

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

Docket No. 9784CR11374

COMMONWEALTH

v.

RICKY McGEE,  
Defendant

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**COMMONWEALTH'S RESPONSE TO  
THE DEFENDANT'S MOTION FOR NEW TRIAL**

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Now comes the Commonwealth and respectfully requests that this Honorable Court vacate the defendant's convictions and grant a new trial. The Commonwealth undertook a comprehensive investigation of the claims raised by the defendant, including locating and reinterviewing critical witnesses, interviewing individuals who were involved in the criminal investigation and prosecution, and investigating new evidence in the case. After a thorough review of the facts and application of the relevant law, the Commonwealth has concluded that a confluence of factors created a substantial risk of a miscarriage of justice in the defendant's case and therefore warrants a new trial.

**BACKGROUND**

On July 23, 1997, a Suffolk County grand jury returned indictments charging the defendant, Ricky McGee, with murder, carrying a firearm without a license, and armed robbery (CA.1-3).<sup>1</sup>

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<sup>1</sup> "(CA.\*)" herein refers to the Commonwealth's record appendix, which is submitted along with this filing.

On October 5, 1998, the defendant's jury trial began (Quinlan, J.) (CA.4). On October 20, 1998, the jury found the defendant guilty of first-degree murder under the theories of deliberate premeditation and felony murder, armed robbery, and unlawful possession of a firearm (CA.11). That same day, the defendant was sentenced to life without the possibility of parole for the murder indictment, life for the armed robbery indictment, and four to five years in state prison for the firearm indictment (CA.26-27).

On November 10, 1998, the defendant filed his first motion for new trial, which was denied by the trial judge after an evidentiary hearing on June 26, 2003 (CA.29-33). On April 14, 2011, the defendant filed a second motion for new trial, which was again denied by the trial judge on June 21, 2012 (CA.35-43).

On April 7, 2014, the Supreme Judicial Court affirmed the defendant's convictions and the denials of his two motions for a new trial (CA.47-57). *See Commonwealth v. McGee*, 467 Mass. 141 (2014).

On March 15, 2024, the defendant filed the instant motion for new trial raising a number of issues related to the Commonwealth's chief witness, Natasha Hamilton, and alleging various claims of police misconduct (CA.58-183). In the months since the filing the defendant has filed numerous motions for postconviction discovery (CA.194-477). On December 10, 2024, this Court explained that "[t]he larger issue in [defendant's] motion is an alleged pattern of misconduct by the police with respect to this case in withholding or otherwise tainting the evidence available to the defense" (CA.483). Because of that, this Court ordered an evidentiary hearing during which three witnesses central to the

defendant's claims – Hamilton, Wendy Morrisette, and Leo Eliasson – would be required to testify (CA.505).

## **FACTS**

### 1. The Crime

On April 16, 1997, between 2:16 AM and 2:40 AM, the victim, Geta Yalew, was shot in the back of the head with a .38 caliber revolver during an apparent robbery while working as a convenience store clerk at Christy's Market at 119 Jersey Street in the Fenway neighborhood of Boston (Tr.1:27). The store was robbed of food stamps, a cash tray that held less than ninety-four dollars in cash, and a coin compartment from the cash register (Tr.3:95). The store surveillance camera was not functioning at the time of the murder and the only physical evidence recovered from the crime scene were two bullet fragments (Tr.3:100/Tr.5:122-123).

A few hours after the robbery, police found the cash tray, a single leather glove, and a coin in an alley next to the convenience store (Tr.2:158-160). Later the same day, a coin compartment was found in the bed of a truck that was parked near the same alleyway (Tr.3:72).

### 2. The Trial

At trial, the Commonwealth's theory that the defendant killed the victim primarily relied upon two witnesses, Natasha Hamilton and Earrie Fenderson, who each claimed that the defendant admitted that he had killed the victim.

