

Commonwealth

v.

Myles King

**Commonwealth's Opposition to
Defendant's Second Supplemental Motion to Dismiss**

Introduction

The Norfolk District Attorney's Office's ("NDAO") review of a court-ordered extraction of former Massachusetts State Police ("MSP") Trooper Michael Proctor's personal phone that began on September 27, 2025 revealed that over the course of many years, Proctor privately exchanged voluminous communications showing bias against women, LGBTQ+ people, people with intellectual disabilities, Black, Asian, Arab, Hispanic, and Jewish people.¹ But because the materials in Proctor's personal phone are not government conduct, because the defendant has not shown that he cannot receive a fair trial or that the investigation charging him with murder was motivated by race, and because dismissal of indictments charging murder and firearms violations as a remedy for a police officer's private expression of bias and racism without a showing that the defendant cannot receive a fair trial is not appropriate, the motion to dismiss should be denied. See e.g., Commonwealth v. Lewin, 405 Mass. 566, 585 (1989) (police misconduct in serious charges which included murder, warranted direct censure, condemnation and punishment, but "[a]t this time at least, society need not punish itself by dismissing the charges"). Where prior to any involvement by Proctor the victim had identified Mizzie Cash, who Milton Police knew was Myles

¹ The MSP suspended Proctor on July 8, 2024, and terminated him on March 19, 2025.

King, the defendant is not entitled to an evidentiary hearing on his equal protection claim based on the discovery of materials showing bias and racism on Proctor's personal phone.²

Relevant procedural background and examination of Proctor's work phone and associated iCloud account, and personal phone

On April 22, 2025, after an extraction on the cellular phone and its associated iCloud account that Proctor was issued for work, a report regarding Proctor's work phone and associated iCloud account was provided to the defense. (docket papers # 59, 89, 130, 131). The Court (Michael P. Doolin, J.) ordered that the defense provide words and terms the defense wanted to have searched on Proctor's work phone. The Commonwealth provided the first report with word search results on July 28, 2025. (docket paper #138). A second report pertaining to additional words and terms was provided on October 30, 2025. (docket paper #138).

On May 28, 2025, the defendant filed a motion to dismiss based on late disclosure of evidence.³ (docket paper # 95). An evidentiary hearing began on July 21, 2025 and was suspended while the first witness was on direct examination, (Peter B. Krupp, J.). The matter was continued to August 5, 2025, at which time the Court (Krupp, J.) ordered the defendant to file a supplemental

² On April 4, 2019, the defendant was charged with receiving a stolen motor vehicle and firearms offenses as a result of an incident in Milton on April 3, 2019. Quincy District Court No. 1956CR001424. On November 21, 2021, the defendant was indicted on the charges arising from that incident, Norfolk Superior Court No. 2182CR00315. On October 20, 2023, a judge allowed the defendant's motion to dismiss in part. The firearm charge has a trial assignment conference scheduled for January 21, 2027.

³ The defendant was held without bail at arraignment. On June 27, 2025, the defendant was released on \$10,000 cash with GPS and home confinement. (see docket paper # 114). On May 8, 2026, the Commonwealth moved to revoke the defendant's release. (docket paper # 214). The defendant is now the custody of the United States Marshals on charges of conspiracy to distribute and possession with intent to distribute controlled substances and distribution of 28 grams or more of cocaine base. (docket paper # 214), United States v. Raughn Williams, a/k/a "Pancho;" et. al., United States District Court for District of Massachusetts, 1:26-cr-10147-MJJ-4.

motion to dismiss by August 15, 2025. On August 15, 2025, the defendant filed a supplemental motion to dismiss. (docket paper # 145).

Also on May 28, 2025, the defendant filed a motion for preservation and production of records for Proctor's personal phone. (docket papers # 91, 92). On June 10, 2025, the Court (Doolin, J.) issued an order that Proctor preserve his personal cell phone and all data on it, provide his personal cell phone to the Commonwealth, and disclose the carrier(s) for his personal cell phone to the Commonwealth. (docket paper #103). The Court also ordered that any investigative materials and information favorable to the defense or otherwise subject to automatic discovery under Rule 14 found on an extraction of Proctor's work phone or on his personal phone was to be produced to the defense. The Court allowed the Commonwealth to move for protective orders for the court's review prior to producing the information.

On August 13, 2025, the Court (Krupp, J.) issued an order permitting the Commonwealth to begin examining Proctor's personal phone for Rule 14 materials upon receipt of a privilege log from Proctor's counsel no later than September 26, 2025. That order required that the Commonwealth provide any Rule 14 materials to the defendant by October 24, 2025. (docket paper # 139). Pursuant to the order, Proctor's counsel provided the privilege log on September 26, 2025, and review of the extraction of Proctor's personal phone began on September 27, 2025.

Preliminary review of the extraction from Proctor's personal phone revealed more data than had been anticipated. On October 16, 2025, the Commonwealth filed a notice of discoverable information and moved for more time to complete its review of the data. (docket paper #170). The Commonwealth noted that: "The extraction yielded hundreds of thousands of items, some of which are dated as far back as 2013. The volume of items was unexpectedly larger than representations of Proctor's counsel concerning the cell phone." Subject to a protective order (Krupp, J.), the

Commonwealth made its first production of Rule 14 materials from the personal phone on October 24, 2025, and the final production on November 20, 2025.⁴ (docket papers # 175, 178, 179). The protective order was modified on December 10, 2025, to allow disclosure of materials to attorneys, paralegals, administrative assistants, investigators, and experts assisting counsel for the defendant. (docket paper #188). Materials on Proctor's personal phone included voice recordings, text messages, emails, and images showing bias against women, LGBTQ+ people, people with intellectual disabilities, Black, Asian, Arab, Hispanic, and Jewish people.

On February 13, 2026, the defendant moved for additional time to investigate the Proctor materials (docket paper # 194), and on May 8, 2026, filed his second supplemental motion to dismiss which references materials from Proctor's personal phone but not from his work phone or associated work iCloud account. (docket paper # 217). On June 4, 2026, the Commonwealth moved for additional time to respond to the second supplemental motion to dismiss (docket paper #228) which was granted (Krupp, J.). On June 11, 2026, the Court (Doolin, J.) allowed the Commonwealth's motion to un-impound the defendant's second supplemental motion to dismiss. On June 18, 2026, the Court (Krupp, J.) allowed the Commonwealth's motion to modify the sequestration order (docket paper # 227) to allow the Commonwealth to discuss the defendant's second supplemental motion to dismiss with the assistant district attorney initially assigned and the supervising investigator at the Milton police department.

⁴ The defendant submitted a USB drive containing the materials from Proctor's personal phone that the NDAO provided to the defense to the Court in conjunction with the Second Supplemental Motion to Dismiss. (Def. Second Supp. Motion to Dismiss 4 at n. 2). That USB drive is impounded.

The Commonwealth will stipulate that the USB drive containing the materials from Proctor's personal phone that the NDAO provided to the defense is admissible at the hearing on the motion to dismiss for the Court's consideration of the defendant's motion to dismiss.

Factual Background: Murder Investigation⁵

At about 6:07 p.m. on Saturday, July 10, 2021, Milton Police Officer Henry Colligan went to the area of 36 Belvoir Road in Milton in response to a 911 call about a shooting. At grand jury, Officer Colligan testified that when he arrived, he saw a man later identified as victim Marquis Simmons laying on the street. (GJ 8/19/21: 36). He saw J.C., a man he was previously familiar with, standing to the left of the victim's head. (GJ 8/19/21: 52). Officer Colligan observed that the victim appeared to have a gunshot wound to his left shoulder area, and two spent shell casings were a couple of feet away from the victim. Officer Colligan approached the victim and asked his name and his date of birth, which the victim provided. He asked the victim who shot him, and the victim said, "Mizzie, Mizzie Cash."⁶ He asked the victim whether he was beefing with anyone, the victim said "No." The victim was going in and out of consciousness. (GJ 8/19/21: 37-43).

