FILED UNDER SEAL

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss. DEDHAM SUPERIOR COURT
DOCKET NO. 2182CR00320

COMMONWEALTH

v.

MYLES KING

DEFENDANT'S SECOND SUPPLEMENTAL MOTION TO DISMISS

On August 14, 2025, King filed his Supplemental Motion to Dismiss for Egregious Government Misconduct (Attachment A), which discussed the Commonwealth's discovery disclosures and violations up until Notice of Discovery XXXIV, on August 6, 2025.

Since the August 14, 2025 filing, the Commonwealth has made seven additional discovery disclosures, including the October 30, 2025 First Proctor Phone Disclosure and the November 20, 2025 Second Proctor Phone Disclosure.

These recent disclosures demonstrate egregious misconduct on the part of the Commonwealth. Proctor's texts and photographs reveal such deep-seated and atrocious racial animosity that infected the entire investigation, in violation of King's rights under the Sixth and Fourteenth Amendments to the United States Constitution and Article XII of the Massachusetts Declaration of Rights, such that dismissal is required. *Commonwealth v. Lewin*, 405 Mass. 566, 587 (1989); *Commonwealth v. Monteagudo*, 427 Mass. 484, 485 (1998); *Commonwealth v. Dew*, 492 Mass. 254 (2023); *Ellis v. Harrison*, 947 F.3d 555, 563 (9th Cir. 2020); *Commonwealth v. Badgett*, 106 Mass. App. Ct. 245 (2025).

FACTUAL BACKGROUND

King incorporates the arguments in his original Motion to Dismiss, filed May 28, 2025, and his First Supplemental Motion to Dismiss, filed August 14, 2025 (attached). The Proctor materials disclosed on October 30 and November 20, 2025 do not stand alone. They constitute another layer in the cumulative pattern of egregious government misconduct already pleaded in King's First Supplemental Motion to Dismiss, and they must be evaluated together with the discovery violations, withheld exculpatory evidence, and grand jury irregularities documented there. *See Kyles v. Whitley*, 514 U.S. 419, 441 (1995) (cumulative evaluation required); *Wearry v. Cain*, 577 U.S. 385, 392 (2016) (same).

A. Procedural History of Proctor's Personal Cell Phone

On April 14, 2025, King filed "Defendant's Supplemental Motion for Discovery Relating to Ex-MSP Trooper Michael Proctor and his Associates and Supervisors." King specifically requested "Proctor's personal cell phone from the dates of this indictment to his firing." Motion at 1.

On April 24, 2025, King filed a Motion to Preserve and Produce Proctor's Cell Phone Records, including Proctor's personal phone. That same day, the Court (Doolin, J.) ordered the preservation of Trooper Proctor's personal and work phones.

On June 17, 2025, Judge Doolin allowed King's Motion to Preserve and Produce Cell Phone Records for Proctor's personal cell phone:

> "as to the communications (including the content, call durations, times and numbers involved) on former State trooper Michael Proctor's personal cell phone, from the date of the charged murder, July 10, 2021 to the date of the indictments, November 19, 2021. **The Commonwealth shall promptly produce any other data from Proctor's personal cell phone**

that constitutes investigative material or is favorable to the defense within the meaning of Mass. R. Crim. P. 14.

Decision at 6 (emphasis added).

On July 25, 2025, Proctor filed "Third Party Michael Proctor's Motion for Clarification of Court's Memorandum and Order Dated June 17, 2025 and for a Protective Order." On August 13, 2025, this Court (Krupp, J.) issued an Order Clarifying Order RE: Examination of Former State Police Trooper Michael Proctor's Cell Phone (attached). The Court ordered:

> "By August 25, 2025, Proctor shall 'provide his personal cell phone to the Commonwealth' and 'disclose the carriers for his personal cell phone to the Commonwealth' as required at page seven of the initial order."
>
> Order at 2.

The Court further ordered that the Commonwealth "shall extract a full digital copy of all of the data on the cell phone, maintain a copy, shall provide a copy of the extraction to Proctor's counsel, and shall return the cell phone to Proctor." Order at 2.[1]

On October 16, 2025, the Commonwealth filed a Notice of Discoverable Information Under Mass. R. Crim. P. 14(B)(2) and Motion for Additional Time to Complete Review of Former State Police Trooper's Cell Phone.

On October 30, 2025, the Commonwealth disclosed the first batch of Proctor's personal phone materials to King. This disclosure contained some of the most heinous, racist, and disturbing conversations that counsel has seen in over thirty years of practice as a criminal defense attorney.

On November 20, 2025, the Commonwealth disclosed the second batch of Proctor's personal phone material to King. This disclosure contained both disturbing text messages and

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[1]King continues to request that his expert have access to the phone to do more in-depth searches to undelete any deleted messages.

racist photographs that no person—never mind a sworn officer of the law—should generate, share, and celebrate.

B. The Disclosed Texts and Photographs (Attachment B)[2]

Examples of text messages sent by Proctor to the group chat include:

*"this double standard/ reverse racism that that n*ggers[3] get away with absolutely infuriates me..."*

*"...Detroit should be destroyed along with places like Flint Michigan. They are breeding grounds for n*ggers to run wild."*

"9 whitey people and 3 negros on the jury"

*"I was planning on tying a n*gger up and dragging him from my bumper through the streets of Randolph."*

*"u see a n*gger just kill it."*

"hahaha... cookie let's get some horses and white sheets and burn a cross in the arboretum."

