

No.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2024-2025

MARK TOMAS REGAN,
Petitioner,

-v.-

COMMONWEALTH OF MASSACHUSETTS
Respondent

ON PETITION FOR WRIT OF CERTIORARI TO
THE APPEALS COURT OF
THE COMMONWEALTH OF MASSACHUSETTS

APPENDIX

David H. Mirsky, Esquire
(MA B.B.O. # 559367)
Counsel of Record for Petitioner
Mirsky & Petito, Attorneys at Law
P.O. Box 1063
Exeter, NH 03833
Tel.: 603-580-2132
dmirsky@comcast.net

Joanne T. Petito, Esquire
(MA B.B.O. # 559773)
Mirsky & Petito, Attorneys at Law
P.O. Box 1063
Exeter, NH 03833
Tel.: 603-580-2132
joanne.petito@gmail.com

APPENDIX TABLE OF CONTENTS

<u>Full Opinion of the Appeals Court for the Commonwealth of Massachusetts,</u> <u>Commonwealth v. Mark Tomas Regan</u> , No. 2021-P-1129 (August 23, 2024), as published at <u>Commonwealth v. Regan</u> , 104 Mass. App. Ct. 623 (2024).....	Appendix A
<u>Supreme Judicial Court of Massachusetts, Order Denying Further</u> <u>Appellate Review, Commonwealth v. Mark Tomas Regan</u> , 2024 Mass. LEXIS 429, 494 Mass. 1109, 244 M.E. 1004 (October 16, 2024)	Appendix B
<u>Docket Entries, Commonwealth v. Mark Tomas Regan</u> , Suffolk Superior Court No. 1484CR10420.....	Appendix C
<u>Docket Entries, Commonwealth v. Mark Tomas Regan</u> , Appeals Court No. 2021-P-1129.....	Appendix D
<u>Docket Entries, Commonwealth v. Mark Tomas Regan</u> , Supreme Judicial Court of Massachusetts, No. FAR-30007.....	Appendix E
<u>Suffolk Superior Court Docket No. 1484CR10420, Paper #100, Defendant's</u> Motion for Required Finding of Not Guilty with Endorsed Order of Denial.....	Appendix F
<u>Suffolk Superior Court Docket No. 1484CR10420, Oral Presentation and</u> Findings on Defendant's Motion for Required Finding of Not Guilty,	

TrVII/114 (May 29, 2019).....	Appendix G
<u>Verdict Slip, Commonwealth v. Mark Tomas Regan</u> , Suffolk Superior Court	
Indictment No. 1484CR10420 #001 (Murder)	Appendix H
<u>Verdict Slip, Commonwealth v. Mark Tomas Regan</u> , Suffolk Superior Court	
Indictment No. 1484CR10420 #002 (Unlawful Possession of a	
Firearm).....	Appendix I
<u>Verdict Slip, Commonwealth v. Mark Tomas Regan</u> , Suffolk Superior Court	
Indictment No. 1484CR10420 #003 (Unlawful Possession of	
Ammunition).....	Appendix J
<u>Defendant's Supplemental Memorandum Regarding The Application Of</u>	
<u>Commonwealth vs Guardado To His Appeal</u>	Appendix K
<u>Defendant's Reply Brief, Commonwealth v. Mark Tomas Regan</u> ,	
Appeals Court No. 2021-P-1129	Appendix L
<u>Defendant's Application for Further Appellate Review, Commonwealth</u>	
<u>v. Mark Tomas Regan</u> , Supreme Judicial Court for the Commonwealth	
of Massachusetts, FAR-3007	Appendix M

APPENDIX A



Neutral

As of: December 31, 2024 3:43 PM Z

Commonwealth v. Regan

Appeals Court of Massachusetts

May 6, 2024, Argued; August 23, 2024, Decided

No. 21-P-1129.

Reporter

104 Mass. App. Ct. 623 *; 242 N.E.3d 631 **; 2024 Mass. App. LEXIS 114 ***; 2024 WL 3908443

COMMONWEALTH vs. MARK TOMAS REGAN.

Subsequent History: Appeal denied by
Commonwealth v. Regan., 2024 Mass. LEXIS
429 (Mass., Oct. 16, 2024)

Prior History: [***1] Suffolk. INDICTMENTS found and returned in the Superior Court Department on May 15, 2014.

A pretrial motion to suppress evidence was heard by *Mary K. Ames, J.*, and the cases were tried before *Jeffrey A. Locke, J.*

Core Terms

fingerprint, emergency aid, caretaking, firearms, firearm and ammunition, suppress, latent, objectively reasonable, unlawful possession, warrant requirement, warrantless entry, emergency, neighbor, revolver, matched, morning, print

Case Summary

Overview

HOLDINGS: [1]-The officers' entry into the victim's house satisfied the requirements for application of the emergency aid doctrine because the facts established an objectively reasonable basis for the officers to believe the victim was in his house and in need of

emergency assistance. The victim's failure to show up at work or answer his cell phone was so unusual that the police received separate requests to conduct a wellness check and they were informed that the victim was sixty-six years old and had unspecified medical issues; [2]-Because the Commonwealth conceded that it did not present evidence at trial that defendant lacked a license for the firearm or the ammunition and the trial court did not instruct the jury that non-licensure was an essential element of the charges, defendant's convictions for unlawful possession of a firearm and ammunition were vacated and set aside.

Outcome

We affirm the defendant's conviction of murder in the second degree.

LexisNexis® Headnotes

Criminal Law & Procedure > Search &
Seizure > Warrantless
Searches > Community Caretaking

Criminal Law &
Procedure > ... > Warrantless
Searches > Exigent
Circumstances > Protection of Officers &

Others

HN1 [L] Warrantless Searches, Community Caretaking

Although the police may no longer rely on the community caretaking doctrine as a standalone justification to enter a home without a warrant, the emergency aid doctrine remains a valid exception to the warrant requirement.

Criminal Law & Procedure > ... > Standards of Review > Clearly Erroneous Review > Findings of Fact

Criminal Law & Procedure > ... > Standards of Review > De Novo Review > Motions to Suppress

Criminal Law & Procedure > Preliminary Proceedings > Pretrial Motions & Procedures > Suppression of Evidence

Criminal Law & Procedure > ... > Standards of Review > Clearly Erroneous Review > Motions to Suppress

HN2 [L] Clearly Erroneous Review, Findings of Fact

Reviewing a ruling on a motion to suppress evidence, an appellate court accepts a motion judge's findings of fact absent clear error and defers to her assessment of the credibility of the testimony taken at the evidentiary hearing. The court reviews de novo the application of constitutional principles to the facts as found.

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Scope of Protection

Criminal Law & Procedure > Search & Seizure > Warrantless

Searches > Community Caretaking

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Warrants

HN3 [L] Search & Seizure, Scope of Protection

The United States Supreme Court has held that police officer's exercise of their duties as community caretakers is not sufficient to excuse the Fourth Amendment's warrant requirements for entry into a home.

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Scope of Protection

Criminal Law & Procedure > Search & Seizure > Warrantless Searches > Community Caretaking

Constitutional Law > State Constitutional Operation

HN4 [L] Search & Seizure, Scope of Protection

Because the Massachusetts Constitution may not provide less protection to defendants than the Federal Constitution, the community caretaking doctrine is insufficient after to justify a warrantless entry into a home under either the Fourth Amendment or Mass. Const. Decl. Rights art. 14.

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Exigent Circumstances

Criminal Law & Procedure > Search & Seizure > Warrantless Searches > Community Caretaking

Criminal Law &

Procedure > ... > Warrantless
 Searches > Exigent
 Circumstances > Protection of Officers &
 Others

Criminal Law &
 Procedure > ... > Warrantless
 Searches > Exigent
 Circumstances > Reasonable & Prudent
 Standard

Constitutional Law > ... > Fundamental
 Rights > Search & Seizure > Scope of
 Protection

HN5 [L] Search & Seizure, Exigent Circumstances

Under the emergency aid doctrine, the police may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury. Because the ultimate touchstone of the Fourth Amendment and *Mass. Const. Decl. Rights art. 14* is reasonableness, the warrant requirement is subject to certain exceptions, and the emergency aid exception allows for warrantless entry in an exigency or emergency when there is a need to protect or preserve life or avoid serious injury.

Constitutional Law > ... > Fundamental
 Rights > Search & Seizure > Exigent
 Circumstances

Criminal Law &
 Procedure > ... > Exclusionary
 Rule > Exceptions to Exclusionary
 Rule > Exigent Circumstances

Criminal Law &
 Procedure > ... > Warrantless
 Searches > Exigent
 Circumstances > Protection of Officers &
 Others

HN6 [L] Search & Seizure, Exigent Circumstances

In *Caniglia*, the United States Supreme Court noted that it had earlier held that law enforcement officers may enter private property without a warrant when certain exigent circumstances exist, including the need to render emergency assistance to an injured occupant or to protect an occupant from imminent injury.

Constitutional Law > ... > Fundamental
 Rights > Search & Seizure > Exigent
 Circumstances

Criminal Law &
 Procedure > ... > Warrantless
 Searches > Exigent
 Circumstances > Absence of Probable
 Cause

Criminal Law & Procedure > Search &
 Seizure > Warrantless
 Searches > Community Caretaking

Criminal Law &
 Procedure > ... > Warrantless
 Searches > Exigent
 Circumstances > Officer Knowledge

Criminal Law &
 Procedure > ... > Warrantless
 Searches > Exigent
 Circumstances > Reasonable & Prudent
 Standard

HN7 [L] Search & Seizure, Exigent Circumstances

Unlike the community caretaking exception, the emergency aid exception applies only when there are exigent circumstances or an emergency. Because the purpose of police entry is not to investigate criminal activity, a showing of probable cause is not necessary to

invoke the exception. Instead, the warrantless entry must satisfy two strict requirements. First, there must be objectively reasonable grounds to believe that an emergency exists. Second, the conduct of the police following the entry must be reasonable under the circumstances. Under the first requirement, reasonableness must be evaluated in relation to the scene as it could appear to the officers at the time, not as it may seem to a scholar after the event with the benefit of leisured retrospective analysis. For there to be reasonable grounds to believe that an emergency exists, the injury sought to be avoided must be immediate and serious, and the mere existence of a potentially harmful circumstance is not sufficient. On the other hand, officers do not need ironclad proof of a likely serious, life-threatening injury to invoke the exception.

Constitutional Law > ... > Fundamental Rights > Search & Seizure > Scope of Protection

Criminal Law &
Procedure > ... > Warrantless Searches > Exigent Circumstances > Protection of Officers & Others

HN8 [📄] Search & Seizure, Scope of Protection

Even though performing wellness checks on vulnerable members of the community is among police officers' most important duties, the mere fact that a concerned friend, family member, or neighbor has requested a wellness check does not automatically justify warrantless entry into a home. Instead, the facts known by the police at the time must establish an objectively reasonable basis to believe that entering a home is warranted to address an emergency.

Constitutional Law > ... > Fundamental Rights > Procedural Due Process > Scope of Protection

Criminal Law &
Procedure > ... > Warrantless Searches > Exigent Circumstances > Protection of Officers & Others

HN9 [📄] Procedural Due Process, Scope of Protection

In *Gallagher*, it was discussed that State law and regulations establish detailed procedures for addressing emergency care for an elder at risk of abuse or neglect, with substantial due process protections and protection from unwarranted entry and treatment without consent.

Evidence > ... > Scientific Evidence > Crime Scenes > Fingerprints & Footprints

HN10 [📄] Crime Scenes, Fingerprints & Footprints

Testimony to the effect that a latent print matches, or is individualized to, a known print, if it is to be offered, should be presented as an opinion, not a fact, and opinions expressing absolute certainty about, or the infallibility of, an individualization of a print should be avoided. Fingerprint expert witnesses must clearly frame their findings in the form of an opinion to avoid improper testimony.

Evidence > ... > Scientific Evidence > Crime Scenes > Fingerprints & Footprints

Evidence > ... > Testimony > Expert

Witnesses > Qualifications

HN11[📌] Crime Scenes, Fingerprints & Footprints

Clarifying the mechanics of fingerprint testimony, the Supreme Judicial Court has stated that an expert testifying to a fingerprint match must state expressly that the match constitutes the expert's opinion based on the expert's education, training, and experience. If the expert does not so testify, the prosecutor must elicit this clarification even if the defendant does not object by, for instance, clarifying that a subjective opinion is being sought and then asking whether the witness has an opinion to a reasonable degree of fingerprint analysis certainty. Mass. G. Evid. § 702.

Criminal Law &
Procedure > Counsel > Effective
Assistance of Counsel > Tests for
Ineffective Assistance of Counsel

Criminal Law &
Procedure > Counsel > Effective
Assistance of Counsel > Trials

HN12[📌] Effective Assistance of Counsel, Tests for Ineffective Assistance of Counsel

To prevail on a claim of ineffective assistance of counsel, a defendant also must show that counsel's deficiency resulted in prejudice, which, in the circumstances of counsel's failure to object to an error at trial, is essentially the same as the substantial risk standard an appellate court applies to unpreserved errors.

Criminal Law &
Procedure > Trials > Motions for Acquittal

Evidence > Burdens of Proof > Allocation

Criminal Law &
Procedure > Trials > Burdens of
Proof > Prosecution

Criminal Law & Procedure > ... > Weapons
Offenses > Possession of
Weapons > Unregistered Firearm

HN13[📌] Trials, Motions for Acquittal

The Supreme Judicial Court has ruled that the Commonwealth bears the burden of proving that a defendant lacks a license for firearms and ammunition, and that a judge must instruct jurors as to this burden. The court clarified that the appropriate remedy for failing to properly instruct the jury on this issue is a new trial, as opposed to a judgment of acquittal.

Headnotes/Summary

Headnotes

MASSACHUSETTS OFFICIAL REPORTS HEADNOTES

*Homicide > Firearms > Evidence > Firearm > Fingerprints > Expert
opinion > Witness > Expert > Constitutional
Law > Search and seizure > Search and
Seizure > Emergency > Warrant > Practice,
Criminal > Instructions to jury > Motion to
suppress*

A Superior Court judge properly denied a criminal defendant's pretrial motion to suppress evidence obtained from the victim's home, where the police's warrantless entry into the home was justified under the emergency aid doctrine, in that the facts known by the police at the time established an objectively reasonable basis for them to believe that the victim was in his house and in need of emergency assistance; and where there was no dispute that the police acted reasonably

under the circumstances following their entry into the house. [626-629]

At a criminal trial, certain unobjected-to statements by the Commonwealth's fingerprint expert witness that, considered in isolation, could be interpreted as overstating the accuracy of forensic fingerprint science, did not give rise to a substantial risk of a miscarriage of justice, where the witness did not describe his methodology as infallible and properly framed his findings as an opinion; where the judge instructed the jury that they were not bound to accept the statements; and where, given the strength of the evidence linking the defendant to the crime, there was no uncertainty that the defendant's guilt had been fairly adjudicated. [630-631]

This court vacated the defendant's convictions of unlawful possession of a firearm and unlawful possession of ammunition, where the defendant was entitled to a new rule announced while his appeal was pending requiring that the Commonwealth prove the absence of licensure as an essential element of the offenses. [631-632]

Counsel: Joanne T. Petito for the defendant.

Paul B. Linn, Assistant District Attorney, for the Commonwealth.

Judges: Present: MILKEY, HODGENS, & TOONE, JJ.

Opinion by: TOONE

Opinion

[**635] TOONE, J. Because the victim, Mark Regan, Sr., never missed work, his coworkers were alarmed when he did not show up one [**624] morning. Calls to his phone went unanswered, and snow and ice on his car went

uncleared. After family and neighbors raised additional concerns about his age and health, police officers entered his house through a second-floor window and found his bloodstained body on the floor. They also encountered the defendant, the victim's son, who shares his name. After obtaining a warrant, the officers searched the house and found a loaded revolver with latent fingerprints that, according to the Commonwealth's expert, matched those of the defendant.

A Superior Court jury found the defendant guilty of murder in the second degree, unlawful possession [***2] of a firearm, and unlawful possession of ammunition. On appeal, the defendant argues that (1) the motion judge erred by denying his motion to suppress the evidence obtained from the home because the officers' warrantless entry violated the *Fourth Amendment to the United States Constitution* and *art. 14 of the Massachusetts Declaration of Rights*, (2) the trial judge erred by allowing certain unobjected-to testimony by the Commonwealth's fingerprint expert, and (3) the Commonwealth did not meet its burden of proof for the unlicensed firearm and ammunition charges.

On the first issue, we conclude that the officers had an objectively reasonable basis to believe that the victim was in his house and in need of emergency assistance. *HN1*[7] Although the police may no longer rely on the community caretaking doctrine as a standalone justification to enter a home without a warrant, see *Caniglia v. Strom*, 593 U.S. 194, 196, 141 S. Ct. 1596, 209 L. Ed. 2d 604 (2021), the emergency aid doctrine remains a valid exception to the warrant requirement. On the second issue, we conclude that while certain statements by the expert may have overstated the accuracy of fingerprint comparisons, they did not result in a substantial risk of a miscarriage of justice. Accordingly, we affirm the defendant's conviction of murder. On the

third issue, we vacate the defendant's firearm and ammunition **[***3]** convictions pursuant to the Supreme Judicial Court's decisions in *Commonwealth v. Guardado*, 491 Mass. 666, 206 N.E.3d 512 (2023) (*Guardado I*), and *Commonwealth v. Guardado*, 493 Mass. 1, 220 N.E.3d 102 (2023) (*Guardado II*), cert. denied, U.S. Supreme Ct., No. 23-886 (June 24, 2024).

Background. We first summarize the facts found by the motion judge in her memorandum of decision denying the defendant's motion to suppress. The victim worked at FedEx in Needham and never missed work or failed to answer his cell phone. After he did not arrive for his morning shift on March 12, 2014, coworkers **[*625]** called him repeatedly, but there was no answer. After the victim failed to arrive for his afternoon shift, his supervisor called 911. He informed the police that the victim was sixty-six years old and his absence was "out of character," expressed concern that the victim might be ill although he was not aware of specific medical problems, and asked them to perform a wellness check.

[636]** On the morning of March 14, Boston police Officer Stephen Parenteau received a radio call asking him to conduct a wellness check at the victim's home after an off-duty officer, whose brother was another of the victim's colleagues, raised concerns about his absence and unspecified medical issues. Two other police officers were outside the victim's house when Parenteau arrived. One neighbor told the officers that he **[***4]** had not seen the victim in a couple of days. Another neighbor reported that over the past few nights she had not seen lights or other signs of activity in the house. The officers knocked and rang the doorbell but received no answer. Inspecting the perimeter of the house, they did not see any unlocked or damaged doors, but there was a pile of mail between the storm and main front doors. The victim's car was parked in

front of the house and covered with snow and ice from a storm that had ended the morning before.

The victim's brother arrived around 8:30 A.M. The brother was concerned about the victim's health, but did not recall whether he discussed those concerns with the officers outside the house. The brother urged the officers to enter the home, but he did not have a key. The officers waited until their patrol supervisor authorized them to enter, and then used a ladder on the side of the house to enter through an unlocked second-floor window. They saw the victim's body in the hall, partially wrapped in a bed sheet, with bloodstains on his body and the floor. After they called for emergency medical services, the defendant appeared. Wearing a T-shirt and underwear, he identified himself **[***5]** as the homeowner's son and said he had been in the attic because he was frightened. The officers took the defendant to police headquarters and sealed the scene until a search warrant was approved.

At trial, evidence was presented that only two of the four bedrooms appeared to be lived in, and in one of those bedrooms the police found live .22 caliber cartridges, spent .38 caliber cartridge casings, and papers showing the defendant's name. They also found a .38 caliber Charter Arms revolver hidden in the insulation under the floorboards of the attic. A ballistics expert testified that a bullet fired from the revolver matched the projec- **[*626]** tiles recovered from the victim's body. A police criminologist testified that three latent fingerprints were found on the revolver and two of them matched the defendant's fingerprints.

[†] HN2[†] Discussion. 1. *Motion to suppress.* Reviewing a ruling on a motion to suppress evidence, we accept the motion judge's findings of fact absent clear error and defer to her assessment of the credibility of the

testimony taken at the evidentiary hearing. See Commonwealth v. Scott, 440 Mass. 642, 646, 801 N.E.2d 233 (2004). We review de novo the application of constitutional principles to the facts as found. See Commonwealth v. Mercado, 422 Mass. 367, 369, 663 N.E.2d 243 (1996).

In denying the defendant's **[**6]** motion to suppress, the judge concluded that the entry "was justified pursuant to the responsibility police have as community caretakers and the emergency aid doctrine." **HN3** Two years later, the United States Supreme Court held that the police's exercise of their duties as community caretakers is not sufficient to excuse the Fourth Amendment's warrant requirements for entry into a home. Caniglia, 593 U.S. at 196. In Caniglia, the petitioner got a handgun, put it on the table, and asked his wife to "shoot [him] now and get it over with." *Id.* The next morning, the wife asked the police to conduct a welfare check on her husband. *Id.* Officers encountered him on the porch, and he agreed to be **[**637]** transported to a hospital for a psychiatric evaluation on the condition that the officers not confiscate his firearms. *Id.* at 196-197. After the ambulance left, the officers entered his home and seized the firearms. *Id.* at 197. The Court ruled that the decision to remove the petitioner and the firearms from the premises was not justified by a community caretaking exception to the warrant requirement. *Id.* at 197-198. Although it had in an earlier case sustained the warrantless search of an automobile in police custody for a firearm, see Cady v. Dombrowski, 413 U.S. 433, 441, 93 S. Ct. 2523, 37 L. Ed. 2d 706 (1973), the Court explained that there is a "constitutional **[**7]** difference" between vehicles and homes, and while officers are frequently called on to perform noncriminal community caretaking functions on public highways, the recognition of those tasks is "not an open-ended license to perform them anywhere." Caniglia, *supra* at

199.

HN4 Because "the Massachusetts Constitution may not provide less protection to defendants than the Federal Constitution," Commonwealth v. DeJesus, 489 Mass. 292, 296, 182 N.E.3d 280 (2022), the community caretaking doctrine is insufficient after Caniglia to justify a warrantless entry into a home under either the Fourth Amendment or art. 14 of the Massachusetts Declaration of Rights. See **[*627]** Gallagher v. South Shore Hosp., Inc., 101 Mass. App. Ct. 807, 823, 197 N.E.3d 885 & n.28 (2022). We therefore consider whether the other ground cited by the judge, the emergency aid doctrine, justified the officers' entry into the victim's house.¹

HN5 Under the emergency aid doctrine, the police "may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury." Commonwealth v. Townsend, 453 Mass. 413, 425, 902 N.E.2d 388 (2009), quoting Brigham City v. Stuart, 547 U.S. 398, 403, 126 S. Ct. 1943, 164 L. Ed. 2d 650 (2006). Because the ultimate touchstone of the Fourth Amendment and art. 14 is reasonableness, the warrant requirement is subject to certain exceptions, and the emergency aid exception allows for warrantless entry in "an exigency or emergency" when there is a "need to protect or preserve life or avoid serious injury." Townsend, *supra*, quoting Commonwealth v. Knowles, 451 Mass. 91, 96, 883 N.E.2d 941 (2008).

The emergency aid exception to the warrant requirement **[**8]** remains valid after Caniglia. **HN6** In Caniglia, 593 U.S. at 198,

¹We assume without deciding that the defendant had a reasonable expectation of privacy in the victim's house. See DeJesus, 489 Mass. at 296. The issue was not raised at the hearing, and there was evidence that the defendant slept at the house several times per week.

quoting *Kentucky v. King*, 563 U.S. 452, 460, 131 S. Ct. 1849, 179 L. Ed. 2d 865 (2011), the Supreme Court noted that it had earlier held that “law enforcement officers may enter private property without a warrant when certain exigent circumstances exist, including the need to ‘render emergency assistance to an injured occupant or to protect an occupant from imminent injury.’” Concurring opinions by Chief Justice Roberts and Justice Kavanaugh confirmed that this exception survived the Court’s new ruling.² Accordingly, **[**638]** courts in other jurisdictions have continued to apply the emergency aid exception after *Caniglia*. See, e.g., *State v. Samuolis*, 344 Conn. 200, 217-218, 278 A.3d 1027 (2022), and cases cited therein; *State v. Abu Youm*, 988 N.W.2d 713, 720 (Iowa 2023).

HN7[†] Unlike the community caretaking exception, the emergency aid exception applies only when there are exigent circumstances or **[*628]** an emergency. Because the purpose of police entry is not to investigate criminal activity, a showing of probable cause is not necessary to invoke the exception. See *Commonwealth v. Duncan*, 467 Mass. 746, 750, 7 N.E.3d 469, cert. denied, 574 U.S. 891, 135 S. Ct. 224, 190 L. Ed. 2d 170 (2014); *Commonwealth v. Raspberry*, 93 Mass. App. Ct. 633, 637-638, 107 N.E.3d 1195 & n.8 (2018). Instead, the warrantless entry must satisfy “two strict requirements.” *Id.* at 638, quoting *Duncan, supra*. “First, there must be objectively reasonable grounds to believe that an emergency exists. ... Second, the conduct of the police following the entry must be

reasonable under the circumstances” **[***9]** (citation omitted). *Duncan, supra*. Under the first requirement, “[r]easonableness must be ‘evaluated in relation to the scene as it could appear to the officers at the time, not as it may seem to a scholar after the event with the benefit of leisured retrospective analysis.’” *Townsend*, 453 Mass. at 425-426, quoting *Commonwealth v. Young*, 382 Mass. 448, 456, 416 N.E.2d 944 (1981). For there to be reasonable grounds to believe that an emergency exists, “[t]he injury sought to be avoided must be immediate and serious, and the mere existence of a potentially harmful circumstance is not sufficient.” *Commonwealth v. Kirschner*, 67 Mass. App. Ct. 836, 841-842, 859 N.E.2d 433 (2006). On the other hand, officers do not need “ironclad proof of ‘a likely serious, life-threatening’ injury” to invoke the exception. *Commonwealth v. Entwistle*, 463 Mass. 205, 214, 973 N.E.2d 115 (2012), cert. denied, 568 U.S. 1129, 133 S. Ct. 945, 184 L. Ed. 2d 736 (2013), quoting *Michigan v. Fisher*, 558 U.S. 45, 49, 130 S. Ct. 546, 175 L. Ed. 2d 410 (2009).

HN8[†] Even though performing wellness checks on vulnerable members of the community is among police officers’ most important duties, the mere fact that a concerned friend, family member, or neighbor has requested a wellness check does not automatically justify warrantless entry into a home.³ Instead, the facts known by the police at the time must establish an objectively reasonable basis to believe that entering a home is warranted to address an emergency. Here, the facts established an objectively reasonable basis for the officers to

² See *Caniglia*, 593 U.S. at 200 (Roberts, C.J., concurring) (“A warrant to enter a home is not required, we explained, when there is a ‘need to assist persons who are seriously injured or threatened with such injury.’ ... Nothing in today’s opinion is to the contrary, and I join it on that basis” [citations omitted]); *id.* at 204 (Kavanaugh, J., concurring) (“[T]he Court’s decision does not prevent police officers from taking reasonable steps to assist those who are inside a home and in need of aid”).

³ **HN9[†]** In particular, as this court discussed in *Gallagher*, 101 Mass. App. Ct. at 818-822, State law and regulations establish detailed “procedures for addressing emergency care for an elder at risk of abuse or neglect, with substantial due process protections and protection from unwarranted entry and treatment without consent.”

believe [***10] that the victim was in his house and in need of emergency assistance. His failure to show up at work or answer his cell phone was so unusual that the police received two separate requests to conduct a wellness check at his [*629] house.⁴ The police were informed that [**639] the victim was sixty-six years old and had certain, unspecified medical issues. As officers conducted their second wellness check outside the house, they were approached by the victim's brother, who urged the officers to enter the house, as well as by two of the victim's neighbors, who reported that they had not seen the victim or any indication of his normal activity at the house for days. The officers knocked and rang the doorbell and received no answer. Mail had accumulated inside the victim's door, and his car had not been moved for two nights. Considering these facts in their totality, we conclude that it was objectively reasonable for officers to believe that the victim was in his home and faced an immediate and serious risk to his health and safety. See, e.g., *Entwistle*, 463 Mass. at 216 ("although it could not reasonably be foreseen precisely what had happened to the missing family, there was a reasonable basis to believe that something unfortunate [***11] might have happened that rendered the defendant's wife unable to communicate with her mother and friends"); *Townsend*, 453 Mass. at 426 (victim's failure to attend visit with her children, "which previously had never occurred," and other factors established reasonable basis to believe she needed aid).

⁴ Although the police were initially made aware of the victim's absence two days before they entered the house, that delay does not indicate a lack of emergency where additional facts emerged that changed their analysis. *Townsend*, 453 Mass. at 427 ("The fact that the officers let some time pass ... does not automatically negate application of the emergency exception"). Rather, the facts show that the police acted reasonably by taking appropriate steps based on information they gathered over time.