⁵ In conjunction with the filing of this opposition, the Commonwealth has submitted an appendix on a thumb drive. The appendix contains grand jury minutes and exhibits, Milton police reports, and Massachusetts State Police reports. Grand jury minutes are referenced as "GJ" followed by date. The Milton Police reports are combined into one pdf document and are referenced as "Milton PD" and the author's name. The Massachusetts State Police reports are referenced as "MSP" followed by report number. All are followed by page number. The Commonwealth has filed a motion to impound its appendix.

⁶ During a July 15, 2021 interview the victim's mother S.A. reported hearing the Milton officer ask her son who did this, and she told her son: "Tell them the name, tell them everything, Please Marquis give them the name." She saw the Milton officer lean in with his ear towards her son's mouth area and heard her son say, "He said he was gonna do it, he said he was gonna do it." (MSP 8: 2). This is the only statement she reported hearing. (See MSP 8: 2).

When she testified before the grand jury, S.A. said that her daughter told her something was happening outside. As she walked down Belvoir Road, she heard someone say, "The kid with the red dreads, the red dreads." Knowing that the description matched her son, she approached and saw her son on the ground. She saw an officer kneeling by her son saying, "Marquis, do you know who shot you? And I'm like, "Marquis, tell them everything, whatever. Tell them whatever you know, please." She testified that she heard her son say, "Mizzie, Mizzie, Mizzie Cash." Marquis then said, "He said – he said he was going to do it." He kept saying, he was going to do it. (GJ 9/15/21: 24-26).

As Officer Colligan was administering aid to the victim, he asked J.C. what had happened. J.C. said that he didn't know. When asked if he had seen anything, J.C. did not answer. After assisting the victim, Officer Colligan looked up and observed that J.C. was no longer present.⁷ (GJ 8/19/21: 53).

Officer Colligan followed the ambulance transporting the victim to the hospital. (GJ 8/19/21: 47). At approximately 10:15 p.m. that night, the victim was pronounced dead. (GJ 9/15/21: 31). The medical examiner determined that the cause of death was a gunshot wound to left shoulder. (GJ 6/29/21: 88; GJ Ex. # 6).

Milton Officer John Binda responded to the crime scene. (GJ 7/29/21: 25-27). At the scene, Officer Binda learned from a fellow Milton officer that Mizzie Cash was a suspect. (GJ 7/29/21: 35). Officer Binda knew the defendant from previous encounters, conversations with others who knew him, and social media, and knew that the defendant's rap name was "Mizzie Cash."⁸ (GJ 7/29/21: 35-36).

The defendant lived on Decker Street in Milton, three streets south of the Belvoir Road crime scene. (GJ 7/29/21: 35). At about 10:00 a.m. that day, Officer Binda had seen a black Mercedes sedan with Maine registration plates parked in front of the defendant's home and ran the plate. (GJ 7/29/21: 36-37). He had seen the black Mercedes sedan at the defendant's home multiple times. (GJ 7/29/21: 37).

⁷ Milton Det. Valter Pires and Det. Lt. Michael Collins attempted to speak with J.C. on July 12, 2021. J.C., who resided in the vicinity of the shooting, declined to speak with them without his attorney present. On July 14, 2021, J.C.'s attorney declined to have J.C. interviewed. (Milton PD: 17-Det. Pires). On August 24, 2021, after a hearing before the court (Krupp, J.), J.C. was found to have a Fifth Amendment privilege.

⁸ The defendant's Instagram handle was "Mizziecash617," and a YouTube video showed the defendant wearing a necklace that read "Mizzy." (Milton PD: 1-Officer Binda; GJ 9/9/21:43-44).

Milton Det. Louis Bullard was asked to respond to the scene, first he went to the Milton police station to gather his equipment. Detective Bullard was informed that Myles King—the defendant—may be the shooting suspect. Detective Bullard texted Det. Cimildoro at 7:32 p.m. (Milton PD: 14-Det. Bullard). After getting no response from Det. Cimildoro, Det. Bullard went to Belvoir Road, driving past the defendant's Decker Street residence. (GJ 9/16/21: 47).

Detective Bullard testified at the grand jury that at the defendant's residence he saw a Black female at the back of a black sedan with her hands in the area of the license plate. The plate appeared consistent with a Massachusetts passenger registration plate. He also observed a Mercedes Benz and a Volkswagen vehicle near the residence. He believed the Mercedes was registered to E.L., the defendant's mother. He then proceeded to Belvoir Road. On arrival, he was told by Milton Lt. Brian Cherry that they were looking for a black sedan, possibly a Mercedes, with Maine plates. Detective Bullard told Lt. Cherry that he had just passed the defendant's home and told him of his observations. (GJ 9/16/21: 47-50).

Detective Bullard and Lt. Cherry returned to the defendant's Decker Street residence and saw that the vehicle and the Black female were no longer present. Detective Bullard, who was familiar with the defendant's mother E.L., knocked on the door and had a conversation with her.⁹ After informing her that her son was a potential suspect in a shooting, he asked if E.L. knew his whereabouts. E.L. told Det. Bullard that she had just arrived home. When asked about the vehicle he saw earlier, E.L. said it belonged to the defendant's girlfriend B.G.¹⁰ E.L. tried to call the defendant, but he did not answer. When asked when she had last seen the defendant, E.L. told Det.

⁹ Det. Lt. Collins was also present for this interview. (GJ 9/9/21: 73).

¹⁰ Det. Bullard subsequently viewed an RMV photo of B.G. and identified her as the Black woman he saw on July 10, 2021. (GJ 9/16/21: 52). B.G. was indicted as an accessory after the fact to murder on November 19, 2021, Norfolk Superior Court No. 2182CR00321. A nolle prosequi was filed on July 25, 2025.

Bullard she last saw him at 5:30 p.m. at the family's barbershop where she had cut his hair. Detective Bullard retrieved a business card and told E.L. that the defendant can "turn himself in to me whenever he gives you a ring back." (GJ 9/16/21: 49-51).

At approximately 9:00 p.m. that evening, E.L. was re-interviewed by Det. Cimildoro and Proctor. She said that she last saw the defendant at 5:30 p.m. when she gave him a haircut at her Barber Shop at on Columbus Avenue in Roxbury. She stated that she last spoke with the defendant at 8:48 p.m. and he told her that he was going to the police station. E.L. provided investigators with the defendant's cell phone number, XXX-XXX-6961. (MSP 1: 3)

Milton officers interviewed F.C. on July 10, 2021. F.C. subsequently testified before the grand jury that he was on Belvoir Road on July 10, 2021 for a family cookout at his cousin M.K.'s house and that he and another cousin's husband, D., left to get supplies for the cookout. (GJ 7/29/21: 7-9). F.C. and D. returned to Belvoir Road and parked one house away from 21 Belvoir. While unloading groceries, F.C. heard one popping noise that sounded like fireworks. Approximately thirty seconds after the popping noise, F.C. looked in the direction of the noise. He saw two unidentified Black men in their early-twenties wearing facemasks as they slowly walked down Belvoir Road; one wore a red tracksuit and the other wore a darker tracksuit, believed to be green. (GJ 7/29/21: 12-15). F.C. then heard someone scream, "Somebody got shot, he's not getting up." (GJ 7/29/21: 11). He saw the two men who had been walking start jogging down the street. (GJ 7/29/21: 15). He also saw a heavysset Black man, balding with gray hair and glasses, applying pressure to the victim's gunshot wound.¹¹ (GJ 7/29/21: 18). The only statement F.C. heard the

¹¹ A Belvoir Road resident gave Milton police a photograph of the man administering aid to the victim. (Milton PD: 22-Det. Lt. Collins). The man was identified as M.T. who was living with J.C. (GJ 9/9/21: 90-91). On August 19, 2021, after a hearing (Robert C. Cosgrove, J.), M.T. was found to have a Fifth Amendment privilege. M.T. died of natural causes on June 12, 2022.

victim say was, "Can you ring the doorbell two houses down, a white house?" F.C. went to the house and rang the bell.¹² (GJ 7/29/21: 19).