*"Hope she gets raped in the ass by a gang of 300 lb n*ggers"*

*"'Hey n*gger go fetch sir bear his wings an pizza'"*

"Haha... I am up. Just got some nig nog pulled over who is unlicensed and debating arresting or give him a summons"

*"... I will never see a movie anywhere else... no n*ggers, obnoxious kids and ample room to spread out and float some ai biscuits..."*

*"Hahahaha. Michael we could use them n*ggers as dart boards."*

*"It should be 'punch a n*gger day' in canton today out of retribution. Any shine u see blast it in the face."*

*"Well n*ggas smell regardless."*

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[2] King is also filing a USB drive under seal with the discovery provided by the Commonwealth about Proctor's phone

[3] In the texts the full n-word is used. We have chosen to modify it for this filing

*"The first phone call that kid will make when a fellow n*gger broke into his house or car is to the cops."*

*"Pendy I haven't shot anyone but I did pull a n*gger over today for tossing a cigarette out the window."*

*"Eat a dick Ghana. Let's enslave those n*ggers my car needs a cleaning."*

*"Oh great now the n*ggers have a straight pipeline to canton."*

*"2 park rangers stabbed in Boston Common... has to be the work of a n*gger."*

*"which is bullshit that these n*gger animals resort to that."*

*"I'd rather a coon... I'd just shoot the n*gga or scare him off by telling him he has to work." (10/1/2018)*

*"Kenner, these n*ggas are holding signs for u at the all-star game." (7/9/2019)*

Examples of texts that Proctor **received** from other members of the WhatsApp group include:

*"ape-economics—a financial system run by n*ggers, by which a prosperous nation is converted into a cesspool of poverty and misery." – Kevin Foley.*

"I wouldn't police the black neighborhoods. Honestly let them do it themselves." – "Fargo".

In response to the above, Kevin Foley stated "let them kill each other."

"My question, what country treats blacks as well as America? What country offers them a better quality of life?"

"Even three year old nigs are terrible humans" "Fargo"

"Shoot a spook"- Larry Kennedy

"This is why I hate spooks and we should send them ALL to an island to kill each other...." -Larry Kennedy

*"I hate n*ggers" – Kevin Foley.*

*"Bear (Proctor) go get the n*gger and string him up. What kind of asshole, stabbed two park rangers. They just want to protect the trees." – "Trendy".*

*"Rocket n*gger—A n*gger attached to a rocket who flies around stealing stuff like cars, basketballs, fried chicken, and people's legs."*

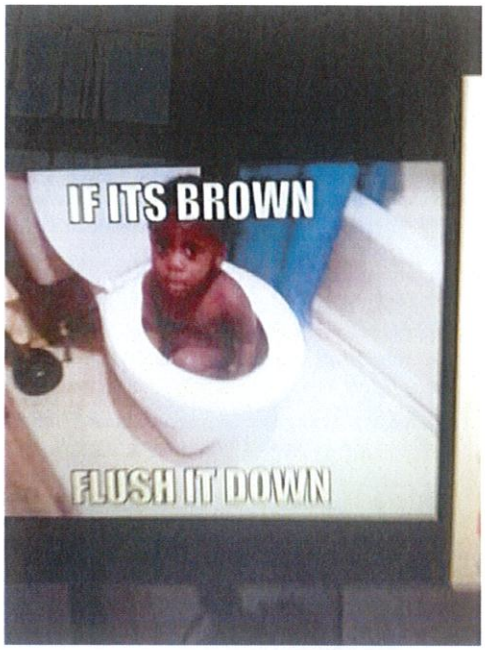
*"n*ggers will riot no matter what the outcome is"—to which Proctor responded "whatever the course of action is these n*ggers will riot."*

*"Let the sand n*ggers kill each other" – "Fargo."*

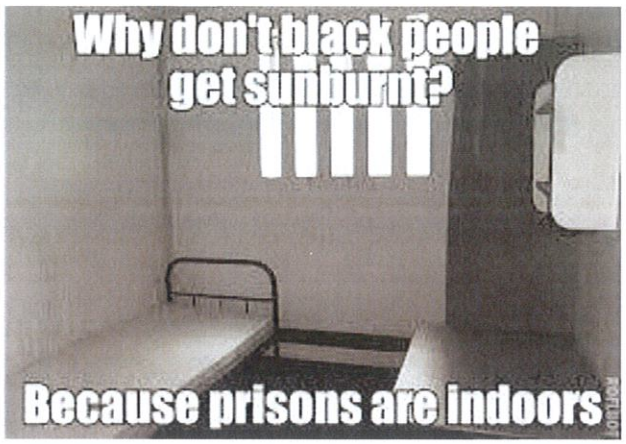
*"fight fight a n*gger and a white. White don't win we all jump in."*

*"#dien*ggerday"*

Proctor also had offensive photographs on his phone. A few examples include:


IF ITS BROWN
FLUSH IT DOWN


This shirt is allowed to say
NIGGER
because it's black



These are only snippets of the derogatory language and offensive photographs that Proctor and his associates used consistently in their group chat from 2013 until 2023.

C. Proctor's Role in King's Case

Michael Proctor was the lead investigator in the Myles King case. Proctor was on the scene the day the homicide occurred on July 10, 2021. Proctor authored all six search warrants in King's case, coordinated video canvasses, reviewed video evidence, directed other investigators in King's case to obtain Simmons's property from BMC, and went to BMC himself to try to obtain the property. Even in the discovery documents provided, Proctor is listed as the "investigator assigned" to the King case.

Proctor interviewed many witnesses in the case, including:

- Kristen Lacasse on July 15, 2021, with Milton Police Detective Mark Cimildoro;
- Firefighter Brian Feeny on July 19, 2021;
- Paramedic Ryan Mitchell on July 19, 2021;
- Finesse Carter on July 21, 2021, with Milton Police Detective Mark Cimildoro;
- Au-Vonnie Dorsett on July 30, 2021, with Milton Police Detective Mark Cimildoro;
- Husnain Akram on August 24, 2021, with Milton Police Detective Lieutenant Michael Collins;

- Dion Knight on September 7, 2021, with Milton Police Detective Sergeant Kirsten Murphy;
- Shirelle McElroy on September 7, 2021, with Milton Police Detective Sergeant Kirsten Murphy;
- Michael Johnson on September 20, 2021, with Milton Police Detective Mark Cimildoro.

On September 2, 2021, Proctor received a picture from Kevin Foley in his WhatsApp that said "going from Cam Newton to Mac Jones is like driving through Mattapan Square and entering Milton," to which Proctor responded "that's great" … "and accurate."

Proctor testified at the Grand Jury in King's case on September 30, 2021, regarding the investigation, the timeline, interviews he had conducted, and evidence he had reviewed. Proctor provided reports and updates to ADA Lally and coordinated witness materials for the Grand Jury. Proctor worked with Milton PD on joint interviews and follow-up communications with witnesses. In sum, Proctor had a hand in almost every aspect of the investigation and in formulating the case against King. As such, this entire investigation is flawed.