As for the second requirement, there is no dispute that the police acted reasonably under the circumstances following their entry into the house. After officers asked the defendant to dress and transported him away, they "froze" or secured the house so that no one could enter while they sought a search warrant, and they reentered the house only after a warrant was issued.

Because the officers' entry into the victim's house satisfied the requirements for application of the emergency aid doctrine, we affirm the judge's decision denying the motion to suppress.⁵

[7] [*630] 2. *Fingerprint expert testimony.* At trial, the police criminologist testified that he recovered three latent fingerprints on the Charter Arms .38 caliber revolver that officers found hidden in the attic, and he opined that two of those fingerprints matched the defendant's thumb and index finger. He further testified that "[f]ingerprints are unique and persistent, [***12] meaning they are unique that no two individuals have ever been found to have the same fingerprints," and after the prosecutor asked whether he had "ever made an erroneous identification," he responded "[t]o my knowledge, no." The defendant argues that these latter statements were improper because they suggested that fingerprint identification evidence is infallible. Because the defendant did not object to either statement, our review is limited to determining whether there was error and, if so, whether the error created a substantial risk of a miscarriage of justice. See *Commonwealth v. Acevedo*, 446 Mass. 435, 450, 845 N.E.2d 274 (2006).

⁵ Because we conclude that the entry was constitutionally authorized, we need not address the defendant's argument that all "fruits" of the entry and subsequent search of the victim's house (including after the warrant was issued) should have been excluded at trial. See *Wong Sun v. United States*, 371 U.S. 471, 487-488, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963).

HN10 [¶] “Testimony to the effect that a latent print matches, or is ‘individualized’ to, a known print, if it is to be offered, should be presented as an opinion, not a fact, and opinions expressing absolute certainty **[**640]** about, or the infallibility of, an ‘individualization’ of a print should be avoided.” *Commonwealth v. Gambora*, 457 Mass. 715, 729 n.22, 933 N.E.2d 50 (2010). Fingerprint expert witnesses “must clearly frame their findings in the form of an opinion to avoid improper testimony.” *Commonwealth v. Fulgiam*, 477 Mass. 20, 44, 73 N.E.3d 798, cert. denied, 583 U.S. 923 (2017).⁶ Here, the trial judge intervened to ensure that the Commonwealth’s witness adhered to these requirements. At one point, the judge asked the witness to confirm that he formed an “opinion” **[***13]** on identification, and then directed the prosecutor to avoid testimony about the verification step of the latent print analysis because it was “a backdoor way of bootstrapping opinions.” See *Commonwealth v. Honsch*, 493 Mass. 436, 451, 226 N.E.3d 287 (2024), quoting *Fulgiam*, *supra* at **[*631]** 46 (urging judges to “use caution in allowing testimony regarding the verification step” in fingerprint analysis).

Notwithstanding the judge’s careful supervision, we acknowledge that, considered in isolation, the unobjected-to statements by the witness might be interpreted as overstating

⁶ After this case was tried, the Supreme Judicial Court clarified the mechanics of fingerprint testimony. **HN11** [¶] “[A]n expert testifying to a fingerprint match must state expressly that the match constitutes the expert’s opinion based on the expert’s education, training, and experience.” *Commonwealth v. Robertson*, 489 Mass. 226, 238, 181 N.E.3d 1065, cert. denied, 143 S. Ct. 498, 214 L. Ed. 2d 284 (2022). If the expert does not so testify, “the prosecutor must elicit this clarification even if the defendant does not object” by, for instance, clarifying that “a subjective opinion is being sought” and then asking “whether the witness has an opinion ‘to a reasonable degree of fingerprint analysis certainty.’” *Id.* at 238-239, citing *Commonwealth v. Pytou Heang*, 458 Mass. 827, 848, 942 N.E.2d 927 (2011). See *Mass. G. Evid.* § 702, Note (Illustrations, Fingerprints) (2023).

the accuracy of forensic fingerprint science. See *Commonwealth v. Wadlington*, 467 Mass. 192, 205, 4 N.E.3d 296 (2014) (error for prosecutor to elicit testimony that latent print analysis is error-free when conducted properly); *Commonwealth v. Joyner*, 467 Mass. 176, 184 n.11, 4 N.E.3d 282 (2014) (“the primary question about the accuracy and reliability of fingerprint identification involves not the uniqueness of different fingerprints but an examiner’s ability reliably to discern such differences”). Nevertheless, in the context of the witness’s over-all testimony, the statements did not give rise to a substantial risk of a miscarriage of justice. See *Commonwealth v. Armstrong*, 492 Mass. 341, 353-358, 211 N.E.3d 622 (2023); *Commonwealth v. Bonnett*, 472 Mass. 827, 831 n.5 (2015), *S.C.*, 482 Mass. 838 (2019). The witness did not describe his methodology as infallible, and (with the judge’s guidance) he properly framed his findings as an opinion, which reduced the risk that either **[***14]** statement misled the jury. The judge also instructed the jury that they should evaluate the testimony of expert witnesses like any other witness and were not bound to accept any expert’s testimony or opinions. Particularly when we consider the strength of the Commonwealth’s evidence linking the defendant to the crime, separate from the fingerprint expert’s testimony, we are not left with any “uncertainty that the defendant’s guilt has been fairly adjudicated” (citation omitted). *Commonwealth v. Azar*, 435 Mass. 675, 687 (2002), *S.C.*, 444 Mass. 72 (2005).⁷

⁷ The defendant’s argument fares no better when reframed as a challenge to his trial counsel’s failure to object to the fingerprint expert’s statements at trial. **HN12** [¶] “To prevail on a claim of ineffective assistance of counsel, ... a defendant also must show that counsel’s deficiency resulted in prejudice, which, in the circumstances of counsel’s failure to object to an error at trial, is essentially the same as the substantial risk standard we apply to unpreserved errors” (citation omitted). *Commonwealth v. LaChance*, 469 Mass. 854, 858, 17 N.E.3d 1101 (2014), cert. denied, 577 U.S. 922, 136 S. Ct. 317, 193

[¶] **[**641]** 3. *Convictions of unlawful possession of a firearm and ammunition.* So ordered. Lastly, the defendant argues that his convictions of unlawful possession of a firearm and ammunition must be reversed **[*632]** due to the Supreme Judicial Court's decisions in *Guardado I* and *Guardado II*. We agree.

End of Document

HN13[¶] Following the Supreme Court's decision in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022), the Supreme Judicial Court ruled in *Guardado I*, 491 Mass. at 690-693, that the Commonwealth bears the burden of proving that a defendant lacks a license for firearms and ammunition, and that a judge must instruct jurors as to this burden. In *Guardado II*, 493 Mass. at 6-9, the court clarified that the appropriate remedy for failing to properly instruct the jury on this issue is a new trial, as opposed to a judgment of acquittal. These decisions **[***15]** apply to this case because the defendant's appeal was pending when they were published. *Guardado I*, *supra* at 694.

The Commonwealth concedes that it did not present evidence at trial that the defendant lacked a license for the firearm or the ammunition. Additionally, the judge, lacking the benefit of *Bruen*, *Guardado I*, or *Guardado II*, did not instruct the jury that nonlicensure is an essential element of the charges. We therefore vacate the defendant's convictions of unlawful possession of a firearm and ammunition and set aside those verdicts. The Commonwealth may retry the defendant on the firearm and ammunition charges if it so chooses. We affirm the defendant's conviction of murder in the second degree.

L. Ed. 2d 227 (2015), citing *Azar*, 435 Mass. at 686-687. Because no substantial risk of a miscarriage of justice resulted from the expert's testimony, there is no basis for an ineffective assistance claim based on counsel's failure to object to that testimony. See *Commonwealth v. Curtis*, 417 Mass. 619, 624 n.4, 632 N.E.2d 821 (1994); *Commonwealth v. Farnsworth*, 76 Mass. App. Ct. 87, 100, 920 N.E.2d 45 (2010).

APPENDIX B



Neutral

As of: January 12, 2025 5:42 PM Z

Commonwealth v. Regan.

Supreme Judicial Court of Massachusetts

October 16, 2024, Decided

No Number in Original

Reporter

2024 Mass. LEXIS 429 *; 494 Mass. 1109; 244 N.E.3d 1004; 2024 WL 4562028

COMMONWEALTH vs. MARK TOMAS REGAN.

Notice: DECISION WITHOUT PUBLISHED
OPINION

Prior History: Reported below: 104 Mass. App.
Ct. 623 (2024) [*1] .

Commonwealth v. Regan, 104 Mass. App. Ct.
623, 2024 Mass. App. LEXIS 114, 2024 WL
3908443 (Aug. 23, 2024)

Opinion

Further appellate review denied.

End of Document

APPENDIX C

1484CR10420 Commonwealth vs. Regan, Mark Tomas

- Case Type:
- Indictment
- Case Status:
- Open
- File Date
- 05/15/2014
- DCM Track:
-
- Initiating Action:
- MURDER c265 §1
- Status Date:
- 05/15/2014
- Case Judge:
- Locke, Hon. Jeffrey A
- Next Event:
-

All Information Party Charge Event Tickler Docket Disposition

Party Information

Commonwealth
- Prosecutor

Alias

Party Attorney

- Attorney
- Campbell, Esq., Cailin
- Bar Code
- 676342
- Address
- Suffolk County District Attorney's Office
- 1 Bulfinch Place
- Boston, MA 02114
- Phone Number
- (617)619-4000
- Attorney
- Iannini, Esq., Craig
- Bar Code
- 654405
- Address
- Suffolk County District Attorney
- One Bulfinch Place
- Boston, MA 02108
- Phone Number
- (617)619-4000

[More Party Information](#)

Regan, Mark Tomas
- Defendant

Alias

Party Attorney

- Attorney
- Bassil, Esq., Janice
- Bar Code
- 033100
- Address
- The Law Offices of Janice Bassil
- 83 Atlantic Ave
- 3rd Floor
- Boston, MA 02110
- Phone Number
- (617)366-2200
- Attorney
- Perez, Esq., Lorenzo
- Bar Code
- 561908
- Address
- Law Office of Lorenzo Perez
- One Boston Place
- 201 Washington Street Suite 2600
- Boston, MA 02108

- Phone Number
- (617)441-0444
- Attorney
- Pelito, Esq., Joanne T
- Bar Code
- 559773
- Address
- Mirsky and Pelito, Attorneys at Law
- PO Box 1063
- Exeter, NH 03833
- Phone Number
- (603)580-2132

[More Party Information](#)

Whittier Street Health Center
- Keeper of Record

Alias

Party Attorney

[More Party Information](#)

Lawrence Psychiatric Center
- Keeper of Record

Alias

Party Attorney

[More Party Information](#)

Baldpate Hospital
- Keeper of Record

Alias

Party Attorney

[More Party Information](#)

Holy Family Hospital
- Keeper of Record

Alias

Party Attorney

[More Party Information](#)

CVS Pharmacy
- Keeper of Record

Alias

Party Attorney

[More Party Information](#)

Dr. Richard Netsky
- Keeper of Record

Alias

Party Attorney

[More Party Information](#)

Massachusetts Partnership for Correctional Healthcare
- Keeper of Record

Alias

Party Attorney

[More Party Information](#)

Party Charge Information

- Regan, Mark Tomas
- - Defendant

265/1-0 - Felony MURDER c265 §1

- Original Charge
- 265/1-0 MURDER c265 §1 (Felony)
- Indicted Charge
-
- Amended Charge
-

Charge Disposition

Disposition Date

Disposition

06/03/2019

Guilty Verdict - Lesser Included

- Regan, Mark Tomas
- - Defendant

269/10/J-1 - Felony FIREARM, CARRY WITHOUT LICENSE c269 s.10(a)

- Original Charge

- 269/10/J-1 FIREARM, CARRY WITHOUT LICENSE c269 s.10(a) (Felony)
- Indicted Charge
- Amended Charge

Charge Disposition

Disposition Date
Disposition
06/03/2019
Guilty Verdict

- Regan, Mark Tomas
- - Defendant

269/10/TT - Misdemeanor - more than 100 days incarceration AMMUNITION WITHOUT FID CARD, POSSESS c269 §10(h)(1)

- Original Charge
- 269/10/TT AMMUNITION WITHOUT FID CARD, POSSESS c269 §10(h)(1) (Misdemeanor - more than 100 days incarceration)
- Indicted Charge
- Amended Charge

Charge Disposition

Disposition Date
Disposition
06/03/2019
Guilty Verdict

Events

<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Event Judge</u>	<u>Result</u>
07/08/2014 09:30 AM	Magistrate's Session		Arraignment		Held as Scheduled
08/21/2014 02:00 PM	Criminal 6		Hearing for Appearance / Appointment of Counsel		Held as Scheduled
08/26/2014 02:00 PM	Criminal 6		Hearing for Appearance / Appointment of Counsel		Held as Scheduled
09/18/2014 02:00 PM	Criminal 6		Status Review		Held as Scheduled
10/21/2014 02:00 PM	Criminal 6		Status Review		Held as Scheduled
12/09/2014 02:00 PM	Criminal 6		Trial Assignment Conference		Held as Scheduled
12/16/2014 02:00 PM	Criminal 6		Status Review		Held as Scheduled
01/05/2015 02:00 PM	Criminal 6		Status Review		Rescheduled
01/23/2015 09:00 AM	Criminal 6		Status Review		Rescheduled
01/27/2015 02:00 PM	Criminal 6		Status Review		Rescheduled
02/17/2015 02:00 PM	Criminal 6		Status Review		Held as Scheduled
03/02/2015 02:00 PM	Criminal 6		Hearing for Appearance / Appointment of Counsel		Held as Scheduled
03/31/2015 02:00 PM	Criminal 6		Status Review		Rescheduled
04/16/2015 02:00 PM	Criminal 6		Trial Assignment Conference		Held as Scheduled
06/16/2015 02:00 PM	Criminal 6		Status Review		Held as Scheduled
07/14/2015 02:00 PM	Criminal 6		Hearing		Held as Scheduled
08/04/2015 02:00 PM	Criminal 6		Hearing		Held as Scheduled

<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Event Judge</u>	<u>Result</u>
09/29/2015 02:00 PM	Criminal 6		Status Review		Held as Scheduled
10/29/2015 02:00 PM	Criminal 6	BOS-9th FL, CR 906 (SC)	Motion Hearing	Locke, Hon. Jeffrey A	Held as Scheduled
11/10/2015 02:00 PM	Criminal 6	BOS-9th FL, CR 906 (SC)	Conference to Review Status		Rescheduled
12/15/2015 02:00 PM	Criminal 6	BOS-9th FL, CR 906 (SC)	Conference to Review Status	Locke, Hon. Jeffrey A	Held as Scheduled
12/22/2015 11:00 AM	Criminal 6	BOS-9th FL, CR 906 (SC)	Hearing on Competency		Held as Scheduled
01/14/2016 02:00 PM	Criminal 6	BOS-9th FL, CR 906 (SC)	Motion Hearing	Locke, Hon. Jeffrey A	Held as Scheduled
02/04/2016 02:00 PM	Criminal 6	BOS-9th FL, CR 906 (SC)	Conference to Review Status	Locke, Hon. Jeffrey A	Held as Scheduled
03/15/2016 02:00 PM	Criminal 6	BOS-9th FL, CR 906 (SC)	Conference to Review Status	Locke, Hon. Jeffrey A	Not Held
03/15/2016 02:00 PM	Criminal 9	BOS-7th FL, CR 713 (SC)	Conference to Review Status	Tochka, Hon. Robert N	Not Held
05/02/2016 09:00 AM	Criminal 6	BOS-9th FL, CR 906 (SC)	Jury Trial		Canceled
05/02/2016 09:00 AM	Criminal 6		Jury Trial		Not Held
05/10/2016 02:00 PM	Criminal 6	BOS-9th FL, CR 906 (SC)	Hearing on Competency		Held as Scheduled
05/17/2016 02:00 PM	Criminal 2	BOS-8th FL, CR 806 (SC)	Hearing on Dwyer Motion		Not Held
06/23/2016 02:00 PM	Criminal 6	BOS-9th FL, CR 906 (SC)	Trial Assignment Conference		Not Held
08/11/2016 02:00 PM	Criminal 6	BOS-9th FL, CR 906 (SC)	Conference to Review Status	Roach, Christine M	Held as Scheduled
09/20/2016 02:00 PM	Criminal 6	BOS-9th FL, CR 906 (SC)	Conference to Review Status	Roach, Christine M	Held as Scheduled
10/27/2016 02:00 PM	Criminal 6	BOS-9th FL, CR 906 (SC)	Conference to Review Status	Roach, Christine M	Held as Scheduled
12/13/2016 02:00 PM	Criminal 6	BOS-9th FL, CR 906 (SC)	Hearing on Withdrawal of Attorney	Roach, Christine M	Held as Scheduled
01/26/2017 02:00 PM	Criminal 6	BOS-9th FL, CR 906 (SC)	Conference to Review Status		Held as Scheduled
02/14/2017 02:00 PM	Criminal 6	BOS-8th FL, CR 808 (SC)	Conference to Review Status	Roach, Christine M	Held as Scheduled
02/28/2017 02:00 PM	Criminal 6	BOS-9th FL, CR 906 (SC)	Conference to Review Status	Roach, Christine M	Held as Scheduled
06/06/2017 02:00 PM	Criminal 6	BOS-9th FL, CR 906 (SC)	Conference to Review Status	Sanders, Hon. Janet L	Rescheduled
06/20/2017 02:00 PM	Criminal 6	BOS-9th FL, CR 906 (SC)	Conference to Review Status	Sanders, Hon. Janet L	Held as Scheduled
07/25/2017 02:00 PM	Criminal 6	BOS-9th FL, CR 906 (SC)	Hearing on Competency	Roach, Christine M	Not Held
10/11/2017 09:30 AM	Criminal 6	BOS-9th FL, CR 906 (SC)	Hearing on Competency		Held as Scheduled
11/28/2017 09:00 AM	Criminal 6	BOS-9th FL, CR 906 (SC)	Conference to Review Status	Roach, Christine M	Rescheduled
11/29/2017 10:00 AM	Criminal 6	BOS-9th FL, CR 906 (SC)	Hearing on Competency	Roach, Christine M	Rescheduled
11/30/2017 02:00 PM	Criminal 6	BOS-9th FL, CR 906 (SC)	Conference to Review Status	Roach, Christine M	Not Held
11/30/2017 02:00 PM	Criminal 3	BOS-8th FL, CR 808 (SC)	Conference to Review Status	Locke, Hon. Jeffrey A	Held as Scheduled



<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Event Judge</u>	<u>Result</u>
12/01/2017 09:00 AM	Criminal 3	BOS-8th FL, CR 808 (SC)	Hearing on Competency	Locke, Hon. Jeffrey A	Held as Scheduled
12/01/2017 10:00 AM	Criminal 6	BOS-9th FL, CR 906 (SC)	Hearing on Competency	Roach, Christine M	Not Held
01/04/2018 02:00 PM	Criminal 6	BOS-9th FL, CR 906 (SC)	Conference to Review Status	Roach, Christine M	Canceled
01/23/2018 02:00 PM	Criminal 6	BOS-9th FL, CR 906 (SC)	Conference to Review Status	Roach, Christine M	Held as Scheduled
03/08/2018 02:00 PM	Criminal 6	BOS-9th FL, CR 906 (SC)	Conference to Review Status	Roach, Christine M	Not Held
04/19/2018 02:00 PM	Criminal 6	BOS-9th FL, CR 906 (SC)	Conference to Review Status	Locke, Hon. Jeffrey A	Held as Scheduled
05/17/2018 02:00 PM	Criminal 6	BOS-9th FL, CR 906 (SC)	Conference to Review Status	Locke, Hon. Jeffrey A	Held as Scheduled
05/31/2018 02:00 PM	Criminal 6	BOS-9th FL, CR 906 (SC)	Conference to Review Status	Locke, Hon. Jeffrey A	Held as Scheduled
06/12/2018 02:00 PM	Criminal 6	BOS-9th FL, CR 906 (SC)	Conference to Review Status	Locke, Hon. Jeffrey A	Held as Scheduled
08/21/2018 09:00 AM	Criminal 9	BOS-7th FL, CR 713 (SC)	Evidentiary Hearing on Suppression		Not Held
08/21/2018 02:00 PM	Criminal 6	BOS-9th FL, CR 906 (SC)	Conference to Review Status		Held as Scheduled
08/23/2018 11:00 AM	Criminal 6	BOS-9th FL, CR 906 (SC)	Motion Hearing	Roach, Christine M	Held as Scheduled
09/05/2018 09:00 AM	Criminal 9	BOS-7th FL, CR 713 (SC)	Evidentiary Hearing on Suppression	Ricciuti, Hon. Michael D	Not Held
09/12/2018 09:30 AM	Criminal 9	BOS-7th FL, CR 713 (SC)	Conference to Review Status	Ricciuti, Hon. Michael D	Held as Scheduled
10/02/2018 02:00 PM	Criminal 2		Conference to Review Status		Held as Scheduled
10/09/2018 02:00 PM	Criminal 6	BOS-9th FL, CR 906 (SC)	Final Pre-Trial Conference		Canceled
10/10/2018 09:30 AM	Criminal 9	BOS-7th FL, CR 713 (SC)	Evidentiary Hearing on Suppression		Canceled
10/17/2018 02:00 PM	Criminal 2		Hearing on Withdrawal of Attorney	Locke, Hon. Jeffrey A	Held as Scheduled
10/29/2018 09:00 AM	Criminal 6	BOS-9th FL, CR 906 (SC)	Jury Trial		Canceled
10/29/2018 02:00 PM	Criminal 2		Trial Assignment Conference	Locke, Hon. Jeffrey A	Held as Scheduled
12/11/2018 09:00 AM	Criminal 9	BOS-7th FL, CR 713 (SC)	Evidentiary Hearing on Suppression	Ames, Hon. Mary K	Held as Scheduled
12/18/2018 09:00 AM	Criminal 9	BOS-7th FL, CR 713 (SC)	Evidentiary Hearing on Suppression	Ames, Hon. Mary K	Canceled
01/03/2019 09:30 AM	Criminal 9	BOS-7th FL, CR 713 (SC)	Conference to Review Status	Ames, Hon. Mary K	Canceled
04/11/2019 02:00 PM	Criminal 6		Conference to Review Status	Locke, Hon. Jeffrey A	Held as Scheduled
05/02/2019 02:00 PM	Criminal 6	BOS-9th FL, CR 906 (SC)	Final Pre-Trial Conference	Locke, Hon. Jeffrey A	Held as Scheduled
05/13/2019 09:00 AM	Criminal 6	BOS-9th FL, CR 906 (SC)	Jury Trial	Locke, Hon. Jeffrey A	Canceled
05/17/2019 09:00 AM	Criminal 6		Conference to Review Status	Locke, Hon. Jeffrey A	Not Held
05/20/2019 09:00 AM	Criminal 6		Jury Trial	Locke, Hon. Jeffrey A	Held as Scheduled
05/21/2019 09:00 AM	Criminal 6		Jury Trial	Locke, Hon. Jeffrey A	Held as Scheduled

<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Event Judge</u>	<u>Result</u>
05/22/2019 09:00 AM	Criminal 6		Jury Trial	Locke, Hon. Jeffrey A	Held as Scheduled
05/23/2019 09:00 AM	Criminal 6		Jury Trial	Locke, Hon. Jeffrey A	Held as Scheduled
05/24/2019 09:00 AM	Criminal 6		Jury Trial	Locke, Hon. Jeffrey A	Held as Scheduled
05/28/2019 09:00 AM	Criminal 6		Jury Trial	Locke, Hon. Jeffrey A	Held as Scheduled
05/29/2019 09:00 AM	Criminal 6		Jury Trial	Locke, Hon. Jeffrey A	Held as Scheduled
05/30/2019 09:00 AM	Criminal 6		Jury Trial	Locke, Hon. Jeffrey A	Held as Scheduled
05/31/2019 09:00 AM	Criminal 6		Jury Trial	Locke, Hon. Jeffrey A	Held as Scheduled
06/03/2019 09:00 AM	Criminal 6		Jury Trial	Locke, Hon. Jeffrey A	Held as Scheduled
06/04/2019 09:00 AM	Criminal 6		Jury Trial	Locke, Hon. Jeffrey A	Canceled
06/06/2019 09:00 AM	Criminal 6		Hearing for Sentence Imposition	Locke, Hon. Jeffrey A	Held as scheduled

Ticklers

<u>Tickler</u>	<u>Start Date</u>	<u>Due Date</u>	<u>Days Due</u>	<u>Completed Date</u>
Conversion Attorney Mismatch	05/15/2014	09/26/2015	1	
Conversion Attorney Mismatch	05/15/2014	09/26/2015	1	

Docket Information

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
05/15/2014	Indictment returned	1	
05/15/2014	MOTION by Commonwealth for arrest warrant to issue; filed & allowed. Hopkins, J.	2	
05/15/2014	Warrant on indictment issued		
05/15/2014	Warrant was entered onto the Warrant Management System 5/15/2014		
05/15/2014	Order of notice of finding of murder indictment		
05/15/2014	Notice & copy of indictment sent to Chief Justice & Atty General		
05/15/2014	Notice & copy of indictment & entry on docket faxed to Sheriff; verification in file. (returned w/service)		
07/08/2014	Defendant brought into court. The order of Notice with Return of service endorsed thereon was received from the Sheriff and filed. Warrant ordered recalled.		
07/08/2014	Warrant canceled on the Warrant Management System 7/8/2014		
07/08/2014	Committee for Public Counsel Services appointed, pursuant to Rule 53, Atty. L. Travayiakis.		
07/08/2014	Deft arraigned before Court		
07/08/2014	Indictment read as to Offense #001.		
07/08/2014	Deft waives reading of indictments #002 ans #003.		
07/08/2014	RE Offense 1:Plea of not guilty		
07/08/2014	RE Offense 2:Plea of not guilty		
07/08/2014	RE Offense 3:Plea of not guilty		



<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
07/08/2014	Bail: Defendant held on a Mittimus without bail without prejudice. Mittimus Issued.		
07/08/2014	Continued to 8/21/2014 for hearing Re: Counsel by agreement in Rm. 906 at 2pm.		
07/08/2014	Commonwealth files Notice of Discovery.	3	
07/08/2014	Deft files Motion to Compel Witnesses Names and Contact information.	4	
07/08/2014	Deft files Motion to preserve and produce mandatory Discovery.	5	
07/08/2014	MOTION (P#5) allowed by agreement.		
07/08/2014	Deft files Motion for funds for Investigator with Affidavit.	6	
07/08/2014	MOTION (P#6) allowed up to \$3,500.00 at CPCS rates. Wilson, MAG - D. Fredette, ADA - L. Travayiakis, Atty - JAVS		
08/21/2014	Defendant brought into court, Hearing re counsel held before Connors, J		
08/21/2014	Deft files Counsel for the deft's Motion to withdraw with affidavit in support thereof	7	
08/21/2014	MOTION (P#7) allowed as stated on the record, Connors. J.		
08/21/2014	Case continued until 8/26/2014 by agreement for further hearing re counsel(906, 2pm, Jail List).		
08/21/2014	Rule 36 waived as stated on the record, Connors, J		
08/21/2014	NAC to issue to CPCS re appointment of counsel. Connors, J. - D. Fredette, ADA. - L. Travayiakis, Atty. - P. Pietrilla, C.R.		
09/02/2014	Defendant brought into court, hearing re counsel held before Connors, J		
09/02/2014	Appearance of Deft's Atty: Kevin M Mitchell (NAC on File)	8	
09/02/2014	Case continued until 9/18/2014 by agreement for status re Discovery and setting of tracking order(906, 2pm, Jail List). Connors, J. - D. Fredette, ADA. - K. Mitchell, Atty. - P. Pietrella, C.R.		
09/18/2014	Defendant brought into court. Motion re discovery and setting of tracking order held before Connors, J		
09/18/2014	Case continued until 10/21/2014 by agreement for status re discovery and setting tracking order(906, 2pm, jail list).		
09/18/2014	Deft's Motion for funds to hire a ballistics Filed and Allowed. Connors, J.	9	
09/18/2014	Deft's Motion for fingerprint expert witness funds Filed and Allowed. Connors, J	10	
09/18/2014	Deft's Motion for funds to hire a private investigator Filed and Allowed. Connors, J. - D. Fredette, ADA. - K. Mitchell, Atty. - JAVS.	11	
10/20/2014	Commonwealth files Notice of Discovery III	12	
10/21/2014	Defendant brought into court		
10/21/2014	Deft files Ex Parte motion for funds for a forensic psychiatrist	13	
10/21/2014	MOTION (P#12) allowed subject to CPCS approval		
10/21/2014	Case continued until 12/9/2014 by agreement for filing and tracking order(906, 2pm, jail list). Locke, RAJ. - D. Fredette/K. Gasso, ADA. - K. Mitchell, Atty. - N. McCann, C.R.		
12/09/2014	Defendant brought into court, Hearing held before Locke, RAJ		
12/09/2014	Deft files Affidavit in support of Motion for examination pursuant to MGL Ch123 Sec15(A)(B) regarding competency to stand trial(Sealed)	14	
12/09/2014	Deft files Motion for examination pursuant to MGL Ch123 Sec15(a)(b) regarding competency to stand trial	15	
12/09/2014	After hearing, deft's motion P#15 allowed and case is continued for clinic evaluation on 12/16/14(P#14 is seated)		