Milton Officer Timothy Doyle interviewed M.V. on July 10, 2021.¹³ M.V. reported that she was in her kitchen on Blue Hills Parkway shortly after 6 p.m. when she heard two gunshots somewhere in the neighborhood. After hearing the gunshots, she went outside and observed a Black male in his late teens/early 20's slowly jogging on the sidewalk southbound on Blue Hills Parkway coming from the direction of Belvoir Road. The man was wearing a gray zip-up hooded sweatshirt with the word "KLEIN" in black letters on the back. She described this man as having a small build, standing approximately 5'8" and weighing approximately 150 pounds. She lost sight of the man as he jogged passed the fence that separated her house from the Tucker School parking lot. She also reported observing an older model black Mercedes Benz sedan possibly pull out of Belvoir Road after the shooting at a high rate of speed. She reported that the vehicle possibly had a Maine license plate. (Milton PD: 4-Officer Doyle).

During a July 13, 2021 interview, M.V. informed Milton Det. Mark Cimildoro and MSP Tpr. Kevin Nichol that the male was skinny and that he appeared as though he was putting his hands down his pants as he ran. He ran past her home on the sidewalk in the direction of Oak Street. She lost sight of him when he reached the fence on the left side of her property abutting the Tucker School. (MSP 7: 1-2).

An arrest warrant for the defendant for first-degree murder was obtained the next day, July 11, 2021.¹⁴ That same day, the defendant turned himself in at the Milton police department. (GJ

¹² This was the victim's home.

¹³ M.V. was not called as a witness before the grand jury.

¹⁴ In coordination with local police and the medical examiner, the district attorney or his law enforcement representative directs and controls investigations into deaths due to violence or other unnatural means. G.L. c. 38, § 4. Proctor was the affiant on the warrant for the defendant's arrest.

11/19/21: 16). The defendant was arraigned in Quincy District Court on July 12, 2021, docket # 2156CR001848.

On July 13, 2021, Milton officers, with assistance from Quincy Police Officer Christopher Donovan and his K-9 partner, searched the area and properties of 65 and 67 Oak Street. (Milton PD: 13-Sgt. Clifford-Murphy). Milton Sgt. Kristen Clifford-Murphy found a black cloth bonnet-style cap on the front right corner of 61/59 Oak Street. (GJ 9/9/21: 47). Behind the fenced yards of 67 and 61/59 Oak Street, Officer Donovan found a gray zip-up style sweatshirt with KLEIN on the back. (GJ 9/9/21: 48). In the southwest corner of 65 Oak Street, Milton Det. Gerard Dhooge found a firearm. (Milton PD: 11-Det. Dhooge). The firearm was Glock 26 9 mm pistol, with one round in the chamber and an extended magazine, which contained 23 rounds. The magazine was capable of holding 30 rounds. The firearm had a laser sight.¹⁵ (MSP 5: 2).

Detective Cimildoro reviewed surveillance footage from the Tucker School, located at 187 Blue Hills Parkway. (GJ 7/29/21: 69; GJ Ex. # 24). That video showed that on July 10, 2021, at about 6:06 p.m., a Black male wearing charcoal gray pants, a gray sweatshirt, a red undershirt, and dark-colored footwear ran through the school parking lot. He appeared to be holding something under his sweatshirt. (GJ 7/29/21: 69-70). At the same time, a black Mercedes sedan drove southbound at high speed on Blue Hills Parkway, past the school. At about 6:07 p.m., the same man ran down Oak Street towards Blue Hill Avenue. (GJ 7/29/21: 70-71).

Police reviewed surveillance video from 71 Oak Street, which appeared to depict the same man from the Tucker School video running past 71 Oak Street and crossing in front of 67 Oak Street. (GJ 9/23/21: 11; GJ Ex. # 17). Another video from 18 Union Avenue showed the man

¹⁵ Forensic examination of the ballistic evidence did not yield any fingerprints or DNA suitable for comparison. Forensic examination determined that the two discharged cartridge casings recovered from Belvoir Road were a match to the recovered firearm.

emerge from a wooded area on Oak Street, no longer wearing the gray sweatshirt, but clad in a red undershirt. (GJ 9/23/21: 54).

Police also reviewed surveillance from a residence at 105 Blue Hill Avenue. On July 10, 2021, at about 6:02 p.m., a black Mercedes with dark front wheel rim traveled northbound on Blue Hill Avenue and turned right on Belvoir Road. About 20 seconds later, the victim, riding a moped, turned onto Belvoir Road from Blue Hill Avenue. (GJ 9/23/21: 67; GJ Ex. # 17).

Proctor reviewed video from Central Avenue at Brooks Road, Milton, that Sgt. Clifford-Murphy provided to him on July 14, 2021. Proctor also reviewed video provided by the Boston Police Department, the Massachusetts Bay Transportation Authority, and several businesses in the City of Boston. (MSP 15: 2).

Surveillance video from Homeland Security cameras in Boston on July 10, 2021, showed that at about 4:30 p.m., a black Mercedes with a Maine registration parked near the corner of Columbus Avenue and Weld Avenue, where the barbershop was located. At about 4:35 p.m., a Black male wearing a gray sweatshirt and dark-colored pants walked from Weld Avenue and entered the barbershop. At 5:14 p.m., the man wearing a gray sweatshirt and dark pants exited the barbershop with another Black man who was wearing a red athletic jump suit with white stripes, and turned right down Weld Avenue. At about 5:16 p.m., surveillance video from a nearby homeless shelter showed the black Mercedes travelling from Weld Avenue on to School Street. At about 5:17 p.m., a black Mercedes traveled on Washington Street towards Columbus Avenue, passing the 10 Eleven Store. The next video showing the vehicle is from 105 Blue Hill Avenue, Milton, when a black Mercedes turned onto Belvoir Road. (GJ 9/30/21: 28-33; GJ Ex. # 16, 17).

On July 14, 2021, Proctor obtained a search warrant for T-Mobile for telephone records for number XXX-XXX-6961, including CSLI, for July 10, 2021, from 5:00 p.m. to July 11, 2021, at 6:00 p.m.¹⁶ (Quincy District Court search warrant 21SW306).

On July 15, 2021, Det. Cimildoro and Proctor interviewed K.L., who lived across from the defendant's Decker Street home. K.L. had known the defendant since he was a young child. K.L. stated that on July 10, 2021, at about 6:00 p.m., from her living room picture window, she saw a dark-colored sedan with a silver grill pull up very fast and then stop abruptly in front of her driveway. A slender male wearing dark-colored pants exited the passenger-side of the vehicle. K.L. lost sight of the man as he went towards the defendant's residence. Five minutes later, a female, wearing short jean shorts, black tights, carrying a dark-colored trash bag, entered the passenger side of the sedan. The sedan left quickly in the direction of Route 138 in Milton. (MSP 9: 1-2).

On July 19, 2021, Proctor interviewed three witnesses without another officer being present: Fallon Paramedic Zachary Miller, who reported only hearing the victim say his own name, "Marquis."¹⁷; Fallon Paramedic Ryan Mitchell, who only reported hearing moans from the victim;

¹⁶ During the investigation Proctor applied for and obtained the following Quincy District Court search warrants: on July 11, 2021, T-Mobile for fifteen days of telephone records for XXX-XXX-6961, a number associated with the defendant (21SW303); on July 14, 2021, T-Mobile for records for number XXX-XXX-5962, the victim's number (21SW307); on August 4, 2021, T-Mobile for XXX-XXX-0134, number associated with S.J. (21SW329); on August 13, 2021, T-Mobile for XXX-XXX-6961, ping data for the defendant's phone (21SW347); on August 13, 2021, to seize and search defendant's phone (21SW348); and on January 13, 2022, cell tower data for T-Mobile (22SW0021), Sprint Wireless (21SW0022), Verizon Wireless (22SW0023) and AT&T (22SW0024).

¹⁷ Fallon Paramedic Miller testified before the grand jury that the only communication he had with the victim was regarding his pain. When he asked where it hurt, the victim responded, "my shoulder." (GJ 8/19/21: 33).

and Milton Firefighter Brian Fenney, who denied any communications with the victim. (MSP 12, 13, 14).