ARGUMENT

This Court has the power to dismiss King's case. *Commonwealth v. Lewin*, 405 Mass. 566, 587 (1989); *Commonwealth v. Monteagudo*, 427 Mass. 484, 485 (1998); *Commonwealth v. Ware*, 492 Mass. 717, 730 (2019). In a case of first impression in this Commonwealth, King moves to dismiss the charges against him on the basis that the lead investigator of his case held views so fundamentally racist and opposed to him as a black man that the entire investigation was tainted by the lead investigator's bias, and that no action save dismissal will be enough to clear that taint. *Monteagudo*, 427 Mass. at 485; *Commonwealth v. Santana*, 99 Mass. App. Ct. 1124 (2021) (unpublished); *Commonwealth v. Rodriguez*, 496 Mass. 627, 634 (2025); *Commonwealth v. Dew*,

492 Mass. 254 (2023); *Sherman v. United States*, 356 U.S. 369, 382 (1958); *United States v. Lyons*, 352 F. Supp. 2d 1231 (D. Haw. 2004).

In the alternative, King requests that this Court dismiss the charges against King based on Proctor's egregious misconduct to "create a climate adverse to repetition of that misconduct that would not otherwise exist." *Lewin*, 405 Mass. at 587; *Bridgeman v. Dist. Attorney for Suffolk Dist.*, 476 Mass. 298, 317 (2017).

Finally, King requests an evidentiary hearing on King's Motion to Dismiss to further develop whether Proctor's racial bias was known and/ or shared by any other member of the prosecution team, and because King has shown an inference of racial bias in Proctor's investigation of King and an abuse of government power in violation of the Equal Protection Clause. *Commonwealth v. Long*, 485 Mass. 711, 726 (2020); *Commonwealth v. Rodriguez*, 496 Mass. 627, 634 (2025); *Sherman v. United States*, 356 U.S. 369, 382 (1958); *United States v. Lyons*, 352 F. Supp. 2d 1231 (D. Haw. 2004).

I. THE LEAD INVESTIGATOR'S RACISM CONSTITUTES EGREGIOUS GOVERNMENT MISCONDUCT THAT TAINTED EVERY ASPECT OF THE INVESTIGATION SUCH THAT KING CAN NEVER HAVE A FAIR TRIAL.

A. Standard for Dismissal Based on Egregious Government Misconduct.

Massachusetts courts have recognized that dismissal of an indictment may be necessary when the government's conduct is so egregious as to prejudice the defendant's right to a fair trial. . *Commonwealth v. Monteagudo*, 427 Mass. 484, 485 (1998); *Commonwealth v. Santana*, 99 Mass. App. Ct. 1124 (2021); *Commonwealth v. Edwards*, 491 Mass. 1, 3(2022); *Commonwealth v. Taylor*, 486 Mass. 469 (2020); *Graham v. District Attorney for Hampden District*, 493 Mass. 348, 377 (2024). Proctor is a member of the prosecution team and a lead investigator in this case. Police conduct may be found egregious where it "involves coercion, violence or brutality, persistent

exploitation of personal weakness, or **where it is shocking, outrageous or clearly intolerable**." *Monteagudo*, 427 Mass. at 485 (emphasis added).

"In cases alleging egregious government conduct ... the focus is not on the propensities and predisposition of a specific defendant, but on 'whether the police conduct revealed in the particular case falls below standards, to which common feelings respond, for the proper use of governmental power... Under this approach, the determination of the lawfulness of the [g]overnment's conduct must be made—as it is on all questions involving the legality of law enforcement methods—by the trial judge, not the jury.'" *Monteagudo*, 427 Mass. at 487 (citing *United States v. Russell*, 411 U.S. 423, 441 (1973) (Stewart, J., dissenting), quoting *Sherman v. United States*, 356 U.S. 369, 382 (1958)).

The Due Process Clause protects "certain immutable principles of justice which inhere in the very idea of free government." *Holden v. Hardy*, 169 U.S. 366 (1898). In evaluating outrageous government misconduct, courts have emphasized that these criteria should not be "rigidly applied" and the ultimate determination is whether the government's conduct was so "shocking, outrageous, and clearly intolerable that Due Process is offended." *United States v. Nolan-Cooper*, 155 F.3d 221, 232–33 (3d Cir. 1998).

In *Monteagudo*, the Supreme Judicial Court addressed a defendant's claim that an undercover State trooper had engaged in egregious government misconduct by recruiting him into the drug trade—allegedly supplying money for a pager, directing him to locate a cocaine supplier, and threatening that his "family was going to pay for it" if he refused to cooperate—and selling cocaine to the trooper on three occasions thereafter. The Court held that the question of outrageous government conduct is one of constitutional due process law reserved exclusively for the trial judge, not the jury. The Court articulated the threshold that governs the defense: the challenged

conduct must be "shocking, outrageous, and clearly intolerable." *Monteagudo*, 427 Mass. 484 (1998); *United States v. Nolan-Cooper*, 155 F.3d 221, 232–33 (3d Cir. 1998); *United States v. Russell*, 411 U.S. 423, 441 (1973) (Stewart, J., dissenting) .

B. Proctor's Conduct Is Shocking, Outrageous, and Clearly Intolerable.

Proctor was the lead investigator in King's case and was involved from the day the homicide occurred. Proctor was on the scene immediately after the homicide; he interviewed witnesses, collected evidence, reviewed video footage, authored all six of the search warrants, and testified at the Grand Jury in King's case. In other words, Proctor had a hand in, and guided the entire investigation.

He did all of this while holding the beliefs that black people should be "enslaved," that black people are "animals," and that they should be killed:

> *"Eat a dick Ghana. Let's enslave those n*ggers my car needs a cleaning."*
>
> *"which is bullshit that these n*gger animals resort to that."*
>
> *"I was planning on tying a n*gger up and dragging him from my bumper through the streets of Randolph."*
>
> *"u see a n*gger just kill it."*
>
> *"hahaha... cookie let's get some horses and white sheets and burn a cross in the arboretum."*

Soaked in his racial bias and hatred for black and brown defendants, Proctor investigated King—a black man—while holding the belief that all black people commit crimes, that black and brown people are not human, that they are "n*ggers" and deserving of punishment no matter the cost. Proctor believed that locking up "n*ggers" made the community at large safer:

> *"2 park rangers stabbed in Boston Common... has to be the work of a n*gger."*

These racist views infected the entire investigation. This was not a search for the truth. It was a modern-day lynching, in which inflicting pain and securing the confinement of black and brown people (whom Proctor referred to as "shines," "n*ggers," "poo," and "poo people") was not just accepted but celebrated.