<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
12/09/2014	Case continued until 12/16/2014 by agreement for status re competency. Locke, RAJ. - D. Fredette, ADA. - K. Mitchell, Atty. - P. Pietrella, C.R.		
12/16/2014	Defendant brought into court. Deft examined by Dr. Miner, Court clinician pursuant to 15(a)		
12/16/2014	After hearing, Court orders deft committed to Bridgewater State Hospital under 15(b) for 20 days(order issued expires on 1/5/15)		
12/16/2014	Case continued until 1/5/2015 for status re competency(906, 2pm, habe issued.		
12/16/2014	Evaluation of competence to stand trial pursuant to MGL Ch123 Sec15(a) by Dr. Jeffrey Miner of the court clinic filed(Special file). Locke, RAJ. - D. Fredette, ADA. - K. Mitchell, Atty. - P. Pietrella, C.R.	16	
12/22/2014	Commonwealth files Notice of Discovery IV	17	
12/30/2014	Request for an extension of commitment of a Defendant for observation under section 15(b) general laws Ch123 received via fax from Bridgewater State Hospital. Note: BSH requesting an extension until 1/23/15	18	
01/05/2015	Defendant not present. Event not held. Paper #18 allowed by Locke, RAJ. Order of Commitment imposed to Bridgewater State Hospital on 12/16/2014 extended to 1/23/2015.		
01/05/2015	Continued by order of the court to 1/23/2015 at 9am in 906 for status re: competency. Habe to BSH (copy in file). (Notice sent to parties)		
01/14/2015	Endorsement on Motion to defendant's motion to withdraw "after further hearing prior ruling of 10/29/2015 Vacated. Motion is now Denied without prejudice. Locke, J. (#24.0): DENIED		
01/23/2015	Defendant not in Court, Event not held due to Court training conference. Parties to contact Session Clerk with respect to next event date.		
01/30/2015	Evaluation of competence to stand trial pursuant to MGL Ch123 Sec15(b) by Lara Guzman-Hosta Psy.D. (Special filed).	19	
02/05/2015	Defendant not present, status conference held before Locke, RAJ		
02/05/2015	Case continued until 2/17/2015 by agreement for status re: Competency(906, 2pm, Jail List at Souza).		
02/05/2015	Note: Court allows counsel to receive copy of P#19(Report of Dr Guzman Hosta)(Copy sent to Atty Kevin Mitchell). Locke, RAJ. - D. Fredette, ADA. - K. Mitchell, Atty. - W. King, C.R.		
02/17/2015	Defendant brought into court, Status conference held before Locke, RAJ		
02/17/2015	Attorney, Kevin M Mitchell's MOTION to withdraw as appointed counsel of record for Mark Tomas Regan with affidavit in support thereof filed	20	
02/17/2015	MOTION (P#20) allowed (Jeffrey A. Locke, Regional Administrative Justice).		
02/17/2015	Continued to 3/2/2015 by agreement for hearing re counsel(906, 2pm, Jail list @ Souza). Locke, RAJ. - C. Campbell for D. Fredette. - L. Mitchell, Atty. - N. King, C.R.		
03/02/2015	Defendant brought into court. Hearing re counsel held before Locke, RAJ		
03/02/2015	Attorney, Kevin M Mitchell's MOTION to withdraw allowed after hearing, Locke, RAJ. Note: CPCS to appoint counsel, notice previously given		
03/02/2015	Continued to 3/31/2015 by agreement re status conference		
03/02/2015	Rule 36 tolled as stated on the record. Locke, RAJ. D. Fredette, ADA. - A. Jeruchim/S. Rayburn, Atty. - N. King, CR.		
03/31/2015	Defendant not present, Present in Lock-up. Event not held due to Atty being on trial		
03/31/2015	Continued to 4/16/2015 by agreement re trial assignment. Jail list. Parties notified. Locke, RAJ. - M. Lee for D. Fredette, ADA. - N. King, CR.		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
04/16/2015	Defendant brought into court, status conference held before Gaziano, RAJ		
04/16/2015	Def't files Motion for funds for expert(ex parte and impounded)	21	
04/16/2015	MOTION (P#21) allowed and Impounded. Gaziano, J. (Copy given in hand to Atty Jeruchim)		
04/16/2015	Def't files Motion for funds to ha an investigator with an affidavit in support thereof	22	
04/16/2015	MOTION (P#22) allowed. Gaziano, J. (Copy given in hand to Atty Jeruchim)		
04/16/2015	Continued to 6/16/2015 by agreement re further status(906, 2pm, jail list). Gaziano, J. - D. Fredette, ADA. - A. Jeruchim/S. Rayburn, Atty. - C. Lavallee, CR.		
06/16/2015	Defendant brought into court, Status Conference held continued by agreement 7/14/2015.re: Filing of Rule 17 Motions and Setting of Trial Date. Locke, RAJ-D. Fredette, ADA-A. Jerechim, Atty-ERD		
07/14/2015	Defendant brought into court. Def Ex Parte Lobby conference held before Lauriat, J.		
07/14/2015	Continued as follows: 8-4-15 at 2:00 pm for filing of discovery motions in 6th Session by agreement. 5-02-16 at 9:00 am for trial in 6th Session by agreement. Lauriat, J. - D. Fredette, ADA - S. Rayburn and A. Jeruchim, Attys - N. King C/R.		
07/27/2015	Commonwealth files Notice of Discovery V	23	
08/04/2015	Defendant brought into court. Status hearing held before Lauriat, J.		
08/04/2015	Continued to 9/29/2015 for hearing re: motions in (Ctrm. 906 at 2:00PM), Motion to be filed out of court by 9-22-15. (Jail List). (Peter M. Lauriat, Justice) - D. Fredette, ADA - A. Jeruchim/S. Rayburn Attorney - N. King, Court Reporter		
09/26/2015	Warrant CKA alias created for party #1 Alias Name: Mark Tomas Regan		
09/29/2015	Event Result: The following event: Status Review scheduled for 09/29/2015 02:00 PM has been resulted as follows: Result: Held as Scheduled. Continued to 10/29/15 Lauriat, J. - D. Fredette, ADA. - A. Jeruchim/S. Rayburn, Atty. - N. King, CR		
10/29/2015	Event Result: Def't brought into court. Hearing re: Counsel's Motion to Withdraw. The following event: Motion Hearing scheduled for 10/29/2015 02:00 PM has been resulted as follows: Result: Held as Scheduled before Locke, RAJ. Case continued to 11/10/15 for status conference re: appearance of new counsel. Locke, RAJ - D. Fredette, ADA - A. Jeruchim, Atty - S. Rayburn, Atty - N. King. C.R.		
10/29/2015	Attorney Vivianne Elise Jeruchim, Esq.'s motion to withdraw as counsel of record for party with an Affidavit in Support Thereof, filed and after hearing, allowed as endorsed. Locke, RAJ (Note: allowance stayed until appearance of successor counsel) Applies To: Jeruchim, Esq., Vivianne Elise (Attorney) on behalf of Regan, Mark T (Defendant)	24	
10/29/2015	Affidavit of In Support of Motion to Withdraw (Impounded and Sealed), filed. (SEALED) Locke, RAJ	25	
10/29/2015	Affidavit of Counsel (Supplemental Impounded and Sealed Affidavit in Support of Motion to Withdraw), filed. (SEALED) Locke, RAJ	26	
10/29/2015	ORDER: Court orders a closed hearing be conducted re: P#25 and P#26 and the record of said hearing be SEALED. Locke, RAJ. P#25 and P#26 ORDERED SEALED. Locke, RAJ	27	
11/10/2015	Defendant not in Court, event cancelled. Note ADA reports that new counsel Janice Bassil unavailable this day. Parties to coordinate w/clerk in session Re: Scheduling of next event Re: Appearance of counsel. (Ctrm 906, Defendant to be placed on Jail List at 2:00PM) Locke, RAJ - D. Fredette, ADA (via phone)		
11/10/2015	Commonwealth 's Notice of Discovery VI	28	
11/10/2015	Event Result: The following event: Conference to Review Status scheduled for 11/10/2015 02:00 PM has been resulted as follows:		

<u>Docket</u> <u>Date</u>	<u>Docket Text</u>	<u>File</u> <u>Ref</u> <u>Nbr.</u>	<u>Image</u> <u>Avail.</u>
	Result: Rescheduled Reason: Attorney on another trial		
12/15/2015	Event Result: The following event: Conference to Review Status scheduled for 12/15/2015 02:00 PM has been resulted as follows: Result: Held as Scheduled. Defendant not in Court. Note: Defendant present in lock-up. Status Conference held before Locke, RAJ Continued to 12/22/15 by agreement hrg. re: Competency (Jail list 52A Status) 11AM Ctrm 906 Court clinic notified and confirmed via telephone . Locke, RAJ - D. Fredette, ADA - S. Rayburn, Atty - A. Jeruchim, Atty - J. Basil, Atty - D. Cerone, CR		
12/22/2015	Event Result: The following event: Hearing on Competency scheduled for 12/22/2015 11:00 AM has been resulted as follows: Result: Held as Scheduled Defendant not in court, note: Present in Lock-Up attorney Janice Bassil files: Continued by agreement to 1/14/2016 @ 2PM for HRG; Motion to appoint mental Health Counsel and hrg re: Rule 17 MOTION (CTRM 906 Jail List 52A Status) Locke, J - D. Fredette, ADA - J. Basil, Atty (Awaiting appt. re Amicus Counsel) Dr. Lisa Rohler Court Clinic A. Jenchim, S. Rayburn, ATTY -N. King, CR		
12/22/2015	Defendant 's Motion of Amicus Counsel for Court Order, filed	29	
12/22/2015	General correspondence regarding Proposed Court Order , filed	30	
12/22/2015	Defendant 's Motion for Competency Examination with a memorandum of Law in support there of, filed	31	
12/22/2015	Defendant 's Motion for funds for Compentency Examination, filed	32	
12/31/2015	General correspondence regarding Order of Locke, RAJ of appointment of Atty. Janice Bassil as Amicus Counsel, filed (Parties notified with copy via electronic email CPCS notified)	33	
12/31/2015	Endorsement on Motion of Amicus Counsel (parties notified via email), (#29.0): ALLOWED		
12/31/2015	Endorsement on Motion of Order Of Locke, RAJ issued (parties notified via email), (#30.0): ALLOWED		
12/31/2015	Endorsement on Motion of Amicus Counsel for Competency Examination (parties notified via email), (#31.0): ALLOWED		
12/31/2015	Endorsement on Motion of Amicus Counsel for funds for Competency Examination (parties notified via email), (#32.0): ALLOWED		
01/14/2016	Event Result: The following event: Motion Hearing scheduled for 01/14/2016 02:00 PM has been resulted as follows: Result: Held as Scheduled Defendant brought into Court, event held before Locke,J Continued by agreement to 2/4/2016 @ 2PM re: Lampon hearing (Ctrm 906. Jail list) Locke, J - D. Fredette, ADA - A. Jeruchim, Atty - S. Rayburn, and J. Bassil, Attys - N. King, CR		
01/14/2016	Endorsement on Motion to defendant's motion to withdraw "After further hearing prior ruling of 10/29/2015 Vacated, Motion is now Denied without prejudice Locke,J, (#24.0): DENIED		
01/14/2016	Defendant 's EX PARTE Motion for Order for Issuance and Funds for serviceof suboenas filed andafter hearing "Lampron hrg for 2/4/2016 @2Pm Locke,J	34	
01/28/2016	Medical Records received from Whittier Street Health Center		
01/28/2016	Appearance entered On this date Janice Bassil, Esq. added for Defendant Mark Tomas Regan		
02/04/2016	Brought into court P#34 allowed, deft objecting thereto Court orders summons to 1.Lawrence Psychiatric Center 2. Bald Pate Hospital 3. Holy Family Hospital 4. CVS Pharmacy 5. Dr Richard Netsky. Summons to issue See P#34. Locke, J Continued to 3-15-16 by agreement re subpoena compliance/status conference(906). Jail list Locke, J. - D. Fredette, ADA. - A. Jeruchim/S. Rayburn, Atty. - J. Basil, Atty		
02/10/2016	Notice and Summons (Dwyer) issued to Keeper of Records, Whittier Street Health Center, Lawrence Psychiatric Center, Baldpate Hospital, Holy Family Hospital, CVS Pharmacy and Dr. Richard Netsky to produce privileged records by 03/02/2016 to the Clerk of the Superior Court.		
02/22/2016	Medical Records received from Baldpate Hospital 83 Baldpate Road Georgetown, MA 01833		
02/26/2016	Medical Records received from Holy Family Hospital.		
02/29/2016	Medical Records received from from Whitter Street Health Center, filed.		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
03/01/2016	Medical Records received from Dr. Richard Netsky		
03/15/2016	Event Result: The following event: Conference to Review Status scheduled for 03/15/2016 02:00 PM has been resulted as follows: Result: Not Held Reason: Transferred to another session		
03/15/2016	Deft not in court. (Appearance waived by Atty Rayburn) Continued by agreement to 5/10/16 at 2:00PM for status Re: competence/trial assignment (JAIL LIST @ WALPOLE) Event Result: The following event: Conference to Review Status scheduled for 03/15/2016 02:00 PM has been resulted as follows: Result: Not Held Reason: Joint request of parties Tochka, J D Fredette, ADA S Rayburn, Atty J Bassil, ADA FTR 713		
03/18/2016	Event Result: The following event: Jury Trial scheduled for 05/02/2016 09:00 AM has been resulted as follows: Result: Canceled Reason: By Court prior to date		
03/28/2016	Medical Records received from Holy Family Hospital		
05/10/2016	Not in court Continued by agreement to 6-23-16 re trial assignment and competency reports(906, jail list) Continued by agreement to 5-17-16 hearing re rule 17(806, deft excused) Gaziano, J. - D. Fredette, ADA. - S. Rayburn, Atty. - FTR		
05/17/2016	Event Result: The following event: Hearing on Dwyer Motion scheduled for 05/17/2016 02:00 PM has been resulted as follows: Result: Not Held Reason: Not reached by Court		
05/20/2016	Notice and Summons (Dwyer) issued to Keeper of Records, Bridgewater State Hospital to produce privileged records by 06/17/2016 to the Clerk of the Superior Court.	35	
05/20/2016	ORDER: Judicial order re: request for records from Bridgewater State Hospital, Gaziano, J.	36	
06/02/2016	Other 's Notice of Opposition to Defendant Mark Regan's Motion for Order of issuance of subpoenas filed (filed by Atty Daryl Glazer on behalf of the MA Department of Correction)	37	
06/06/2016	Other 's Notice of Opposition (Corrected) to Defendant Mark Regan's Motion for Order of issuance of subpoenas filed (filed by Atty Daryl Glazer on behalf of the MA Department of Correction)	38	
06/08/2016	Medical Records received from received from Bridgewater State Hospital.		
06/14/2016	Business Records received from MA Department of Correction. MCI Concord		
06/23/2016	Event Result: The following event: Trial Assignment Conference scheduled for 06/23/2016 02:00 PM has been resulted as follows: Result: Not Held Reason: Not reached by Court		
07/27/2016	General correspondence regarding Scheduling. By agreement of all parties, matter scheduled for status conference and Trial Assignment on 8/11/16 at 2PM (Ctrm 906, Jail List) Note: parties confirm via email		
08/11/2016	Event Result: The following event: Conference to Review Status scheduled for 08/11/2016 02:00 PM has been resulted as follows: Result: Held as Scheduled Defendant brought into Court, Status hrg re: Records held before Roach RAJ. Continued by agreement to 9/20/16 at 2PM for further status hrg re: Records (Ctrm 906, Jail List 52A status) - Roach RAJ - D.Fredette, ADA - FTR ctrm906 - Atty's J.Basil. A.Jeruchim and S.Rayburn		
08/16/2016	ORDER: Furthur Judicial Order of Roach RAJ issued and filed The Court Roach RAJ authorizes Atty Janice Basil to receive Records received in the Criminal Clerks Office on 6/8/16 (BSH Records) note: see Order of Court, Locke J. P#30 Order #6 and Records received on 6/14/16 re: MA Dept of Correction MCI Concord (see Order P#39) Records taken this day by Atty Basil and to be returned to Criminal Clerks Office upon completion of review.	39	

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
08/17/2016	Janice Bassil, Esq.'s Notice regarding return of Records to Clerks Office (see 8/16/16 entry) Records received in Clerks Office and returned back to file.	40	
09/20/2016	Defendant brought into court. Hearing Re: Records Held.		
09/20/2016	Defendant's Motion for issuance of a summons filed and after hearing ALLOWED. Summons to Issue. Returnable by October 4, 2016. Continued to 10/27/16 by agreement at 2:00PM Hearing Re: Stauts Re: Records. Jail List. Roach, RAJ. - D. Fredette, ADA - J. Basil, Atty- N. King, CR	41	
10/27/2016	Deft brought into court. Even held before Roach, RAJ. Case continued by agreement to 12/13/2016 at 2PM for status conference re: Trial date/ Hrg Re: Counsel Review Motion to withdraw. CtRm 906, JAIL LIST Roach Raj, D. Fredette ADA, J. Bassil for S. Rayburn Atty, C.R.		
12/13/2016	Defendant brought into Court, Status Hearing Re: Counsel held before Roach, RAJ Note: Due to Disruptive behavior, Defendant was removed from the courtroom by the Court Officers (see generally record) -Continued by agreement to 1/26/17 for Status Re: Issues of Competency (2pm, Criminal Session 6, CtRm 906)- court orders defendant excused Roach, RAJ - D. Fredette, ADA - V. Jeruchim, Atty - S. Rayburn, Atty - C. Sproule, CR		
01/26/2017	Deft Not in Court Result: Held as Scheduled Continued by agreement to 2/14/17 for Hearing re: Status in 6th Session, Courtroom 808, 2:00PM, Deft Presence Waived Roach, RAJ D Fredette, ADA J Bassil, ATTY V Jeruchim, ATTY F LeRoux, CR		
01/26/2017	Report of Independent Examiner Forensic Mental Health Report of Frank DiCataldo filed FILED UNDER SEAL	42	
02/14/2017	Defendant not in Court, -Defense counsel unavailable today -Continued to 2/28/17, RE: Setting of Next Date (2pm, Criminal Session 6, CtRm 808)- Defendant's presence waived Roach, RAJ - D. Fredette, ADA - C. Sproul, CR		
02/28/2017	Event Result: No next date at this time The following event: Conference to Review Status scheduled for 02/28/2017 02:00 PM has been resulted as follows: Result: Held as Scheduled Defendant not in court Applies To: Jeruchim, Esq., Vivianne Elise (Attorney) on behalf of Regan, Mark Tomas (Defendant); Bassil, Esq., Janice (Attorney) on behalf of Regan, Mark Tomas (Defendant); Fredette, Esq., David Jon (Attorney) on behalf of Commonwealth (Prosecutor); Event Judge: Roach, Christine M- C.Kerrigan, CR		
02/28/2017	Commonwealth's Motion for court ordered psychiatric examination and access to psychiatric and other records	43	
03/07/2017	Endorsement on Motion for court-ordered psychiatric examination of defendant and access to psychiatric and other records endorsed as follows: (#43.0): DENIED (Please copy motion endorsement and notify attys with copy)		
03/07/2017	ORDER: Further order by the court on Commonwealth's motion for examination, filed. (Notify ADA D. Fredette, Atty, A. Jeruchim, S. Rayburn, J. Bassil Atty, along with endorsement P#43) Roach, RAJ	44	
03/13/2017	General correspondence regarding (further order above 3/7/2017 order) Following consultation sealed tape recording of proceedings to remain in custody of court reporter, unless and until the motions Judge requests. (Notify all same parties as above) Roach, RAJ		
03/16/2017	The following form was generated: A Clerk's Notice was generated and sent to: Attorney: Vivianne Elise Jeruchim, Esq. Attorney: Janice Bassil, Esq. Attorney: Susan Marie Rayburn, Esq. Attorney: David Jon Fredette, Esq.		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
05/24/2017	Event Result: The following event: Conference to Review Status scheduled for 06/06/2017 02:00 PM has been resulted as follows: Result: Rescheduled Reason: Joint request of parties		
05/24/2017	The following form was generated: Notice to Appear Sent On: 05/24/2017 12:52:02		
06/20/2017	Defendant brought into Court, Case heard in Criminal Session 3, CtRm 808, - Continued by agreement to 7/25/17, Hearing RE: Competency (2pm, Criminal Session 6, CtRm 906) ** HABA to MCI @ Cedar Junc needed** NOTE: Prioritize case before Sanders, J NOTE: Dr. Dicataldo will be available Fishman, J - D. Fredette, ADA - V. Jeruchim, Atty - S. Rayburn, Atty - J. Bassil, Atty - M. Wrighton, CR		
06/20/2017	Commonwealth's Motion for Access to Materials relied upon by Dr. Dicataldo. Filed.	45	
06/20/2017	Endorsement on Commonwealth's Motion for Access to Materials relied upon by Dr. Dicataldo, (#45.0): ALLOWED		 Image
07/19/2017	Habeas Corpus for defendant issued to MCI - Cedar Junction (at Walpole) returnable for 07/25/2017 02:00 PM Hearing on Competency.		
07/24/2017	Habeas Corpus for defendant issued to MCI - Cedar Junction (at Walpole) returnable for 07/25/2017 02:00 PM Hearing on Competency. ***** CANCEL HABA FOR 7/25/17*****		
07/25/2017	Def't Not in Court, Event not Needed by the Court Parties to Coordinate w/ Clerk in Session re: Next Event for Hearing re: Competency Roach, RAJ		
10/11/2017	Defendant not in court. Hearing RE: Competency- Not Held. NOTE: Dr. Dicataldo unavailable due to illness. Status Hearing RE: Defendant's Competency- Held before Roach, RAJ Continued by agreement until 11/29/17 @ 10:00AM RM 906 for Hearing RE: Competency (JAIL LIST) Continued by Order of the Court to 11/28/17 @ 9:00AM for Status re: Remand to NSJ (CtRm 906 - JAIL LIST @ Cedar Junction) NOTE: Rule 36 not waived by Defendant. Attorney Jeruchim to notify Attorney S. Rayburn Roach, RAJ, D. Fredette, ADA, V. Jeruchim, Atty, J. Bassil, (Amicus Atty), R. LeRoux, C.R. Judge: Roach, Christine M		
10/18/2017	Event Result: Judge: Roach, Christine M The following event: Conference to Review Status scheduled for 11/28/2017 09:00 AM has been resulted as follows: Result: Rescheduled Reason: Joint request of parties		
10/18/2017	Event Result: Judge: Roach, Christine M The following event: Hearing on Competency scheduled for 11/29/2017 10:00 AM has been resulted as follows: Result: Rescheduled by agreement of parties and due to the unavailability of Dr.Dicataldo. Matter Continued by agreement to 11/30/17 at 9AM for status hrg re: remand to NSJ and 12/1/17 at 10:00AM for hrg re: Competency (CtRm 906 Jail List @ Cedar Junction) Judge: Roach, Christine M		
11/29/2017	Event Result: Judge: Roach, Christine M The following event: Conference to Review Status scheduled for 11/30/2017 02:00 PM has been resulted as follows: Result: Not Held Reason: Transferred to another session		
11/30/2017	Defendant brought into court. Defendant remanded to NSJ to return to court on 12/1/17. Judge: Locke, Hon. Jeffrey A		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
12/01/2017	Defendant brought into court. Hearing re: Competency held before Locke, J. After hearing, motion under advisement. Paper #24 (Motion to Withdraw) withdrawn as endorsed. Case continued by agreement to 1/4/18 at 2pm for filing of Defendant's motions in 906. (presence waived) c/r N King Judge: Locke, Hon. Jeffrey A		
12/01/2017	Event Result: Judge: Roach, Christine M The following event: Hearing on Competency scheduled for 12/01/2017 10:00 AM has been resulted as follows: Result: Not Held Reason: Transferred to another session		
12/01/2017	ORDER: Ruling and Order Regarding Defendant's Competency to Stand Trial Defendant deemed competent to stand trial. Judge: Locke, Hon. Jeffrey A	46	
01/04/2018	Event Result: Judge: Roach, Christine M The following event: Conference to Review Status scheduled for 01/04/2018 02:00 PM has been resulted as follows: Result: Canceled Reason: Court Closure		
01/23/2018	Event Result: Judge: Roach, Christine M The following event: Conference to Review Status scheduled for 01/23/2018 02:00 PM has been resulted as follows: Result: Held as Scheduled Continued by Agreement to 3/8/18 @ 200pm re: Status Conference (906, Jail List at Cedar Junction) Continued by Agreement to 10/9/18 @ 200pm re: FPTC (906, Jail List at Cedar Junction) Continued by Agreement to 10/29/18 @ 900am re: trial (906, Jail List at Cedar Junction) Note: The Court Roach RAJ Indicates this matter will most likely be heard before Locke, J. Roach, RAJ - D.Fredette, ADA - A.Jeruchim, Atty - R.LeRoux, C.R. Judge: Roach, Christine M		
01/23/2018	Defendant 's EX PARTE Motion for funds re: Medical Expert Filed	47	
01/23/2018	Defendant 's EX PARTE Motion for funds re: Expert Electronic Data Forensics Expert Filed	48	
01/23/2018	Defendant 's EX PARTE Motion for Fingerprint Expert w/ An Affidavit in Support Filed	49	
01/23/2018	Endorsement on Motion for funds for Medical Expert w/ an Affidavit in Support thereof, (#47.0): ALLOWED (Copy Given to Atty Jeruchim in hand ~ ORDERED SEALED) Judge: Roach, Christine M		
01/23/2018	Endorsement on Motion for funds for an Electronic Data Forensics Expert, (#48.0): ALLOWED (Copy Given to Atty Jeruchim in hand ~ ORDERED SEALED) Judge: Roach, Christine M		
01/23/2018	Endorsement on Motion for funds for Fingerprint Expert w/ an Affidavit, (#49.0): ALLOWED (Copy Given to Atty Jeruchim in hand ~ ORDERED SEALED) Judge: Roach, Christine M		
03/08/2018	Defendant Not in Court Note: Present in Lock Up, Event Not Held by Agreement Judge: Roach, Christine M The following event: Conference to Review Status scheduled for 03/08/2018 02:00 PM has been resulted as follows: Result: Not Held Reason: Joint request of parties Continued by Agreement to 4/19/18 @ 200pm for Status Conference (906, Jail List at Cedar Junction) Roach, RAJ - D.Fredette, ADA and A.Jeruchim, Atty Each via email - xxx, C.R. Judge: Roach, Christine M		
04/19/2018	Defendant Brought into Court Judge: Locke, Hon. Jeffrey A The following event: Conference to Review Status scheduled for 04/19/2018 02:00 PM has been resulted		

**Docket
Date****Docket Text****File
Ref
Nbr.****Image
Avail.**

as follows:

Result: Held as Scheduled

Continued by Agreement to 5/17/18 @ 200pm for Status Conference/Filing of Motions(906,Jail List at Cedar Junction)

Locke,J - D.Fredette,ADA - A.Jeruchim, Atty- R.LeRoux,C.R.

Judge: Locke, Hon. Jeffrey A

05/17/2018 Defendant Brought into Court

Judge: Locke, Hon. Jeffrey A

The following event: Conference to Review Status scheduled for 05/17/2018 02:00 PM has been resulted as follows:

Result: Held as Scheduled

Continued by Agreement to 5/31/18 @ 200pm for Appearance of Commonwealths Counsel/Filing /Scheduling of any/all Motions to Suppress(906, Jail List at Cedar Junction)

Locke,J - D.Fredette,ADA - S.Rayburn,Atty - N.King,C.R.

Judge: Locke, Hon. Jeffrey A

05/31/2018 Defendant brought into Court. Note: Matter heard before Muse, J. in Courtroom 806. Continued by Agreement to 06/12/2018 @ 2:00pm re: Scheduling of Motion to Suppress/ Appearance of Commonwealth's Counsel (Ctrm 906)(Jail List @ Cedar Junction). Note: ADA D. Deakin to be Assigned to Case. Muse, J. - D. Fredette, ADA. - S. Rayburn, Atty. for A. Jeruchim, Atty. - L. Tyler, CR.

Judge: Locke, Hon. Jeffrey A

05/31/2018 Defendant 's Motion to suppress Statements, with Memorandum of Law and Affidavit in Support of.

50



05/31/2018 Defendant 's Motion to suppress evidence seized without a search warrant, with Affidavit

51

[Image](#)

06/12/2018 Defendant Brought into Court, Event held before Locke, J. *Note: ADA D Deakin appears/ Assigned to Case for Commonwealth. Continued by Agreement to 08/21/2018 @ 9:00am Hearing re: Motion to Suppress (Ctrm 713)(Jail List @ Souza). Continued by Agreement to 08/21/2018 @ 2:00am re: Status Conference (Ctrm 906)(Jail List @ Souza). Locke, J. - D. Deakin, ADA. - A. Jeruchim, Atty. - R. LeRoux, CR.