*Natasha Hamilton*

At the time of the murder, Hamilton and her children lived with the defendant, the defendant's mother Marion McGee (hereinafter, "McGee"), and the defendant's siblings a few blocks from the scene of the murder (Tr.4:46). Hamilton testified that on April 16, she was watching TV sometime after 1:00 am, when the defendant came out of his room, asked for a cigarette, and left the house wearing a dark-colored pullover jacket, army pants, boots, a camouflage ski mask around his neck, gloves in his side pocket, and a Scully cap on his head (Tr.4:65-67). When the defendant came back about fifteen to twenty minutes later, he appeared nervous and said that he "shot the man in the store" during a robbery attempt (Tr.4:80). Hamilton then saw the defendant pull money and food stamps out of his pocket and stack them in separate piles on the table (Tr.4:85). From his waist, the defendant also pulled a black firearm that had a cylinder in the middle (Tr.4:86). Hamilton saw bullets fall out when the defendant manipulated the cylinder (Tr.4:89). She recognized the firearm as one he kept stored in his bedroom under a couch cushion (Tr.4:86-87), and had also seen it being displayed in a photo of the defendant and his friends (Tr.4:88).<sup>2</sup>

Hamilton testified that the defendant told her that he did not know if the man he shot was dead or alive, or if anyone had found him (Tr.4:90). The defendant placed the food stamps under the microwave, put the money in his pocket, and went into his room (Tr.4:90). Fifteen minutes later, he emerged in a

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<sup>2</sup> This photograph depicts Earrie Fenderson holding the firearm that Hamilton stated she saw the defendant carry and pull out of his pants the night of the murder (Tr.4:88).

new change of clothes and asked if Hamilton wanted to go to the White Hen to get some cigarettes (Tr.4:91-92). She agreed and they walked to the White Hen, passing by Christy's market to see if the police or an ambulance had arrived yet (Tr.4:92). While walking there, the defendant stated, "damn, no one found him yet," when he realized that there were no lights or sirens outside the store (Tr.4:95). They eventually arrived at the White Hen, where Hamilton bought some cigarettes, and then the pair walked past Christy's again to see if police or an ambulance had arrived (Tr.4:97-98). The defendant was worried about the clerk and hoped he did not die (Tr.4:98). Hamilton offered to call the police but did not, because they heard sirens in the distance (Tr.4:98). They talked for a bit longer, with the defendant telling her he wanted to go back to the store to get the videotape from security and to fetch a glove he dropped during his escape through the alley (Tr.4:100). At the end of this conversation, the defendant went to his room to go to bed, and Hamilton went to sleep on the couch (Tr.4:101).

Hamilton woke up the next morning to the television broadcasting a report about the murder (Tr.4:103). Hamilton testified that McGee said, "that was sad, what happened to the guy in the store, and whoever did that, that's messed up." (Tr.4:103). The defendant agreed that it was messed up and gave Hamilton a look (Tr.4:103). Shortly after watching the news, McGee and Hamilton went down to Christy's to see what was happening. The defendant stayed behind (Tr.4:104). When McGee and Hamilton returned the defendant was leaving the house with Earrie Fenderson and stated he was going to take the gun to Mission Hill (Tr.4:105). Hamilton then saw the handle of the gun when the defendant lifted

his shirt and recognized it from the night before when she saw it sticking out of his pants (Tr.4:105).

*Earrie Fenderson*

Fenderson was a close friend that had known the defendant for at least eight years (Tr.5:135). He testified that the defendant told him that he robbed and shot the clerk in Christy's (Tr.5:142). The defendant told Fenderson that he shot the clerk in the back of the head because the clerk was "hesitating on the money" (Tr.5:142). Fenderson explained that the defendant admitted that he used the same .38 revolver that Fenderson was seen holding in the photograph hanging in the defendant's room (Tr.5:143). Fenderson testified that he had previously seen the defendant in possession of black or brown leather gloves, an army fatigue-patterned mask, and that he had seen .38 shell casings in McGee's room (Tr.5:139, 140, 146-147).

*The Defense*

The defense at trial was that the Commonwealth's case was "built entirely on the say so of two absolutely untrustworthy, unreliable witnesses" and that there was a lack of physical evidence to support their testimony (Tr.8:17).

