

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT
CRIMINAL ACTION
NO. 9384-CR-11743

COMMONWEALTH

v.

SEAN ELLIS

MEMORANDUM OF DECISION AND ORDER
ON ASSENTED-TO MOTION FOR NEW TRIAL

Despite the overwhelming undisclosed exculpatory evidence that led the Supreme Judicial Court (“SJC”) to uphold the grant of a new trial on defendant Sean Ellis’s (“Ellis’s”) September 1995 murder and armed robbery convictions, see *Commonwealth v. Ellis*, 475 Mass. 459 (2016) (“*Ellis I*”), Ellis remains convicted of unlawful firearms possession for the simple reason that the firearms conviction occurred at an earlier trial, in January 1995. The Court held a hearing today on Ellis’s motion for a new trial on the firearms conviction. After reviewing the above-noted SJC decision, the SJC’s 2000 decision affirming Ellis’s convictions, see *Commonwealth v. Ellis*, 432 Mass. 746 (2000) (“*Ellis II*”), the submissions of the parties, and a letter from the victim’s family, this Court agrees with Ellis and the Suffolk County District Attorney’s Office that Ellis’s January 1995 trial was fundamentally unfair, and justice was not done. Therefore, Ellis’s motion for a new trial will be ALLOWED.

The Legal Standard

A court may grant a new trial “at any time if it appears that justice may not have been done.” Mass. R. Crim. P. 30(b); *Commonwealth v. Lane*, 462 Mass. 591, 597 (2012). The standard under Rule 30(b) is intentionally broad, and the disposition of the motion for new trial is left to the discretion of the motion judge. However, a strong policy of finality limits the grant of

new trial motions to exceptional situations, and such motions should not be allowed lightly. A court is “to apply the standards set forth in Rule 30(b) rigorously and should only grant such a motion if the defendant comes forward with a credible reason which outweighs the risk of prejudice to the Commonwealth.” *Commonwealth v. Wheeler*, 52 Mass. App. Ct. 631, 635-636 (2001), citing *Commonwealth v. Fanelli*, 412 Mass. 497, 504 (1992).

“A defendant seeking a new trial on the ground of newly discovered evidence bears the burden of demonstrating that (1) the evidence ‘is in fact newly discovered’; (2) the newly discovered evidence is ‘credible and material’; and (3) the newly discovered evidence ‘casts real doubt on the justice of the conviction.’” *Commonwealth v. Pina*, 481 Mass. 413, 435 (2019), quoting *Commonwealth v. Staines*, 441 Mass. 521, 530 (2004). See also, *Commonwealth v. Grace*, 397 Mass. 303, 306 (1986); *Commonwealth v. LaFaille*, 430 Mass. 44, 55 (1999). The ultimate inquiry is whether the newly discovered evidence “casts real doubt on the justice of the conviction,” not because “the verdict would have been different, but rather [because] the new evidence would probably have been a real factor in the jury’s deliberations.” *Commonwealth v. Ellis*, 475 Mass. 459, 476-477 (2016), quoting *Commonwealth v. Cowels*, 470 Mass. 607, 616 (2015), quoting *Grace*, 397 Mass. at 305.

Application of the Legal Standard

At his January 1995 trial, Ellis had none of the exculpatory evidence, obtained long after his trials, that led Superior Court Judge Carol S. Ball to grant Ellis a new trial on the murder and armed robbery convictions, and the SJC to affirm Judge Ball’s decision. As set forth in *Ellis II*, this exculpatory evidence included the following:

(1) information regarding the theft on September 9, 1993, seventeen days before the victim's death, of approximately \$26,000 from Robert Martin by Detectives Robinson, Acerra, and Kenneth Beers, Sergeant Detective Leonard J. Marquardt,

and the victim (Martin theft). (2) Federal Bureau of Investigation informant reports (FBI informant reports) [describing criminal activities by the victim]; (3) information regarding an allegation by Boston police Detective George Foley that the son of a Boston police officer had told him in late August, 1993, that his father was going to kill the victim because the victim would not leave the son's fourteen year old sister alone (Foley allegation); (4) information from Boston police anti-corruption division (ACD) files regarding Detective Robinson and the victim together robbing two mid-level drug dealers of a large sum of money in or around May of 1992 (drug dealer robbery); (5) information from ACD files regarding the victim obtained through Ronald Hansen (Hansen report) [describing criminal activity by the victim and third party knowledge of victim carrying a .25 caliber gun at his ankle]; and (6) tips from the Boston police "hotline" established after the victim's killing to obtain investigative leads (hotline tips) [suggesting that someone other than Ellis had committed the murder and armed robbery].