Judge: Locke, Hon. Jeffrey A

06/12/2018 Defendant 's Motion to suppress Statements, with Affidavit and Memorandum of Law in Support there of

52



06/12/2018 Defendant 's Motion to suppress Evidence Seized without a Search Warrant

53

[Image](#)

07/31/2018 Defendant 's Motion for funds

54

[Image](#)

07/31/2018 Endorsement on Motion for funds , (#54.0): ALLOWED as Endorsed (Copy forwarded to Atty. Bassil via E-Mail).

[Image](#)

Judge: Roach, Christine M

08/21/2018 Event Result:: Evidentiary Hearing on Suppression scheduled on:
08/21/2018 09:00 AM

Has been: Not Held For the following reason: Joint request of parties

Hon. Michael D Ricciuti, Presiding

Appeared:

Staff:

Rourke Donnelly, Assistant Clerk Magistrate

08/21/2018 Commonwealth 's Notice of Discovery VII, filed

55

08/21/2018 Event Result:: Conference to Review Status scheduled on:
08/21/2018 02:00 PM

Has been: Held as Scheduled

Christine M Roach, Presiding

Defendant not in court; presence excused by Court, Roach RAJ.

Matter brought forward to homicide session at the request of both parties (originally scheduled for 2pm; matter called at 11:30 a.m.)

Status conference held. Matter has next dates.

Roach, RAJ, - D.Deakin, ADA, - A.Jeruchim, Atty, - FTR/906 11:30-11:40 a.m.

Judge: Roach, Christine M

08/23/2018 Defendant 's Motion to Withdraw

56

08/23/2018 Commonwealth 's Response to Defense Counsel's Motion to Withdraw













57













<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
08/23/2018	Event Result:: Motion Hearing scheduled on: 08/23/2018 11:00 AM Has been: Held as Scheduled Hon. Jeffrey A Locke, Presiding Defendant brought into Court for Motion Hearing on P#s 56 and 57. Motion hearing held-UNDER SEAL. After hearing, P#56: DENIED as endorsed, Locke, J. Matter has next dates. Locke, J., - A.Mark for D.Deakin, ADA, - A.Jeruchim/S.Rayburn, ADAs, - FTR/906/N.McCann Judge: Locke, Hon. Jeffrey A		
08/24/2018	Commonwealth 's Notice of Discovery VIII	58	
09/05/2018	Event Result:: Evidentiary Hearing on Suppression scheduled on: 09/05/2018 09:00 AM Has been: Not Held For the following reason: Defendant found not competent Hon. Michael D Ricciuti, Presiding Appeared: Staff: Rourke Donnelly, Assistant Clerk Magistrate Defendant brought into the Court; defendant evaluated for competency by Dr. Shapiro from the Court Clinic; matter continued to 9/12/18 for Status re: Competency, RM 713. Ricciuti, J. - D.Deakin, ADA - A.Jeruchim / S.Rayburn, Attnys - FTR Attest:R.Donnelly, A/C. Judge: Ricciuti, Hon. Michael D		
09/05/2018	Defendant 's Memorandum in Support of Motion to Suppress, filed	59	
09/05/2018	Commonwealth 's Memorandum in Opposition to Motion to Suppress, filed	60	
09/12/2018	Event Result:: Conference to Review Status scheduled on: 09/12/2018 09:30 AM Has been: Held as Scheduled Hon. Michael D Ricciuti, Presiding Appeared: Staff: Rourke Donnelly, Assistant Clerk Magistrate Defendant brought into Court; Hearing re:Competency; Dr. Shapiro & Dr. Beszterczay make report to the Court. Defendant deemed competent; matter continued to 10/10/18 for Motion to Suppress. Ricciuti, J. - D.Deakin / A.Polin, ADAs - A.Jeruchim / S.Rayburn, Attnys -FTR Judge: Ricciuti, Hon. Michael D		
09/14/2018	Defendant Vivianne Elise Jeruchim, Esq., Susan Marie Rayburn, Esq.'s Motion to Withdraw (Affidavit in support thereof filed under seal)	61	
10/01/2018	Transcript received re: 12/13/16		
10/02/2018	Event Result:: Conference to Review Status scheduled on: 10/02/2018 02:00 PM Has been: Held as Scheduled Hon. Jeffrey A Locke, Presiding Judge: Locke, Hon. Jeffrey A		
10/02/2018	Attorney appearance On this date Lorenzo Perez, Esq. added as Appointed - Indigent Defendant for Defendant Mark Tomas Regan Appointment made for the purpose of Case in Chief by Judge Hon. Jeffrey A Locke.		
10/02/2018	Legal Counsel Fee Waived. Judge: Locke, Hon. Jeffrey A		
10/02/2018	Commonwealth 's Notice of Discovery IX	62	
10/03/2018	Event Result:: Evidentiary Hearing on Suppression scheduled on: 10/10/2018 09:30 AM Has been: Canceled For the following reason: By Court prior to date Hon. Jeffrey A Locke, Presiding Appeared: Staff: Rourke Donnelly, Assistant Clerk Magistrate		
10/17/2018	Other Vivianne Elise Jeruchim, Esq.'s Supplemental impounded and sealed affidavit in support of third motion to withdraw	63	

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
10/17/2018	Defendant's Memorandum in opposition to forfeiture of counsel, motion for appointment of substitute counsel; and, memorandum of law in support of opposition and motion	64	
10/17/2018	Brought into court Event Result:: Hearing on Withdrawal of Attorney scheduled on: 10/17/2018 02:00 PM Has been: Held as Scheduled. After hearing re: paper (#61), Attorney A. Jeruchum and Attorney S. Rayburn are allowed to withdraw. Attorney Lorenzo Perez remains as defendant's counsel. cont. to 10/29/18 at 2pm re: Trial assignment at request of deft in room 808. Hon. Jeffrey A Locke, Presiding D. Deakin and A. Poulin ADA's A. Jeruchum Attorney S. Rayburn Attorney L. Perez Attorney Judge: Locke, Hon. Jeffrey A Judge: Locke, Hon. Jeffrey A Judge: Locke, Hon. Jeffrey A Judge: Locke, Hon. Jeffrey A Judge: Locke, Hon. Jeffrey A		
10/17/2018	Endorsement on , (#61.0): ALLOWED , as endorsed. See motion and record. Paper (#63) Ordered Sealed and Impounded. Judge: Locke, Hon. Jeffrey A		
10/17/2018	Attorney appearance On this date Vivianne Elise Jeruchim, Esq. dismissed/withdrawn for Defendant Mark Tomas Regan		
10/17/2018	Attorney appearance On this date Susan Marie Rayburn, Esq. dismissed/withdrawn as Appointed - Indigent Defendant for Defendant Mark Tomas Regan		
10/17/2018	Event Result:: Jury Trial scheduled on: 10/29/2018 09:00 AM Has been: Canceled For the following reason: Other event activity needed Hon. Jeffrey A Locke, Presiding Judge: Locke, Hon. Jeffrey A Judge: Locke, Hon. Jeffrey A		
10/22/2018	ORDER: and ruling on counsel's motion to withdraw, filed and ALLOWED. Judge: Locke, Hon. Jeffrey A	65	
10/29/2018	Brought into court. Status hearing held. New dates set by agreement (see case schedule). Locke, J. D. Deakin and A. Poulin - ADA's L. Perez - Attorney C. Sproul CR Judge: Locke, Hon. Jeffrey A		
10/29/2018	Commonwealth's Notice of Discovery X	66	
10/29/2018	Defendant's EX PARTE Motion for funds to hire a firearms and ballistics expert filed and Allowed, as endorsed. Locke, J.	67	

















Image








<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
12/11/2018	Event Result:: Evidentiary Hearing on Suppression scheduled on: 12/11/2018 09:00 AM Has been: Held as Scheduled Hon. Mary K Ames, Presiding Appeared: Staff: Rourke Donnelly, Assistant Clerk Magistrate Defendant brought into Court; motion to suppress hearing held; deff. to file memo in support of Motion to Suppress by 12/19/18; C/W opposition to be filed by 1/2/19. Ames,J. - D.Deakin, A.Pollin, ADAs - L.Perez, Attny - FTR		
12/11/2018	Endorsement on Defendant's Motion to Suppress Statements, (#52.0): Other action taken At hearing, the parties have represented to the Court that they have reached full agreement on this Motion and will enter into a stipulation to be entered at an order of the court.		 Image
12/11/2018	Endorsement on Defendant's Motion to Suppress Statements, (#50.0): Other action taken See Paper #52		 Image
12/26/2018	Defendant 's Memorandum in Support of Motion to Suppress, filed	68	 Image
01/03/2019	Event Result:: Conference to Review Status scheduled on: 01/03/2019 09:30 AM Has been: Canceled For the following reason: Joint request of parties Hon. Mary K Ames, Presiding Appeared: Staff: Rourke Donnelly, Assistant Clerk Magistrate Defendant not in Court; matter taken off the list @ request of the parties. Ames,J. - Attest:R.Donnelly		
01/03/2019	Commonwealth 's Response to Defendant's Supplemental Memorandum of Law in Support of Motion to Suppress, filed	69	 Image
04/01/2019	Commonwealth 's Notice of Discovery XI	70	 Image
04/01/2019	Defendant 's Motion to Allow Ballistics Expert to Inspect Evidence	71	 Image
04/03/2019	Defendant 's Supplement to Previously Filed Motion to Allow Ballistics Expert to Inspect Evidence	72	 Image
04/11/2019	Event Result:: Jury Trial scheduled on: 05/13/2019 09:00 AM Has been: Canceled For the following reason: By Court prior to date Hon. Jeffrey A Locke, Presiding Staff: Michelle Fentress, Assistant Clerk Magistrate		
04/11/2019	Endorsement on Motion to Allow Ballistics expert to inspect evidence, (#71.0): ALLOWED "by agreement" J. Locke, J		 Image
04/11/2019	Endorsement on Motion to Allow Ballistics expert to inspect evidence, (#72.0): ALLOWED		 Image
04/11/2019	ORDER: Regarding Ballistics Examination	73	 Image
04/11/2019	Defendant 's EX PARTE Motion for funds to hire a firearms and ballistics expert, second with affidavit in support thereof (Filed)	74	 Image
04/11/2019	Endorsement on Motion for funds to hire a firearms and ballistics expert, second, (#74.0): ALLOWED "Subject to CPCS rates review and approval" J. Locke, J		 Image
04/11/2019	Defendant not in court, defendant excused Conference to Review Status, Held Jury Trial date rescheduled per order of the court Case continued by agreement to 05/2/2019 RE: Final Pre Trial Conference in CTRM 906 at 2:00pm *Jail List at Souza Baranowski and Habe to Souza Baranowski Case continued by agreement to 05/20/2019 RE: Jury Trial in CTRM 906 at 9:00am *Jail List at Souza Baranowski and Habe to Souza Baranowski 05/13/2019 Date Canceled *All trial dates motions to be filed on or before 05/02/2019 out of court J. Locke, J C.Iannini, Atty N. King, Court reporter		
04/11/2019	Attorney appearance On this date David A Deakin, Esq. dismissed/withdrawn as Attorney for the Commonwealth for Prosecutor		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
	Commonwealth		
04/11/2019	Attorney appearance On this date Craig Iannini, Esq. added as Attorney for the Commonwealth for Prosecutor Commonwealth		
04/12/2019	Habeas Corpus for defendant issued to Souza Baranowski Correctional Center returnable for 05/02/2019 02:00 PM Final Pre-Trial Conference.	75	
04/30/2019	Endorsement on Defendant's Motion to Suppress Evidence Seized Without a Search Warrant, (#53.0): DENIED See order		 Image
05/02/2019	The following form was generated: A Clerk's Notice was generated regarding endorsement on P#50 and sent to: Attorney: Lorenzo Perez, Esq. Attorney: Craig Iannini, Esq. by e-mail		
05/02/2019	The following form was generated: A Clerk's Notice was generated regarding endorsement on P#52 and sent to: Attorney: Lorenzo Perez, Esq. Attorney: Craig Iannini, Esq. by e-mail		
05/02/2019	The following form was generated: A Clerk's Notice was generated regarding endorsement on P#53 and sent to: Attorney: Lorenzo Perez, Esq. Attorney: Craig Iannini, Esq. by e-mail		
05/02/2019	MEMORANDUM & ORDER: On Mark Regan's Motion to Suppress Evidence Seized Without a Search Warrant Judge: Ames, Hon. Mary K Motion DENIED	76	 Image
05/02/2019	The following form was generated: A Clerk's Notice was generated regarding Memorandum and Order and sent to: Attorney: Lorenzo Perez, Esq. Attorney: Craig Iannini, Esq. by e-mail. Hard copies of Memorandum to be provided in-hand during afternoon call of the list this date.		
05/02/2019	Joint Pre-Trial Memorandum filed: (Filed)	77	
05/02/2019	Witness list Applies To: Iannini, Esq., Craig (Attorney) on behalf of Commonwealth (Prosecutor)	78	
05/02/2019	Commonwealth 's Motion in Limine for Judicial Inquiry into Criminal History Records of Potential Trial Jurors, in the Alternative, Notice of Intent to Independently Seek Such Information for Limited Purposes of Jury Empanelment, First (Filed)	79	 Image
05/02/2019	Commonwealth 's Motion In Limine for Attorney Conducted Voir Dire of Prospective Jurors (Filed)	80	 Image
05/02/2019	Commonwealth 's Motion In Limine to Exclude Third Party Culprit Evidence (Filed)	81	 Image
05/02/2019	Commonwealth 's Motion in Limine for A View (filed)	82	 Image
05/02/2019	Commonwealth 's Motion In Limine to Admit Autopsy and Crime Scene Photos and Video (Filed)	83	 Image
05/02/2019	Commonwealth 's Motion in limine to Admit Photograph of Victim (Alive)	84	 Image
05/02/2019	Defendant 's EX PARTE Motion for Funds to Hire an Investigator	85	 Image
05/02/2019	Endorsement on Defendant's Ex Parte Motion for Funds to Hire an Investigator, (#85.0): ALLOWED		 Image
05/02/2019	Defendant 's EX PARTE Motion for Funds to Hire a Latent Print Forensic Expert	86	 Image
05/02/2019	Endorsement on Defendant 's EX PARTE Motion for Funds to Hire a Latent Print Forensic Expert, (#86.0): ALLOWED		 Image
05/02/2019	Event Result:: Final Pre-Trial Conference scheduled on: 05/02/2019 02:00 PM Has been: Held as Scheduled Hon. Jeffrey A Locke, Presiding		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
	Defendant brought into Court.		
	Final Pre-Trial Conference held.		
	Matter continued by agreement to 5/17/19 at 9:00 a.m., Room 906 for Order of Remand to Nashua Street Jail for the pendency of the trial.		
	Order of the Court: trial date competency evaluation ordered for 5/20/19.		
	Locke, J., - C.Iannini, ADA, - L.Perez, Atty, - FTR: 4:27 p.m.		
05/02/2019	ORDER: The Court, Locke, J., orders that Mark Tomas Regan be remanded to the Nashua Street Jail on 5/17/19 for the duration of his trial and day to day thereafter until the said trial is concluded.	88	 Image
05/03/2019	Habeas Corpus for defendant issued to Souza Baranowski Correctional Center returnable for 05/17/2019 09:00 AM Conference to Review Status.	87	
05/14/2019	The following form was generated: A Clerk's Notice was generated regarding Order of Remand and sent to: Holding Institution: Souza Baranowski Correctional Center by fax		
05/17/2019	Event Result:: Conference to Review Status scheduled on: 05/17/2019 09:00 AM Has been: Not Held For the following reason: Other event activity needed Comments: Defendant remanded to Nashua Street Jail this date. Hon. Jeffrey A Locke, Presiding Staff: Michelle Fentress, Assistant Clerk Magistrate		
05/20/2019	Witness list	89	
	Applies To: Iannini, Esq., Craig (Attorney) on behalf of Commonwealth (Prosecutor)		
05/20/2019	Commonwealth 's Motion in limine to Admit Prior Convictions	90	 Image
	Applies To: Iannini, Esq., Craig (Attorney) on behalf of Commonwealth (Prosecutor)		
05/20/2019	Commonwealth 's Motion to Exempt Family Member from General Sequestration Order	91	 Image
05/20/2019	Defendant 's Submission Motions in Limine	92	 Image
05/20/2019	Witness list	93	 Image
	Applies To: Perez, Esq., Lorenzo (Attorney) on behalf of Regan, Mark Tomas (Defendant)		
05/20/2019	Event Result:: Jury Trial scheduled on: 05/20/2019 09:00 AM Has been: Held as Scheduled Hon. Jeffrey A Locke, Presiding		
	Defendant brought into Court.		
	Trial Date competency evaluation ordered, Locke, J.		
	Court Clinician Dr. Shapiro conducts said evaluation and reports findings on the record in open court.		
	After hearing, Court finds Defendant competent to stand trial.		
	Hearing Re: Motions in Limine held.		
	Commonwealth moves for trial. The Court, Locke, J orders 16 jurors empaneled.		
	Court begins empanelment.		
	Empanelment completed for the day with 5 jurors (not sworn)		
	The Court allows the 5 selected unsworn jurors to depart and return on Wednesday, May 22, 2019 at 9:00 a.m.		
	The panel of jurors having exhausted at 4:38 p.m.		
	Matter continued to 5/21/19 at 9:00 a.m., Room 906 for jury empanelment. (jail list)		
	Locke, J., - C.Iannini, ADA, - L.Perez, Atty, - N.King, C./R.		
05/20/2019	Endorsement on Commonwealth's First Motion in Limine for Judicial Inquiry into Criminal History Records of Potential Trial Jurors, or, in the alternative, Notice of Intent to Independently Seek Such Information for		 Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
	Limited Purposes of Jury Empanelment, (#79.0): ALLOWED pursuant to Commonwealth v. Cousin		
05/20/2019	Endorsement on Commonwealth's Third Motion in Limine to Exclude Third Party Culprit Evidence, (#81.0): Other action taken Reserved		 Image
05/20/2019	Endorsement on Commonwealth's Motion in Limine for a View, (#82.0): Withdrawn		 Image
05/20/2019	Endorsement on Commonwealth's Motion to Exempt Family Member from General Sequestration Order, (#91.0): Other action taken After hearing, ALLOWED to the extent B. Regan may be present for opening statements, and for witness testimony AFTER he has testified.		 Image
05/20/2019	Endorsement on Commonwealth's Motion in Limine to Admit Autopsy and Crime Scene Photos and Video, (#83.0): ALLOWED subject to review of photos prior to admission		 Image
05/20/2019	Endorsement on Commonwealth's Motion in Limine to Admit Photograph of Victim (Alive), (#84.0): ALLOWED		 Image
05/20/2019	Endorsement on Commonwealth's Motion in Limine to Admit Prior Convictions, (#90.0): DENIED after hearing.		 Image
05/20/2019	Endorsement on Defendant's Motions in Limine, (#92.0): Other action taken See endorsements on the Motion itself (which has embedded within it, 10 separate Motions in Limine)		 Image
05/20/2019	ORDER: to Provide Criminal Records to Defense Counsel	94	 Image
05/20/2019	Endorsement on Commonwealth's Motion in Limine for Attorney-Conducted Voir Dire of Prospective Jurors, (#80.0): ALLOWED as to Individual Voir Dire		 Image
05/21/2019	Event Result:: Jury Trial scheduled on: 05/21/2019 09:00 AM Has been: Held as Scheduled Hon. Jeffrey A Locke, Presiding Defendant brought into Court. The Commonwealth having moved for trial, the Defendant having answered ready and having been previously set at the bar, the Court, Locke, J orders 11 additional jurors empaneled. Court continues empanelment. Empanelment completed with 11 additional jurors (not sworn). The Court allows the 11 selected unsworn jurors to depart and return on Wednesday, May 22, 2019 at 9:00 a.m. Locke, J., - C.Iannini, ADA, - L.Perez, Atty, - N.King, C./R.		
05/22/2019	Event Result:: Jury Trial scheduled on: 05/22/2019 09:00 AM Has been: Held as Scheduled Hon. Jeffrey A Locke, Presiding Defendant brought into Court. Jurors Sworn // Indictments Formally Read Court proceeds with pre-charge. Opening Statements made. Evidence begins. Court allows jurors to separate and reconvene 5/23/19 at 9:00 a.m., Room 906 Locke, J., - C.Iannini, ADA, - L.Perez, Atty, - N.King, C./R.		
05/22/2019	Mental Health Records received from Adult Mental Health Court Clinic FILED and stored on the 14th Floor	95	
05/23/2019	Event Result:: Jury Trial scheduled on: 05/23/2019 09:00 AM Has been: Held as Scheduled Hon. Jeffrey A Locke, Presiding Defendant brought into Court. Trial resumes before Locke, J, with 16 jurors present.		

<u>Docket</u> <u>Date</u>	<u>Docket Text</u>	<u>File</u> <u>Ref</u> <u>Nbr.</u>	<u>Image</u> <u>Avail.</u>
	Evidence resumes.		
	Jurors allowed to separate and reconvene 5/24/19 at 9:00 a.m, Room 906.		
	Locke, J., - C.Iannini, ADA, - L.Perez, Atty, - N.King, C./R.		
05/24/2019	Defendant 's EX PARTE Motion Third Ex Parte Motion for Funds to Hire a Firearms & Ballistics Expert	96	
05/24/2019	Defendant 's Motion for Limiting Instruction, Gang Evidence	97	
05/24/2019	Defendant 's EX PARTE Motion for Funds to Hire an Investigator	98	
05/24/2019	Event Result:: Jury Trial scheduled on: 05/24/2019 09:00 AM Has been: Held as Scheduled Hon. Jeffrey A Locke, Presiding		
	Defendant brought into Court.		
	After hearing at sidebar, J#244, S#3 excused by agreement and without objection; juror failed to appear this date due to illness.		
	Trial resumes before Locke, J, with 15 jurors present.		
	Evidence resumes.		
	Jurors allowed to separate and reconvene 5/28/19 at 9:00 a.m, Room 906.		
	Locke, J., - C.Iannini, ADA, - L.Perez, Atty, - N.King, C./R.		
05/28/2019	Event Result:: Jury Trial scheduled on: 05/28/2019 09:00 AM Has been: Held as Scheduled Hon. Jeffrey A Locke, Presiding		
	Defendant brought into Court.		
	Trial resumes before Locke, J, with 15 jurors present.		
	Evidence resumes.		
	Jurors allowed to separate and reconvene 5/29/19 at 9:00 a.m, Room 906.		
	Locke, J., - C.Iannini, ADA, - L.Perez, Atty, - N.King, C./R.		
05/29/2019	Lorenzo Perez, Esq.'s Motion to withdraw with an affidavit in support there of filed.	99	
05/29/2019	Event Result:: Jury Trial scheduled on: 05/29/2019 09:00 AM Has been: Held as Scheduled Hon. Jeffrey A Locke, Presiding		
	Defendant brought into Court.		
	Trial resumes before Locke, J, with 15 jurors present.		
	Evidence resumes.		
	Locke, J., - C.Iannini, ADA, - L.Perez, Atty, - N.King, C./R.		
05/29/2019	TRIAL ACTIVITY: Closed Ex parte hearing conducted at 9:30AM re: Atty Perez's Motion to withdraw held before Locke J. Colloquy conducted with the Defendant re: Atty Perez's Motion to withdraw. Note: The Court, Locke J. Orders the closed hearing sealed. Sealed section ends at 9:50AM Voir Dire conducted with Sergeant Detective Paul McLaughlin. (see generally record) Judge: Locke, Hon. Jeffrey A		
05/29/2019	Endorsement on Attorney Lorenzo Perez's Motion to Withdraw, (#99.0): DENIED "After hearing, to include a Voir dire of Sergeant Detective Paul McLaughlin and exploration of Police knowledge of Gang affiliations and rivalries, Motion is DENIED"		
05/29/2019	TRIAL ACTIVITY: Commonwealth rests its case at 12:32PM		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
05/29/2019	Defendant 's Motion for a required finding of Not Guilty filed	100	
05/29/2019	Endorsement on Defendant's Motion for a required finding of not guilty, (#100.0): DENIED		
05/29/2019	TRIAL ACTIVITY: Colloquy conducted with the Defendant re: Defendant's right to testify. Note: Court orders sidebar conference sealed. Defense rests at 1:57PM Closing arguments made by the Defense and Commonwealth. The Court allows the Jury depart at 3:16PM and Orders them to return 5/30/19 at 9AM to resume with the Trial.		
05/29/2019	Endorsement on Defendant's Motion for Limiting Instruction, Gang Evidence, (#97.0): Other action taken Reserved base on uncertainty as to whether such evidence is to be presented, and, if so, for what probative purpose (e.g. Bowden claim vs. third-party culprit claim).		
05/30/2019	Defendant 's Motion Renewed Motion for Required Finding of Not Guilty with Regard to Murder with Extreme Atrocity	101	
05/30/2019	Event Result:: Jury Trial scheduled on: 05/30/2019 09:00 AM Has been: Held as Scheduled Hon. Jeffrey A Locke, Presiding Defendant brought into Court. Defendant's renewed Motion for Required Finding of Not Guilty, after hearing, DENIED, Locke, J. Trial resumes before Locke, J, with 15 jurors present. Court proceeds with charge Court appoints juror #20 in S#10 J.S.. as foreperson of the trial In the final submission of the case to the jury with a panel of 15 jurors present, the Court orders the jury reduced to 12 members. By lottery method, the clerk, having previously withdrawn the seat number of the foreperson and the excused juror seated in S#3, draws from the barrel the following: Juror #271 in S#4 B.D.; Juror #4 in S#7 M.M.; and Juror #42, S#12, R.S each designated as alternate jurors 125 Exhibits and 3 Verdict Slips examined and certified Jury deliberations begin at 11:10 a.m. Jurors allowed to separate and reconvene 5/31/19 at 9:00 a.m. Locke, J., - C.Iannini, ADA, - L.Perez, Atty, - N.King, C./R.		
05/30/2019	Endorsement on Defendant's Renewed Motion for Required Finding of Not Guilty with Regard to Murder with Extreme Atrocity, (#101.0): DENIED after hearing.		
05/31/2019	Event Result:: Jury Trial scheduled on: 05/31/2019 09:00 AM Has been: Held as Scheduled Hon. Jeffrey A Locke, Presiding Defendant brought into Court. Deliberations resume with 12 deliberating jurors. Juror communication marked "J" for Identification. Note sent back to jury on juror communication "J." Court conducts individual voir dire hearing with J#232, S#1 (A.B.) at sidebar. After hearing, juror sent back to Deliberation Room. All jurors ordered into courtroom to receive 3 options and then ordered back to the Deliberation Room: (1) continue deliberating today; (2) resume deliberations on Saturday; or (3) start deliberations anew on Monday. Juror communications marked "K" and "L" for Identification. Jurors ordered into courtroom. Juror #1 excused, per order of the court, due to previously disclosed personal commitment. Jurors allowed to separate at 5:20 p.m. and reconvene Monday, June 3, 2019 at 9:00 a.m.		

Docket
DateDocket TextFile
Ref
Nbr. Image
Avail.

Locke, J., - C.Iannini, ADA, - L.Perez, Atty, - FTR: 9:31 a.m.

05/31/2019 Endorsement on Defendant's Third Ex Parte Motion for Funds to Hire a Firearms & Ballistics Expert, (#96.0): ALLOWED

05/31/2019 Endorsement on Defendant's Ex Parte Motion for Funds to Hire an Investigator, (#98.0): ALLOWED

06/03/2019 Event Result:: Jury Trial scheduled on:

06/03/2019 09:00 AM

Has been: Held as Scheduled

Hon. Jeffrey A Locke, Presiding

Defendant brought into Court.

Juror #5, S#8, (J.K.) calls in sick; court delays start of deliberations until 11 a.m. when the jurors is expected to arrive.

Court conducts individual voir dire of J#5, S#8 (J.K.). After voir dire, juror remains seated.

By lottery method, the following alternate jurors is selected:

Juror #42, S#12 (R.S.).

Jury deliberations begin anew at 11:29 a.m.

Verdict returned at 4:40 p.m.

#001 Guilty of Lesser Included Offense of Murder in the 2nd Degree;

#002 Guilty as charged

#003 Guilty as charged.

Commonwealth moves for sentencing.

Matter continued by agreement to 6/6/19 at 9:00 a.m. for Sentencing , Room 906 (jail list).

Locke, J., - C.Iannini, ADA, - L.Perez, Atty, - FTR: 9:24 a.m.

06/03/2019 Event Result:: Jury Trial scheduled on:

06/04/2019 09:00 AM

Has been: Canceled For the following reason: Other event activity needed

Comments: Verdict returned at 4:40 p.m.