At trial, Hamilton was impeached with her grand jury testimony (Tr.8:26, 29-31)<sup>3</sup> and questioned at length about her motivations for testifying (Tr.8:20, 24), which included the potential receipt of reward money and other benefits

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<sup>3</sup> Defense counsel asked Hamilton about her changing statements from her interview with police to grand jury (Tr.4:194), including what she was watching on television (Tr.4:210-211; 5:15-16); details about the glove the defendant was wearing (Tr.5:19-24); and who bought cigarettes after the murder (Tr.5:26-27).

related to her testimony (Tr.8:20-22).<sup>4</sup> Trial counsel additionally attempted to admit evidence of an allegation that after the murder, Hamilton broke into a mailbox, stole checks, and fraudulently used the checks (Tr.3:166-176). The trial judge excluded this evidence as subsequent uncharged bad acts (Tr.3:199).

Trial counsel also sought to question Hamilton about her relationship with the McGee family, in particular Hamilton's alleged belief that McGee was behind the Department of Social Services' attempt to take away Hamilton's children in January of 1997 (Tr.4:183). Hamilton testified that she never entertained a belief that McGee tried to have her children taken away by DSS (Tr.4:143, 183, 185), and denied threatening McGee that Hamilton would do the same thing to McGee's children that McGee had done to hers (Hamilton's) (Tr.4:185).

Trial counsel also attacked the credibility of Fenderson. On cross-examination, counsel elicited from Fenderson that police had told him that he was a suspect in the case and that they had read him his *Miranda* warnings with his mother present (Tr. 5:153).<sup>5</sup> Counsel also implied through questioning that Fenderson implicated the defendant only after being informed by police that the defendant "might wind up trying to point the finger on me" (Tr. 5:55). Fenderson

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<sup>4</sup> Hamilton was questioned about whether she had attempted to collect a \$25,000 cash reward from Christy's and answered that she had not inquired about it and did not intend to collect it (Tr.4:137). and a \$1,000 cash reward from Crime Stoppers (Tr.4:137). Hamilton was also questioned about the Commonwealth putting her up in a Holiday Inn (Tr.4:134); helping her receiving a Section 8 housing certificate (Tr.4:134); and helping her pay her first month rent, security deposit, and brokers fee on an apartment (Tr.4:135).

<sup>5</sup> Fenderson was a juvenile at the time (Tr.5:134).

testified that he was intoxicated during his police interview (Tr. 5:156). When questioned about whether he learned the facts of the murder from sources other than the defendant, Fenderson testified that he was aware of the murder and had read about it in the newspaper and seen it on the news (Tr. 5:156-158). Fenderson denied that he learned about the safe or the suspect's flight path from the news, however, insisting that he learned these facts from the defendant (Tr. 5:159-160). Fenderson further testified that he was afraid of being arrested again due to a photograph in evidence depicting holding two firearms (Tr. 7:112).

### 3. Post-Conviction

In 2024, the defendant filed the instant motion for new trial. In preparation for the evidentiary hearing ordered by this Court, the Commonwealth interviewed numerous people involved with the case: the trial prosecutor, former Assistant District Attorney Elizabeth Keeley; BPD Superintendent Robert Harrington (retired); BPD Superintendent Paul Joyce (retired); Natasha Hamilton; Cecil McKnight; Leo Eliasson; and Wendy Morrissette.<sup>6</sup>

During her postconviction interview, Hamilton was asked to explain the circumstances under which she first informed the police of the information she had about the murder (CA.512). Hamilton stated that sometime after the murder she contacted the father of her children, Cecil McKnight, who was incarcerated at the time, and told him that she had information about the Christy's murder (CA.512). In his postconviction interview, McKnight stated that he remembered

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<sup>6</sup> The interviews were conducted primarily by an investigator from the Suffolk County District Attorney's Office (hereinafter, "postconviction interview").