Any prosecution infected with racial bias and hatred to the degree that Proctor expressed freely and celebrate about to his fellow conspirators is an improper use of government power in violation of King's rights under the Sixth and Fourteenth Amendments to the United States Constitution and Article XII of the Massachusetts Declaration of Rights. *Bridgeman v. Dist. Attorney for Suffolk Dist.*, 476 Mass. 298, 316–17 (2017); *Monteagudo*, 427 Mass. at 485; *United States v. Nolan-Cooper*, 155 F.3d 221 (3d Cir. 1998).

If the celebration of the killing of black and brown people, reference to black and brown people as objects ("it"), with a goal of making the (white) community safer by locking up black and brown people, is not "shocking, outrageous or clearly intolerable" conduct of the type the court outlined in *Monteagudo*, then it begs the question whether anything an officer does would cross that line. *Monteagudo*, 427 Mass. at 485; *Holden v. Hardy*, 169 U.S. 366 (1898); *United States v. Nolan-Cooper*, 155 F.3d 221, 232–33 (3d Cir. 1998); *United States v. Russell*, 411 U.S. 423, 441 (1973) (Stewart, J., dissenting).

1. Explicit Bias.

> "Bias has many forms and many manifestations. On the face of it, explicit bias is the worst. When explicit intentional biases occur in the justice and legal systems it is especially alarming as people can be wrongfully convicted, and conversely, guilty people can go free…" Dror, I., *Biased and Biasing: The Hidden Bias Cascade and Bias Snowball Effects*, Behavioral Sciences (April 8, 2025) (Attachment C)

The texts and photographs sent and received by Michael Proctor on his personal phone can only be described as explicit bias against black and brown people. In King's case, these

communications demonstrate Proctor's explicit bias against black people. This is the type of racial bias that the Courts have categorized as "evil" and that, "if left unaddressed, would risk systemic injury to the administration of justice." *Commonwealth v. McCalop*, 485 Mass. 790, 798 (2020) (citing *Pena-Rodriguez v. Colorado*, 137 S. Ct. 855 (2017)).

The rationale of *Pena-Rodriguez* applies with equal or greater force to a lead investigator. The Supreme Court in *Pena-Rodriguez* held that the no-impeachment rule must yield where a juror has expressed racial animus, because race is a "familiar and recurring evil" that demands extraordinary procedural protection. 137 S. Ct. at 868. If even a single juror's racial bias requires that ordinary rules give way, then *a fortiori*, the racial bias of a lead investigator—who, unlike a juror, is not constrained by the rules of evidence, who alone determines what evidence is collected, which witnesses are credited, and what facts the prosecution and the jury ever see—must trigger the same departure from ordinary procedural defaults. The Supreme Court reinforced this principle in *Buck v. Davis*, 580 U.S. 100 (2017), where it held that the appearance of racial bias in even a single phase, of a capital proceeding required relief, observing that "[s]ome toxins can be deadly in small doses" when race is involved. *Id.* at 122. Where, as here, racial bias infected not a single phase but the foundational investigative phase that produced every warrant, every witness statement, and every fact placed before the grand jury, the structural-error framework of *Vasquez v. Hillery*, 474 U.S. 254 (1986), and *Buck* requires dismissal without any showing of particularized prejudice.

A person who refers to black people as "the n-word," as "animals" who all commit crimes, who deserve to be in cages and enslaved, who objectifies them, refers to them as "it" ("if you see a n*gger kill it"), and believes they should all die, is not capable of conducting a fair investigation

into King's case. Proctor's own words reveal his explicit, intentional bias, and he held those beliefs while he was investigating the King case.

It appears from a review of the evidence that Proctor followed up on and credited the accounts of white witnesses while disregarding the accounts of black witnesses. A further evidentiary hearing is necessary to flesh out this intentional bias and racism. It is very possible that Proctor did this intentionally, because of his explicit bias. Even if this Court finds that Proctor's actions in the King case were not the result of intentional, explicit bias, Proctor was undoubtedly driven by his implicit bias against black people.

2. Implicit (Cognitive) Bias.

"Cognitive bias is an outcome, a byproduct of people's cognitive architecture and of how the brain processes information. Within the justice and legal systems, cognitive bias has been defined as 'the class of effects through which an individual's pre-existing beliefs, expectations, motives, and situational context influence the collection, perception and interpretation of evidence during the course of a criminal case.'" Dror, I., *Biased and Biasing: The Hidden Bias Cascade and Bias Snowball Effects*, Behavioral Sciences (April 8, 2025) (citing Kassin, S.M., *The Forensic Confirmation Bias: Problems, Perspectives, and Proposed Solutions*, Journal of Applied Research in Memory and Cognition, 42–52 (2013)).

The Massachusetts courts have acknowledged how implicit bias can affect everyone's ability to come to fair conclusions. The courts have published Model Jury Instructions on Implicit Bias that are read both before and after a jury hears the evidence in a case. "There is near consensus among experts, based on studies of populations, that implicit bias can affect human behavior, including decision making." Attachment C.

Implicit bias is:

> "widespread. Although explicit intentional bias exists, it is not as common and widespread as cognitive [implicit] bias. Whereas the former is exhibited only by some 'bad apples' who are deliberately and intentionally biased, the latter cognitive bias is a ubiquitous phenomenon that impacts everyone due to the top-down nature of human cognition and other aspects of cognitive architecture." Dror, *Biased and Biasing* (citing Nickerson, R.S., *Confirmation Bias: A Ubiquitous Phenomenon in Many Guises*, Review of General Psychology 175–220 (1998)).