Hon. Jeffrey A Locke, Presiding

Staff:

Michelle Fentress, Assistant Clerk Magistrate

06/03/2019 Exhibits returned per Order of the Clerk

Returned to ADA Craig Iannini

Applies To: Perez, Esq., Lorenzo (Attorney) on behalf of Regan, Mark Tomas (Defendant); Iannini, Esq., Craig (Attorney) on behalf of Commonwealth (Prosecutor)

Receipt in file.

06/04/2019 Offense Disposition::

Charge #1 MURDER c265 §1

On: 06/03/2019 Judge: Hon. Jeffrey A Locke

By: Jury Trial Guilty Verdict - Lesser Included

Charge #2 FIREARM, CARRY WITHOUT LICENSE c269 s.10(a)

On: 06/03/2019 Judge: Hon. Jeffrey A Locke

By: Jury Trial Guilty Verdict

Charge #3 AMMUNITION WITHOUT FID CARD, POSSESS c269 §10(h)(1)

On: 06/03/2019 Judge: Hon. Jeffrey A Locke

By: Jury Trial Guilty Verdict

06/04/2019 List of exhibits

102

Re: Identification




06/04/2019 List of exhibits













103












06/04/2019 Witness list







104

Re: Trial Witnesses

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
	Applies To: Perez, Esq., Lorenzo (Attorney) on behalf of Regan, Mark Tomas (Defendant); Iannini, Esq., Craig (Attorney) on behalf of Commonwealth (Prosecutor)		
06/04/2019	List of jurors filed.	105	
	Applies To: Perez, Esq., Lorenzo (Attorney) on behalf of Regan, Mark Tomas (Defendant); Iannini, Esq., Craig (Attorney) on behalf of Commonwealth (Prosecutor)		
06/04/2019	Verdict affirmed, verdict slip filed #001-Guilty, Second Degree Murder	106	 Image
	Applies To: Perez, Esq., Lorenzo (Attorney) on behalf of Regan, Mark Tomas (Defendant); Iannini, Esq., Craig (Attorney) on behalf of Commonwealth (Prosecutor)		
06/04/2019	Verdict affirmed, verdict slip filed #002-Guilty as charged	107	 Image
	Applies To: Perez, Esq., Lorenzo (Attorney) on behalf of Regan, Mark Tomas (Defendant); Iannini, Esq., Craig (Attorney) on behalf of Commonwealth (Prosecutor)		
06/04/2019	Verdict affirmed, verdict slip filed #003-Guilty as charged	108	 Image
	Applies To: Perez, Esq., Lorenzo (Attorney) on behalf of Regan, Mark Tomas (Defendant); Iannini, Esq., Craig (Attorney) on behalf of Commonwealth (Prosecutor)		
06/06/2019	Event Result:: Hearing for Sentence Imposition scheduled on: 06/06/2019 09:00 AM Has been: Held as scheduled Hon. Jeffrey A Locke, Presiding Defendant brought into Court. Hearing Re: Sentencing held. Victim Impact statements read. After hearing, the Court, Locke, J, imposes the following sentence: Charge #: 1 MURDER c265 §1 Life with Parole Not Less Than: 15 Years, 0 Months, 0 Days Charge #: 2 FIREARM, CARRY WITHOUT LICENSE c269 s.10(a) Committed to HOC Term: 2 Years, 0 Months, 0 Days To Serve: 2 Years, 0 Months, 0 Days Served Consecutively Charge # 1 Charge #: 3 AMMUNITION WITHOUT FID CARD, POSSESS c269 §10(h)(1) Committed to HOC Term: 1 Years, 0 Months, 0 Days To Serve: 1 Years, 0 Months, 0 Days Served Concurrently Charge # 2 Committed to MCI - Cedar Junction (at Walpole) Credits 1910 Days Financials: Victim/Witness Assessment on felony G.L. c. 258B, § 8. Amount \$90.00 \$110 DNA Fee imposed. Locke, J., - C.Iannini, ADA, - L.Perez, Atty, - FTR: 9:29		
06/06/2019	Findings and Order of Statutory Fees Judge: Locke, Hon. Jeffrey A	109	 Image
06/06/2019	Endorsement on Defense Counsel's Motion to Withdraw, (#112.0): Other action taken Allowed except as to any proceeding before an appellate sentencing board.		 Image
06/06/2019	Defendant notified of right of appeal to the Appeals Court within thirty (30) days. Judge: Locke, Hon. Jeffrey A		
06/06/2019	Defendant sentenced:: Sentence Date: 06/06/2019 Judge: Hon. Jeffrey A Locke Charge #: 1 MURDER c265 §1 Life with Parole Not Less Than: 15 Years, 0 Months, 0 Days Charge #: 2 FIREARM, CARRY WITHOUT LICENSE c269 s.10(a) Committed to HOC Term: 2 Years, 0 Months, 0 Days To Serve: 2 Years, 0 Months, 0 Days Served Consecutively Charge # 1		

<u>Docket</u> <u>Date</u>	<u>Docket Text</u>	<u>File</u> <u>Ref</u> <u>Nbr.</u>	<u>Image</u> <u>Avail.</u>
	Charge #: 3 AMMUNITION WITHOUT FID CARD, POSSESS c269 §10(h)(1) Committed to HOC Term: 1 Years, 0 Months, 0 Days To Serve: 1 Years, 0 Months, 0 Days Served Concurrently Charge # 2		
	Committed to MCI - Cedar Junction (at Walpole) Credits 1910 Days		
	Financials: Victim/Witness Assessment on felony G.L. c. 258B, § 8. Amount \$90.00		
06/06/2019	Issued on this date: Mittimus for Sentence (All Charges) Sent On: 06/06/2019 10:19:41	110	 Image
06/06/2019	Notice of appeal filed by defendant regarding certain opinions, rulings, directions, and judgments of the Court on conviction.	111	 Image
06/06/2019	Defendant 's Motion to Withdraw as Counsel Applies To: Perez, Esq., Lorenzo (Attorney) on behalf of Regan, Mark Tomas (Defendant)	112	 Image
06/06/2019	Defendant 's Motion for the Appointment of Appellate Counsel Applies To: Perez, Esq., Lorenzo (Attorney) on behalf of Regan, Mark Tomas (Defendant)	113	 Image
06/06/2019	Notice of appeal from sentence to MCI - Cedar Junction (at Walpole) filed by defendant Applies To: Perez, Esq., Lorenzo (Attorney) on behalf of Regan, Mark Tomas (Defendant)	114	 Image
06/06/2019	Notification to the Appellate Division sent.		
06/06/2019	Endorsement on Defendant's Motion for the Appointment of Appellate Counsel, (#113.0): ALLOWED CPCS to appoint appellate counsel.		 Image
06/06/2019	Endorsement on Motion to Withdraw as Counsel, (#112.0): ALLOWED "ALLOWED except as to any proceeding before an appellate sentencing." Hon. J. Locke (6/6/19) (Notice with copy of Motion sent to Atty L. Perez)		 Image
06/06/2019	Endorsement on Motion for the Appointment of Appellate Counsel, (#113.0): ALLOWED "ALLOWED. CPCS to appoint appellate counsel." Hon. J. Locke (6/6/19) (Notice with copy of endorsement sent to Atty L. Perez via mail and CPCS D. Mele via email) Judge: Locke, Hon. Jeffrey A		 Image
06/07/2019	Witness 's Statement four (4) Impact Statements ordered to be made part of the record by Hon. Locke, J.	115	 Image
06/07/2019	Docket Note: Emailed Atty L. Perez regarding new procedure of ordering transcripts		
06/11/2019	Certification/Copy of Letter of transcript ordered from Court Reporter 05/20/2019 09:00 AM Jury Trial, 05/21/2019 09:00 AM Jury Trial, 05/22/2019 09:00 AM Jury Trial, 05/23/2019 09:00 AM Jury Trial, 05/24/2019 09:00 AM Jury Trial, 05/28/2019 09:00 AM Jury Trial, 05/29/2019 09:00 AM Jury Trial, 05/30/2019 09:00 AM Jury Trial, 05/31/2019 09:00 AM Jury Trial, 06/03/2019 09:00 AM Jury Trial, 06/06/2019 09:00 AM Hearing for Sentence Imposition, 12/11/2018 09:00 AM Evidentiary Hearing on Suppression (Requested by Atty L. Perez through OTS/FTR)	116	 Image
07/26/2019	Other 's Notice of Appearance of Counsel from CPCS		 Image
07/29/2019	Attorney appearance On this date Joanne T Petito, Esq. added as Appointed - Appellate Action for Defendant Mark Tomas Regan		
07/29/2019	Joanne T Petito, Esq.'s Notice of Appearance of Counsel (filed)	117	 Image
08/28/2019	Appeal: JAVS DVD/CD Received from OTS; re: 12/11/18, 5/31/19, 6/3/19, and 6/6/19		
10/30/2019	Appeal for review of sentence entered at the Appellate Division: Originating Court: Suffolk County Criminal Receiving Court: Suffolk County Criminal Case Number: 1984AD408-SU ;		
06/01/2020	Appeal: JAVS DVD/CD Received from OTS Re: 5/20/19; 5/21/19; 5/22/19; and 5/23/19.		
07/27/2020	CD of Transcript of 05/24/2019 09:00 AM Jury Trial, 05/28/2019 09:00 AM Jury Trial, 05/29/2019 09:00 AM Jury Trial, 05/30/2019 09:00 AM Jury Trial received from Paula Mills. 4		
08/28/2020	Notice to counsel ADA C.Campbell and Atty J. Petito with all transcript(s) sent via e-mail		
10/01/2020	CD of Transcript of 02/17/2015 02:00 PM Status Review, 03/02/2015 02:00 PM Hearing for Appearance / Appointment of Counsel, 01/14/2016 02:00 PM Motion Hearing, 12/01/2017 09:00 AM Hearing on		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
	Competency received from Nancy King. 4		
11/16/2020	Order from Appellate Division of the Superior Court on the Review of Sentence it is ORDERED: The appeal of the defendant for review of sentence to the M.C.I., Cedar Junction, imposed June 6, 2019 on indictments 1484CR10420 by the Superior Court Department for the county of Suffolk having been entered as an agreed recommendation upon a plea of guilty or a mandatory/ minimum or maximum sentence or a concurrent with a life sentence, or a Habitual Sentence and the Court reviewing this matter on the record only, it is ORDERED that the judgements imposing said sentence stand and that said appeal be and is hereby dismissed. (Giles, Cosgrove & Kenton-Walker, JJ.)	119	 Image
03/15/2021	Defendant 's Motion for access to sealed transcripts with affidavit (filed) (Notice sent to Locke, J. with copy (P#118) and docket sheets	118	 Image
03/25/2021	Endorsement on Motion for access to sealed transcripts, (#118.0): ALLOWED "ALLOWED as follows: Appellate counsel may receive and review sealed transcripts but shall not disclose copy or make use of transcribed material in any way (including distribution or disclosing to defendant) without futher leave of court (or appellate court)." (Locke, J.) (Copy with notice sent to J. Petito, Atty and C. Iannini via US Mail)		 Image
03/26/2021	The following form was generated: A Clerk's Notice was generated and sent to: Defendant, Attorney: Joanne T Petito, Esq. Mirsky and Petito, Attorneys at Law PO Box 1063, Exeter, NH 03833 Prosecutor, Attorney: Craig Iannini, Esq. Suffolk County District Attorney One Bulfinch Place, Boston, MA 02108		
04/21/2021	CD of Transcript of 01/14/2016 02:00 PM Motion Hearing, 02/17/2015 02:00 PM Status Review, 03/02/2015 02:00 PM Hearing for Appearance / Appointment of Counsel, 12/01/2017 10:00 AM Hearing on Competency received from Nancy Kind..		
04/21/2021	CD of Transcript of 12/22/2015 11:00 AM Hearing on Competency received from Nancy Kind..		
04/22/2021	Attorney appearance On this date Cailin Campbell, Esq. added for Prosecutor Commonwealth		
06/24/2021	Transcript received from Nancy King, CR - RE: 07/14/2015 and 10/29/2015. (SEALED) (Emailed ADA, C. Campbell)		
11/01/2021	CD of Transcript of 05/29/2019 09:00 AM Jury Trial received from Paula Mills for Nancy King. 1 (Sidebar-3 portions(Sealed))		
12/15/2021	Notice of assembly of record sent to Counsel		 Image
12/15/2021	Notice to Clerk of the Appeals Court of Assembly of Record		 Image
12/15/2021	Appeal: Statement of the Case on Appeal (Cover Sheet).	120	 Image
12/17/2021	Notice of Entry of appeal received from the Appeals Court	121	 Image
12/21/2021	CD of Transcript of 05/20/2019 09:00 AM Jury Trial received from Paula Milla. 2 (2 Sealed Portions received from Attorney J. Petito) (Copies sent to Appeals Court)		 Image
06/13/2022	Defendant 's Motion to permit appellate counsel to distribute sealed transcripts to the defendant with affidavit filed (Copy, notice and docket sheets sent to Ullmann, RAJ)	122	 Image
06/16/2022	Endorsement on Motion to Permit Appellate Counsel to Distribute Sealed Transcripts to the Defendant, (#122.0): Other action taken "Commonwealth to Respond by 7/8/22" (Copy and Notice sent to ADA Iannini and Atty. Petito)		 Image
06/21/2022	The following form was generated: A Clerk's Notice was generated and sent to: Defendant, Attorney: Joanne T Petito, Esq. Mirsky and Petito, Attorneys at Law PO Box 1063, Exeter, NH 03833 Prosecutor, Attorney: Craig Iannini, Esq. Suffolk County District Attorney One Bulfinch Place, Boston, MA 02108		
09/16/2022	Defendant 's Motion for a Ruling on Defendant's Motion to Permit Appellate Counsel to Distribute Sealed Transcripts to the Defendant with affidavit, filed. (copy of motion, docket sheets and Clerks Notice sent to Ullmann RAJ)	123	 Image
09/26/2022	Endorsement on Defendant 's Motion for a Ruling on Defendant's Motion to Permit Appellate Counsel to Distribute Sealed Transcripts to the Defendant with affidavit, (#123.0): ALLOWED Paper #122 is ALLOWED without opposition. Defendant shall not disseminate any sealed materials absent further court order.		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
	(Notice and copy sent to J. Petito, Atty and C. Iannini, ADA via mail)		
10/04/2022	The following form was generated: A Clerk's Notice was generated and sent to: Defendant, Attorney: Joanne T Petito, Esq. Mirsky and Petito, Attorneys at Law PO Box 1063, Exeter, NH 03833 Prosecutor, Attorney: Craig Iannini, Esq. Suffolk County District Attorney One Bulfinch Place, Boston, MA 02108		
10/27/2023	Notice of docket entry received from Appeals Court ORDER: The SJC has issued two decisions in Commonwealth v. Guardado, SJC-13315, the first on 4/13/23 (Guardado I), the second on 10/26/23 after allowing the Commonwealth's motion for reconsideration (Guardado II). The parties are to file a joint status report, on or before 11/10/23, regarding how they request to proceed following the SJC's Guardado decisions. Should the parties disagree as to how to proceed, they are to provide an explanation as to their disagreement. Notice/attest	124	 Image
10/30/2023	Notice of docket entry received from Appeals Court RE#19: See court's order dated 10/27/2023. A joint status report remains due on or before 11/10/2023. *Notice.	125	 Image
11/08/2023	Notice of docket entry received from Appeals Court RE#20: Treated as a joint motion to file supplemental memoranda regarding the application of Guardado to this appeal, the motion is allowed. The defendant's supplemental memorandum, not to exceed 10 double spaced pages or 2,200 words is due on or before 11/21/23. The Commonwealth's memorandum, if any, is due 14 days after service of the defendant's supplemental memorandum. The defendant's reply brief, if any will be due 14 days after service of the Commonwealth's memorandum. *Notice.	126	 Image
11/20/2023	Notice of docket entry received from Appeals Court RE #21: Allowed to 12/5/23 for filing of the defendant's supplemental memorandum. The Commonwealth's memorandum, if any, is due 14 days after service of the defendant's supplemental memorandum. The defendant's reply brief, if any will be due 14 days after service of the Commonwealth's memorandum.	127	 Image
10/17/2024	Rescript received from Appeals Court; judgment AFFIRMED The judgement on the indictment charging the defendant with murder in the second degree is affirmed. The judgements on the indictments charging the defendant with unlawful possession of a firearm and ammunition are vacated, and those verdicts are set aside. (referred to ACM K. Zitano)	128	 Image
11/08/2024	ORDER: The Appeals Court affirmed the defendant's conviction for murder in the second degree, and vacated two convictions for firearms offenses because of Guardado. CW shall file by November 29, 2024: (a) a motion requesting a trial date for the two indictments, OR (b) a nolle prosequi. So Ordered (notice and copy of order sent to Atty J. Petito, ADA C. Campbell and ADA C. Iannini)	129	 Image

Case Disposition

<u>Disposition</u>	<u>Date</u>	<u>Case Judge</u>
Disposed by Jury Verdict	06/03/2019	Locke, Hon. Jeffrey A

APPENDIX D

APPEALS COURT
Full Court Panel Case
Case Docket

COMMONWEALTH vs. MARK T. REGAN
PARTIALLY SEALED
2021-P-1129

CASE HEADER

Case Status	Closed: Rescript issued
Status Date	10/17/2024
Nature	Murder, second degree
Entry Date	12/15/2021
Appellant	Defendant
Case Type	Criminal
Brief Status	
Brief Due	
Arg/Submitted	05/06/2024
Decision Date	08/23/2024
Panel	Milkey, Hodgens, Toone, JJ.
Citation	104 Mass. App. Ct. 623
Lower Court	Suffolk Superior Court
TC Number	
Lower Ct Judge	Jeffrey A. Locke, J.
TC Entry Date	05/15/2014
SJ Number	
FAR Number	<u>FAR-30007</u>
SJC Number	

INVOLVED PARTY

Commonwealth
Plaintiff/Appellee
Red brief filed
3 Enls, 109 Days

Mark T. Regan
Defendant/Appellant
Stay vacated
Blue br, app & reply br filed
3 Enls, 240 Days

ATTORNEY APPEARANCE

Caitlin M. Campbell, A.D.A. - Inactive
Craig Iannini, A.D.A. - Inactive
Paul B. Linn, A.D.A.
David D. McGowan, A.D.A.
Joanne T. Petito, Esquire
Lorenzo Perez, Esquire - Inactive

ORAL ARGUMENTS

0:00 / 0:00

DOCKET ENTRIES

Entry Date	Paper	Entry Text
12/16/2021		IMPOUNDED INFORMATION: The motion for funds (#21) and supplemental impounded and sealed affidavit in support of third motion to withdraw, transcripts of the 07/14/2015 and 10/29/2015 proceedings in the Superior Court are sealed pursuant to the orders of the Superior Court on the record at those proceedings.
12/15/2021		Transcript Volume: 02/17/2015 - Hearing .
12/15/2021		Transcript Volume: 03/02/2015 - Hearing .
12/15/2021		Transcript Volume: 07/14/2015 - Hearing SEALED.
12/15/2021		Transcript Volume: 10/29/2015 - Hearing SEALED.
12/15/2021		Transcript Volume: 12/22/2015 - Hearing .
12/15/2021		Transcript Volume: 01/14/2016 - Hearing .
12/15/2021		Transcript Volume: 12/13/2016 - Hearing .
12/15/2021		Transcript Volume: 12/01/2017 - Hearing .
12/15/2021		Transcript Volume: 09/12/2018 - Hearing .

12/15/2021 Transcript Volume: 12/11/2018 - Motion to Suppress .

04/02/2024 Additional Transcript Volume: 12/12/2018 - Hearing

12/15/2021 Transcript Volume: 05/20/2019 - Trial .

12/21/2021 Additional Transcript Volume: 05/20/2019 - Trial (SEALED Part 1) .

12/21/2021 Additional Transcript Volume: 05/20/2019 - Trial (SEALED part 2) .

12/15/2021 Transcript Volume: 05/21/2019 - Trial .

12/15/2021 Transcript Volume: 05/22/2019 - Trial .

12/15/2021 Transcript Volume: 05/23/2019 - Trial .

12/15/2021 Transcript Volume: 05/24/2019 - Trial .

12/15/2021 Transcript Volume: 05/28/2019 - Trial .

12/15/2021 Transcript Volume: 05/29/2019 - Trial .

12/15/2021 Transcript Volume: 05/29/2019 - Trial - Addendum. SEALED

12/15/2021 Transcript Volume: 05/30/2019 - Trial .

12/15/2021 Transcript Volume: 05/31/2019 - Trial .

12/15/2021 Transcript Volume: 06/03/2019 - Trial .

12/15/2021 Transcript Volume: 06/06/2019 - Sentencing .

12/15/2021 #1 Lower Court Assembly of the Record Package

12/15/2021 #2 Notice of entry sent.

12/22/2021 #3 Docketing Statement filed for Mark T. Regan by Attorney Joanne Petito.

01/14/2022 #4 Motion of Appellant to extend date for filing brief and appendix filed for Mark T. Regan by Attorney Joanne Petito.

01/18/2022 RE#4: Allowed to 04/27/2022. *Notice

04/19/2022 #5 Motion of Appellant to extend date for filing brief and appendix filed for Mark T. Regan by Attorney Joanne Petito.

04/20/2022 RE#5: Allowed to 7/22/22. No further enlargements should be anticipated. (Neyman, J.) Notice sent.

07/14/2022 #6 Motion of Appellant to extend date for filing brief and appendix filed for Mark T. Regan by Attorney Joanne Petito.

07/15/2022 RE#6: Allowed to 9/22/22. No further enlargement. (Sacks, J.). *Notice

09/15/2022 #7 Motion of Appellant to extend date for filing brief and appendix filed for Mark T. Regan by Attorney Joanne Petito.

09/19/2022 RE#7: Pursuant to the single justice's 07/15/2022 order, the motion is denied without prejudice to renewal accompanied by the proposed brief and appendix no later than 10/24/2022. (Green, C.J.). *Notice.

10/24/2022 #8 Appellant brief filed for Mark T. Regan by Attorney Joanne Petito.

10/24/2022 #9 Appendix filed for Mark T. Regan by Attorney Joanne Petito.

10/24/2022 #10 Motion of Appellant to extend date for filing brief and appendix filed for Mark T. Regan by Attorney Joanne Petito.

10/28/2022 RE#10: Allowed and accepted for filing. Notice

11/23/2022 #11 MOTION of Appellee to extend brief due date filed for Commonwealth by Attorney Paul Linn.

11/28/2022 RE#11: Allowed to 01/23/2023. Notice sent.

01/25/2023 #12 MOTION of Appellee to extend brief due date filed for Commonwealth by Attorney Paul Linn.

01/26/2023 RE#12: Allowed to 03/06/2023. Notice sent.

03/06/2023 #13 MOTION of Appellee to extend brief due date filed for Commonwealth by Attorney Paul Linn.

03/07/2023 RE#13: Allowed to 03/13/2023. Notice sent.

03/13/2023 #14 Appellee brief filed for Commonwealth by Attorney Paul Linn.

03/21/2023 #15 Motion of Appellant to extend date for filing Reply Brief filed for Mark T. Regan by Attorney Joanne Petito.

03/23/2023 RE#15: Allowed to 04/26/2023. *Notice.

04/21/2023 #16 MOTION of Appellant to stay appellate proceedings filed for Mark T. Regan by Attorney Joanne Petito.

04/24/2023 #17 RESPONSE filed for Commonwealth by Attorney Paul Linn.

04/25/2023 RE#16 & 17: After review of papers #16 & 17, the defendant may raise his arguments related to Commonwealth v. Guardado, 491 Mass. 666 (2023), in his reply brief, now due on or before 05/05/2023. Within 14 days of the filing of the defendant's reply brief, the Commonwealth may file a supplemental memorandum, not to exceed 10 pages addressing the defendant's arguments related to Guardado only. (Vuono, J.) . *Notice.. *Notice.

04/28/2023 #18 ORDER: It has come to the court's attention that the Commonwealth intends to file a Rule 27 motion for reconsideration or modification of decision in Commonwealth v. Guardado (SJC-13315). As issues related to Guardado are implicated in this appeal, appellate proceedings are stayed pending the SJC's issuance of the rescript to the trial court in that matter or further order of this court. A status report is due within 7 days of the issuance of the rescript in Guardado. *Notice/Attest.

04/28/2023 RE#16 & 17 (REVISED ACTION): See court's order entered this date staying appellate proceedings. *Notice.

10/26/2023 #19 Status Report filed for Commonwealth by Attorney Paul Linn.

10/27/2023 ORDER: The SJC has issued two decisions in Commonwealth v. Guardado, SJC-13315, the first on 4/13/23 (Guardado I), the second on 10/26/23 after allowing the Commonwealth's motion for reconsideration (Guardado II). The parties are to file a joint status report, on or before 11/10/23, regarding how they request to proceed following the SJC's Guardado decisions. Should the parties disagree as to how to proceed, they are to provide an explanation as to their disagreement. Notice/attest

10/30/2023 RE#19: See court's order dated 10/27/2023. A joint status report remains due on or before 11/10/2023. *Notice.

11/06/2023 #20 Status Report filed for Commonwealth and Mark T. Regan by Attorney Joanne Petito.

11/08/2023 RE#20: Treated as a joint motion to file supplemental memoranda regarding the application of Guardado to this appeal, the motion is allowed. The defendant's supplemental memorandum, not to exceed 10 double spaced pages or 2,200 words is due on or before 11/21/23. The Commonwealth's memorandum, if any, is due 14 days after service of the defendant's supplemental memorandum. The defendant's reply brief, if any will be due 14 days after service of the Commonwealth's memorandum. *Notice.

11/20/2023 #21 Motion for extension of time to file supplemental memo filed for Mark T. Regan by Attorney Joanne Petito.

11/20/2023 RE#21: Allowed to 12/5/23 for filing of the defendant's supplemental memorandum. The Commonwealth's memorandum, if any, is due 14 days after service of the defendant's supplemental memorandum. The defendant's reply brief, if any will be due 14 days after service of the Commonwealth's memorandum. *Notice

12/05/2023 #22 Supplemental Memorandum filed for Mark T. Regan by Attorney Joanne Petito.

12/20/2023 #23 Supplemental Memorandum filed for Commonwealth by Attorney Paul Linn.

12/20/2023 #24 MOTION of Appellee to extend memorandum due date filed for Commonwealth by Attorney Paul Linn.

12/21/2023 RE#24: Allowed and accepted for filing. *Notice.

01/03/2024 #25 Reply brief filed for Mark T. Regan by Attorney Joanne Petito.

03/14/2024 Notice sent seeking information on unavailability for oral argument in May 2024

03/19/2024 #26 Response from Paul B. Linn, A.D.A. re: unavailable for oral argument May 10.

03/29/2024 #27 Notice of 05/06/2024, 9:30 AM argument at Allan M. Hale (Rm Four) sent.

04/03/2024 Response from Paul B. Linn, A.D.A. re: will appear and argue on 05/06/2024.

04/04/2024 Response from Joanne T. Petito, Esquire re: will appear and argue on 05/06/2024. (Received on 04/02/2024)

05/03/2024 #28 Letter pursuant to MRAP 16(l) filed for Mark T. Regan by Attorney Joanne Petito.

05/06/2024 Oral argument held. (Milkey, J., Hodgens, J., Toone, J.).

08/23/2024 RE#22: No action needed. (Milkey, Hodgens, Toone, JJ.). *Notice.

08/23/2024 RE#23: No action needed. (Milkey, Hodgens, Toone, JJ.). *Notice.

08/23/2024 RE#28: No action needed. (Milkey, Hodgens, Toone, JJ.). *Notice.

08/23/2024 #29 Decision: Full Opinion (Toone, J.). The judgment on the indictment charging the defendant with murder in the second degree is affirmed. The judgments on the indictments charging the defendant with unlawful possession of a firearm and ammunition are vacated, and those verdicts are set aside. *Notice.

09/12/2024 FAR-30007 opened on FAR APPLICATION filed for Mark Tomas Regan by Attorney Joanne Petito.

10/17/2024 FAR DENIED (on 10/16/2024).

10/17/2024 RESCRIPT to Trial Court.

As of 10/17/2024 3:15pm

APPENDIX E

SUPREME JUDICIAL COURT
for the Commonwealth
Case Docket

COMMONWEALTH vs. MARK TOMAS REGAN
PARTIALLY SEALED
FAR-30007

CASE HEADER

Case Status	FAR denied
Status Date	10/16/2024
Nature	Murder2
Entry Date	09/12/2024
Appeals Ct Number	<u>2021-P-1129</u>
Response Date	09/26/2024
Appellant	Defendant
Applicant	Defendant
Citation	494 Mass. 1109
Case Type	Criminal
Full Ct Number	
TC Number	
Lower Court	Suffolk Superior Court
Lower Ct Judge	Jeffrey A. Locke, J.

