

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

COMMONWEALTH

v.

BENJAMIN LAGUER

Criminal Action No. 83-103391 to
83-103394

**DEFENDANT'S MOTION TO RECONSIDER THE
DENIAL OF DEFENDANT'S MOTION FOR NEW TRIAL OR,
ALTERNATIVELY, FOR DISMISSAL OF THE INDICTMENTS
AND LEAVE TO FILE A SUPPORTING MEMORANDUM WITHIN 60 DAYS**

Defendant Benjamin LaGuer moves for reconsideration of the Court's September 22, 2004 order denying his motion for new trial or, alternatively, dismissal of the indictments, and moves for leave to file a memorandum in support of this motion within 60 days. As grounds therefor, Mr. LaGuer states as follows:

1. On February 11, 2004, Mr. LaGuer filed a motion seeking a new trial or, alternatively, dismissal of the indictments. In his motion, Mr. LaGuer argued that he was entitled to a new trial because the Commonwealth had withheld, for over eighteen years, exculpatory evidence. Specifically, Mr. LaGuer contended that, despite three specific pre-trial requests in 1983 and 1984 for fingerprint-related information, the Commonwealth failed to produce a fingerprint report, dated July 15, 1983, that had been prepared by the State Police Crime Laboratory during the 1983 investigation of the crime. Notably, the front of the report (the only portion of the report disclosed to the defendant) indicates that, contrary to the evidence presented at trial, four fingerprints were found on the trimline telephone from which the cord used to bind the victim's hands had been removed by the perpetrator, and that all four prints,

when compared to those of Mr. LaGuer, conclusively did not match Mr. LaGuer's fingerprints. Mr. LaGuer argued that a new trial was warranted because: (1) the fingerprint report is exculpatory evidence that the Commonwealth suppressed in violation of Mr. LaGuer's due process rights; and (2) the Commonwealth's loss or destruction of the actual fingerprints taken from the scene of the crime, as well as the loss or destruction of the back page of the fingerprint report, violated Mr. LaGuer's constitutional rights.

2. On May 19, 2004, the Commonwealth filed an opposition to Mr. LaGuer's motion. In its opposition, the Commonwealth, **apparently conceding** that it suppressed (or lost or destroyed) the fingerprint report, nonetheless argued that the suppressed evidence was cumulative of that presented at trial. Moreover, the Commonwealth urged the Court consider to allegations of a post-conviction DNA analysis and pre-trial misconduct by Mr. LaGuer, arguing that these allegations rendered a new trial unnecessary.

3. On September 22, 2004, the Court denied Mr. LaGuer's Motion for New Trial. In doing so, the Court relied on several factual arguments that were never asserted by the Commonwealth, and to which Mr. LaGuer never had an opportunity to respond. Among others, the Court relied upon the following erroneous assertions:

- a. The Court incorrectly concluded that the fingerprint report could not be exculpatory, and thus not material, because Mr. LaGuer could not demonstrate that the fingerprints found on the base of the telephone were placed there during the crime. The Court, however, ignores the fact that, by withholding this evidence for over eighteen years, and by losing the actual fingerprints, the Commonwealth effectively denied Mr. LaGuer the opportunity to test this fingerprint evidence, and retain an expert who

could testify as to: (1) when those fingerprints were placed on the telephone, and (2) to whom those fingerprints belong. Indeed, the Commonwealth never raised this issue in its briefing. Mr. LaGuer should be given the opportunity to consult with a fingerprint expert and prepare a response to this argument.

- b. The Court incorrectly concluded that the evidence contained in the fingerprint report would not have been a real factor in the jury's deliberations. In doing so, the Court ignores the numerous ways in which Mr. LaGuer could have used this evidence, which went to the core issue in this case – identification. Clearly, evidence which would tend to show that someone else – and not Mr. LaGuer – committed this crime would likely constitute a “real factor” in the jury's deliberations.
- c. In its Memorandum and Order, the Court improperly states that the defendant contends that the fingerprint report is exculpatory because whoever left the four fingerprints on the telephone must have been the actual rapist. *See* Memorandum and Order, at 12. The Court, however, misconstrues the defendant's position. Mr. LaGuer does not argue that the fingerprints on the telephone were definitively those of the actual rapist; rather, Mr. LaGuer argues that the Commonwealth denied the defendant the opportunity to present evidence to bolster his mistaken identity theory, and denied the defendant the opportunity the opportunity to retain an expert who could have tested the fingerprints found and determined to whom they belong.

d. In its Memorandum and Order, the Court asserts that there was “strong” evidence in the record to support the Commonwealth’s contention that Mr. LaGuer was the assailant. *See* Memorandum and Order, at 14-15. Mr. LaGuer contends that the issue of identification was much closer than indicated by the Court, and requests an opportunity to analyze the trial record to rebut certain factual assertions made by the Court.

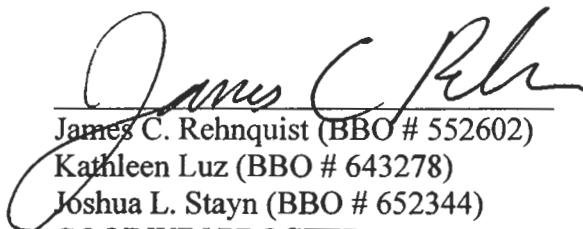
4. Mr. LaGuer requests the opportunity to move for reconsideration and the opportunity to address these, and other, factual inaccuracies.

5. Mr. LaGuer requests 60 days to prepare a memorandum of law in support of this motion for reconsideration.

Respectfully submitted

BENJAMIN LAGUER

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