Implicit bias is also harder to detect, as it often occurs without conscious awareness of "the person who is exhibiting the bias." *Id.*

Dror further explains that bias does not stay confined to a single decisionmaker. Bias *cascades* when a bias introduced into one element of the justice system contaminates other elements, and bias *snowballs* when biased decisions feed back into and reinforce one another, growing in power as they propagate through the system. Dror, *Biased and Biasing*. The lead investigator's racial bias is precisely the kind of upstream contamination that cascades through the entire prosecution—into search warrants, witness selection and interviewing, evidence collection, grand jury testimony, and the charging decision—and snowballs as each downstream actor relies on the biased work product of the one before.

Here, there can be no claim that Proctor's racist views did not interfere with his investigation of this case as either explicit, intentional bias or implicit, cognitive bias. To hold the views about black and brown people that Proctor does, and to "investigate" black and brown communities impartially, is an impossibility.

There is no way to separate the taint of Proctor's racist views from the investigation he conducted as the lead investigator in this case. Every decision that Proctor made while investigating the King case was infected by, in some implicit or (in Proctor's case) explicit way, bias against black people. Proctor's actions are "shocking, outrageous, [and] clearly intolerable"

such that King could never have a fair trial where Proctor was the lead investigator. *Bridgeman*, 476 Mass. at 316–17; *Monteagudo*, 427 Mass. at 485.

As such, the charges against King should be dismissed. *Bridgeman*, 476 Mass. at 316–17; *Lewin*, 405 Mass. at 587; *Commonwealth v. Cronk*, 396 Mass. 194, 198 (1985); *Monteagudo*, 427 Mass. at 485; *Nolan-Cooper*, 155 F.3d 221; *Buck v. Davis*, 580 U.S. 100 (2017);

II. KING NEED NOT PROVE PREJUDICE TO OBTAIN DISMISSAL; HOWEVER, KING HAS BEEN PREJUDICED IN ANY EVENT.

A. King Need Not Prove Prejudice Where the Lead Investigator Harbors Deep-Seated Racial Animus.

Where the racial bias of a member of the prosecution team is as overt and unrelenting as Proctor's, no separate showing of prejudice is required. The Supreme Judicial Court's decision in *Commonwealth v. Dew*, 492 Mass. 254 (2023), establishes that bigotry of this kind is itself the constitutional injury—the defendant cannot be required to reconstruct, after the fact, the precise ways in which a deeply racist actor's decisions warped the proceedings.

Just over six years ago, the SJC wrote an open letter to the members of the judiciary and the bar of the Commonwealth, acknowledging the grave and ongoing threat that racism poses to our criminal justice system. *Letter from the Seven Justices of the Supreme Judicial Court to Members of the Judiciary and the Bar* (June 3, 2020). The letter's call to "create in our courtrooms… a place where all are truly equal" (*id.*) echoes longstanding Supreme Court language that racism is fundamentally at odds with any notion of real justice: "Discrimination on the basis of race … [is a source of] 'injury to the law as an institution, to the community at large, and to the democratic ideal reflected in the processes of our courts.'" *Rose v. Mitchell*, 443 U.S. 545, 555–56 (1979) (quoting *Ballard v. United States*, 329 U.S. 187, 195 (1946)). Racial discrimination "not only violates our constitution and the laws enacted under it but is at war with our basic concepts

of a democratic society and a representative government." *Smith v. Texas*, 311 U.S. 128, 130 (1940).

It is hardly surprising, therefore, to find a myriad of cases in which racism has been at the root of structural error. *See, e.g.*, *Vasquez v. Hillery*, 474 U.S. 254 (1986) (racial discrimination in grand jury selection); *Commonwealth v. Vann Long*, 419 Mass. 798, 799–805 (1995) (racial bias of juror); *Batson v. Kentucky*, 476 U.S. 79 (1986) (racial bias in exercising peremptory challenges); *Commonwealth v. Soares*, 377 Mass. 461 (1979) (same).

The SJC has repeatedly confirmed that racial prejudice is so antithetical to the integrity of the criminal legal system that even the possibility of racist motivations can constitute structural error. *Commonwealth v. Ortega*, 480 Mass. 603, 607–08 (2018); *Commonwealth v. Robertson*, 480 Mass. 383, 393–97 (2018); *Commonwealth v. Jones*, 477 Mass. 307, 319–26 (2017).

Based on Proctor's own texts, there is no doubt that Proctor was racially prejudiced. We know of his bias and bigotry as a result of his repeated declarations of hatred against black people and celebrates the very idea of killing and enslaving black and brown people.

In *Commonwealth v. Dew*, the Court held that "counsel's bigotry against persons of the defendant's faith and race, which manifested during counsel's representation of the defendant, deprived the defendant of [his right to a fair trial]." 492 Mass. 254 (2023). In *Dew*, the Court found that the defendant had "shown a pattern of posts reflecting the intensity of [defense counsel's] bias coupled with a record that [defense counsel] was unable to divorce his animus from his conduct as defense counsel." *Id.* at 267; *Ellis v. Harrington*, 947 F.3d 555, 553 (9th Cir. 2020) (Nguyen, J., concurring).

> "Although we cannot know with certainty whether [defense counsel's] actions or inactions during the course of the representation were 'motivated by anything other than [the defendant's] best interest,' … on

> the record before us, we cannot credibly assume that [defense counsel's] representation was not affected by his virulent anti-Muslim and racist views… Importantly we cannot know whether an attorney who did not share the animus that [defense counsel] harbored for persons of Muslim faith and Black persons would have negotiated a better plea agreement. Nor can we know whether [defense counsel's] other actions were unaffected by his views regarding black and Muslim individuals. Where, as the record shows was the case here, counsel harbours a deep-seated animus for persons of the defendant's race or religion, we cannot presume zealous advocacy**, nor can we ask the defendant to prove how his counsel's bigotry might have affected the plea deal or otherwise impaired their representation**, especially in view of the record that [defense counsel's] bias reared its head in connection with his treatment of the defendant."
>
> *Dew*, 492 Mass. at 267 (emphasis added).