the conversation and further stated that Hamilton mentioned not knowing what to do with the information (CA.512). McKnight also acknowledged that Hamilton told him about the reward money during that conversation (CA.522). Superintendent Paul Joyce,<sup>7</sup> who at the time of the murder was a detective and a liaison to the United States Attorney's Office in Boston (CA.514), was tasked with gathering information from incarcerated federal informants about unsolved gang and drug-related homicides (CA.514-515). It was in this capacity that he was familiar with McKnight (CA.515). In a postconviction interview, Joyce stated that McKnight told him that Hamilton had information about the Yalew murder (CA.515). Det. Joyce informed then Sergeant Detective Harrington,<sup>8</sup> who was assigned to the Yalew murder, about the information he had received (CA.515). In her postconviction interview, Hamilton stated that she was visited by Det. Joyce after her conversation with McKnight and that Det. Joyce arranged for her to be interviewed (CA.512). Hamilton then testified before the grand jury and the defendant was charged with murder (Tr.4:193).

During her postconviction interview, Hamilton was asked about the alleged threats that she made to McGee (CA.513). Hamilton stated that she had gotten into an altercation with Dominka McGee, the defendant's sister, on the Dorchester courthouse steps after the defendant had been charged with the

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<sup>7</sup> Superintendent was the position held by Paul Joyce when he retired. For purposes of clarity and based on his position at the time, he will be here in referred to as Det. Joyce.

<sup>8</sup> Superintendent was the position held by Robert Harrington when he retired. For purposes of clarity and based on his position at the time, he will be here in referred to as Sgt. Det. Harrington.

murder (CA.513). Hamilton recalled that the defendant's sister approached her and asked her to help the defendant, to which Hamilton responded, "your mother had my kids taken away but wait till you see what I do to her kid" (CA.513). Hamilton also confirmed that she did in fact accept the \$25,000 reward from Christy's after her testimony despite having testified that she was not interested in reward money (CA.512). When asked about a \$1,000 reward offered by Crime Stoppers, Hamilton denied she had collected the money and then asked if it was still available to collect (CA.512).

The Commonwealth also conducted a postconviction interview of Wendy Morrisette regarding her affidavit submitted with the defendant's motion for new trial (CA.520-521). Morrisette stated that she was the victim of bank fraud in 1997, and that Boston Police Detective Robert Bowes and a Lieutenant McCarthy were assigned to investigate it (CA.520). She said that Det. Bowes and Lt. McCarthy told her that Hamilton was responsible for the fraud but that they could not touch Hamilton because she was a witness in a homicide (CA.520). Morrisette also stated that after that conversation, a police detective came to her home and threatened her (CA.521). She did not know the detective's name but described him as being in his mid-to-late 40s with a mustache, almost like a TV detective (CA.521).<sup>9</sup> Morrisette explained that the detective told her that she was interfering with a police investigation and needed to "knock it off" (CA.521).

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<sup>9</sup> Neither Joyce nor Harrington match the description given by Wendy Morrisette and the individual described has not been identified (CA.521).

According to Morrissette, the unknown officer then told her that “she could be arrested if she did not stop what she was doing” (CA.521).

The Commonwealth conducted a postconviction interview of Leo Eliasson regarding his affidavit submitted in support of the defendant’s motion for new trial (CA.518-519). Interviewed for the first time by the Commonwealth, Eliasson stated that he worked for US Trust Bank at the time and that the bank’s normal practice was not to investigate claims of fraud involving relatively small amounts of money. He stated that they broke with that practice in this case because of the persistence shown by Morrissette and her husband (CA.518). Eliasson said that there were good photographs of the perpetrator from an ATM, and that the Morrissettes had identified the perpetrator as Natasha Hamilton (CA.518). Based on this, Eliasson stated that he submitted a report to the Boston Police Department so the case could be prosecuted (CA.518). Shortly after Eliasson submitted his report to BPD, he stated that he received a phone call from an unknown officer, who claimed to be assigned to homicide cases (CA.518). This individual told Eliasson that Hamilton was a witness in a homicide case; that they were keeping her in Somerville; and that he needed to drop the matter (CA.518). Eliasson also said that the unnamed officer told him that if he proceeded with the case, the officer would testify that Hamilton was with him at the time the theft occurred (CA.518). Eliasson eventually dropped the investigation because the bank was in the process of being bought out and he did not want to alienate the Boston Police Department (CA.519).