Milton Det. Lt. Collins and Det. Cimildoro interviewed V.H. on July 21, 2021. (Milton PD: 18-Det. Lt. Collins). V.H. subsequently testified before the grand jury that on July 10, 2021, he was working at 30 Belvoir Road on a second-floor porch. (GJ 8/24/21: 6-7). Sometime after 4:00 p.m., he heard two pops that he thought were firecrackers; he continued working. (GJ 8/24/21: 13). He picked up his head and looked, but did not pay attention until he heard someone crying out to call 911. A couple of minutes later, the police and ambulance arrived. (GJ 8/24/21: 14).

On July 30, 2021, Det. Cimildoro and Proctor interviewed A.D., girlfriend of victim Marquis Simmons. She told the officers that on July 10, 2021, she dropped the victim off at D.W.'s home in Mattapan for maintenance on his scooter. She received a text from the victim at 5:11 p.m. that he was about to leave. She said that in November or December 2020, she received a friend request on Instagram from "Mizziecash617" which she accepted. She observed that the victim and defendant followed one another on Instagram. (MSP 11: 1-2).

On September 21, 2021, H.A. testified at the grand jury.¹⁸ H.A. testified that he had been friends with the defendant since meeting him in sixth grade. (GJ 9/21/21: 23). When asked if he recalled speaking with the defendant on July 10, 2021, he testified that he recalled speaking with him that night. (GJ 9/21/21: 25). He agreed that he had five contacts with the defendant after 9:00 p.m., but did not recall if the defendant called him or if he called the defendant. He initially did not remember what the defendant said to him, but when asked if he recalled speaking with police

¹⁸ On May 7, 2026 H.A. was among the people, including this defendant, charged in the United States District Court. United States v. Raughn Williams, a/k/s "Pancho;" et. al.; Cr. No. 26-cr-10147-MJJ. H.A. is charged with conspiracy to distribute and possession to distribute controlled substances and distribution of 40 grams or more of fentanyl.

about the call on August 24, 2021, H.A. remembered that the defendant stated, "he was going to turn himself in and he loved me and he missed me."¹⁹ (GJ 9/21/21; 25-27).

On September 7, 2021, Milton Sgt. Clifford-Murphy and Proctor interviewed the defendant's nephew, D.K., who resided on Victory Road in the Dorchester section of Boston. Based on the call detail records T-Mobile had produced in response to search warrant 21SW306, police knew the defendant contacted D.K. after the shooting, and that at about 7:00 p.m., the defendant's phone had connected to a cell tower in the Victory Road area of D.K.'s residence. D.K. confirmed that on July 10, 2021, at about 7:00 p.m., the defendant called and asked for his address and directions. Later that evening, the defendant arrived. At some point, D.K. saw an unknown female with the defendant on the couch in his living room. The defendant used D.K.'s cell phone to make a call. The defendant and the female stayed at D.K.'s home for a few hours and left. (MSP 20: 1-2).

S.P., the defendant's manager, testified before the grand jury on September 21, 2021, he had been managing the defendant for five years. (GJ 9/21/21: 8). He recalled receiving a phone call from the defendant around 8:00 or 9:00 p.m. on July 10, 2021, and the defendant told him that he was "gonna turn himself in and he loved me and, you know, just keep music alive." S.P. was getting his hair done when the defendant called, and when he called the defendant after, he did not receive an answer. (GJ 9/21/21: 15)

¹⁹ On August 24, 2021, Det. Lt. Collins and Proctor interviewed H.A. concerning phone records for 781-308-6961 that showed a phone call between that number and H.A. in the hours after the homicide. H.A. told investigators that he last spoke with the defendant, who he has known since the 6th grade, in the evening hours on July 10, 2021. The defendant told H.A. that officers went to his house and were currently looking for him and he was going to turn himself in. (MSP 22: 1-2).

On September 21, 2021, S.J. testified at the grand jury that he had known the defendant for a couple of years. (GJ 9/21/21: 35). S.J. denied any memory of three phone calls with the defendant on July 10, 2021; a two-minute call at 5:17 p.m.; a twenty-two-minute call at 5:31 p.m.; and a call at 6:08 p.m. When asked about receiving a phone call at 7:38 p.m., from a phone number associated with D.K., he testified that he did not know D.K. and did not know why D.K. would be calling him at that time. (GJ 9/21/21: 42).

On November 19, 2021, Proctor testified at grand jury regarding a CSLI PowerPoint prepared by MSP Lt. Brian Tully. Using call detail records for the defendant's phone that T-Mobile provided in response to Search Warrant 21SW306, troopers showed where the phone was located based on towers. This evidence showed that on July 10, 2021, at 5:22 p.m., the defendant's phone was in the area of his mother's barbershop in Roxbury. At 5:40 p.m., the defendant's phone moved away from the barbershop, from Weld Avenue to School Street, then to Washington Street in Boston. At 5:55 p.m., the phone was in the area of Hyde Park Avenue in Boston. At 5:59 p.m., the phone was near Blue Hill Avenue, Cummins Highway, which is Mattapan Square in Boston. At 6:02 p.m., the phone was in the area of Belvoir Road in Milton. At 6:06 p.m., the phone was in the area of Oak Street in Milton. At 7:00 p.m., the phone was in the area of Victory Road in Boston. (GJ 11/19/21: 48-53; GJ Ex. # 44).

During the investigation, members of the MSP interviewed additional witnesses with the assistance of Milton officers: July 11, 2021, Tpr. Matthew Dunne, Tpr. Yuriy Bukhenik, Tpr. Jeffrey Kotkowski interviewed D.W. (MSP 10: 1-2); September 9, 2021, MSP Sgt. John Fanning and Tpr. Kevin Tufts showed D.K. a photo array (MSP 17: 1-10);²⁰ September 20, 2021, Proctor

²⁰ The target of the array was the defendant's girlfriend B.G. No identification was made of the female target. (MSP 17: 1).

and Det. Cimildoro interviewed M.J. (MSP 19: 1-2); October 13, 2021, Proctor and Det. Lt. Collins interviewed L.K. (MSP 16: 1-8).

Argument

The defendant asks this Court to dismiss the indictment charging him with the murder of Marquis Simmons because former MSP Trooper Proctor, designated as the MSP case officer, "held views so fundamentally racist and opposed to him as a [B]lack 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." (Def. Second Supp. Mot. to Dismiss 9).

Dismissal with prejudice is the most severe sanction that the court can impose in a criminal case to remedy misconduct on the part of the Commonwealth. Commonwealth v. Mason, 453 Mass. 873, 877 (2009). Dismissing a criminal case is "a remedy of last resort because it precludes a public trial and terminates criminal proceedings." Id. at 877, quoting Commonwealth v. Cronk, 396 Mass. 194, 198 (1985). "Precluding trial of the accused based on some unauthorized or unconstitutional conduct on the part of wayward prosecutors, police, or other officers within the law enforcement or judicial system deprives the public of its ability to protect itself by punishing an offender." Commonwealth v. Viverito, 422 Mass. 228, 230 (1996). "Absent egregious misconduct or at least a serious threat of prejudice, the remedy of dismissal infringes too severely on the public interest in bringing guilty persons to justice." Commonwealth v. Gardner, 467 Mass. 363, 368 (2014).

I. While explicit bias materials found on Proctor's personal phone show that Proctor is not fit to be a law enforcement officer, the materials do not show misconduct attributable to the government.

Whether an indictment should be dismissed for egregious government misconduct turns primarily on the ability of the defendant to obtain a fair trial after, and in light of, the impropriety.

Commonwealth v. Lam Hue To, 391 Mass. 301, 311-312 (1984) (discussing prosecutorial misconduct in context of late disclosure of exculpatory evidence). An indictment must be dismissed for government misconduct upon a showing of irremediable harm to the defendant's opportunity to obtain a fair trial. Lewin, 405 Mass. at 579, 588. But if a defendant can receive a fair trial despite government misconduct, dismissal is not appropriate. See Viverito, 422 Mass. at 230 (showing of prejudice necessary to justify dismissal for police misconduct).