INVOLVED PARTY

Commonwealth
Plaintiff/Appellee

Mark Tomas Regan
Defendant/Appellant

ATTORNEY APPEARANCE

Cailin M. Campbell, A.D.A. - Inactive
Craig Iannini, A.D.A. - Inactive
Paul B. Linn, A.D.A.
David D. McGowan, A.D.A.
Joanne T. Petito, Esquire
Lorenzo Perez, Esquire - Inactive

DOCKET ENTRIES

Entry Date	Paper	Entry Text
09/12/2024		Docket opened.
09/12/2024	#1	FAR APPLICATION filed for Mark Tomas Regan by Attorney Joanne Petito.
10/16/2024	#2	DENIAL of FAR application.

As of 10/23/2024 2:20pm

APPENDIX F

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
DOCKET # SU2014-CR-10420

COMMONWEALTH

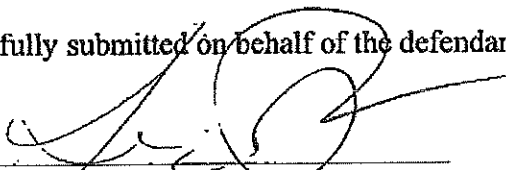
V.

MARK REGAN

MOTION FOR A REQUIRED FINDING OF NOT GUILTY

Now comes the defendant in the above-captioned case and, pursuant to Mass.R.Crim.P. 25, and moves this Honorable Court for a Required Finding of Not Guilty. In the event that the Court declines to enter a finding of not guilty, the defendant requests the Court to exercise its discretion to order a new trial on the ground that justice may not have been done.

Respectfully submitted on behalf of the defendant,



Lorenzo Perez, Esq. BBO# 561908
60 State Street, Suite 700
Boston, MA 02109

Phone (617) 441-0444
Email: AttorneyPerez@Gmail.com

Date:

May 29, 2019

5/29/19
Devid.
J.P.P.

5/29/19 Filed

APPENDIX G

Volume: VII
Pages: 258
Exhibits: (See Index)

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

* * * * *
COMMONWEALTH OF MASSACHUSETTS *
vs. * Indictment No.
MARK TOMAS REGAN * 1484CR10420
* * * * *

Trial with Jury - Day 7
Before the Honorable Jeffrey A. Locke

APPEARANCES:

For the Commonwealth:
Office of the District Attorney for Suffolk County
One Bulfinch Place
Boston, Massachusetts 02114
BY: Craig Iannini
Assistant District Attorney

For Mark Tomas Regan:
BY: Lorenzo Perez
Attorney at Law
Law Office of Lorenzo Perez, P.C.
One Boston Place
201 Washington Street, Suite 2600
Boston, Massachusetts 02108

Suffolk Superior Courthouse
Boston, Massachusetts
Wednesday, May 29, 2019

Paula M. Mills
Retired Certified Court Reporter
and Court Transcriptionist

1 for right now, if you would, take a brief recess.

2 The jurors may be excused.

3 (Whereupon, the jury is excused for a brief
4 recess.)

5 THE COURT: All right. The Commonwealth
6 having rested, Mr. Perez, do you have a motion?

7 MR. PEREZ: Yes, I do, Your Honor.

8 THE COURT: Do you want to be heard on the
9 motion beyond its filing?

10 MR. PEREZ: No, Your Honor. I think it
11 speaks for itself. I'm sure Your Honor has been
12 keen to the points that I have made and I will
13 make. The Commonwealth hasn't met its burden. It
14 shouldn't go to the jury at this point. There is
15 inadequate evidence, even in the light most
16 favorable to the Commonwealth.

17 THE COURT: Applying the well-known
18 *Latimore* standard at this stage of the proceedings,
19 the issue is whether or not there is any evidence
20 from which a reasonable jury, drawing all
21 inferences in favor of the Commonwealth, could find
22 the Commonwealth had met its burden of proof; and I
23 find under that analysis that there is sufficient
24 evidence. The motion, therefore is denied.

25 All right. Mr. Perez, I indicated

APPENDIX H

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK S.S.

Superior Court Department - Criminal

May 2019, SITTING

Commonwealth of Massachusetts

VS

Mark Tomas Regan

VERDICT SLIP

1484CR10420 #001- Murder

In the above-entitled case, we the jury say that the defendant is

1. ☐ Not Guilty

2. ☐ Guilty of Murder in the First Degree

Based upon the theory or theories of:

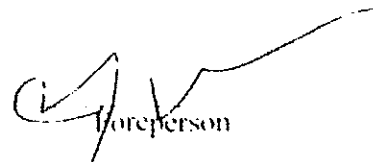
☐ Extreme Atrocity or Cruelty

☐ Deliberate Premeditation

3. ☒ Guilty of Murder in the Second Degree

And this is our unanimous decision.

Date: June 20, 2019


Foreperson

RA108

APPENDIX I

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK S.S.

Superior Court Department - Criminal

May 2019, SITTING

Commonwealth of Massachusetts

vs

Mark Tomas Regan

VERDICT SLIP

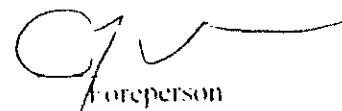
1484CR10 420 #002- Unlawful Possession of a Firearm

In the above-entitled case, we the jury say that the defendant is

1. ☐ Not Guilty
2. ☒ Guilty as charged

And this is our unanimous decision.

Date: June 30, 2019


Foreperson

RA 110

APPENDIX J

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK S.S.

Superior Court Department - Criminal

May 2019, SITTING

Commonwealth of Massachusetts

VS

Mark Tomas Regan

VERDICT SLIP

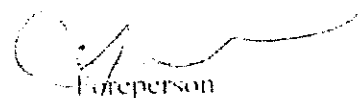
1484CR10420 #003- Unlawful Possession of Ammunition

In the above-entitled case, we the jury say that the defendant is

1. ☐ Not Guilty
2. ☒ Guilty as charged

And this is our unanimous decision.

Date: June 11, 2019


Foreperson

RA109

APPENDIX K

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

APPEALS COURT
No. 2021-P-1129

COMMONWEALTH

V.

MARK T. REGAN

**DEFENDANT'S SUPPLEMENTAL MEMORANDUM REGARDING THE
APPLICATION OF
COMMONWEALTH VS GUARDADO TO HIS APPEAL**

Background

The defendant was tried by a jury in Suffolk Superior Court in May and June, 2019. On June 4, 2019, he was convicted of second-degree murder, G.L. c. §265(1); unlawful possession of a firearm, G.L. c. 269 §10(h); and unlawful possession of ammunition, G.L. c. 269 §10(h). He was sentenced on June 6, 2019. RA/30-32.¹ The defendant filed a notice of appeal on June 6, 2019, and his case was entered in this Court on December 15, 2021. RA/111.

After the main briefs were filed but before the defendant filed his reply brief, the SJC decided Commonwealth v. Guardado, 491 Mass. 666 (2023) ("Guardado I").

¹ Consistent with the defendant's brief, the Record Appendix is cited as "RA/[page no.]". The trial transcript is cited as "Tr/[I-XII]/[page no.]".

and on April 28, 2023, appellate proceedings were stayed in the instant case pending the SJC's decision on a motion for reconsideration in Guardado I, *supra*. On October 25, 2023, the SJC decided Commonwealth v. Guardado, 493 Mass. 1 (2023) ("Guardado II"), and on November 8, 2023 this Court issued an order allowing the parties to file supplemental memoranda to address the application of the SJC decisions in Guardado I and Guardado II to this appeal.

Facts Regarding Firearm and Ammunition Charges

The defendant moved for a required finding of not guilty at the close of the Commonwealth's evidence, which was denied. TrVII/114. The trial judge instructed the jury on the charges of unlawful possession of a firearm, not having been issued a firearm identification ("F.I.D.") card and unlawful possession of ammunition, not having been issued an F.I.D. card, as follows:

The defendant is next charged under Section 10H of Chapter 269 of our General Laws of knowingly possessing a firearm unlawfully. In order to prove the defendant guilty of this offense, the Commonwealth must prove three elements beyond a reasonable doubt, first, that the defendant possessed a firearm; second, that what the defendant possessed met the legal definition of a firearm; and, third, the defendant knew that he possessed that firearm.

TrVIII/52-53

...

If the Commonwealth has proved each of these elements beyond a reasonable doubt, then you shall find the defendant guilty of unlawful possession of a firearm. If, however, the Commonwealth has failed to prove any one of these elements beyond a reasonable doubt, then you shall find the defendant not guilty.

Now, the defendant is also charged with unlawful possession of ammunition in violation of General Laws, Chapter 269, Section 10H. And this statute provides in part, “Whoever possesses ammunition without complying with the requirements of the law regarding ammunition shall be punished.” In order to prove the defendant guilty of this offense, the Commonwealth must prove the following three elements beyond a reasonable doubt, first, that the defendant possessed that item; second, the item meets the legal definition of ammunition; and, third, the defendant knew that he possessed that ammunition.

TrVIII/56

...

If the Commonwealth proves each of these elements beyond a reasonable doubt, then you should find the defendant guilty of this offense. If, however, the Commonwealth fails to prove any one of these three elements beyond a reasonable doubt, then you shall find the defendant not guilty.

TrVIII/57. The defendant did not object to the instructions. TrVIII/57. There was no evidence at trial regarding whether the defendant had been issued a firearms identification card. TrI-VII. The defendant was convicted under G.L. c. 269 §10(h) of unlawful possession of a firearm and ammunition that were found in his home. TrVI/46,53-56; TrVII/151-152.

Argument

In Guardado I, *supra*, the SJC revisited its then-existing precedent that, consistent with G.L. c. 278 sec. 7, licensure is an affirmative defense and that to convict a defendant under G.L. c. 269 §10(a) or §10(h) the Commonwealth does not have to prove that the defendant did not have a license or firearm identification card. Guardado I, 491 Mass. at 687-688, 690 (citing New York State Rifle & Pistol Ass'n v.

Bruen, 142 S. Ct. 2111, 2122, 2134, 2135 (2022); id., 142 S. Ct. at 2135 (quoting District of Columbia v. Heller, 554 U.S. 570,592 (2008)). The SJC held that in order to convict a defendant of unlawful possession of a firearm, the Commonwealth must prove “as an element of the crime charged” that the defendant in fact failed to comply with the licensure requirements for possessing a firearm and ammunition. Guardado I, 491 Mass. at 690,692-693. The SJC determined that the decision in Guardado I applies prospectively and to cases that were active or pending on direct review as of the date of the U.S. Supreme Court’s June 23, 2022 decision in Bruen, 142 S. Ct. at 2122. Guardado, 491 Mass. at 694. Because the defendant was convicted and sentenced in June 2019 and his case is currently pending in this Court on direct appeal, the decision in Guardado I applies to his case. Guardado I, 491 Mass. at 693-694.

In the instant case, the jury was not instructed that absence of an F.I.D. card is an essential element of the firearm and ammunition charges and that the Commonwealth must prove beyond a reasonable doubt absence of an F.I.D. card in order to convict the defendant. TrVIII/52-53,56-57. Failure to so instruct the jury permitted the defendant to be convicted of unlawful possession of a firearm and ammunition without proof beyond a reasonable doubt of every essential element, violating his rights under the Due Process Clause of the Fourteenth Amendment and under the Second Amendment. Guardado I, 491 Mass. at 691; Bruen, 142 S. Ct. at

2122 (2nd and 14th Amendments protect the right to carry a handgun for self-defense outside the home, consistent with Heller, supra, 554 U.S. 570, 128 S.Ct. 2783 (2008) and McDonald v. Chicago, 561 U.S. 742, 130 S. Ct. 3020 (2010), which recognized the right to possess a handgun for self-defense in the home); Heller, 554 U.S. at 628, 635; McDonald, 561 U.S. at 791. The Due Process Clause of the 14th Amendment requires the Commonwealth to prove beyond a reasonable doubt every essential element of the charged offense. In re Winship, 397 U.S. 358, 364 (1970) (Due Process Clause requires “proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged”); Commonwealth v. Brown, 477 Mass. 805, 815 (2017), cert. denied, 139 S. Ct. 54 (2018) (citing In re Winship, supra, 397 U.S. at 364). Because absence of an F.I.D. card is an essential element of unlawful possession of a firearm and unlawful possession of ammunition, the defendant's rights to due process were violated when the judge placed upon him the onus of presenting evidence of licensure, and his convictions must be reversed. Guardado I, 491 Mass. at 688 (citing Walton v. Arizona, 497 U.S. 639, 650 (1990); Commonwealth v. Mills, 436 Mass. 387, 398 (2002); and Neder v. United States, 527 U.S. 1, 10 (1999) (“improperly omitting an element from the jury ... precludes the jury from making a finding on the *actual* element of the offense” [emphasis in original])).

As in Guardado I, trial counsel's failure to object to the jury instructions is excused under the clairvoyance exception: the defendant's trial occurred between

May 20 and June 6, 2019, prior to the U.S. Supreme Court's decision in Bruen, *supra*, and the constitutional theory on which the SJC decision in Guardado I is based was not yet sufficiently developed to afford the defendant a genuine opportunity to raise his claim. Guardado, 491 Mass. at 686, 694. Prior to its decision in Guardado I, the SJC consistently held that "in prosecutions under G. L. c. 269, § 10 (a) and (h), the Commonwealth does not need to present evidence to show that the defendant did not have a license or FID card because the burden is on the defendant, under G. L. c. 278, § 7 to come forward with such evidence." Commonwealth v. Powell, 459 Mass. 572, 582 (2011) (declining to revisit allocation of burden to produce evidence of licensure under G.L. c. 278, § 7 for prosecutions under G.L. c. 269, § 10(a) & (h) because absence of a license was not considered by the SJC to be an element of the offense).

The erroneous jury instructions were not harmless, as there was no evidence at trial regarding licensure, including possession of an F.I.D. card, and the error caused the defendant to be convicted of crimes for engaging in constitutionally protected activity. Guardado, 491 Mass. at 691; Bruen, 142 S. Ct. at 2122.

For the reasons stated above, the defendant's convictions on the firearm and ammunition charges must be vacated. Guardado, 491 Mass. at 691; Jackson v. Virginia, 443 U.S. 307, 318-319 (1979); Commonwealth v. Latimore, 378 Mass. 671, 676-678 (1979); Bruen, 142 S. Ct. at 2122; Heller, 554 U.S. at 628, 635; McDonald, 561 U.S. at 791. Under Guardado II, the defendant's case must be remanded for a new

trial on the firearm and ammunition charges. Guardado II, 493 Mass. at 12.

In the alternative, while the decisions in Guardado I and Guardado II treat the U.S. Supreme Court decision in Bruen as a new rule, the decision in Bruen may be regarded as stating an old constitutional rule, at least with respect to possession of a firearm and ammunition in one's home, because it was dictated by existing Supreme Court precedent at the time the defendant's conviction became final. Teague v. Lane, 489 U.S. 288, 301 (1989); Commonwealth v. Melendez-Diaz, 460 Mass. 238, 243 (2011); contra Guardado II, 493 Mass. at 8, Guardado I, 491 Mass. at 694. The Supreme Court in Bruen attributed its decision to its previous holdings in Heller and MacDonald, stating that

In District of Columbia v. Heller, 554 U. S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008), and McDonald v. Chicago, 561 U. S. 742, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010), we recognized that the Second and Fourteenth Amendments protect the right of an ordinary, law-abiding citizen to possess a handgun in the home for self-defense. In this case, petitioners and respondents agree that ordinary, law-abiding citizens have a similar right to carry handguns publicly for their self-defense. We too agree, and now hold, consistent with Heller and McDonald, that the Second and Fourteenth Amendments protect an individual's right to carry a handgun for self-defense outside the home.

Bruen, 142 S. Ct. at 2122. Thus, Bruen may be viewed as not breaking new ground with respect to the right to possess a firearm in the home; rather, the Second Amendment constitutional right to possess a handgun in one's own home was established by Heller and McDonald and that conduct was presumptively protected prior to the defendant's trial. Bruen, 142 S. Ct. at 2122, 2126; Teague, 489 Mass. at

301; Heller, 554 U.S. at 628-629; McDonald, 561 U.S. at 767-768, 791. Because licensure is an essential element of unlawful possession of a firearm and ammunition under G.L. c. 269 § 10, the Commonwealth was required to prove beyond a reasonable doubt absence of licensure. Heller, 554 U.S. at 628-629; McDonald, 561 U.S. at 767-768, 791; Bruen, 142 C. Ct. at 2122, 2126; see Herrington v. United States, 6 A.3d 1237, 1242-1244 (D.C. 2010); Guardado I, 491 Mass. at 690, 692-693. Where the right to possess a handgun in one's own home was established prior to the defendant's trial by Heller, supra, and McDonald, supra, the evidence in the defendant's trial may be deemed insufficient not only by the post-trial legal development in Bruen, but by the law set forth in Heller and McDonald. Under those circumstances, the defendant's motion for a required finding of not guilty should have been granted on the firearm and ammunition charges, and Fifth Amendment principles of double jeopardy preclude retrial. Burks v. U.S., 437 U.S. 1, 10-11, 16-18 (1978); North Carolina v. Pearce, 395 U.S. 711, 717-718 (1969); Commonwealth v. Lopez, 484 Mass. 211, 221 (2020); Jackson, 443 U.S. at 318-319; Latimore, 378 Mass. at 676-678.

Conclusion

For the reasons stated above, the defendant's convictions of unlawful possession of a firearm and unlawful possession of ammunition must be vacated and verdicts of not guilty entered on those indictments; in the alternative, his case must be

remanded for a new trial on those indictments.

Respectfully submitted,

Mark Tomas Regan,
by his Attorney,

/s/ Joanne T. Petito
Joanne T. Petito, Esq.
B.B.O. # 559773
Mirsky & Petito
Attorneys at Law
P.O. Box 1063
Exeter, NH 03833
Tel. (603) 580-2132
joanne.petito@gmail.com

Dated: December 5, 2023

CERTIFICATE OF SERVICE

I, Joanne T. Petito, hereby certify that December 5, 2023, a true copy of the above document was served on Paul B. Linn, A.D.A., Office of the District Attorney/Suffolk, One Bullfinch Place, Boston, MA 20114, via efileMA, the Massachusetts efilng provider accessed through www.efilema.com.

/s/ Joanne T. Petito
Joanne T. Petito, Esq.
BBO # 559773
Mirsky & Petito
Attorneys at Law
P.O. Box 1063
Exeter, NH 03833
Tel. (603)580-2132
Joanne.petito@gmail.com

Dated: December 5, 2023

APPENDIX L

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

APPEALS COURT
No. 2021-P-1129

COMMONWEALTH,
Appellee,

v.

MARK TOMAS REGAN,
Appellant

On Appeal from Superior Court

DEFENDANT'S REPLY BRIEF

Joanne T. Petito, Esquire
B.B.O. # 559773
Mirsky & Petito
Attorneys at Law
P.O. Box 1063
Exeter, NH 03833
Tel. 603-580-2132
joanne.petito@gmail.com

TABLE OF CONTENTS

	<u>Page</u>
Issues	5
Statement of the Case	6
Statement of Facts	6
Argument	6

ARGUMENT

<u>I. The warrantless entry and search of the defendant's residence on March 14, 2014 violated his rights under the Fourth Amendment and Article 14, and all evidence obtained from the entry and search should have been suppressed.</u>	6
<u>II. Testimony by a fingerprint expert that he has never made an error, and that no two individuals have ever been found to have the same fingerprint, was inadmissible as testimony of infallibility of individualization of fingerprints, creating a substantial risk of a miscarriage of justice and requiring reversal.</u>	10
<u>III. The defendant was deprived of his right to effective assistance of counsel under the 6th Amendment and Article 12 by trial counsel's failure to object to inadmissible fingerprint expert testimony.</u>	13
<u>IV. The defendant's convictions of unlawful possession of a firearm and unlawful possession of ammunition must be vacated because the evidence was insufficient to prove that the defendant did not have an F.I.D. card, and the jury was not instructed on the essential element of absence of</u>	

<u>licensure.</u> ¹	13
Conclusion.	14
Supplemental Addendum (“S.A.”)	15
Certificate of Compliance	
Certificate of Service	

Table of Authorities

Cases

<u>Caniglia v. Strom</u> , 141 S.Ct. 1596 (2021)	n.5
<u>Commonwealth v. Armstrong</u> , 492 Mass. 341 (2023)	11
<u>Commonwealth v. DiGeronimo</u> , 38 Mass. App. Ct. 714 (1995)	9
<u>Commonwealth v. Entwistle</u> 463 Mass. 205 (2012)	7
<u>Commonwealth v. Gambora</u> , 457 Mass. 715 (2010)	10,11,12,13
<u>Commonwealth v. Guardado I</u> , 491 Mass. 666 (2023)	14
<u>Commonwealth v. Guardado II</u> , 493 Mass. 1 (2023)	14

¹ This argument was raised in the Defendant’s Supplemental Memorandum Regarding the Application of Commonwealth vs. Guardado to his Appeal, pursuant to this Court’s Order of November 8, 2023.

<u>Commonwealth v. Joyner</u> , 467 Mass. 176 (2014)	12,13
<u>Commonwealth v. Ortiz</u> , 435 Mass. 569 (2002)	8
<u>Commonwealth v. Patterson</u> , 445 Mass. 626 (2005)	12,13
<u>Commonwealth v. Raspberry</u> , 93 Mass. App. Ct. 633 (2018)	7,9
<u>Commonwealth v. Snell</u> , 428 Mass. 766 (1988)	8
<u>Commonwealth v. Townsend</u> , 453 Mass. 413 (2009)	8
<u>Commonwealth v. Tuschall</u> , 476 Mass. 581 (2017)	9
<u>Commonwealth v. Wadlington</u> , 467 Mass. 192 (2014)	11
<u>Jones v. United States</u> , 357 U.S. 493 (1958)	10
<u>United States v. Casanova</u> , 886 F.3d 55 (1 st Cir. 2018)	10

Constitutional Provisions

4 th Amendment to the United States Constitution	6,9
Article 14, Massachusetts Declaration of Rights	6,9

Additional Authorities

2009 National Academy of Sciences (“NAS”) Report (National Research Council, “Strengthening Forensic Science in the United States, A Path Forward”)	11,12
---	-------

ISSUES PRESENTED

- I. Whether the defendant's Motion to Suppress Evidence Seized Without a Search Warrant was erroneously denied because the warrantless entry and search were unjustified under the emergency aid and the community caretaking exceptions to the warrant requirement, depriving the defendant of his rights under the Fourth Amendment and Article 14, requiring reversal.
- II. Whether a fingerprint expert improperly testified to the infallibility of individualization of fingerprints, creating a substantial risk of a miscarriage of justice and requiring reversal.
- III. Whether trial counsel's failure to object to a fingerprint expert's testimony deprived the defendant of effective assistance of counsel, requiring reversal.
- IV. Whether the defendant's convictions of unlawful possession of a firearm and unlawful possession of ammunition must be vacated because the evidence was insufficient to prove that the defendant did not have an F.I.D. card, and the jury was not instructed on the essential element of absence of licensure.²

² This issue was raised in the Defendant's Supplemental Memorandum Regarding the Application of Commonwealth vs. Guardado to his Appeal, pursuant to the November 8, 2023 Order of this Court.

STATEMENT OF THE CASE

The defendant relies on the Statement of the Case contained in his principal brief and in the “Background” section of Defendant’s Supplemental Memorandum Regarding the Application of Commonwealth vs. Guardado to his Appeal.

STATEMENT OF FACTS

The defendant relies on the Statement of Facts contained in his principal brief and in the Defendant’s Supplemental Memorandum Regarding the Application of Commonwealth vs. Guardado to his Appeal.

ARGUMENT³

I. The warrantless entry and search of the defendant’s residence on March 14, 2014 violated his rights under the Fourth Amendment and Article 14, and all evidence obtained from the entry and search should have been suppressed.

The motion judge denied the defendant’s Motion to Suppress Evidence Seized Without a Search Warrant, finding that the warrantless entry into the defendant’s residence was justified by both the emergency aid exception and the community caretaking exception to the warrant requirement. This ruling was erroneous because

³ The defendant does not waive arguments raised in his principal brief and in Defendant’s Supplemental Memorandum Regarding the Application of Commonwealth vs. Guardado to his Appeal.

police did not have sufficient information to form an objective belief that Regan⁴ was injured or in imminent danger of physical harm prior to their entering the residence at 105 Perham Street, which is required for the emergency aid exception to apply; and the community caretaking exception does not apply to residences.⁵

Mere existence of potentially harmful circumstances is not sufficient under the emergency aid exception; there must be imminent danger of immediate and serious injury for the exception to apply. Commonwealth v. Raspberry, 93 Mass. App. Ct. 633, 638-639 (2018). The emergency aid exception has been applied in cases where there were factors in addition to missed appointments or unresponsiveness to attempts to contact; however, no such additional factors were present in the instant case. See, eg., Commonwealth v. Entwistle 463 Mass. 205, 216 (2012) (presence of pampered

⁴ Consistent with the defendant's principal brief, the decedent is referred to herein as "Regan", the defendant is referred to as "the defendant", and Bernard Regan is referred to as "Bernard".

⁵ As argued in the defendant's principal brief, in 2021 the U.S. Supreme Court held in Caniglia v. Strom, 141 S.Ct. 1596 (2021), decided after the motion judge's decision in this case, that the community caretaking exception does not apply to residences. Caniglia, supra, 141 S. Ct. at 1598. The Commonwealth does not argue on appeal that the warrantless entry and search of 105 Perham Street was justified under the community caretaking exception. (C.Br. 18-19).

family pet left unattended, and infant family member); Commonwealth v. Snell, 428 Mass. 766, 773 (1988) (threats to burn house down and murder missing individual before individual went missing); Commonwealth v. Ortiz, 435 Mass. 569, 571, 573 (2002) (missing individual last seen being taken into a store by individual who had sexually assaulted someone else earlier that morning).

The motion judge and the Commonwealth compare the instant case to Commonwealth v. Townsend, 453 Mass. 413 (2009); however, this case is distinguishable from Townsend, supra, in significant respects. Townsend involved domestic violence and drug use. The missing individual in Townsend was a victim of domestic violence incidents committed by the defendant in that case, and she was last heard from while inside the defendant's apartment. In addition, she was a drug user and was known to binge on cocaine. Police were apprised of all that information prior to their warrantless entry into the defendant's apartment. The instant case, by contrast, did not involve domestic violence, and while Regan's brother Bernard testified that the defendant and Regan had a "tumultuous" relationship, that information was not relayed to police prior to entry. Supp/26.

Although the motion judge and the Commonwealth point to "very real concerns of a medical emergency based on [Regan's] medical history and age", there

was no evidence to establish objective concern that there was a medical emergency. Police had no information regarding any emergent or potentially emergent medical concerns; they were advised only that Regan “had a medical history, but not any specific injury or issue at that moment”, and they had no information regarding what medical issues Regan might have had.⁶ Supp/76. Mere existence of potentially harmful circumstances is insufficient. Raspberry, 93 Mass. App. Ct. at 638-639.

The Commonwealth’s suggestion in its brief that an imminent medical emergency is presented by Regan’s age of either 58 or 66 years because a heart attack or stroke may occur suddenly in a person of that age is unsupportable. Such a standard would permit warrantless entry into any residence where an individual aged 58 to 66 may be present, which clearly violates the Fourth Amendment and Article 14: exceptions to the warrant requirement for entry into a home are few, and they are “carefully and jealously drawn”. Commonwealth v. Tuschall, 476 Mass. 581, 589 (2017) (citing Commonwealth v. DiGeronimo, 38 Mass. App. Ct. 714, 721 [1995],

⁶ No current medical conditions ever came to light; Bernard testified at the suppression hearing that Regan had been successfully treated for cancer in the past, and that he had “a couple of physical issues”. Supp/30.

quoting Jones v. United States, 357 U.S. 493, 499 (1958). They do not permit entry into an individual's home simply because a 58- or 66-year old person may be inside.

II. Testimony by a fingerprint expert that he has never made an error, and that no two individuals have ever been found to have the same fingerprint, is inadmissible as testimony of infallibility of individualization of fingerprints, creating a substantial risk of a miscarriage of justice and requiring reversal.

The Commonwealth erroneously equates Savicke's testimony that he has never made an erroneous fingerprint identification to the testimony of an expert in United States v. Casanova, 886 F.3d 55 (1st Cir. 2018), that the error rate in fingerprint comparison is "very small". Casanova, supra, 886 F.3d at 61-62. Savicke did not testify that the error rate is very small. TrVII/97;RA/100;A/60. Testimony that the error rate is "very small" would suggest that the errors do occur, that the rate is not zero, and that fingerprint analysis is not infallible. Casanova, 886 F.3d at 62. Savicke testified instead that his error rate is zero, and that is impermissible. His testimony suggested that his individualization of fingerprints is infallible, which is precisely what Commonwealth v. Gambora, 457 Mass. 715 (2010), prohibits. Gambora, supra, 457 Mass. at n.22 (expert opinions expressing absolute certainty or infallibility of individualization of a print are impermissible),

and n.15 (assertion of zero error rate is unrealistic) (citing and quoting⁷ National Research Council, “Strengthening Forensic Science in the United States, A Path Forward” (2009), at 143 (“National Academy of Sciences (‘NAS’) Report”), <https://www.ojp.gov/pdffiles1/nij/grants/228091.pdf> (Supplemental Addendum, this brief (“S.A.”) 16-19)). Savicke’s testimony that he has never made a misidentification is also prohibited under Commonwealth v. Wadlington, 467 Mass. 192 (2014), in which the SJC specifically found that expert testimony that the error rate of latent print comparison “should be zero” is inadmissible. Wadlington, supra, 467 Mass. at 205; Commonwealth v. Armstrong, 492 Mass. 341, 346-347 (2023) (improper to suggest infallibility of fingerprint examiner’s conclusions on direct examination).