The Court further stated that defense counsel "did not leave his deep-seated bigotry at the courthouse door … our confidence that the defendant was afforded a constitutionally fair process is necessarily undermined." *Dew*, 492 Mass. at 268 (citing *Ellis v. Harrington*, 947 F.3d 555, 553 (9th Cir. 2020) (Nguyen, J., concurring)). The Court held that "no additional showing of prejudice is required" and vacated the defendant's convictions and remanded for a new trial. *Id.* at 254.

As Justice Cypher stated in her concurrence, "public confidence in the integrity of the criminal justice system is essential to its ability to function… We must be aware of and concerned with the confidence of not just this defendant, and not just all black and Muslim clients represented by [defense counsel], but rather all Black persons and members of the Muslim faith in our community, not simply those that have come into contact with the criminal justice system." *Dew*, 492 Mass. at 269 (Cypher, J., concurring) (citing *Georgia v. McCollum*, 505 U.S. 42, 49 (1992); *Commonwealth v. Goldman*, 395 Mass. 495, 508 (1985)).

While the holding in *Dew* focused on defense counsel, the analytical framework—that bigotry creates an actual conflict of interest that cannot be cured by post-hoc speculation about its effects—translates, in this case of first impression, to Proctor as the lead investigator. In *Commonwealth v. Rodriguez*, the SJC expanded the *Long* racial protections to non-traffic investigatory stops, which should extend to the investigations themselves. 496 Mass. 627, 633 (2025). And *Commonwealth v. Badgett* extended *Dew* to include relief for defendants where racist social-media posts postdated the attorney's representation of the defendant. 106 Mass. App. Ct. 245 (2025). The Court reasoned that intense racism and bigotry of the kind shown does not develop overnight and that overt racist statements during the representation are not required to constitute an actual conflict. *Id. Badgett*'s reasoning is particularly forceful here, because King is not asking the Court to draw an inference of contemporaneous bias from later-in-time conduct. The disclosed Proctor materials span 2013 to 2023—a continuous, unbroken record of explicit racial animus that encompasses, rather than postdates, the entire investigation of King in 2021. Proctor was actively exchanging racist messages while investigating King: on September 2, 2021, between the homicide and his Grand Jury testimony, Proctor received a message from a fellow group-chat member that "going from Cam Newton to Mac Jones is like driving through Mattapan Square and entering Milton," to which Proctor responded "that's great" and "accurate." If postdated racist conduct supports the *Badgett* inference, contemporaneous racist conduct establishes the conflict directly.

Here, there is no question that Proctor's communications crossed the line from "defensible political positions" to expressions of "extreme racism," at times directed toward defendants he was investigating. Thus there is no question that Proctor had a conflict of interest which would render

any investigation into King, a black man, "fundamentally unfair and its result unreliable." *Ellis*, 947 F.3d at 564 (Nguyen, J., concurring).

In a rare case like this, where the primary investigating officer's racial bias is so blatant, failing to provide a remedy is pernicious not only because it deprives King of rights secured by the Sixth and Fourteenth Amendments to the United States Constitution and Article XII of the Massachusetts Declaration of Rights, but also because it systematically infects and "poisons public confidence in the judicial proceeding," injuring "the law as an institution" and "the community at large." *Buck v. Davis*, 580 U.S. 100, 124 (2017) (internal quotation marks and citations omitted); *see also Ramos v. Louisiana*, 140 S. Ct. 1390, 1418 (2020) (Kavanaugh, J., concurring) ("[U]nfairness and racial bias … can undermine confidence in and respect for the criminal justice system."). When confronted with such clear discrimination, putting the burden on the accused to prove prejudice sends the "unmistakable message" that the criminal legal system tolerates bias and signals that ours is a system of justice for some rather than justice for all. *Ortega*, 480 Mass. at 607; *Sanchez v. Roden*, 753 F.3d 279, 299 (1st Cir. 2014).

Any claim by Proctor that he no longer holds these racist beliefs, or that those beliefs did not interfere with the investigation in the King case, must be discounted. Proctor was sending and receiving racist messages while he was investigating the King case. *Commonwealth v. Badgett*, 106 Mass. App. Ct. 245 (2025). On September 2, 2021—while actively investigating King—Proctor received a picture from Kevin Foley in his WhatsApp that said "going from Cam Newton to Mac Jones is like driving through Mattapan Square and entering Milton," to which Proctor responded "that's great" … "and accurate."

B. In Any Event, King Has Suffered Actual Prejudice.

Even if this Court were to require King to demonstrate prejudice, he has shown it. The *Dew* framework recognizes the futility of asking a defendant to reconstruct the precise harm caused by deep-seated racial animus, but the record here also affirmatively demonstrates that Proctor's racism shaped the investigation in concrete, identifiable ways.

Proctor's racist views infected the investigation's most basic credibility judgments. After reviewing these messages and pictures, and coming to understand the full extent of Proctor's hatred of black and brown people, statements and omissions made by Proctor in King's case—a black man's case—now take on a more sinister meaning.

Counsel can argue, after reviewing Proctor's personal phone, that if Proctor was given conflicting statements by a white person and a black person, his racism would cause him to disbelieve the black person every time. For example, in this case, Patrol Officer Henry T. Colligan told Proctor that he asked Simmons who shot him and that Simmons responded "Mizzie Cash." Yet Finesse Carter and Michael Turner—the two witnesses who are noted to have been with the victim in close proximity, rendering aid[4]—did not hear this conversation, and it appears from the discovery that they were not asked about this conversation. In other words, Proctor credited the white officer without even attempting to corroborate or refute that statement using the observations of two black witnesses.

While that example is obvious from the circumstances, it is impossible to determine whether there were others—whether Proctor's biases caused him to fail to pursue other leads or avenues of investigation that are now lost and undocumented. King has clearly suffered prejudice

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[4]According to emails between Proctor and ADA Lally, Michael Turner was photographed kneeling next to the victim and rendering aid.

at the hands of a lead investigator who thought King, and everyone who looked like him, was less than human. Every decision Proctor made was filtered through that animus.