In the absence of prejudice, dismissal could be required for prophylactic reasons. Commonwealth v. King, 400 Mass. 283, 290 (1987). However, the Supreme Judicial Court has "never ordered the dismissal of an indictment for misconduct in the absence of prejudice." Commonwealth v. Monteagudo, 427 Mass. 484, 486 (1998) (internal citations and quotations omitted). "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." Monteagudo, 427 Mass. at 486, quoting Commonwealth v. Drumgold, 423 Mass. 230, 246 (1996), quoting Lewin, 405 Mass. at 587. The Court's "inquiry in that regard begins with the recognition that the public has a substantial interest in prosecuting those accused of crime and bringing the guilty to justice." King, 400 Mass. at 290. (citations omitted). The Supreme Judicial Court has emphasized that "any remedy should be tailored to cure the prejudice to the defendant Because judicial responses should be limited to truly remedial, and not punitive, measures, the absolute necessity for integrity in law enforcement recommends, in appropriate cases, recourse to civil remedies and departmental police discipline." Mason, 453 Mass. at 878, quoting Commonwealth v. Hine, 393 Mass. 564, 573 (1984).

In evaluating government misconduct, the focus is 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." Monteagudo, 427 Mass. at 486 (internal quotation and citation omitted). Police conduct may be found egregious where it involves "coercion, violence or brutality," "persistent exploitation of personal weakness," or where the conduct is "shocking, outrageous, and clearly intolerable." Id. at 487. Because the issue of outrageous government conduct is a question of constitutional law of due process, it is a question for a judge rather than a jury issue. Monteagudo, 427 Mass. at 486, see also E. B. Cypher, 30A Criminal Practice and Procedure § 26:87 (4th ed. and 2026 update).

Cases in which misconduct is attributable to the prosecution are those in which a member of the prosecution team acted in their official capacity in furtherance of the perceived mission of the government. See e.g., Commonwealth v. Scott, 467 Mass. 336, 350 (2014) (noting egregious misconduct of state lab chemist Dookhan "to further what she perceived to be the mission of the Commonwealth: 'to get criminals off the streets' and not to further her own "individual unlawful scheme"); Commonwealth v. Cotto, 471 Mass. 97, 107-108 (2015) (state lab chemist Farak's evidence tampering attributable to government); Committee for Public Counsel Services v. Attorney General, 480 Mass. 700, 701-702, 725 (2018) (prosecutors deceptive withholding of exculpatory evidence related to Farak attributable to government); Commonwealth v. Hallinan, 491 Mass. 730, 755 (2023) (state police office of alcohol testing failure to produce exculpatory "failed certification" worksheets for breathalyzer machines attributable to government); Commonwealth v. Fontaine, 402 Mass. 491, 497 (1988) (officer's review of recorded conversation between defendant and his attorney misconduct attributable to government); Lewin, 405 Mass. at 585 (where police lied in reports, affidavits, and in court and then lied to cover up lies, the "contemptible and disgusting misconduct by police officers in blatant violation of their sworn duties" was attributable to government).

In contrast, the Supreme Judicial Court has never held or suggested that misconduct by police in pursuit of their own unlawful schemes rather than in furtherance of law enforcement goals is attributable to the prosecution. See e.g., Commonwealth v. Waters, 410 Mass. 224, 229-230 (1991) (extortion scheme where officers paid protection money to allow defendant to sell marijuana not attributable to government); Commonwealth v. Campiti, 41 Mass. App. Ct. 43, 65-66, further review denied, 423 Mass. 1107 and 423 Mass. 1111 (1996) (state police investigator embezzled money from district attorney's office to support gambling habit, activity did not taint voluminous evidence against defendant and unconnected with law enforcement activities).

As the defendant correctly notes, materials found on Proctor's personal phone include disturbing conversations, text messages, and racist images that show pervasive animosity towards several groups, including Black people. (Def. Second Supp. Mot. to Dismiss 1-8). The racist and biased beliefs that Proctor shared with friends on his personal phone are shocking, outrageous, and clearly intolerable in a law enforcement officer. See e.g., Broderick v. Police Commissioner of Boston, 368 Mass. 33, 41-42 (1975) (police officer's conduct while off duty might show him unfit to continue to act as police officer); Boston Globe Media Partners, LLC v. Department of Criminal Justice Information Services, 484 Mass. 279, 292 (2020), citing Police Comm'r of Boston v. Civil Service Comm'n, 22 Mass. App. Ct. 364, 371-372 (1986) ("By assuming their unique position of power and authority in our communities, police officers 'must comport themselves in accordance with the laws that they are sworn to enforce and behave in a manner that brings honor and respect for rather than public distrust of law enforcement personnel.'") (emphasis in original).

The racist and biased materials discovered on Proctor's personal phone is not conduct attributable to the government. While Proctor's personal phone shows racist communications with friends while this investigation was ongoing, no connection to this defendant or this investigation

has been identified. Private communications on Proctor's personal phone do not appear to reference steps undertaken in the course of this investigation. These materials were being exchanged between apparent long-term friends, not with other members of the prosecution team on this investigation. The materials on Proctor's personal phone do not reflect the furtherance of any perceived mission of the government, but show the personal biases of Proctor and those with whom the materials were exchanged.

To satisfy due process, the government is required to disclose evidence in its possession, including evidence of bias or prejudice against a group of which the defendant is a member, or that could materially aid the defense against pending charges. Mass. R. Crim. P. 14(b)(2)(C)(f) (information favorable to defense includes information reflecting bias or prejudice against defendant or against any class or group of which defendant is a member); see also Commonwealth v. Laguer, 448 Mass. 585, 593 (2007); Commonwealth v. Bresilla, 470 Mass. 422, 431 (2015). Shortly after the review began on September 27, 2025, the Commonwealth disclosed materials showing bias and prejudice found on Proctor's personal phone to this defendant and others. (see e.g., docket papers # 178, 179); see e.g., Graham v. District Attorney for Hampden District, 493 Mass. 348, 378 (2024); Commonwealth v. Mcfarlane, 493 Mass. 385, 386-387 (2024). The required due process was the disclosure of the materials to the defendant, which has been done.

The defendant notes the apparent novelty of the situation here: "[i]n a case of first impression in this Commonwealth, King moves to dismiss the charges against him on the basis that the lead investigator held views so fundamentally racist and opposed to him as a [B]lack 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." (Def. Second Supp. Mot. to Dismiss 9). The Commonwealth has not identified any Massachusetts cases where the bias of a prosecution team

member entitled a defendant to dismissal. But the defendant's reliance on cases about impropriety in jury selection, jurors tainted by bias, and bias on the part of defense counsel for the proposition that dismissal is warranted here is misplaced as those do not address the pretrial procedural posture of this case. (Def. Second Supp. Motion to Dismiss 18).

A Batson-Soares error in jury selection constitutes structural error for which prejudice is presumed.²¹ Commonwealth v. Jones, 477 Mass. 307, 325-326 (2017). See e.g., Commonwealth v. Ortega, 480 Mass. 603, 606-608 (2018) (reversed and remanded for new trial where judge abused discretion in declining to require group-neutral reason for challenge of African-American juror); Commonwealth v. Robertson, 480 Mass. 383, 390-397 (2018) (reversed and remanded for new trial where judge failed to find pattern and require group-neutral reason for challenge of Black men); Jones, 477 Mass. at 319-326 (conviction reversed and remanded for new trial where judge declined to require genuine race-neutral reason for peremptory challenge of African-American prospective juror). But the issue here is not impropriety during jury empanelment.

Nor do cases in which jurors are alleged to have had biases so as to deprive defendants of their right to impartial jury support the argument that this defendant is entitled to pretrial dismissal. (Def. Second Supp. Motion to Dismiss 13-14). Commonwealth v. McCalop, 485 Mass. 790, 798 805-806 (2020) (allegations that jury deliberations tainted by racism resulted in new trial on sentencing enhancement); Pena-Rodriguez v. Colorado, 580 U.S. 206, 225 (2017) (where juror clearly states reliance on racial stereotypes or animus to convict, Sixth Amendment requires that no-impeachment rule give way to permit the trial court to consider evidence of juror's statement and any resulting denial of the jury trial guarantee). Rather, to ensure the right to a fair trial,

²¹ Batson v. Kentucky, 476 U.S. 79 (1986); Commonwealth v. Soares, 377 Mass. 461, cert. denied, 444 U.S. 881 (1979).