Ellis II, 475 Mass. at 465-466. As the SJC explained:

The judge concluded that these six categories of newly discovered evidence showed that the investigators "failed to vigorously pursue other leads" and, when combined with evidence of the "conflict of interest" of Acerra, Robinson, and Brazil, formed the basis for "a potentially powerful" defense under *Commonwealth v. Bowden*, 379 Mass. 472, 485-486 (1980) [that the police failed to pursue leads that could have identified a different perpetrator]....

The conflict of interest the judge identified was that

"Detectives Brazil, Acerra, and Robinson had a personal interest in solving [the victim's] homicide as quickly as possible before any members of the . . . [t]ask [f]orce, who were not part of the corruption scheme, or anyone else, could look further into *why* [the victim] may have rubbed people the wrong way or was rumored to be a 'dirty cop.' In other words, they needed to prevent others from finding out that they and [the victim] had been engaging in illegal activities."
(Emphasis in original.)

The judge stated that, with this newly discovered evidence, the defendant could have argued that the corrupt detectives "compromised potential evidence of the identity of [the victim's] killer while attempting to conceal evidence of their own wrongdoing."

The judge also found that

"[t]he newly discovered evidence would have further supported a powerful *Bowden* defense by revealing that the Commonwealth failed to investigate numerous other parties with reason to kill [the victim]. Such a defense could have raised a reasonable doubt as to whether, as

the Commonwealth claimed at trial, [the defendant] decided to kill [the victim] simply because the opportunity presented itself."

The judge concluded that the newly discovered evidence of the conflict of interest of Acerra, Robinson, and Brazil, and the Boston police department's "failure to follow up on leads implicating third-party suspects is material, credible, and would have been a real factor in the jury's deliberations," such that "this is a case where justice has not been done."

Id. at 470-472.

Just as the above-noted undisclosed evidence "would have been a real factor in the jury's deliberations" on the murder and armed robbery charges, it would have been a real factor in the jury's deliberations on the firearms charge, which involved the same events and the same investigation.

The Court has considered Ellis's concession at his January 1995 trial with regard to the firearms, but this was a strategic decision made, at a fundamentally unfair trial, in order to maximize Ellis's chances of avoiding conviction on the murder and armed robbery charges. A defendant's concession at a trial rigged against him, made with the hope of avoiding conviction on far more serious charges, has no more credence than a defendant's unlawfully coerced confession, and provides no grounds to deny Ellis's new trial motion.

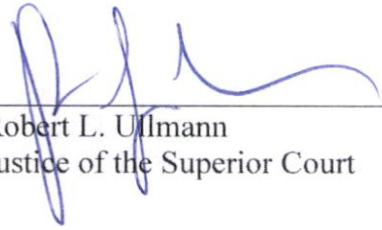
Since the SJC's ruling in *Ellis II*, new previously undisclosed evidence has come to light that further undermines the fairness of Ellis's January 1995 trial, including payments to three Commonwealth witnesses and problems with the Commonwealth's fingerprint evidence. Although there have been no formal findings about the extent to which this additional evidence is "credible and material," *Pina*, 481 Mass. at 435, the credibility and materiality of at least some of this evidence is self-evident, this additional evidence is not necessary to the Court's ruling, and there is no good reason to delay a decision on Ellis's new trial motion. Ellis has clearly met the standard for granting a new trial on the firearms charge.

Conclusion and Order

For the above reasons, Defendant's Motion for New Trial (As to Trial 1) (Docket # 240) is

ALLOWED.

Dated: May 4, 2021



Robert L. Ullmann
Justice of the Superior Court