Det. Joyce and Sgt. Det. Harrington were asked about the claims made by Morrissette and Elliason regarding the interference by the police (CA.516). Both men flatly denied intervening in the fraud investigation (CA.516). Sgt. Det. Harrington stated that the fraud case was not an issue for him, and he would have left it up to the jury to decide Hamilton's credibility (CA.516). Det. Joyce and Sgt. Det. Harrington denied any knowledge or involvement in the described encounters with these two witnesses (CA.516).

### **ARGUMENT**

A judge has the discretion to “grant a new trial at any time if it appears that justice may not have been done” under Rule 30(b) of the Massachusetts Rules of Criminal Procedure. “The fundamental principle established by Mass. R. Crim. P. 30 (b) is that, if it appears that justice may not have been done, the valuable finality of judicial proceedings must yield to our system's reluctance to countenance significant individual injustices.” *Commonwealth v. Brescia*, 471 Mass. 381, 388 (2015).<sup>10</sup>

To determine whether “justice may not have been done,” in rare cases a judge “may need to look beyond specific, individual reasons for granting a new trial to consider how a number of factors act in concert to cause a substantial risk of a miscarriage of justice and therefore warrant the granting of a new trial.” *Commonwealth v. Rosario*, 477 Mass. 69, 77-78 (2017). The determination is

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<sup>10</sup> The Commonwealth's response addresses only the reasons that it believes supports the relief requested. Any issues not addressed by the Commonwealth are not waived. The Commonwealth can address any additional issues upon the Court's request.

ultimately one of “fundamental fairness,” and asks whether the defendant “can receive, or has received, a fair trial.” *Brescia*, 471 Mass. at 390-391. Where, as here, the defendant’s claims are based on new evidence, the defendant must show that the evidence is newly available and that it casts real doubt on the defendant’s conviction. *Commonwealth v. Duguay*, 492 Mass. 520, 531 (2023). “[T]he key question is ‘whether the new evidence would probably have been a real factor in the jury’s deliberations.’” *Commonwealth v. Cowels*, 470 Mass. 607, 616 (2015) (quoting *Commonwealth v. Grace*, 397 Mass. 303, 305 (1986)).

Here, there are three categories of evidence that when taken together support that a new trial is warranted: (1) evidence from Eliasson and Morrisette about alleged interference with the fraud investigation; (2) evidence that Hamilton collected reward money after the trial; and (3) evidence about Hamilton’s motive to lie. Each was unknown at the time of trial and each, taken together, could have been a factor in the jury’s deliberations.

As to the first category, on the record, it is clear that the alleged interference with the fraud investigation was unknown to both defense counsel and the Commonwealth (Tr.3:187-188). The trial prosecutor told the judge there was nothing to suggest that “the Commonwealth, and I certainly didn’t hear this from Attorney Kamholtz, did anything to interfere with any investigation by U.S. Trust or Fleet Bank into any fraudulent use of credit cards or checks” (Tr.3:187). The trial prosecutor also argued that “there is no evidence to suggest here . . . that the Commonwealth was aware of these alleged bad acts of Ms. Hamilton” (Tr.3:188). In support of the instant motion, Eliasson wrote an affidavit and also

stated to a Suffolk County District Attorney's Office investigator that the police told him not to pursue the fraud investigation or take out charges. Morrisette echoed the same, in both an affidavit and in a statement to Suffolk County District Attorney's Office investigator, that a detective came to her house and dissuaded her from pressing the issue further.