Massachusetts jurors are typically screened for explicit biases, and seated jurors are instructed about their own implicit biases. Supreme Judicial Court Model Jury Instructions on Implicit Bias (April 7, 2026). Here, a jury has not been selected yet, and Proctor will not be involved as a juror.

The cases in which a defense attorney was discovered to have made racist and biased social media postings do not advance the argument that pretrial dismissal is warranted. (Def. Second Supp. Motion to Dismiss 18-21). See e.g., Commonwealth v. Dew, 492 Mass. 254 (2023). While the content of the materials on Proctor's personal phone appear similar to the materials posted by the plea attorney in Dew, the procedural posture and facts are fundamentally different. In Dew, the defendant's attorney's public social media postings expressing vitriolic hatred and bigotry against persons of the Muslim faith and Black persons created an actual conflict of interest depriving that defendant, who was Black and a member of the Muslim faith, of his constitutional right to the effective assistance of counsel; the case was not dismissed, but rather remanded for a new trial.²² Dew, 492 Mass. at 268. Proctor was an investigator, not an attorney appointed in accordance with the defendant's constitutional right to the effective assistance of counsel. Unlike Dew, this defendant is not seeking new counsel and a new trial because of a conflict of interest, but instead seeks to bar the government from ever bringing him to trial.

²² Commonwealth v. Badgett, 106 Mass. App. Ct. 245 (2025), involved the same attorney in Dew and the Court held that no showing of overt racism toward a defendant was required to prove an actual conflict of interest.

II. Even if materials on Proctor's personal phone showing bias and racism are considered egregious misconduct attributable to the government, dismissal is not appropriate as the defendant has not shown prejudice or that he cannot receive a fair trial.

Even if this Court were to find that the materials on Proctor's personal phone amounted to egregious misconduct attributable to the government, dismissal is not warranted as the defendant has not shown prejudice. The Supreme Judicial Court held that dismissal was not warranted in a case where police lied in the course of their duties and then lied to cover up the initial lies. Lewin, 405 Mass. at 585. Describing the conduct in that case as "contemptible and disgusting misconduct by police officers in blatant violation of their sworn duties," the Court noted "to express its outrage at the reprehensible police conduct . . . society need not punish itself by freeing a man who may be guilty of murder in the first degree and other serious crimes." Id. at 584, 586, 588. That Court vacated the trial court order dismissing the indictments and remanded for trial. Id. at 588. Similarly, Lam Hue To was a murder prosecution for a fatal stabbing in which a mistrial and order of dismissal was entered due to the prosecution's failure to inform the defense before trial that knives, including one with reddish-brown stains, had been found at the crime scene. Lam Hue To, 391 Mass. at 304-307, 310, 314. Rather than allowing the order of dismissal to stand as a sanction, the Supreme Judicial Court found that on the record before it, no showing of irremediable harm such that a fair trial was not possible had been made. Lam Hue To, 391 Mass. at 304-307, 310, 314. The case was remanded to the trial court for a determination on the specific facts whether the defendant had suffered such irremediable harm that a fair trial was not possible. Lam Hue To, 391 Mass. at 304-307, 310, 314.

It is rare that dismissal is found to be an appropriate remedy for egregious government misconduct. In Commonwealth v. Manning, 373 Mass. 438, 444 (1977), an appeal from a jury-waived conviction, the Supreme Judicial Court examined the conduct of federal agents in a

narcotics matter who, without knowledge of the defendant's attorney, contacted the defendant and sought to induce him into becoming an informer. Id. at 440. Finding that agents violated the defendant's constitutional right to counsel and his right to a fair trial, the Court held that where the government had deliberately and intentionally attempted to subvert the attorney-client relationship and the defendant's right to a fair trial, the indictments would be dismissed with prejudice. Id. at 442-443. In Commonwealth v. Fontaine, 402 Mass. 491, 494-495 (1988), police failed to deactivate the booking area recording system while an attorney spoke with his client, and an officer later reviewed that recording after a court hearing. For the charges for which no defense strategy that the recording was likely to affect, the Court found no irremediable prejudice to the defendant and noted that barring certain officers from testifying and suppressing the recorded conversation and its fruits was an adequate remedy; only for those charges tainted by the fact that the Government gained information for which it was not entitled, were the charges dismissed.²³ Id. at 497-498.

In cases addressing instances of wide-scale misconduct, the Supreme Judicial Court has found that indiscriminate dismissal was not warranted. Examining state lab chemist Dookhan's widescale misconduct, the Supreme Judicial Court noted that rather than dismissal of all Dookhan cases, the remedy should be tailored to the injury suffered, and the rights of defendants "balanced against the necessity for preserving society's interest in the administration of justice." Bridgeman v. District Attorney for Suffolk District, ("Bridgeman I"), 471 Mass. 465, 475 (2015) quoting Commonwealth v. Cronk, 396 Mass. 194, 199 (1985). Revisiting Dookhan's misconduct in Bridgeman v. District Attorney for Suffolk District ("Bridgeman II"), 476 Mass. 298, 300 (2017),

²³ That Court noted that the Commonwealth "agree[d] that under the circumstances of this case, it bears the burden of proving no prejudice to the defendant resulted from the viewing of the videotape." Id. at 495.

the Supreme Judicial Court adopted a three-phase protocol to address the large number of affected defendants and noted that as "challenging as [the remedy the SJC ordered] is to implement, [it] preserves the ability of these defendants to vindicate their rights through case-by-case adjudication, respects the exercise of prosecutorial discretion, and maintains the fairness and integrity of our criminal justice system in the wake of a laboratory scandal of unprecedented magnitude." Id. at 301. In Committee for Public Counsel Services v. Attorney General, 480 Mass 700, 701-702, 729 (2018), the Supreme Judicial Court found that state lab chemist Farak consumed drug submissions and lab standards and manipulated evidence, and prosecutors covered up the misconduct. The Supreme Judicial Court held that the misconduct was intentional and egregious that to protect the integrity of the criminal justice system, and that rather than dismissing all convictions based on samples tested during Farak's tenure, only methamphetamine convictions tested during Farak's tenure, convictions where Farak signed the certificate, and convictions based on lab work when Farak's drug use had spiraled out of control would be vacated and dismissed. Id. at 729.

In light of drug lab scandals, the Supreme Judicial Court adopted the two-pronged Scott-Ferrara test to determine whether government misconduct was so egregious that it rendered guilty pleas involuntary and in violation of a defendant's right to due process. Hallinan, 491 Mass. at 744. Applying the Scott-Ferrara test, a defendant bears the burden of demonstrating both egregious government misconduct and that it caused irremediable harm to his right to a fair trial. See Hallinan, 491 Mass. 730, 744-745, 748, 751 (2023) citing Commonwealth v. Scott, 467 Mass. 336, 347-351 (2014) and Ferrara v. United States, 456 F. 3d 278, 290 (1st Cir 2006). To prevail on a claim that government misconduct induced a defendant to admit to sufficient facts, that defendant had to show that egregiously impermissible misconduct by government agents occurred before the entry of the plea, and that the misconduct was material to the decision to plead guilty. Hallinan,

491 Mass. at 744-745 citing Scott, 467 Mass. at 347-351 and Ferrara v. United States, 456 F. 3d 278, 290 (1st Cir 2006).

In Hallinan, extensive and pervasive misconduct by the MSP office of alcohol testing (OAT) intentionally withholding exculpatory failed calibration worksheets violated the rights of due process for approximately 27,000 defendants. Hallinan, 491 Mass. at 731, 742. But despite the widespread egregious government misconduct, the Supreme Judicial Court declined to dismiss all OUI cases within the relevant time period. Hallinan, 491 Mass. at 748. The Court noted that unlike cases tainted by the drug lab scandals, OUI prosecutions could rest entirely on untainted circumstantial evidence, and the Commonwealth may have ways to pursue conviction if the breath tests were suppressed. Hallinan, 491 Mass. at 749.