⁷ "Error rate is a much more difficult challenge [than documentation]. Errors can occur with any judgment-based method, especially when the factors that lead to the ultimate judgment are not documented. Some in the latent print community argue that the [ACE-V] method itself, if followed correctly (i.e., by well-trained examiners properly using the method), has a zero error rate. Clearly, this assertion is unrealistic, and, moreover, it does not lead to a process of method improvement. The method, and the performance of those who use it, are inextricably linked, and both involve multiple sources of error (e.g., errors in executing the process steps, as well as errors in human judgment)."

NAS Report at 143, quoted at Gambora, supra, 457 Mass. at n.15.

In addition, Savicke's testimony that fingerprints "are unique [in] that no two individuals have ever been found to have the same fingerprints" overstates the accuracy of latent print comparison for at least two reasons. First, as the SJC in Gambora noted, uniqueness of human friction ridge arrangement "provides no guarantee that prints from two different people are always sufficiently different that they cannot be confused". Commonwealth v. Joyner, 467 Mass. 176, n.6 (2014) (quoting Gambora, 457 Mass. at 724-725, and the 2009 NAS Report, *supra*, at 144). Thus, stating that fingerprints are unique and that no two individuals have ever been found to have the same fingerprint overstates the accuracy of fingerprint comparison: uniqueness provides no guarantee that prints from two different people are sufficiently different that they cannot be confused. Gambora, *supra*, 457 Mass. at 724-725 and at n.14; Joyner, 467 Mass. at 181 and n.6.

Second, the SJC has noted that "the uniqueness of two full fingerprints does not, in and of itself, prove that one small portion of a fingerprint cannot mirror one portion of another print." Joyner, 467 Mass. at 185-186 (2014) quoting Commonwealth v. Patterson, 445 Mass. 626, 629 (2005). The type of fingerprint comparison at issue in this case is partial latent print comparison, not comparison of full fingerprint impressions. Savicke compared unknown partial latent prints to

known full impressions taken from the defendant. Savicke's comparison of each partial latent print found on the gun consisted of determining whether the latent print, which is a portion of an unknown fingerprint, mirrored a portion of the defendant's full fingerprint. In light of the SJC's recognition, stated in Joyner, supra, that uniqueness of full fingerprints does not prove that a portion of a print left by one unknown individual cannot mirror a portion of a print taken from a different individual, Savicke's testimony regarding the uniqueness of fingerprints has no direct bearing on whether his identifications of partial latent prints found on the gun as having originated from the defendant are accurate. Joyner, 467 Mass. at 185-186. However, his testimony erroneously suggests that because fingerprints are unique and because no two individuals have ever been found to have the same fingerprint, a match between the partial latent prints and portions of the defendant's full fingerprints proves that the latent prints and the full fingerprints came from the same individual. This overstates the accuracy of fingerprint comparison and is impermissible. Joyner, supra, at 467 Mass. at n.6, 181, and 185-186 (quoting Patterson, 445 Mass. at 629); Gambora, 457 Mass. at 724-725, n.14

III. The defendant was deprived of his right to effective assistance of counsel under the 6th Amendment and Article 12 by trial counsel's failure to object to inadmissible fingerprint expert testimony.

The defendant relies on the argument set forth in his principal brief.

IV. The defendant's convictions of unlawful possession of a firearm and unlawful possession of ammunition must be vacated because the evidence was insufficient to prove that the defendant did not have an F.I.D. card, and the jury was not instructed on the essential element of absence of licensure.

The defendant relies on the argument set forth in Defendant's Supplemental Memorandum Regarding the Application of Commonwealth vs. Guardado to his Appeal.

CONCLUSION

For the reasons stated above and in the defendant's principal brief and in Defendant's Supplemental Memorandum Regarding the Application of Commonwealth vs. Guardado to his Appeal, the defendant's appeal must be sustained and his convictions reversed.

Respectfully submitted,

Mark Tomas Regan,
by his Attorney,

/s/ Joanne T. Petito
Joanne T. Petito, Esq.
B.B.O. # 559773
Mirsky & Petito
Attorneys at Law
P.O. Box 1063
Exeter, NH 03833
Tel. (603) 580-2132

SUPPLEMENTAL ADDENDUM

2009 National Academy of Sciences (“NAS”) Report
(National Research Council, “Strengthening Forensic
Science in the United States, A Path Forward”) excerpt S.A. 16-19

STRENGTHENING FORENSIC SCIENCE IN THE UNITED STATES

A PATH FORWARD

Committee on Identifying the Needs of the Forensic Science Community

Committee on Science, Technology, and Law
Policy and Global Affairs

Committee on Applied and Theoretical Statistics
Division on Engineering and Physical Sciences

NATIONAL RESEARCH COUNCIL
OF THE NATIONAL ACADEMIES

THE NATIONAL ACADEMIES PRESS
Washington, D.C.
www.nap.edu

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Copyright © National Academy of Sciences. All rights reserved.

THE NATIONAL ACADEMIES PRESS 500 Fifth Street, N.W. Washington, DC 20001

NOTICE: The project that is the subject of this report was approved by the Governing Board of the National Research Council, whose members are drawn from the councils of the National Academy of Sciences, the National Academy of Engineering, and the Institute of Medicine. The members of the committee responsible for the report were chosen for their special competences and with regard for appropriate balance.

This study was supported by Contract No. 2006-DN-BX-0001 between the National Academy of Sciences and the National Institute of Justice. Any opinions, findings, conclusions, or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the organizations or agencies that provided support for the project.

Library of Congress Cataloging-in-Publication Data

Strengthening forensic science in the United States : a path forward : summary / Committee on Identifying the Needs of the Forensic Science Community, Committee on Science, Technology, and Law Policy and Global Affairs, Committee on Applied and Theoretical Statistics, Division on Engineering and Physical Sciences.

p. cm.

Includes index.

ISBN-13: 978-0-309-13135-3 (hardcover)

ISBN-10: 0-309-13135-9 (hardcover)

ISBN-13: 978-0-309-13131-5 (pbk.)

ISBN-10: 0-309-13131-6 (pbk.)

1. Forensic sciences—United States. 2. Criminal investigation—United States. 3. Evidence, Criminal—United States. I. National Research Council (U.S.). Committee on Identifying the Needs of the Forensic Science Community. II. National Research Council (U.S.). Committee on Science, Technology, and Law Policy and Global Affairs. III. National Research Council (U.S.). Committee on Applied and Theoretical Statistics.

HV8073.S7347 2009

363.250973—dc22

2009011443

Additional copies of this report are available from the National Academies Press, 500 Fifth Street, N.W., Lockbox 285, Washington, DC 20055; (800) 624-6242 or (202) 334-3313 (in the Washington metropolitan area); Internet, <http://www.nap.edu>.

Copyright 2009 by the National Academy of Sciences. All rights reserved.

Printed in the United States of America

This document is a research report submitted to the U.S. Department of Justice. This report has not been published by the Department. Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

Copyright © National Academy of Sciences. All rights reserved.

paper by Haber and Haber²⁹ presents a thorough analysis of the ACE-V method and its scientific validity. Their conclusion is unambiguous: “We have reviewed available scientific evidence of the validity of the ACE-V method and found none.”³⁰ Further, they state:

[W]e report a range of existing evidence that suggests that examiners differ at each stage of the method in the conclusions they reach. To the extent that they differ, some conclusions are invalid. We have analysed the ACE-V method itself, as it is described in the literature. We found that these descriptions differ, no single protocol has been officially accepted by the profession and the standards upon which the method’s conclusions rest have not been specified quantitatively. As a consequence, at this time the validity of the ACE-V method cannot be tested.³¹

Recent legal challenges, *New Hampshire vs. Richard Langill*³² and *Maryland vs. Bryan Rose*,³³ have also highlighted two important issues for the latent print community: documentation and error rate. Better documentation is needed of each step in the ACE-V process or its equivalent. At the very least, sufficient documentation is needed to reconstruct the analysis, if necessary. By documenting the relevant information gathered during the analysis, evaluation, and comparison of latent prints and the basis for the conclusion (identification, exclusion, or inconclusive), the examiner will create a transparent record of the method and thereby provide the courts with additional information on which to assess the reliability of the method for a specific case. Currently, there is no requirement for examiners to document which features within a latent print support their reasoning and conclusions.

Error rate is a much more difficult challenge. Errors can occur with any judgment-based method, especially when the factors that lead to the ultimate judgment are not documented. Some in the latent print community argue that the method itself, if followed correctly (i.e., by well-trained examiners properly using the method), has a zero error rate. Clearly, this assertion is unrealistic, and, moreover, it does not lead to a process of method improvement. The method, and the performance of those who use it, are inextricably linked, and both involve multiple sources of error (e.g., errors in executing the process steps, as well as errors in human judgment).

Some scientific evidence supports the presumption that friction ridge patterns are unique to each person and persist unchanged throughout a

²⁹ Mnookin, op. cit.

³⁰ Ibid., p. 19.

³¹ Ibid.

³² 157 N.H. 77, 945 A.2d 1 (N.H., April 04, 2008).

³³ No. K06-0545 (MD Cir. Ct. Oct. 19, 2007).

lifetime.³⁴ Uniqueness and persistence are necessary conditions for friction ridge identification to be feasible, but those conditions do not imply that anyone can reliably discern whether or not two friction ridge impressions were made by the same person. Uniqueness does not guarantee that prints from two different people are always sufficiently different that they cannot be confused, or that two impressions made by the same finger will also be sufficiently similar to be discerned as coming from the same source. The impression left by a given finger will differ every time, because of inevitable variations in pressure, which change the degree of contact between each part of the ridge structure and the impression medium. None of these variabilities—of features across a population of fingers or of repeated impressions left by the same finger—has been characterized, quantified, or compared.³⁵

To properly underpin the process of friction ridge identification, additional research is also needed into ridge flow and crease pattern distributions on the hands and feet. This information could be used to limit the possible donor population of a particular print in a statistical approach and could provide examiners with a more robust understanding of the prevalence of different ridge flows and crease patterns. Additionally, more research is needed regarding the discriminating value of the various ridge formations and clusters of ridge formations.³⁶ This would provide examiners with a solid basis for the intuitive knowledge they have gained through experience and provide an excellent training tool. It also would lead to a good framework for future statistical models and provide the courts with additional information to consider when evaluating the reliability of the science. Recently, research has begun to build some of this basis.³⁷

³⁴ F. Galton. 1892. *Fingerprints*. New York: MacMillan; H. Cummins and C. Midlo. 1943. *Finger Prints, Palms and Soles: An Introduction of Dermatoglyphics*. Philadelphia: The Blakiston Company; A. Hale. 1952. Morphogenesis of volar skin in the human fetus. *The American Journal of Anatomy* 91:147-173; S. Holt and L.S. Penrose. 1968. *The Genetics of Dermal Ridges*. Springfield, IL: Charles C Thomas Publishing; W. Montagna and P. Parakkal. 1974. *The Structure and Function of Skin*. New York: Academic Press; J. Raser and E. O'Shea. 2005. Noise in gene expression: Origins, consequences, and control. *Science* 39:2010-2013.

³⁵ Some in the friction ridge community point to an unpublished 1999 study by the Lockheed-Martin Corporation, the "50K vs. 50K Fingerprint Comparison Test," as evidence of the scientific validity of fingerprint "matchup." But that study has several major design and analysis flaws, as pointed out in D.H. Kaye. 2003. Questioning a courtroom proof of the uniqueness of fingerprints. *International Statistical Review* 71(3):524. Moreover, even if it were valid, the study provides only a highly optimistic estimate of the reliability of friction ridge analyses, biased toward highly favorable conditions.

³⁶ Haber and Haber also provide a sensible research agenda for enhancing the validity of fingerprint comparisons.

³⁷ E.g., C. Neumann, C. Champod, R. Puch-Solis, N. Egli, A. Anthonioz, and A. Bromage-Griffiths. 2007. Computation of likelihood ratios in fingerprint identification for configurations of any number of minutiae. *Journal of Forensic Sciences* 52(1):54-64; N.M. Egli,

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

APPEALS COURT
No. 2021-P-1129

COMMONWEALTH

V.

MARK TOMAS REGAN

CERTIFICATE OF COMPLIANCE

I, Joanne T. Petito, hereby certify, pursuant to Mass. R.A.P. 16(k), that the DEFENDANT'S REPLY BRIEF in the above-captioned case is in compliance with Mass. R.A.P. 16(a)(13); Mass. R.A.P. 16(e); Mass. R.A.P. 18; Mass. R.A.P. 20; and Mass. R.A.P. 21. Compliance with Mass. R.A.P. 20 is ascertained by using the proportionally spaced font Times New Roman, 14 point size. This brief was produced using Microsoft Word 2016 and contains 2,061 non-excluded words.

January 3, 2024

/s/ Joanne T. Petito
Joanne T. Petito, Esquire
B.B.O. #559773
Mirsky & Petito
Attorneys at Law
P.O. Box 1063
Exeter, NH 03833
Tel. (603) 580-2132

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

APPEALS COURT
No. 2021-P-1129

COMMONWEALTH

V.

MARK TOMAS REGAN

CERTIFICATE OF SERVICE

I, Joanne T. Petito, hereby certify, under the penalties of perjury, that on January 3, 2023, I served an electronic copy of this Reply Brief on Paul B. Linn, A.D.A., Office of the District Attorney/Suffolk, One Bullfinch Place, Boston, MA 02114, via efileMA, the Massachusetts efilng provider accessed through www.efilema.com.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 3rd
DAY OF JANUARY, 2024.

/s/ Joanne T. Petito
Joanne T. Petito, Esquire
B.B.O. # 559773
Mirsky & Petito
Attorneys at Law
P.O. Box 1063
Exeter, NH 03833
Tel. 603-580-2132
Joanne.petito@gmail.com

APPENDIX M

**Commonwealth of Massachusetts
Supreme Judicial Court
For the Commonwealth**

SUFFOLK, SS.

FAR No.
Appeals Court
No. 2021-P-1129

COMMONWEALTH,
Appellee,

v.

MARK TOMAS REGAN,
Appellant

DEFENDANT'S APPLICATION FOR FURTHER APPELLATE REVIEW

Joanne T. Petito, Esquire
B.B.O. # 559773
Mirsky & Petito
Attorneys at Law
P.O. Box 1063
Exeter, NH 03833
Tel. 603-580-2132
joanne.petito@gmail.com

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

FAR No.
APPEALS COURT
No. 2021-P-1129

COMMONWEALTH,
Appellee,

v.

MARK TOMAS REGAN,
Appellant

DEFENDANT'S APPLICATION FOR FURTHER APPELLATE REVIEW

Now comes the defendant, Mark Tomas Regan, and respectfully applies, pursuant to Mass. R. App. P. 27.1, for leave to obtain further appellate review of his convictions in the Suffolk Superior Court of second degree murder (G.L. c. 265 §1) (001); possession of a firearm not having been issued a firearm identification card (G.L. c. 269 §10(h) (002); and possession of ammunition not having been issued a firearm identification card (G.L. c. 269 §10(h) (003).

The Defendant states that his application raises substantial issues affecting the interests of justice, including violation of the right of individuals, guaranteed by the Fourth Amendment and Article 14 of the Massachusetts Declaration of Rights, to be secure against unreasonable searches and seizures in one's own

home; improper admission into evidence of testimony that an expert's fingerprint analysis is infallible; and violation of 5th Amendment double jeopardy principles by permitting, pursuant to Commonwealth v. Guardado, 493 Mass. 1 (2023), cert. denied 144 S. Ct. 2683 (2024), ("Guardado II"), retrial of a defendant on charges of unlawful possession of a firearm and ammunition in his own home, where insufficient evidence was presented on those charges at trial.

The reasons for his application for further appellate review are fully set forth in the defendant's supporting memorandum of law, which accompanies his application.

Respectfully submitted,
MARK TOMAS REGAN,
By his Attorney,

/s/Joanne T. Petito
Joanne T. Petito, Esq.
B.B.O. # 559773
Mirsky & Petito
Attorneys at Law
P.O. Box 1063
Exeter, NH 03833
Tel. (603)580-2132
Joanne.petito@gmail.com

Date: September 12, 2024

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

FAR No.

Appeals Court No.

2021-P-1129

COMMONWEALTH

V.

MARK TOMAS REGAN

**DEFENDANT'S MEMORANDUM IN SUPPORT OF HIS APPLICATION
FOR FURTHER APPELLATE REVIEW**

PRIOR PROCEEDINGS

The defendant seeks Further Appellate Review of his June 4, 2019, convictions of second degree murder (G.L. c. 265 §1) (001); possession of a firearm not having been issued a firearm identification card (G.L. c. 269 §10(h) (002); and possession of ammunition not having been issued a firearm identification card (G.L. c. 269 §10(h) (003), following a jury trial before the Hon. Jeffrey A. Locke. RA/30-31.¹

¹ The defendant's Record Appendix is cited herein as "RA/[page no.]". The trial transcript is in 12 volumes dated September May 20, 21, 22, 23, 24, 28, 29, 30, 31, and June 3, 4, and 6, 2019, and is cited herein as "Tr/[I-XII]/[page no.]". The transcript of the suppression hearing is in one volume dated December 11, 2018, and is cited herein as "Supp/[page no.]".

On June 4, 2019, the defendant was sentenced to life imprisonment with the possibility of parole after 15 years, on the second degree murder conviction; two years imprisonment at the South Bay House of Corrections, from and after the sentence on the murder conviction, on the firearm charge; and one year imprisonment at South Bay House of Corrections, concurrent with the sentence on the firearm charge and from and after the sentence on the murder conviction, on the ammunition charge. RA/31-32.

The defendant filed a notice of appeal on June 6, 2019, and his case was entered in this Court on December 15, 2021. RA/111. On August 23, 2024, the Appeals Court issued a published decision affirming the second degree murder conviction and vacating the convictions of unlawful possession of a firearm and ammunition, setting aside the verdicts on the firearm and ammunition charges. Commonwealth v. Regan, 2024 Mass. App. LEXIS 114 (August 23, 2024), No. 21-P-1129. A copy of the Appeals Court's opinion is appended hereto. The defendant does not seek a rehearing in the Appeals Court.

**STATEMENT OF POINTS AS TO WHICH FURTHER APPELLATE
REVIEW IS SOUGHT.**

I. Whether the Appeals Court erred in finding that warrantless entry into the defendant's home was justified under the emergency aid exception, where there was no evidence to support an objectively reasonable belief of imminent danger of immediate and serious injury to an occupant.

II. Whether the Appeals Court erred in finding that: inadmissible testimony by a fingerprint expert that he has never made an erroneous identification and that fingerprints are unique and persistent did not create a substantial risk of a miscarriage of justice, where the fingerprint expert identified to the defendant two latent prints on weapon that a ballistics expert determined had fired projectiles recovered from decedent; and that defense counsel's failure to object to the inadmissible testimony did not constitute ineffective assistance of counsel.

III. Whether the Appeals Court erred in finding that the defendant may be retried on charges of unlawful possession of a weapon and ammunition, regardless of 5th Amendment double jeopardy principles and pursuant to Guardado II, where there was insufficient evidence at trial to convict on those charges, and where the right to possess a firearm in one's own home was established by District of Columbia v. Heller, 554 U.S. 570, 592 (2008) and McDonald v. Chicago, 561 U.S. 742, 130 S. Ct. 3020 (2010). prior to New York State Rifle & Pistol Ass'n v. Bruen, 142 S. Ct. 2111 (2022).

ADDITIONAL RELEVANT FACTS NOT CONTAINED IN APPEALS
COURT OPINION

Police found documents in the defendant's home which they photographed as potential evidence of gang activity. TrVI/111. The defendant had an "LK" tattoo on the inside of his wrist; according to Detective John McLaughlin, the "LK" tattoo could mean "Latin Kings". TrVI/101-103. Police did not use the Boston Regional Intelligence Center to search for information about the defendant's tattoos. TrVI/103.

In addition to other ballistics found in the home, police found a projectile embedded in the drawer of a nightstand next to the defendant's bed in his bedroom. TrIV/30-34; Tr/VII/134-135. The Commonwealth's ballistics expert opined that all four projectiles recovered from the decedent were fired from a Charter Arms revolver found in the attic of the home, but his opinion was inconclusive as to whether the bullet found embedded in the nightstand in the defendant's bedroom was fired from that weapon. TrIV/51-58; TrV/44. The exterior of the defendant's bedroom window, which was unlocked and through which police entered the home, was not tested for latent fingerprints. TrVII/110.

The defense requested and the judge gave the jury a Bowden instruction regarding whether police conducted an adequate investigation and whether the failure to investigate certain things, or the failure to conduct some testing that one might expect to have been conducted, might suggest police bias or affect whether

the Commonwealth had proved its case beyond a reasonable doubt. TrVI/166; Tr/VII/31; Tr/VIII/17.

ARGUMENT

I. The Appeals Court erred in finding that warrantless entry into the defendant's home was justified under the emergency aid exception, where there was no evidence that an occupant was "injured or in imminent danger of physical harm."

The information known to police before entering the defendant's home did not support an objectively reasonable belief that someone was inside and was "injured or in imminent danger of physical harm," which is required for the emergency aid exception to the warrant requirement to apply. Commonwealth v. Kirschner, 67 Mass. App. Ct. 836, 841-842; Commonwealth v. Raspberry, 93 Mass. App. Ct. 633, 638-639 (2018). "The injury sought to be avoided must be immediate and serious, and the mere existence of a potentially harmful circumstance is not sufficient." Kirschner, 67 Mass. App. Ct. 836, 841-842; Raspberry, 93 Mass. App. Ct. at 638-639.

The Appeals Court recognized that "the mere fact that a concerned friend, family member, or neighbor has requested a wellness check does not automatically justify warrantless entry into a home." Regan, 2024 Mass. App. LEXIS at *9. The circumstances in this case did not amount to more than a routine request for a wellness check. This case is distinct from cases relied on by the Appeals Court in

which additional factors were present, such as domestic violence and substance abuse (Commonwealth v. Townsend, 453 Mass. 413 (2009)) or the possibility of an infant left alone and a family pet left unattended (Commonwealth v. Entwistle, 463 Mass. 205 (2009)). Townsend, supra, 453 Mass. at 426 (history of domestic violence between defendant and victim, victim last heard from while at defendant's home, victim prone to cocaine binges); Entwistle, 463 Mass. at 216 (possibility of infant alone in home, pampered family pet left unattended). "[I]n cases involving missing persons, the showing of a true emergency is required." Commonwealth v. Bates, 28 Mass. App. Ct. 217, 218-221 (1990). Absent a reasonable basis to believe that there is "imminent and serious danger to persons or property requiring immediate action," the Fourth Amendment does not permit warrantless entry into an individual's home under the emergency aid exception. Kirschner, 67 Mass. App. Ct. at 841-842, 844; Commonwealth v. Arias, 481 Mass. 604, 613-614 (2019); Commonwealth v. Tuschall, 476 Mass. 581, 585-587 (2017).

Here, police testified that, upon their arrival at the home for a wellness check, Regan's² brother "[j]ust seemed like a caring and concerned family member, not sure why he hadn't heard from his brother in a few days."

² The defendant and the decedent share the name Mark Regan; the decedent's brother is Bernard Regan. To avoid confusion, the defendant is referred to herein as "the defendant", the decedent is referred to as "Regan", and Bernard Regan is referred to by his first name.

Tr/Supp/67. While the Appeals Court noted in its decision that police were informed that Regan had “certain, unspecified medical issues”, police were not in fact informed of any “certain” medical conditions. A caller requesting a wellness check said that Regan “had some medical issues, but did not expand upon what those might be”; police “were advised that [Regan] had a medical history, but not a specific injury or issue at that moment.” Supp/63,76 (Testimony of Officer Parenteau). The defendant’s brother, who was present at the home at the time of entry and who told police that they could enter, did not say anything to police about medical concerns.³ Supp/32-34.

As the Appeals Court recognized, objectively reasonable grounds to believe that an emergency exists requires that “the injury to be avoided must be immediate and serious, and the mere existence of a potentially harmful circumstance is not sufficient.” Regan, 2024 Mass. App. LEXIS at *9, quoting Kirschner, 67 Mass. App. Ct. at 841-842. In this case, when police arrived to conduct a wellness check, there was no indication of any emergency or dangerous circumstances occurring at the home, and police had no information regarding any emergent medical concerns. Supp/63,76-78. Because there was no indication of a true emergency, warrantless entry into the defendant’s home was not justified by the emergency aid

³ No medical concerns ever came to light. There was testimony at the suppression hearing that Regan had been successfully treated for cancer in the past, and that he had “a couple of physical issues”. Supp/30.

exception and it violated his rights under the Fourth Amendment and Article 14. U.S. Const. Amend. IV; Mass. Dec. Rights, art. 14; Kyllo v. United States, 533 U.S. 27, 37 (2001); Brigham City v. Stuart, 547 U.S. 398, 403 (2006); Kirschner, 67 Mass. App. Ct. at 841-842; Tuschall, 476 Mass. at 589.

II. The Appeals Court erred in finding that a fingerprint expert's testimony that he has never made an erroneous identification did not create a substantial risk of a miscarriage of justice, where the expert testified that he identified to the defendant latent prints on a firearm that, according to the ballistics expert, had fired projectiles recovered from decedent.

As the Appeals Court noted, the Commonwealth's fingerprint expert testified that "[f]ingerprints are unique and persistent, meaning they are unique in that no two individuals have ever been found to have the same fingerprints", and after the prosecutor asked the expert whether he had "ever made an erroneous identification", he responded "[t]o my knowledge, no." Regan, 2024 Mass. App. LEXIS at 11-12. The Appeals Court found that this testimony "might be interpreted as overstating the accuracy of forensic fingerprint science", citing SJC case law holding that it is error to elicit testimony that latent print analysis is error-free, and that "reliability of fingerprint identification involves not the uniqueness of different fingerprints but an examiner's ability reliably to discern the differences". Regan, 2024 Mass. App. LEXIS at 13.

While recognizing the above transgressions, the Appeals Court erred in finding that the errors did not create a substantial risk of a miscarriage of justice,

where police found, under floorboards in the attic of the home, “a loaded revolver with latent fingerprints that, according to the Commonwealth’s expert, matched those of the defendant.” Regan, 2024 Mass. App. LEXIS at 1,5,13-14. Although the Appeals Court found that the expert “did not describe his methodology as infallible”, *supra at 13-14*, his testimony that he has never made an error is in fact a statement of infallibility. <https://dictionary.cambridge.org/us/dictionary/english/infallible> (definition of infallible: “never wrong, failing, or making a mistake”); TrVII/97. The Commonwealth relied on the expert’s latent print comparison to connect the firearm used to shoot Regan to the defendant. TrVII/151,163-166.

The Commonwealth’s ballistics expert testified that the bullets recovered from the decedent’s body came from the gun found in the attic, but his opinion was inconclusive as to whether the bullet found embedded in a night stand next to the defendant’s bed came from the same weapon. Tr/IV/51-58; TrV/44. The defendant received a Bowden instruction and raised a Bowden defense, arguing that police failure to investigate possible gang involvement in the shooting and failure to retrieve and analyze latent prints from the unlocked window in the defendant’s bedroom left reasonable doubt as to the defendant’s guilt, where there was no sign of violence between the defendant and his father, but four shots were fired into Regan and another into the nightstand next to the defendant’s bed. TrVII/131-

136,145; Commonwealth v. Bowden, 379 Mass. 472 485-486 (1980) . In light of the defendant's Bowden defense, the fingerprint expert's improper and inadmissible testimony created a substantial risk of a miscarriage of justice.

In addition, because defense counsel did not object to the inadmissible testimony, the defendant was deprived of effective assistance of counsel.

Strickland v. Washington, 466 U.S. 668, 687 (1984); Evitts v. Lucey, 469 U.S. 387, 392 (1985); Commonwealth v. Donlan, 436 Mass. 329,333 (2002), quoting Commonwealth v. Saferian, 366 Mass. 89, 96 (1974). An ordinary, fallible attorney would have objected to the inadmissible testimony, and counsel's failure to do so prejudiced the defendant by allowing testimony overstating the accuracy of fingerprint comparison to go the jury regarding crucial evidence linking the defendant to the shooting. Donlan, 436 Mass. at 333, quoting Commonwealth v. Saferian, 366 Mass. at 96; Commonwealth v. [Name Redacted], 397 Mass. 560, 578 (1986); Strickland, 466 U.S. at 687.

III. The Appeals Court erred in finding that the defendant can be re-tried for the firearm offenses, because Fifth Amendment double jeopardy principles preclude retrial.

