

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss.

SUPERIOR COURT
CR 05-109

COMMONWEALTH

v.

CHRISTOPHER M. MCCOWEN

**MEMORANDUM OF DECISION ON DEFENDANT'S
THIRD MOTION FOR NEW TRIAL**

On January 6th, 2002, Christa Worthington was found dead in her home in Truro. She had been brutally murdered. On November 16, 2006, at the conclusion of a five week long trial, the jury found the defendant, Christopher M. McCowen, guilty of the first degree murder of Worthington. The Supreme Judicial Court affirmed both the conviction and this court's denial of the first motion for a new trial on December 10, 2010. Commonwealth v. McCowen, 458 Mass. 461 (2010).

On October 5, 2010, present counsel, together with trial counsel Robert A. George, filed the third motion for a new trial focusing on allegations that the medical examiner, Dr. Henry M. Nields, testified falsely at trial as to his credentials as a forensic pathologist. The motion rested on the affidavit of Dr. Stanton C. Kessler to the effect that he precluded Dr. Nields from completing a fellowship at the Office of the Chief Medical Examiner and that his signatures on documents supporting Dr. Nields' application for certification as a forensic pathologist were forged. Regrettably, the motion and Dr. Kessler's affidavit were publicized widely to the

detriment of Dr. Nields.¹ The word regrettably aptly applies. While Dr. Kessler's affidavit provided defense counsel with a "good ground to support" the motion (borrowing the language of Rule 11(a), M. R. Civ. P.) a more thorough investigation would have revealed obvious weaknesses in Dr. Kessler's assertions.

In response to the motion, State Police Captain Christopher Mason conducted a meticulous investigation into Dr. Kessler's claims. Captain Mason's findings support but one conclusion, that Dr. Kessler's affidavit is not credible. After Captain Mason's investigation was wrapped up in August 2011, defense counsel did not press for a hearing on the motion. The Commonwealth sought, and was granted, a hearing on January 27, 2014. Defendant's present counsel² sought to withdraw the motion on the basis that Dr. Kessler was the sole witness in support of the motion and he passed away in December 2011. In open court defense counsel has conceded he cannot meet his burden of proof on the motion.

On January 27th, the District Attorney argued that Dr. Kessler's affidavit continues as a smear against Dr. Nields' reputation and casts an unnecessary shadow over the doctor's leadership as Chief Medical Examiner. This jurist noted on the 27th that Dr. Kessler's affidavit was the only item on file bearing on the allegations. The District Attorney was granted leave to file an affidavit. On February 6, 2014 the court received the affidavit of Captain Mason and a

¹The news media had the story the instant the motion and affidavit were filed, and perhaps even before the documents reached the clerk's office. This is but one example of what this jurist concludes was a pattern of trying the McCowen case in the news media fostered by trial counsel for the defendant.

²Attorney Gary Pelletier has assumed sole representation of McCowen in the wake of Robert George's U.S. District Court conviction and prison sentence for money laundering in October, 2012.

ream of supporting documents.

“The credibility, weight and impact of the affidavits in support of the motion are entirely within the judge’s discretion. He is not required to believe them even if they are undisputed.”

Commonwealth v. Pingaro, 44 Mass. App. Ct. 41, 48 (1997).

Captain Mason’s investigation revealed that, contrary to Dr. Kessler’s assertions, Dr. Nields successfully completed a fellowship at the offices of the Chief Medical Examiner in 1998. Dr. Kessler’s bald allegation that his signatures on documents associated with Dr. Nields’ certification as a forensic pathologist were forged is false. Dr. Nields did not furnish the certifying agency with the documents. Dr. Kessler obviously signed them and they were submitted to the agency in due course. Dr. Kessler’s recollections of a disruptive confrontation in the morgue and an incident of sexual harassment concern events unrelated to Dr. Nields and yet when Dr. Kessler signed his affidavit he incorrectly attributed these events to Dr. Nields. The Captain’s report and the supporting documents dissect and disprove each and every allegation leveled by Dr. Kessler.

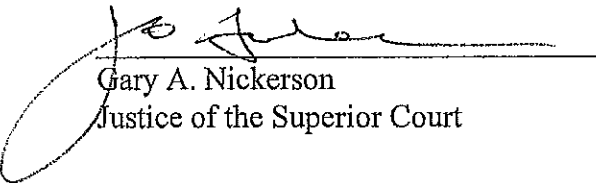
One wonders why an accomplished medical professional would launch such a smear against a colleague. Captain Mason’s report provides the answer. Dr. Nields completed his fellowship at the Office of Chief Medical Examiner in 1998 and went on to positions of increasing responsibility in his field until he rose to the rank of Chief Medical Examiner for the Commonwealth. Dr. Kessler’s career path led from Massachusetts to South Carolina and Alaska in the late 1990’s and early 2000’s. From 2007 through 2009, Dr. Kessler sought to return to Boston. In an email dated August 19, 2009, addressed to the director of human resources for the Office of the Chief Medical Examiner, Dr. Kessler bombastically suggested his failure to secure

employment in Boston was the fault of Dr. Nields. Clearly Drs. Kessler and Nields' personalities clashed in the 1990's to the point the two men distrusted one another. Dr. Kessler's rant of August 19th demonstrates that Dr. Nields' distrust of Dr. Kessler was well founded. The evidence at hand supports the conclusion that Dr. Kessler's affidavit filed with this court is the product of a disgruntled individual bent on revenge.

This court finds the affidavit of Dr. Kessler in support of the defendant's third motion for a new trial is wholly without merit.

ORDER

For the above stated reasons it is ORDERED that the Defendant's Third Motion For New Trial be DENIED.


Gary A. Nickerson
Justice of the Superior Court

DATED: April 29, 2014