Assuming for the sake of argument that the Scott-Ferrara test is appropriately applied to the circumstances here, the defendant has not shown that the racist and biased materials found on Proctor's personal phone are egregious government misconduct, or that Proctor's racist and biased beliefs have caused irreparable harm to his right to a fair trial. While the defendant points out bias and racism, he has not pointed to any conduct taken by Proctor in this investigation that could have interfered with any constitutionally guaranteed rights. Contrast Commonwealth v. Teixeira, 76 Mass. App. Ct. 101, 106, further review denied, 456 Mass. 1102 (2010) (where defendant shows government engaged in misconduct having potential to interfere with constitutional guarantees, Commonwealth bears burden of showing no interference actually occurred). The defendant has not pointed to any conduct by Proctor that could have impacted the fairness of his trial. Contrast Fontaine, 402 Mass. at 496-497 (prejudice found where, after testifying at suppression hearing, officer reviewed improperly recorded video of defendant's meeting with attorney; advance knowledge of defendant's position gave prosecution unfair advantage). While worthy of

condemnation, the biases and racism found on Proctor's personal phone is not misconduct attributable to government in this prosecution, and there has been no showing that Proctor's biased views caused irremediable harm to this defendant's right to a fair trial. Notably, Proctor was not integral to the investigation and the Commonwealth will present its case without reliance on Proctor.

The contention that racism caused Proctor to believe the statement of a white police officer who heard the victim say that he had been shot by "Mizzie Cash" does not advance the defendant's argument. (Def. Second Supp. Mot. to Dismiss 22). The victim, a Black man, identified Mizzie Cash as the shooter to Milton Officer Colligan, who testified before the grand jury that returned the indictment for murder. (GJ 8/19/2021: 39, 42). Significantly, prior to Proctor's involvement, Milton officers went to the defendant's home and told the defendant's mother that he was a potential suspect in a shooting and could turn himself in to a Milton detective. (GJ 9/16/2021: 50-51).

Speculation that biases caused Proctor to fail to pursue leads or avenues of investigation that are now lost and undocumented does not entitle the defendant to pretrial dismissal. (Def. Second Supp. Mot. to Dismiss 22). A defendant may introduce evidence for the proposition that inadequate police investigation raises serious questions about whether the police and the Commonwealth have charged and are prosecuting the proper perpetrator, and thus may give rise to reasonable doubt about the defendant's guilt. See e.g., Commonwealth v. Bowden, 379 Mass. 472, 485–486 (1980) (fact that certain tests not conducted or certain police procedures not followed could raise reasonable doubt as to defendant's guilt in minds of jurors). While the defendant can argue to the jury that the investigation was flawed, bias materials found on Proctor's personal phone are not grounds to dismiss the murder indictment.

The assertion that Proctor's racist beliefs tainted every aspect of the entire investigation (Def. Second Supp. Mot. to Dismiss 10) is flawed. Significantly, while designated as the MSP case officer, Proctor was not present for the shooting or the victim's statement to Milton Officer Colligan that "Mizzie Cash" shot him. Many officers were involved and the investigation was advanced before Proctor became involved. Prior to the victim being pronounced dead, Milton Det. Bullard informed the defendant's mother that the defendant was a potential suspect in a shooting and told her that the defendant "can turn himself into me." (GJ 9/16/2021: 50-51). While Proctor requested the search warrants for CSLI and other records, probable cause was found, those records are created and maintained by third parties, and will be introduced through keepers of records for those third parties which the defendant will be able to challenge at trial. Although Proctor reviewed surveillance video, he did not collect it, and in accordance with the rules of evidence, surveillance video will be authenticated by a keeper or some other person with personal knowledge of the video, and the video will be available for the jury to review and assess.²⁴

To the extent Proctor's biased and racist beliefs may be admissible at trial, despite the contention that the defendant "will never be able to paint a full picture for the jury about just how racist the lead investigator of his case was" (Def. Second Supp. Mot. to Dismiss 22-24), the Commonwealth's election not to call Proctor does not prevent the defendant from putting on a defense or impair the defendant's right to a fair trial. The defense could pursue calling Proctor and seek to have him declared a hostile witness. See e.g., Mass. G. Evid. 611 (2025); Commonwealth v. Monahan, 349 Mass. 139, 162-163 (1965). Although the defendant suggests that Proctor may invoke a Fifth Amendment privilege to avoid testifying (Def. Second Supp. Mot. to Dismiss 23), there are procedures for this Court to determine whether Proctor has a valid Fifth Amendment

²⁴ Surveillance video was presented at grand jury.

privilege. Where there has been no showing of prejudice or that the defendant cannot receive a fair trial, dismissal of the indictment because materials showing bias and racism were found on the former MSP case officer's personal phone is not appropriate.

III. Structural error analysis is not appropriately applied to a pretrial motion to dismiss based on bias material that was discovered and provided to the defense prior to trial.

"Structural error is '[g]enerally . . . error that 'necessarily render[s] a criminal trial fundamentally unfair or an unreliable vehicle for determining guilt or innocence.'" Commonwealth v. Williams, 481 Mass. 443, 454 (2022) quoting Commonwealth v. Hampton, 457 Mass. 152, 163 (2010), quoting Washington v. Recuenco, 548 U.S. 212, 218-219, 126 S. Ct. 2546 (2006). Structural errors "have been recognized in limited circumstances ... [and] occur rarely." Williams, 481 Mass. at 254 quoting Hampton, 457 Mass. at 163, citing Recuenco, 548 U.S. at 218 n.2, 126 S.Ct. 2546. The Commonwealth has not identified any Massachusetts case where structural error analysis was applied to a pretrial motion to dismiss. The defendant's reliance on cases addressing errors that occurred at trial is misplaced, and notably, retrial is not automatically precluded where post-conviction structural error analysis is applied. See e.g., Commonwealth v. Cohen (No. 1), 456 Mass. 94, 119-120, 127 (2010) (remanded for new trial in light of structural error analysis of violation of right to public trial).

Cases cited by the defendant (Def. Second Supp. Mot. to Dismiss 17-21) do not suggest that structural error analysis is appropriately considered in conjunction with a request to bar the government from ever proceeding to trial against this defendant. See Dew, 492 Mass. 245 (actual conflict of interest found without showing of prejudice, motion for new trial allowed and remanded for further proceedings); Vasquez v. Hillery, 474 U.S. 254, 262, 106 S. Ct. 617, 623 (1986) (habeas review of murder conviction for discrimination in grand jury selection, government permitted to

recharge defendant and try him in accordance with procedure conforming to constitutional requirements, see Hillery v. Pulley, 733 F. 2d 644 (9th Cir. 1984)); Pena-Rodriguez v. Colorado, 580 U.S. 206, 209, 212, 137 S. Ct. 107 (2017) (juror relied on racial stereotypes in convicting defendant, remanded for further proceedings); Buck v. Davis, 580 U.S. 100, 104-105, 137 S. Ct. 759 (2017) (procedural default in death penalty murder conviction, defense expert considered future violence by defendant more likely because he was Black, defendant allowed to pursue appeal); Commonwealth v. McCalop 485 Mass. 790, 791, 805-806 (2020) (alleged racism during deliberations that convicted defendant, defendant allowed to move for new trial if evidence showed deliberations tainted by racial bias). While structural error analysis is a standard of review that may in certain circumstances appropriately be applied to matters that have been tried or otherwise adjudicated, it should not be applied to prevent the Commonwealth from proceeding to trial.

IV. Dismissal of the indictment for the murder of Marquis Simmons will not create a climate adverse to repetition to avoid repetition.

"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." Monteagudo, 427 Mass. at 486, quoting Drumgold, 423 Mass. at 246, quoting Lewin, 405 Mass. at 587. In Lewin, where police engaged in perjury and an attempted cover up, but the Court held that dismissal was not required for prophylactic reasons, the Court noted that repetition of such conduct by others was sufficiently discouraged without dismissal: the officers' police careers were over, their reputations were greatly damaged, and they faced serious criminal charges. Lewin, 405 Mass. at 587. Rather than ordering dismissal, the Supreme Judicial Court ordered the case remanded for trial. Id. at 588.

