

## Testimony by [WIT name]<sup>1</sup>

WIT testified in this case as an incarcerated informant. An incarcerated informant is a witness who was incarcerated either at the time (he/she) offered to testify, or at the time (he/she) provided testimony, about a defendant's inculpatory statements or actions, regardless of where or when those inculpatory statements or actions took place.

Although the Commonwealth is permitted to present the testimony of an incarcerated informant, you should examine the testimony of such a witness who provides evidence against a defendant with greater care and caution than the testimony of an ordinary witness.

You should keep in mind that (he/she) may be looking or hoping for some favorable treatment in the sentence, supervision, or disposition of (his/her) own matters, and therefore (his/her) testimony may have been influenced by (his/her) expectation of or hope for favorable treatment in the sentence, supervision, or disposition of (his/her) own matters.

You should also keep in mind that in presenting the incarcerated informant as a witness, the Commonwealth does not know whether (he/she) is telling the truth. The witness's truthfulness is solely a question for you to decide.

The factors you may consider, among others, when evaluating the credibility of such a witness include:

- the extent to which the witness's testimony is confirmed by other evidence;
- the extent to which the testimony contains details known only by the perpetrator of the alleged offense;
- the extent to which the details of the testimony could be obtained from a source other than the defendant, such as pretrial

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<sup>1</sup> This instruction is now required. See *Commonwealth v. Lacrosse*, No. SJC-13080, slip op. at 37–38 (Aug. 21, 2024).

discovery in the possession of the defendant that may have been accessed by the witness or media coverage of the alleged offense;

- the circumstances under which the witness initially provided information supporting such testimony to law enforcement or a prosecutorial official;
- whether the witness has received a benefit, or expects to receive a benefit (including immunity from prosecution, leniency in prosecution, leniency in sentencing, or personal advantage), in exchange for testimony;
- any other case in which the witness testified or offered statements and whether the witness received any promise, inducement, or benefit in exchange for that testimony or statement; and
- whether the witness has ever changed (his/her) testimony.

You should carefully scrutinize the testimony of such a witness before you accept it. However, you are not required to disbelieve a witness simply because (he/she) is an incarcerated informant. Like all other questions of credibility, this is an issue for you to determine based on all the evidence presented to you.