Moreover, the Commonwealth has informed King that it does not plan to call Proctor at trial. If King calls Proctor, Proctor may invoke the Fifth Amendment.[5] Even if Proctor does not invoke the Fifth, the Commonwealth's decision not to call Proctor would shield Proctor from cross-examination, as he would need to be called by King. The impact would not be the same. Where King is denied a fair trial because of the overt racism of the lead investigator, resistance to relief for King would severely undermine the integrity of the criminal legal system. As the SJC recently recognized, "[t]his must be a time not just of reflection but of action." *Letter from the Seven Justices of the Supreme Judicial Court to Members of the Judiciary and the Bar* (June 3, 2020). An institution cannot be "recommitt[ed] … to the systemic change needed to make equality under the law an enduring reality for all" (*id.*) and at the same time hold that an investigator who dehumanizes black persons—and every other non-white race and non-Christian religion—can adequately and impartially investigate a case with a black defendant.

The Commonwealth's election not to call Proctor as a witness compounds the prejudice and converts a fact-witness problem into a structural one. The Commonwealth proposes to introduce the fruits of Proctor's racist investigation—his warrants, the witness statements he took, the evidence he collected, the photo arrays he assembled—through other witnesses who relied on Proctor's work, while keeping Proctor himself off the stand. The result is that the Commonwealth gets the benefit of Proctor's biased investigation without ever exposing Proctor to cross-examination by King. That is precisely the kind of structural manipulation of witness availability that violates due process. *Webb v. Texas*, 409 U.S. 95 (1972); *Commonwealth v. Pina*, 406 Mass.

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[5]King is not admitting or denying that Proctor has a Fifth Amendment claim.

540 (1990); *Commonwealth v. Reynolds*, 429 Mass. 388 (1999). If King is forced to call Proctor in order to expose his bias, and Proctor invokes the Fifth Amendment, the Commonwealth will have effectively immunized its own racist lead investigator from any meaningful cross-examination—an outcome that confronts King with an impossible choice between forgoing impeachment of the investigation and putting on a witness who will assert privilege. Either way, the right to meaningful confrontation guaranteed by the Sixth Amendment and Article XII is hollowed out. *Webb v. Texas*, 409 U.S. 95 (1972).

Thus King has suffered irreparable harm, as he will never be able to paint a full picture for the jury about just how racist and biased the lead investigator of his case was. *Bridgeman*, 476 Mass. at 316–17; *Monteagudo*, 427 Mass. at 485; *Dew*, 492 Mass. 254; *Badgett*, 106 Mass. App. Ct. 245; *Webb v. Texas*, 409 U.S. 95 (1972).

III. DISMISSAL IS WARRANTED EVEN ABSENT PREJUDICE TO CREATE A CLIMATE ADVERSE TO REPETITION.

Even if this Court were to find that King has not established prejudice, this Court can still dismiss the indictments because Proctor's conduct was egregious and dismissing King's case would "create a climate adverse to repetition." *Commonwealth v. Lewin*, 405 Mass. 566, 587 (1989).

Dismissal with prejudice is a "remedy of last resort." *Commonwealth v. Cronk*, 396 Mass. 194, 198 (1985). Dismissal can occur where there is egregious government misconduct in failing to disclose evidence, the defendant is prejudiced by the late disclosure, and the defendant can show "irremediable harm" to the defendant's ability to obtain a fair trial. *Cronk*, 396 Mass. at 198; *Bridgeman*, 476 Mass. at 316. Under a second principle, when prosecutorial misconduct is

egregious, deliberate, and intentional, or results in a violation of constitutional rights, it may give rise to presumptive prejudice. *Cronk*, 396 Mass. at 194.

"The only reason to dismiss criminal charges because of nonprejudicial but egregious police misconduct would be **to create a climate adverse to repetition of that misconduct that would not otherwise exist**." *Lewin*, 405 Mass. at 587 (emphasis added); *Bridgeman*, 476 Mass. at 317.

The texts on Proctor's phone are vile, and Proctor was not the only police officer participating in the WhatsApp group messaging. Even now, the Norfolk County District Attorney's Office continues to protect Proctor and the horrible messages on his phone. The Commonwealth has had access to the texts since at least July of 2025 and has failed to take any steps to dismiss the case against King. The message currently being sent is that it is acceptable to be a police officer and to hold beliefs that black people are animals responsible for all crime, and that the Commonwealth will protect people who hold those beliefs; shield them from accountability by refusing to call them as a witness; and seek protection orders to further shield their racism from the public.

This Court has the power to dismiss the case against King and to send a message that the courts do not tolerate officers that participate in any criminal investigation where the officer believes that black people are less than human and that black people always commit crimes and should be killed and enslaved. King requests that this Court dismiss the indictments with prejudice because Proctor's conduct was egregious and dismissing King's case would "create a climate adverse to repetition." *Lewin*, 405 Mass. at 587; *United States v. Nolan-Cooper*, 155 F.3d 221 (3d Cir. 1998).

IV. KING IS ENTITLED TO AN EVIDENTIARY HEARING UNDER THE EQUAL PROTECTION CLAUSE AND ARTICLES 1 AND 10.

The Equal Protection "principles of the Fourteenth Amendment … and Arts. 1 and 10 … prohibit discriminatory application of impartial laws." *Commonwealth v. Long*, 485 Mass. 711, 717 (2020); *see Lora*, 451 Mass. at 436 (quoting *Commonwealth v. Franklin Fruit Co.*, 388 Mass. 228, 229–30 (1983)); *Commonwealth v. Rodriguez*, 496 Mass. 627, 633 (2025).

While some "selectivity or discretion must be tolerated in criminal law enforcement, that selectivity is permissible only so long as it 'is not based on an unjustifiable standard such as race, religion or other arbitrary classification.'" *Long*, 485 Mass. at 717 (quoting *Lora*, 451 Mass. at 437); *Commonwealth v. King*, 374 Mass. 5, 20 (1977).

Selective enforcement occurs when there is "discriminatory policing in the investigatory phase of the case." *Commonwealth v. Dilworth*, 494 Mass. 579, 587 (2024). To succeed on a selective enforcement claim, the defendant first has "the burden of establishing, by motion, a reasonable inference that the officer's decision was motivated by race or another protected class." *Long*, 485 Mass. at 713. The defendant must produce evidence from which a reasonable person could infer that the officer discriminated on the basis of the defendant's race. *Rodriguez*, 496 Mass. at 634.

