

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT
CRIMINAL ACTION
9784-CR-11374

COMMONWEALTH

v.

RICKEY MCGEE

DEFENDANT'S MOTION FOR POSTCONVICTION RELIEF

The defendant, Rickey McGee,¹ hereby moves under M.R.C.P. Rule 30(b) for postconviction relief in the above-numbered case. As grounds therefor, the defendant states that:

1. Newly available evidence and Brady material show that the Boston Police obstructed justice and the Commonwealth violated McGee's right to a fair trial by providing undisclosed inducements to witness Natasha Hamilton and by and shielding her from prosecution for crimes involving fraud that police knew she had committed. See Commonwealth v. Caldwell, 487 Mass. 370, 375 (2021); Commonwealth v. Hill, 432 Mass. 704, 716 (2000); Mass Decl. of Rts. Art. 12; U.S. Const. Amends. V, XIV. See Memo at pp. 45-72.
2. Newly available evidence and Brady material show that police knew of a plausible third-party suspect, Damian Gray, but violated McGee's right to a fair trial by suppressing evidence that would have enabled him to present compelling third-party culprit and Bowden defenses. See Commonwealth v. Bowden, 379 Mass. 472, 485-486 (1980). See

¹ Although the caption to Mr. McGee's case spells his name as "Ricky," the correct spelling is "Rickey."

also Commonwealth v. Holbrook, 482 Mass. 596, 611 (2019) (suppression of evidence of a third-party culprit); Commonwealth v. Sullivan, 478 Mass. 369, 381 (2017) (suppression of evidence that could bolster Bowden defense); Commonwealth v. Grace, 397 Mass. 303, 306 (1986); Mass Decl. of Rts. Art. 12; U.S. Const. Amends. V, XIV. See Memo at pp. 72-93.


3. Where the Boston police lied to McGee's 15-year-old friend in order to get him to implicate McGee, newly available evidence concerning the interrogation of juveniles using deception, and other risk factors, would likely have been a real factor to McGee's jury. See Commonwealth v. Epps, 474 Mass. 743, 766 (2016); Mass Decl. of Rts. Art. 12; U.S. Const. Amends. V, XIV. See Memo at pp. 93-101.
4. The Commonwealth failed to disclose critical and substantial impeachment evidence about ballisticsian George Foley showing, *inter alia*, that he had pending criminal charges against him at the time of the trial, was battling alcoholism, and had (according to the Boston Police) "lost contact with reality." In suppressing this material, the Commonwealth denied McGee his right to a fair trial. Relatedly, the Commonwealth suppressed other impeachment evidence: an affidavit signed by Detective Foley concerning the apparent murder weapon that contradicted another affidavit he signed only four days later. See Giglio v. United States, 405 U.S. 151-52 (1972); Grace, 397 Mass. at 306; Mass Decl. of Rts. Art. 12; U.S. Const. Amends. V, XIV. See Memo at pp. 102-133.

The defendant anticipates supplementing his claims and perhaps adding other claims as he receives the requested discovery and other records, pursuant to M.R.C.P. Rules 30(c)(4) & 17.

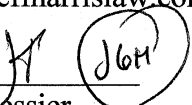
In support of this motion, the defendant has attached a Memorandum of Law in Support of His Motion for Postconviction Relief, a Record Appendix (RA), a Sealed Record Appendix (SRA),

affidavits of witnesses Wendy Morrissette and Leo Eliasson, undersigned counsel Jeffrey G. Harris and Jill Ann Tessier, prior counsel Matthew Kamholtz and David A. F. Lewis, investigators John Nardizzi and Rob Selevitch, and expert Lucy Guarnera, Ph.D.

Pursuant to MRCP Rule 30(b), for the reasons given above, both alone and in confluence with each other, see Memo at pp. 123-124, and in the accompanying memorandum of law, a new trial is in the interests of justice.



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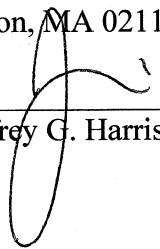


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Dated: March 15, 2024

CERTIFICATE OF SERVICE

I, Jeffrey G. Harris, hereby certify that a true and accurate copy of the foregoing motion was served earlier today by email to Jennifer Zalnasky, Assistant District Attorney, Suffolk County District Atty's Office, One Bulfinch Place, Boston, MA 02114.



Jeffrey G. Harris