The Supreme Court in Bruen attributed its decision that the Second Amendment protects the right to carry a handgun for self-defense outside the home to its previous holdings in Heller and MacDonald, stating that

In *District of Columbia v. Heller*, 554 U. S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008), and *McDonald v. Chicago*, 561 U. S. 742, 130 S. Ct. 3020,

177 L. Ed. 2d 894 (2010), we recognized that the Second and Fourteenth Amendments protect the right of an ordinary, law-abiding citizen to possess a handgun in the home for self-defense. In this case, petitioners and respondents agree that ordinary, law-abiding citizens have a similar right to carry handguns publicly for their self-defense. We too agree, and now hold, consistent with Heller and McDonald, that the Second and Fourteenth Amendments protect an individual's right to carry a handgun for self-defense outside the home.

Bruen, 142 S. Ct. at 2122. Thus, the Second Amendment constitutional right to possess a handgun in one's own home was established by Heller and McDonald and that conduct was presumptively protected prior to the defendant's trial. Bruen, 142 S. Ct. at 2122, 2126; Heller, 554 U.S. at 628-629; McDonald, 561 U.S. at 767-768, 791; Teague v. Lane, 489 U.S. 288, 301 (1989); Commonwealth v. Melendez-Diaz, 460 Mass. 238, 243 (2011); *contra* Commonwealth v. Guardado, 493 Mass. 1, 8 (2023), cert. denied, 144 S. Ct. 2683 (2024) ("Guardado II"), Commonwealth v. Guardado, 491 Mass. 666, 694 (2023) ("Guardado I"). Because licensure is an essential element of unlawful possession of a firearm and ammunition under G.L. c. 269 § 10, the Commonwealth was required to prove beyond a reasonable doubt absence of licensure. In re Winship, 397 U.S. 358, 364 (1970) (Due Process Clause requires "proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged"); Commonwealth v. Brown, 477 Mass. 805, 815 (2017), cert. denied, 139 S. Ct. 54 (2018) (citing In re Winship, *supra* at *id.*); Heller, 554 U.S. at 628-629; McDonald, 561 U.S. at 767-768, 791; Bruen, 142 S. Ct. at 2122, 2126; see Herrington v. United States, 6 A.3d 1237, 1242-1244 (D.C.

2010); Guardado I, 491 Mass. at 690,692-693. Where the right to possess a handgun in one's own home was established prior to the defendant's trial by Heller, supra, and McDonald, supra, the evidence in the defendant's trial was insufficient not only under the post-trial legal development in Bruen, but also under the law set forth in Heller and McDonald. Under these circumstances, the defendant's motion for a required finding of not guilty should have been granted on the firearm and ammunition charges, and Fifth Amendment principles of double jeopardy preclude retrial. Burks v. U.S., 437 U.S. 1, 10-11,16-18 (1978); North Carolina v. Pearce, 395 U.S. 711, 717-718 (1969); Commonwealth v. Lopez, 484 Mass. 211, 221 (2020); Jackson v. Virginia, 443 U.S. 307, 318-319 (1979); Commonwealth v. Latimore, 378 Mass. 671, 676-678 (1979); *contra* Guardado II, 493 Mass. at 8, Guardado I, 491 Mass. at 694.

Conclusion

For the foregoing reasons, the Defendant's Application for Further Appellate Review should be granted.

Respectfully submitted,

Mark Tomas Regan

By his Attorney,

/s/Joanne T. Petito
Joanne T. Petito, Esq.
B.B.O. #559773
Mirsky & Petito

September 12, 2024

Attorneys at Law
P.O. Box 1063, Exeter, NH 03833
Tel. (603) 580-2132
Joanne.petito@gmail.com

No Shepard's Signal™
As of: August 29, 2024 6:59 PM Z

Commonwealth v. Regan

Appeals Court of Massachusetts

May 6, 2024, Argued; August 23, 2024, Decided

No. 21-P-1129.

Reporter

2024 Mass. App. LEXIS 114 *; 2024 WL 3908443

COMMONWEALTH vs. MARK TOMAS REGAN.

Prior History: [*1] Suffolk. INDICTMENTS found and returned in the Superior Court Department on May 15, 2014.

A pretrial motion to suppress evidence was heard by *Mary K. Ames*, J., and the cases were tried before *Jeffrey A. Locke*, J.

Core Terms

fingerprint, emergency aid, caretaking, firearms, firearm and ammunition, suppress, latent, objectively reasonable, unlawful possession, warrant requirement, warrantless entry, emergency, neighbor, revolver, matched, morning, print

Headnotes/Summary**Headnotes****MASSACHUSETTS OFFICIAL REPORTS HEADNOTES**

Homicide > *Firearms* > *Evidence* > *Firearm* > *Fingerprints* > *Expert opinion* > *Witness* > *Expert* > *Constitutional Law* > *Search and seizure* > *Search and Seizure* > *Emergency* > *Warrant* > *Practice, Criminal* > *Instructions to jury* > *Motion to suppress*

A Superior Court judge properly denied a criminal defendant's pretrial motion to suppress evidence obtained from the victim's home, where the police's warrantless entry into the home was justified under the emergency aid doctrine, in that the facts known by the police at the time established an objectively reasonable basis for them to believe that the victim was in his house and in need of emergency assistance; and where there was no dispute that the police acted reasonably under the circumstances following their entry into the house. [___ - ___]

At a criminal trial, certain unobjected-to statements by the Commonwealth's fingerprint expert witness that, considered in isolation, could be interpreted as overstating the accuracy of forensic fingerprint science, did not give rise to a substantial risk of a miscarriage of justice, where the witness did not describe his methodology as infallible and properly framed his findings as an opinion; where

the judge instructed the jury that they were not bound to accept the statements; and where, given the strength of the evidence linking the defendant to the crime, there was no uncertainty that the defendant's guilt had been fairly adjudicated. [____-____]

This court vacated the defendant's convictions of unlawful possession of a firearm and unlawful possession of ammunition, where the defendant was entitled to a new rule announced while his appeal was pending requiring that the Commonwealth prove the absence of licensure as an essential element of the offenses. [____-____]

Counsel: *Joanne T. Petito* for the defendant.

Paul B. Linn, Assistant District Attorney, for the Commonwealth.

Judges: Present: MILKEY, HODGENS, & TOONE, JJ.

Opinion by: TOONE

Opinion

TOONE, J. Because the victim, Mark Regan, Sr., never missed work, his coworkers were alarmed when he did not show up one morning. Calls to his phone went unanswered, and snow and ice on his car went uncleared. After family and neighbors raised additional concerns about his age and health, police officers entered his house through a second-floor window and found his bloodstained body on the floor. They also encountered the defendant, the victim's son, who shares his name. After obtaining a warrant, the officers searched the house and found a loaded revolver with latent fingerprints that, according to the Commonwealth's expert, matched those of the defendant.

A Superior Court jury found the defendant guilty of murder in the second degree, unlawful possession [*2] of a firearm, and unlawful possession of ammunition. On appeal, the defendant argues that (1) the motion judge erred by denying his motion to suppress the evidence obtained from the home because the officers' warrantless entry violated the *Fourth Amendment to the United States Constitution* and *art. 14 of the Massachusetts Declaration of Rights*, (2) the trial judge erred by allowing certain unobjected-to testimony by the Commonwealth's fingerprint expert, and (3) the Commonwealth did not meet its burden of proof for the unlicensed firearm and ammunition charges.

On the first issue, we conclude that the officers had an objectively reasonable basis

to believe that the victim was in his house and in need of emergency assistance. Although the police may no longer rely on the community caretaking doctrine as a standalone justification to enter a home without a warrant, see Caniglia v. Strom, 593 U.S. 194, 196, 141 S. Ct. 1596, 209 L. Ed. 2d 604 (2021), the emergency aid doctrine remains a valid exception to the warrant requirement. On the second issue, we conclude that while certain statements by the expert may have overstated the accuracy of fingerprint comparisons, they did not result in a substantial risk of a miscarriage of justice. Accordingly, we affirm the defendant's conviction of murder. On the third issue, we vacate the defendant's firearm and ammunition [*3] convictions pursuant to the Supreme Judicial Court's decisions in Commonwealth v. Guardado, 491 Mass. 666, 206 N.E.3d 512 (2023) (Guardado I), and Commonwealth v. Guardado, 493 Mass. 1, 220 N.E.3d 102 (2023) (Guardado II), cert. denied, U.S. Supreme Ct., No. 23-886 (June 24, 2024).

Background. We first summarize the facts found by the motion judge in her memorandum of decision denying the defendant's motion to suppress. The victim worked at FedEx in Needham and never missed work or failed to answer his cell phone. After he did not arrive for his morning shift on March 12, 2014, coworkers called him repeatedly, but there was no answer. After the victim failed to arrive for his afternoon shift, his supervisor called 911. He informed the police that the victim was sixty-six years old and his absence was "out of character," expressed concern that the victim might be ill although he was not aware of specific medical problems, and asked them to perform a wellness check.

On the morning of March 14, Boston police Officer Stephen Parenteau received a radio call asking him to conduct a wellness check at the victim's home after an off-duty officer, whose brother was another of the victim's colleagues, raised concerns about his absence and unspecified medical issues. Two other police officers were outside the victim's house when Parenteau arrived. One neighbor told the officers that he [*4] had not seen the victim in a couple of days. Another neighbor reported that over the past few nights she had not seen lights or other signs of activity in the house. The officers knocked and rang the doorbell but received no answer. Inspecting the perimeter of the house, they did not see any unlocked or damaged doors, but there was a pile of mail between the storm and main front doors. The victim's car was parked in front of the house and covered with snow and ice from a storm that had ended the morning before.

The victim's brother arrived around 8:30 A.M. The brother was concerned about the victim's health, but did not recall whether he discussed those concerns with the officers outside the house. The brother urged the officers to enter the home, but he did not have a key. The officers waited until their patrol supervisor authorized them to enter, and then used a ladder on the side of the house to enter through an unlocked second-floor window. They saw the victim's body in the hall, partially wrapped in

a bed sheet, with bloodstains on his body and the floor. After they called for emergency medical services, the defendant appeared. Wearing a T-shirt and underwear, he identified himself [*5] as the homeowner's son and said he had been in the attic because he was frightened. The officers took the defendant to police headquarters and sealed the scene until a search warrant was approved.

At trial, evidence was presented that only two of the four bedrooms appeared to be lived in, and in one of those bedrooms the police found live .22 caliber cartridges, spent .38 caliber cartridge casings, and papers showing the defendant's name. They also found a .38 caliber Charter Arms revolver hidden in the insulation under the floorboards of the attic. A ballistics expert testified that a bullet fired from the revolver matched the projectiles recovered from the victim's body. A police criminologist testified that three latent fingerprints were found on the revolver and two of them matched the defendant's fingerprints.

Discussion. 1. *Motion to suppress.* Reviewing a ruling on a motion to suppress evidence, we accept the motion judge's findings of fact absent clear error and defer to her assessment of the credibility of the testimony taken at the evidentiary hearing. See Commonwealth v. Scott, 440 Mass. 642, 646, 801 N.E.2d 233 (2004). We review de novo the application of constitutional principles to the facts as found. See Commonwealth v. Mercado, 422 Mass. 367, 369, 663 N.E.2d 243 (1996).

In denying the defendant's [*6] motion to suppress, the judge concluded that the entry "was justified pursuant to the responsibility police have as community caretakers and the emergency aid doctrine." Two years later, the United States Supreme Court held that the police's exercise of their duties as community caretakers is not sufficient to excuse the *Fourth Amendment's* warrant requirements for entry into a home. Caniglia, 593 U.S. at 196. In Caniglia, the petitioner got a handgun, put it on the table, and asked his wife to "shoot [him] now and get it over with." *Id.* The next morning, the wife asked the police to conduct a welfare check on her husband. *Id.* Officers encountered him on the porch, and he agreed to be transported to a hospital for a psychiatric evaluation on the condition that the officers not confiscate his firearms. *Id.* at 196-197. After the ambulance left, the officers entered his home and seized the firearms. *Id.* at 197. The Court ruled that the decision to remove the petitioner and the firearms from the premises was not justified by a community caretaking exception to the warrant requirement. *Id.* at 197-198. Although it had in an earlier case sustained the warrantless search of an automobile in police custody for a firearm, see Cady v. Dombrowski, 413 U.S. 433, 441, 93 S. Ct. 2523, 37 L. Ed. 2d 706 (1973), the Court explained that there is a "constitutional [*7] difference" between vehicles and homes, and while officers are frequently called on to perform noncriminal community caretaking functions on public highways, the recognition of those tasks is "not an open-ended license to perform them anywhere." Caniglia, *supra* at 199.

Because “the Massachusetts Constitution may not provide less protection to defendants than the Federal Constitution,” *Commonwealth v. DeJesus*, 489 Mass. 292, 296, 182 N.E.3d 280 (2022), the community caretaking doctrine is insufficient after *Caniglia* to justify a warrantless entry into a home under either the *Fourth Amendment* or art. 14 of the Massachusetts Declaration of Rights. See *Gallagher v. South Shore Hosp., Inc.*, 101 Mass. App. Ct. 807, 823, 197 N.E.3d 885 & n.28 (2022). We therefore consider whether the other ground cited by the judge, the emergency aid doctrine, justified the officers' entry into the victim's house.¹

Under the emergency aid doctrine, the police “may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury.” *Commonwealth v. Townsend*, 453 Mass. 413, 425, 902 N.E.2d 388 (2009), quoting *Brigham City v. Stuart*, 547 U.S. 398, 403, 126 S. Ct. 1943, 164 L. Ed. 2d 650 (2006). Because the ultimate touchstone of the *Fourth Amendment* and art. 14 is reasonableness, the warrant requirement is subject to certain exceptions, and the emergency aid exception allows for warrantless entry in “an exigency or emergency” when there is a “need to protect or preserve life or avoid serious injury.” *Townsend*, *supra*, quoting *Commonwealth v. Knowles*, 451 Mass. 91, 96, 883 N.E.2d 941 (2008).

The emergency aid exception to the warrant requirement [*8] remains valid after *Caniglia*. In *Caniglia*, 593 U.S. at 198, quoting *Kentucky v. King*, 563 U.S. 452, 460, 131 S. Ct. 1849, 179 L. Ed. 2d 865 (2011), the Supreme Court noted that it had earlier held that “law enforcement officers may enter private property without a warrant when certain exigent circumstances exist, including the need to ‘render emergency assistance to an injured occupant or to protect an occupant from imminent injury.’” Concurring opinions by Chief Justice Roberts and Justice Kavanaugh confirmed that this exception survived the Court's new ruling.² Accordingly, courts in other jurisdictions have continued to apply the emergency aid exception after *Caniglia*. See, e.g., *State v. Abu Youm*, 988 N.W.2d 713, 720 (Iowa 2023); *State v. Samuolis*, 344 Conn. 200, 217-218, 278 A.3d 1027 (2022), and cases cited therein.

¹ We assume without deciding that the defendant had a reasonable expectation of privacy in the victim's house. See *DeJesus*, 489 Mass. at 296. The issue was not raised at the hearing, and there was evidence that the defendant slept at the house several times per week.

² See *Caniglia*, 593 U.S. at 200 (Roberts, C.J., concurring) (“A warrant to enter a home is not required, we explained, when there is a ‘need to assist persons who are seriously injured or threatened with such injury.’ ... Nothing in today's opinion is to the contrary, and I join it on that basis” [citations omitted]); *id.* at 204 (Kavanaugh, J., concurring) (“[T]he Court's decision does not prevent police officers from taking reasonable steps to assist those who are inside a home and in need of aid”).

Unlike the community caretaking exception, the emergency aid exception applies only when there are exigent circumstances or an emergency. Because the purpose of police entry is not to investigate criminal activity, a showing of probable cause is not necessary to invoke the exception. See *Commonwealth v. Duncan*, 467 Mass. 746, 750, 7 N.E.3d 469, cert. denied, 574 U.S. 891, 135 S. Ct. 224, 190 L. Ed. 2d 170 (2014); *Commonwealth v. Raspberry*, 93 Mass. App. Ct. 633, 637-638, 107 N.E.3d 1195 & n.8 (2018). Instead, the warrantless entry must satisfy “two strict requirements.” *Id.* at 638, quoting *Duncan*, *supra*. “First, there must be objectively reasonable grounds to believe that an emergency exists. ... Second, the conduct of the police following the entry must be reasonable under the circumstances” [*9] (citation omitted). *Duncan*, *supra*. Under the first requirement, “[r]easonableness must be ‘evaluated in relation to the scene as it could appear to the officers at the time, not as it may seem to a scholar after the event with the benefit of leisured retrospective analysis.’” *Townsend*, 453 Mass. at 425-426, quoting *Commonwealth v. Young*, 382 Mass. 448, 456, 416 N.E.2d 944 (1981). For there to be reasonable grounds to believe that an emergency exists, “[t]he injury sought to be avoided must be immediate and serious, and the mere existence of a potentially harmful circumstance is not sufficient.” *Commonwealth v. Kirschmer*, 67 Mass. App. Ct. 836, 841-842, 859 N.E.2d 433 (2006). On the other hand, officers do not need “ironclad proof of ‘a likely serious, life-threatening’ injury” to invoke the exception. *Commonwealth v. Entwistle*, 463 Mass. 205, 214, 973 N.E.2d 115 (2012), cert. denied, 568 U.S. 1129, 133 S. Ct. 945, 184 L. Ed. 2d 736 (2013), quoting *Michigan v. Fisher*, 558 U.S. 45, 49, 130 S. Ct. 546, 175 L. Ed. 2d 410 (2009).

Even though performing wellness checks on vulnerable members of the community is among police officers' most important duties, the mere fact that a concerned friend, family member, or neighbor has requested a wellness check does not automatically justify warrantless entry into a home.³ Instead, the facts known by the police at the time must establish an objectively reasonable basis to believe that entering a home is warranted to address an emergency. Here, the facts established an objectively reasonable basis for the officers to believe [*10] that the victim was in his house and in need of emergency assistance. His failure to show up at work or answer his cell phone was so unusual that the police received two separate requests to conduct a wellness check at his house.⁴ The police were informed that the victim

³ In particular, as this court discussed in *Gallagher*, 101 Mass. App. Ct. at 818-822, State law and regulations establish detailed “procedures for addressing emergency care for an elder at risk of abuse or neglect, with substantial due process protections and protection from unwarranted entry and treatment without consent.”

⁴ Although the police were initially made aware of the victim's absence two days before they entered the house, that delay does not indicate a lack of emergency where additional facts emerged that changed their analysis. *Townsend*, 453 Mass. at 427 (“The fact that the officers let some time pass ... does not automatically negate application of the emergency exception”). Rather, the facts show that the police acted reasonably by taking

was sixty-six years old and had certain, unspecified medical issues. As officers conducted their second wellness check outside the house, they were approached by the victim's brother, who urged the officers to enter the house, as well as by two of the victim's neighbors, who reported that they had not seen the victim or any indication of his normal activity at the house for days. The officers knocked and rang the doorbell and received no answer. Mail had accumulated inside the victim's door, and his car had not been moved for two nights. Considering these facts in their totality, we conclude that it was objectively reasonable for officers to believe that the victim was in his home and faced an immediate and serious risk to his health and safety. See, e.g., *Entwistle*, 463 Mass. at 216 (“although it could not reasonably be foreseen precisely what had happened to the missing family, there was a reasonable basis to believe that something unfortunate [*11] might have happened that rendered the defendant's wife unable to communicate with her mother and friends”); *Townsend*, 453 Mass. at 426 (victim's failure to attend visit with her children, “which previously had never occurred,” and other factors established reasonable basis to believe she needed aid).

As for the second requirement, there is no dispute that the police acted reasonably under the circumstances following their entry into the house. After officers asked the defendant to dress and transported him away, they “froze” or secured the house so that no one could enter while they sought a search warrant, and they reentered the house only after a warrant was issued.

Because the officers' entry into the victim's house satisfied the requirements for application of the emergency aid doctrine, we affirm the judge's decision denying the motion to suppress.⁵

2. Fingerprint expert testimony. At trial, the police criminologist testified that he recovered three latent fingerprints on the Charter Arms .38 caliber revolver that officers found hidden in the attic, and he opined that two of those fingerprints matched the defendant's thumb and index finger. He further testified that “[f]ingerprints are unique and persistent, [*12] meaning they are unique that no two individuals have ever been found to have the same fingerprints,” and after the prosecutor asked whether he had “ever made an erroneous identification,” he responded “[t]o my knowledge, no.” The defendant argues that these latter statements were improper because they suggested that fingerprint identification evidence is infallible. Because the defendant did not object to either statement, our

appropriate steps based on information they gathered over time.

⁵Because we conclude that the entry was constitutionally authorized, we need not address the defendant's argument that all “fruits” of the entry and subsequent search of the victim's house (including after the warrant was issued) should have been excluded at trial. See *Wong Sun v. United States*, 371 U.S. 471, 487-488, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963).

review is limited to determining whether there was error and, if so, whether the error created a substantial risk of a miscarriage of justice. See *Commonwealth v. Acevedo*, 446 Mass. 435, 450, 845 N.E.2d 274 (2006).

“Testimony to the effect that a latent print matches, or is ‘individualized’ to, a known print, if it is to be offered, should be presented as an opinion, not a fact, and opinions expressing absolute certainty about, or the infallibility of, an ‘individualization’ of a print should be avoided.” *Commonwealth v. Gambora*, 457 Mass. 715, 729 n.22, 933 N.E.2d 50 (2010). Fingerprint expert witnesses “must clearly frame their findings in the form of an opinion to avoid improper testimony.” *Commonwealth v. Fulgiam*, 477 Mass. 20, 44, 73 N.E.3d 798, cert. denied, 583 U.S. 923 (2017).⁶ Here, the trial judge intervened to ensure that the Commonwealth’s witness adhered to these requirements. At one point, the judge asked the witness to confirm that he formed an “opinion” [*13] on identification, then directed the prosecutor to avoid testimony about the verification step of the latent print analysis because it was “a backdoor way of bootstrapping opinions.” See *Commonwealth v. Honsch*, 493 Mass. 436, 451, 226 N.E.3d 287 (2024), quoting *Fulgiam*, *supra* at 46 (urging judges to “use caution in allowing testimony regarding the verification step” in fingerprint analysis).

Notwithstanding the judge’s careful supervision, we acknowledge that, considered in isolation, the unobjected-to statements by the witness might be interpreted as overstating the accuracy of forensic fingerprint science. See *Commonwealth v. Wadlington*, 467 Mass. 192, 205, 4 N.E.3d 296 (2014) (error for prosecutor to elicit testimony that latent print analysis is error-free when conducted properly); *Commonwealth v. Joyner*, 467 Mass. 176, 184 n.11, 4 N.E.3d 282 (2014) (“the primary question about the accuracy and reliability of fingerprint identification involves not the uniqueness of different fingerprints but an examiner’s ability reliably to discern such differences”). Nevertheless, in the context of the witness’s overall testimony, the statements did not give rise to a substantial risk of a miscarriage of justice. See *Commonwealth v. Armstrong*, 492 Mass. 341, 353-358, 211 N.E.3d 622 (2023); *Commonwealth v. Bonnett*, 472 Mass. 827, 831 n.5 (2015), S.C., 482 Mass. 838 (2019). The witness did not describe his methodology as infallible, and (with the judge’s guidance) he properly framed his findings as an

⁶ After this case was tried, the Supreme Judicial Court clarified the mechanics of fingerprint testimony. “[A]n expert testifying to a fingerprint match must state expressly that the match constitutes the expert’s opinion based on the expert’s education, training, and experience.” *Commonwealth v. Robertson*, 489 Mass. 226, 238, 181 N.E.3d 1065, cert. denied, 143 S. Ct. 498, 214 L. Ed. 2d 284 (2022). If the expert does not so testify, “the prosecutor must elicit this clarification even if the defendant does not object” by, for instance, clarifying that “a subjective opinion is being sought” and then asking “whether the witness has an opinion ‘to a reasonable degree of fingerprint analysis certainty.’” *Id.* at 238-239, citing *Commonwealth v. Peyton Heang*, 458 Mass. 827, 848, 942 N.E.2d 927 (2011). See *Mass. G. Evid.* § 702, Note (Illustrations, Fingerprints) (2023).

opinion, which reduced the risk that either [*14] statement misled the jury. The judge also instructed the jury that they should evaluate the testimony of expert witnesses like any other witness and were not bound to accept any expert's testimony or opinions. Particularly when we consider the strength of the Commonwealth's evidence linking the defendant to the crime, separate from the fingerprint expert's testimony, we are not left with any "uncertainty that the defendant's guilt has been fairly adjudicated" (citation omitted). Commonwealth v. Azar, 435 Mass. 675, 687 (2002), S.C., 444 Mass. 72 (2005).⁷

3. *Convictions of unlawful possession of a firearm and ammunition.* Lastly, the defendant argues that his convictions of unlawful possession of a firearm and ammunition must be reversed due to the Supreme Judicial Court's decisions in *Guardado I* and *Guardado II*. We agree.

Following the Supreme Court's decision in New York State Rifle & Pistol Ass'n, Inc. v. Bruen, 597 U.S. 1, 142 S. Ct. 2111, 213 L. Ed. 2d 387 (2022), the Supreme Judicial Court ruled in *Guardado I*, 491 Mass. at 690-693, that the Commonwealth bears the burden of proving that a defendant lacks a license for firearms and ammunition, and that a judge must instruct jurors as to this burden. In *Guardado II*, 493 Mass. at 6-9, the court clarified that the appropriate remedy for failing to properly instruct the jury on this issue is a new trial, as opposed to a judgment of acquittal. These decisions [*15] apply to this case because the defendant's appeal was pending when they were published. *Guardado I*, *supra* at 694.

The Commonwealth concedes that it did not present evidence at trial that the defendant lacked a license for the firearm or the ammunition. Additionally, the judge, lacking the benefit of *Bruen*, *Guardado I*, or *Guardado II*, did not instruct the jury that nonlicensure is an essential element of the charges. We therefore vacate the defendant's convictions of unlawful possession of a firearm and ammunition and set aside those verdicts. The Commonwealth may retry the defendant on the firearm and ammunition charges if it so chooses. We affirm the defendant's conviction of murder in the second degree.

⁷ The defendant's argument fares no better when reframed as a challenge to his trial counsel's failure to object to the fingerprint expert's statements at trial. "To prevail on a claim of ineffective assistance of counsel, ... a defendant also must show that counsel's deficiency resulted in prejudice, which, in the circumstances of counsel's failure to object to an error at trial, is essentially the same as the substantial risk standard we apply to unpreserved errors" (citation omitted). Commonwealth v. LaChance, 469 Mass. 854, 858, 17 N.E.3d 1101 (2014), cert. denied, 577 U.S. 922, 136 S. Ct. 317, 193 L. Ed. 2d 227 (2015), citing Azar, 435 Mass. at 686-687. Because no substantial risk of a miscarriage of justice resulted from the expert's testimony, there is no basis for an ineffective assistance claim based on counsel's failure to object to that testimony. See Commonwealth v. Curtis, 417 Mass. 619, 624 n. 4, 632 N.E.2d 821 (1994); Commonwealth v. Farnsworth, 76 Mass. App. Ct. 87, 100, 920 N.E.2d 45 (2010).

So ordered.

End of Document

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

FAR No.
Appeals Court
No. 2021-P-1129

COMMONWEALTH

v.

MARK TOMAS REGAN

CERTIFICATE OF COMPLIANCE

I, Joanne T. Petito, hereby certify, pursuant to Mass. R.A.P. 27.1 and Mass. R.A.P. 16(k), that the foregoing DEFENDANT'S APPLICATION FOR FURTHER APPELLATE REVIEW in the above-captioned case is in compliance with Mass. R.A.P. 27.1(b) and Mass. R.A.P. 20(a). Compliance with Mass. R.A.P. 20(a) is ascertained by using the proportional font Times New Roman, 14 point size. This Application for Further Appellate Review was produced using Microsoft Word 2016 and contains fewer than 2,000 non-excluded words.

September 12, 2024

/s/ Joanne T. Petito
Joanne T. Petito, Esq.
B.B.O. #559773
Mirsky & Petito
Attorneys at Law
P.O. Box 1063
Exeter, NH 03833
Tel. (603) 580-2132
Joanne.petito@gmail.com

SUFFOLK, SS.

FAR No.
Appeals Court
No. 2021-P-1129

COMMONWEALTH

v.

MARK TOMAS REGAN

CERTIFICATE OF SERVICE

I, Joanne T. Petito, hereby certify that on September 12, 2024, I served an electronic copy of this Application for Further Appellate Review on Paul B. Linn, A.D.A., Office of the District Attorney/ Suffolk, One Bullfinch Place, Boston, MA 20114, via efileMA, the Massachusetts efilng provider accessed through www.efilema.com.

/s/ Joanne T. Petito
Joanne T. Petito, Esq.
BBO # 559773
Mirsky & Petito
Attorneys at Law
P.O. Box 1063
Exeter, NH 03833
Tel. (603) 580-2132
Joanne.petito@gmail.com

Dated: September 12, 2024