The defendant claims that "the message currently being sent is that it is acceptable to be a police officer and to hold beliefs that [B]lack 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." (Def. Second Supp. Mot. to Dismiss 25). The NDAO provided materials found on Proctor's personal phone to this and other defendants, the Town of Canton, and the Peace Officer Standards and Training Commission ("POST").²⁵ (see docket paper # 180). Canton police officer Sean Goode, whose racist and biased communications were found on Proctor's personal phone, was investigated by the Town of Canton, resigned, and has been suspended by POST.²⁶ Rather than shielding Proctor from accountability, even prior to the review of Proctor's personal phone by the NDAO, Massachusetts State Police suspended and then fired Proctor for, among other reasons, sending derogatory, defamatory, disparaging, and otherwise inappropriate text messages about a suspect in a different investigation.²⁷ The widely publicized sanctions experienced by Proctor and Goode will discourage repetition, while dismissal of the indictment to 'send a message' will preclude prosecution of the defendant for the murder of a Black man who was equally the subject of the racist beliefs discovered on Proctor's personal phone.

²⁵ Proctor was suspended by POST on December 18, 2025. Case No. 2025-072.

²⁶ Goode resigned from the Canton Police Department on June 2, 2026. Goode was suspended by POST on June 18, 2026. Case No. 2026-0033. On June 30, 2026, the Town of Canton released a report regarding an internal affairs investigation into former Canton Sergeant Sean Goode. <https://www.town.canton.ma.us/DocumentCenter/View/13523/Final-Internal-Investigation-Report> (accessed July 6, 2026).

²⁷ See Division of State Police Trial Board Finding 25PER178. The text messages at issue in Commonwealth v. Read and at Proctor's MSP disciplinary hearing were not from the extraction examined by the NDAO beginning on September 27, 2025, but were produced by the federal government.

- V. **Where prior to Proctor's involvement the victim identified Mizzie Cash as the shooter, Milton police knew that "Mizzie Cash" was the defendant, and a Milton detective told the defendant's mother that the defendant was a suspect in a shooting and could turn himself in to that detective, bias and racism shown on Proctor's personal phone cannot establish an equal protection violation in this investigation.**

Relying on Commonwealth v. Long, 485 Mass. 711 (2020) and its progeny, the defendant contends that he is entitled to an evidentiary hearing on his claim of selective enforcement. (Def. Second Supp Mot. to Dismiss 10, 26, 27). Equal protection principles under the Fourteenth Amendment and arts 1 and 10 of the Mass. Declaration of Rights prohibit discriminatory application of impartial laws. Commonwealth v. Lora, 451 Mass. 425, 436 (2008). Although "the application of the criminal law inevitably involves some degree of selectivity, the exercise of that discretion is compatible with equal protection only if it 'is not based on an unjustifiable standard such as race, religion or other arbitrary classification.'" Commonwealth v. Rodriguez, 496 Mass. 627, 633 (2025) quoting Lora, 451 Mass. at 437

Selective enforcement occurs when there is discriminatory policing in the investigatory phase of a case.²⁸ Rodriguez, 496 Mass. at 633; Commonwealth v. Dilworth, 494 Mass. 579, 587 (2024). The Long standard applies generally to allegations of discriminatory policing in the investigatory phase. Rodriguez, 496 Mass. at 634; Dilworth, 494 Mass. at 587 (2024); Robinson-Van Rader, 492 Mass. at 20-21. The defendant "must produce evidence upon which a reasonable person could rely to infer that the officer discriminated on the basis of the defendant's race or membership in another protected class." Long at 724. Discriminatory motivation exists whenever the challenged enforcement decision "was motivated at least in part by race." Rodriguez, 496

²⁸ Selective prosecution occurs when a prosecutor pursues similar cases differently based on race or another protected class. Rodriguez, 496 Mass. at 633, citing Commonwealth v. Robinson-Van Rader, 492 Mass. 1, 19 (2023).

Mass. at 634 quoting Long, 485 Mass. at 726. "To establish a reasonable inference of such motivation, 'the defendant must point to specific facts from the totality of the circumstances.'" Rodriguez, 496 Mass. at 634 quoting Long, 485 Mass. at 713.

Where a defendant has established an inference of selective enforcement, the defendant is "entitled to a hearing at which the Commonwealth would have the burden of rebutting the inference." Rodriguez, 496 Mass. at 634 quoting Long, 485 Mass. at 713. Absent such a rebuttal, any evidence derived from the selective enforcement would be suppressed. Rodriguez, 496 Mass. at 634 quoting Long, 485 Mass. at 726. The defendant must show more than the fact that he is a member of a constitutionally protected class and was stopped, see generally Long, 485 Mass. at 723, he must establish a reasonable inference that the officer's decision was motivated by race and 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 633.

The defendant notes, and the Commonwealth does not dispute, that the defendant is a member of a constitutionally protected class who has been charged with murder, and that materials on Proctor's personal phone show racist and biased beliefs. (Def. Second Supp. Mot. to Dismiss 26-27). However, the defendant has not shown any connection between the materials on Proctor's personal phone and this defendant being investigated and charged with murdering Marquis Simmons. This investigation began when Milton police were dispatched to the scene of a shooting where the victim, a Black man, told a Milton officer that he had been shot by "Mizzie Cash," who Milton police knew was the defendant. Milton officers responded to the defendant's home shortly after the shooting and told the defendant's mother to tell the defendant that he could turn himself in to Det. Bullard. The defendant turned himself in to Milton police the next day. Because the defendant has not produced evidence from which a reasonable person could infer that the decision

to investigate the defendant for murdering Marquis Simmons was made because of the defendant's race or membership in a protected class, the defendant is not entitled to an evidentiary hearing on his selective enforcement claim.²⁹

VI. The bias materials discovered on Proctor's personal phone and the issues raised in the original and first supplemental motion to dismiss do not entitle defendant to dismissal.

The Commonwealth relies upon and incorporates by reference the "Commonwealth's Response to the Defendant's Motion to Dismiss or, in the Alternative, Release King on Bail, and Continue the Trial Date Given the Voluminous Late Disclosed Evidence" (docket paper # 118). The defendant has had the discovery for more than a year, and any prejudice from the late disclosure has been remedied as the defendant has had time to make effective use of the materials. The racist and biased materials found on Proctor's personal phone span many years, but are not government conduct or connected to this case. Even evaluated together, the claims in the defendant's original and two supplemental motions to dismiss should not result in the extreme sanction of dismissal of the indictments.

²⁹ If this Court were to determine that an evidentiary hearing is necessary, the Commonwealth anticipates presenting testimony from Officer Colligan and Det. Bullard regarding the identification of the defendant by the victim and communication with the defendant's mother about the defendant turning himself in.

Conclusion

For the reasons cited herein and in the Commonwealth's initial submission (docket paper # 118), the motion to dismiss should be denied.

Respectfully submitted
For the Commonwealth
Michael W. Morrissey

/s/ Jennifer J. Hickman

/s/ Tracey Lusick

Assistant District Attorneys
Norfolk District Attorney's Office
45 Shawmut Road
Canton, MA 02021

August 12, 2026

Commonwealth's Impounded Appendix³⁰

USB drive containing:

Grand Jury minutes (12 volumes)
GJ exhibits
Milton Police Reports (27 pages)
Massachusetts State Police Reports (# 1-34)

Certificate of Service

I certify that on August 12, 2026, I served this document on Rosemary Scapicchio [rosemary@scapicchiolaw.com] and Nicole Scapicchio [nicole@scapicchiolaw.com], counsel for the defendant, by email and by causing it to be hand delivered to counsel at 107 Union Wharf, Boston, MA 02109. I served a copy of so much of the appendix as includes the grand jury minutes, Milton Police Reports, and Massachusetts State Police Reports by causing a USB thumb drive to be delivered to counsel's office on August 12, 2026. Due to an unanticipated network reboot sometime overnight between August 11-12, 2026, the grand jury exhibits referenced herein did not complete copying and will be delivered on a USB thumb drive to the court and counsel on August 13, 2026.

/s/ Jennifer J. Hickman

³⁰ The Commonwealth is filing a separate motion to impound its appendix.