The same is true of the second category. At trial, Hamilton testified that she had no intention to collect the reward money (Tr.4:137), and also denied that collecting a reward was a motivating factor in her coming forward and cooperating with the police (Tr.5:63-64). However, in his interview McKnight explained that Hamilton mentioned the reward money the very first time they talked about the murder, and Hamilton admitted when recently interviewed not only that she collected the reward money after trial, but also that if there was still any outstanding reward money that she wished to collect it. Finally, as to the third category, at trial Hamilton denied making a threat to McGee that she "better watch what [Hamilton] does to her kids" and "that this is what you did to me, I'm going to do this to you" (Tr.4:185). When recently interviewed Hamilton admitted that she had indeed made such a threat to the defendant's sister, telling her, "your mother had my kids taken away, but wait till you see what I do to her kid."

These three categories of evidence, had they been known at the time of trial, would have supported the defendant's overarching defense that the Commonwealth's case was built on untrustworthy witnesses (Tr.8:17). The evidence about Hamilton's motivation to lie, including her desire to collect the

reward money, her threat to exact revenge on McGee, and her desire to trade information with the police for protection from prosecution for the fraud case, would have provided powerful fodder for cross-examination and argument. Though discovery of additional impeachment evidence is typically not a ground to grant a motion for a new trial, the newly discovered evidence would have provided defense counsel with an additional ground of defense. Indeed, defense counsel would have had a good faith basis to question and argue that the integrity of the police investigation was tainted by credible allegations that investigators attempted to shield Hamilton from criminal charges to protect the case against the defendant.<sup>11</sup> Such actions touch upon Hamilton *and* the investigation and would have provided a powerful avenue of defense for the defendant that could have been a real factor in the jury’s deliberations.

That is especially true given that the case against the defendant was not particularly strong. In analyzing prejudice to the defendant, the Court “need not determine . . . whether the defendant would be found not guilty,” were the evidence presented. *Commonwealth v. Gaines*, 494 Mass. 525, 540 (2024). Instead, the court must ask whether the new evidence “probably would have

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<sup>11</sup> Neither Eliasson nor Morrisette were able to identify who they spoke to. The descriptions given do not match Harrington or the detectives involved in this case. During the Commonwealth’s postconviction investigation, no information has surfaced that implicates the trial prosecutor, Sgt. Det. Harrington, or Detective Joyce in any misconduct. Nevertheless, the allegations could have created a good faith basis for trial counsel to have raised a broader claim that someone in the Boston Police Department was engaged in a concerted effort to protect a crucial witness in the homicide case from prosecution. That, together with the other newly discovered evidence, created a substantial risk of a miscarriage of justice.

been a real factor in the jury's deliberations." See *Commonwealth v. Ellis*, 475 Mass. 459, 476-477 (2016). Here, the Commonwealth's case was almost entirely dependent on two admissions by the defendant, there was no physical evidence tying him to the crime scene, and the evidence that did – the testimony of Hamilton and Fenderson -- had serious weaknesses. The newly discovered evidence would have further strengthened those weaknesses and would have seriously weakened, if not foreclosed, the trial prosecutor's argument to the jury that Hamilton came forward and cooperated in the case because of her relationship to the victim and the kindness the victim showed to her (Tr.8:65). Further, the newly discovered evidence, as it related to the interference with the fraud investigation, could have prompted the jury to question not only Hamilton's reliability but also the reliability of the entire police investigation. Evidence of such alleged misconduct could have been a real factor in the jury's deliberations. Given that real possibility, a new trial is warranted.

## **CONCLUSION**

For all the above stated reasons, the Commonwealth requests that this honorable court vacate the defendant's convictions and enter an order for a new trial, reconsider and allow the defendant's motion to stay the execution of his sentence, and cancel the evidentiary hearing scheduled for October 27, 2025.

Respectfully submitted  
For The Commonwealth,

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October 2, 2025

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing notice of appearance was filed and sent to the defendant's counsel of record by email to Jeffrey Harris, Esq., and Jill Tessier, Esq., at [jh@menkenharris.com](mailto:jh@menkenharris.com) and [jtessier@publiccounsel.net](mailto:jtessier@publiccounsel.net).

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October 2, 2025