The courts have found that discriminatory motivation exists when the challenged enforcement decision was "motivated at least in part by race." *Long*, 485 Mass. at 726; *Rodriguez*, 496 Mass. at 634. To establish a reasonable inference of racist motivation, the defendant must point to specific facts from the totality of the circumstances. *Id.* If that inference is established, the defendant is entitled to a hearing, where the Commonwealth has the burden of rebutting the inference. *Long*, 485 Mass. at 725. If the Commonwealth is not able to rebut the racist inference,

the evidence derived from the selective enforcement is suppressed. *Long*, 485 Mass. at 726; *Rodriguez*, 496 Mass. at 634.

Here, King has established not just an inference of a racist motivation by Proctor; he has included texts and photographs from Proctor's phone in this very motion that **should** lead a reasonable person to infer that Proctor's enforcement decisions are almost always "motivated at least in part by race." *Long*, 485 Mass. at 726; *Rodriguez*, 496 Mass. at 634.

Proctor's beliefs on race can be summed up in his own text messages:

> *"u see a n*gger just kill it."*
>
> *"It should be 'punch a n*gger day' in canton today out of retribution. Any shine u see blast it in the face."*
>
> *"...Detroit should be destroyed along with places like Flint Michigan. They are breeding grounds for n*ggers to run wild."*
>
> *"I was planning on tying a n*gger up and dragging him from my bumper through the streets of Randolph."*
>
> *"Eat a dick Ghana. Let's enslave those n*ggers my car needs a cleaning."*
>
> *"Oh great now the n*ggers have a straight pipeline to canton."*

Or texts that Proctor **received**:

> *#dien*ggerday*
>
> *"I hate n*ggers" – Kevin Foley.*
>
> *"Bear (Proctor) go get the n*gger and string him up. What kind of asshole, stabbed two park rangers. They just want to protect the trees." – Trendy.*
>
> *"Rocket n*gger—A n*gger attached to a rocket who flies around stealing stuff like cars, basketballs, fried chicken, and people's legs."*
>
> *"n*ggers will riot no matter what the outcome is"—to which Proctor responded, "whatever the course of action is these n*ggers will riot."*

These messages come from a person who, at the time of King's case,[6] had sworn to serve and protect his community and faithfully execute the laws of the Commonwealth.

While the typical remedy in a *Long* hearing for discriminatory enforcement is suppression, here, with Proctor's egregious racism, the remedy should be dismissal. This is not a case of statistical data showing potential bias in car stops. What King has shown the Court is racism from Proctor that cannot be disputed and did not change over time, and therefore a hearing is required. *Long*, 485 Mass. at 726; *Rodriguez*, 496 Mass. at 634.

For the Commonwealth to oppose, and for this Court to deny, an evidentiary hearing on these facts would further shield Proctor from accountability for his egregious misconduct, compounding the very harm this motion seeks to remedy.

V. KING'S MOTION SHOULD BE ALLOWED ON BASIC PRINCIPLES OF FAIRNESS.

Although there appear to be no reported cases addressing whether a defendant's due process rights were violated as a result of a racially biased lead investigator, courts have found due process violations on grounds of judicial bias. *See, e.g.*, *Tumey v. Ohio*, 273 U.S. 510 (1927); *Williams v. Pennsylvania*, 136 S. Ct. 1899 (2016). Racism has also been linked to, or has been the sole basis for, the finding of due process violations. *Brown v. Mississippi*, 297 U.S. 278 (1936) (torture of black defendants to coerce confessions violated due process); *Loving v. Virginia*, 388 U.S. 1 (1967) (laws barring interracial marriage violated due process); *Bolling v. Sharpe*, 347 U.S. 497 (1954) (racial segregation in public schools violated due process).

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[6]Proctor was fired from his job as a State Trooper based on misogynistic texts he sent in the Commonwealth v. Karen Read case.

For this Court to acknowledge the profound impropriety created by Proctor's investigation of King would be no more than "recognizing that this case offends those canons of decency and fairness which express the notions of justice of English-speaking peoples even toward those charged with the most heinous offenses." *Malinski v. New York*, 324 U.S. 401, 416–17 (1945) (Frankfurter, J., concurring). Because while the constitutional violation in this case appears to be one of first impression, due process requires a judgment "reconciling the needs both of continuity and of change in a progressive society." *Rochin v. California*, 342 U.S. 165, 172 (1952). As demonstrated by the facts of King's case, "today [racial] discrimination takes the form more subtle than before … but it is not less real or pernicious." *Rose v. Mitchell*, 443 U.S. 545, 559 (1979).

Regardless of King's constitutional claims, "[c]ommon principles may provide even greater protections than either the State or the Federal Constitution require." *Berry v. Commonwealth*, 393 Mass. 793, 798 (1985). Common-law principles of fairness have supported a wide range of decisions protecting defendants' rights. *See Commonwealth v. Johnson*, 473 Mass. 594 (2016) (suppression of unreliable eyewitness identification absent any claim of police misconduct); *Berry*, 393 Mass. 793 (dismissal of indictment on double jeopardy grounds); *Commonwealth v. Fontes*, 396 Mass. 733 (1986) (admission of specific acts of violence to support a claim of self-defense).

So even if this Court were to determine that the prevalence of racism in this case (throughout Proctor's investigation) was not a violation of King's constitutional rights, common-law principles of fairness demand that King's Motion to Dismiss be allowed. No objective observer could view an investigation in which the lead investigator held such deep-seated racist beliefs as anything approaching "fair." *Tumey v. Ohio*, 273 U.S. 510 (1927); *Williams v. Pennsylvania*, 136 S. Ct. 1899 (2016); *Rochin v. California*, 342 U.S. 165, 172 (1952).

CONCLUSION

For all of the foregoing reasons, as well as the reasons stated in King's original Motion to Dismiss and his First Supplemental Motion to Dismiss, King requests that this Court dismiss the charges against him and, in any event, grant an evidentiary hearing on his Motions to Dismiss. To deny an evidentiary hearing on these facts would further shield Proctor and the Commonwealth from accountability for this egregious misconduct.

Date: 5/8/2024

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each party and upon any party appearing pro se by first-class mail, postage prepaid, or by hand delivery.

Dated: 5/8/2026 Signed: _____