

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

NORFOLK SUPERIOR COURT  
2382 CR 0091

COMMONWEALTH

v.

BRIAN WALSH

DEFENDANT'S REQUEST FOR RECITATION OF FACTS AT PLEA COLLOQUY

Now comes the defendant to respectfully request this Honorable Court *limit* the

Commonwealth's recitation of facts at his plea colloquy to the following<sup>1</sup>:

Willfully conveying a human body in violation of G.L. c. 272, § 71

That the defendant disposed of and did convey the body of Ana Walshe after her death and in so disposing the body of Ana Walshe, the defendant knowingly and intentionally did not comply with the law, that is, her body was not decently buried, entombed in a mausoleum, vault, or tomb, or cremated in a reasonable time after death<sup>2</sup>.

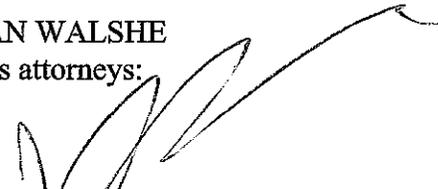
Misleading police in violation of G.L. c. 268, § 13B

That the defendant did willfully mislead members of the Cohasset and Massachusetts State Police during an open criminal investigation into the disappearance of his wife, Ana Walshe. The defendant participated in four interviews with members of law enforcement during the first week of January, 2023 and during said interviews did knowingly and intentionally make false statements in an effort to interfere with their investigation.

Respectfully submitted;

BRIAN WALSH

By his attorneys:



Kelli Porges, BBO #659834  
Iglehart & Porges  
55 Union Street, 3<sup>rd</sup> Floor  
Boston, MA 02108  
617-335-3398

<sup>1</sup> The defendant offered to collaborate on a statement of facts with the Commonwealth but received no response at the time of filing this request.

<sup>2</sup> This language is taken directly from the Commonwealth's request for preliminary jury instruction.

5202  
8/11/19  
filed

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.  
ASSIGNED: JUDGE FRENIERE

SUPERIOR COURT  
NO. 2382CR00091

COMMONWEALTH  
v.  
BRIAN WALSH

DEFENDANT'S MEMORANDUM OF LAW IN SUPPORT OF HIS RIGHT  
TO ENTER GUILTY PLEAS TO TWO INDICTMENTS

The defendant intends to tender guilty pleas on two indictments, one for misleading and one for disinterment. The Commonwealth rejected the defendant's offer to plead to the two indictments, stating in part that the Commonwealth would not negotiate unless negotiations included the indictment charging murder. The Commonwealth is controlling the defendant's ability to exercise his due process right to admit his guilt. The Commonwealth offered no suggested disposition.<sup>1</sup>

In support of its position, the Commonwealth cited in its email responding to the defendant's offer to plead, Commonwealth v. Ramos-Cabrera, 486 Mass. 364, 366 (2020) (plea rejected where defendant refused to admit to specific facts regarding drug distribution). The Commonwealth parenthetically noted that a "judge is afforded wide discretion in determining whether to accept plea of guilty; no constitutional right to have one's plea

---

1 It is now well-established that a defendant cannot plead to murder in the first degree and a Court cannot accept a plea to a lesser murder charge without the Commonwealth agreeing to the lesser-included offense.

accepted." The Commonwealth also cited to G.L. c. 258B, s. 3, parenthetically noting the statute concerns "[r]ights afforded victims, witnesses or family members."

While there is no established constitutional right to plead guilty, the defendant's due process rights are implicated in this context. At a minimum, a defendant does have the right to plead guilty where he intends to do so voluntarily, knowingly and intelligently and agrees to the underlying specific facts that would support a guilty finding. Mr. Walshe is entirely prepared to do just that.

There are a number of Massachusetts cases dealing with a court rejecting a defendant's guilty plea for valid reasons. First, cases deal with rejecting the so-called Alford plea.<sup>2</sup> Mr. Walshe is not seeking to use an Alford plea.<sup>3</sup> Secondly, relevant cases involve a defendant failing to acknowledge the facts necessary for a court to accept the plea.<sup>4</sup> And third, a

---

2 See North Carolina v. Alford, 400 U.S. 25 (1970) (permitting a defendant to profess innocence but nonetheless enter an "Alford" plea and specifically stating that a court need not accept an Alford plea). There are two underlying reasons often noted for rejecting an Alford plea: to preserve the appearance of justice in the courts and to protect the defendant against an unwise decision.

3 See Commonwealth v. Gendraw, 55 Mass. App. Ct. 677 (2002) (court rejected Alford plea); Commonwealth v. Lawrence, 404 Mass. 378 (1989) (plea rejected where defendant would only enter an Alford plea on a reduced second-degree charge).

4 See Commonwealth v. Dilone, 385 Mass. 281 (1982) (plea rejected (continued...))

defendant's prior criminal history involving prior and similar serious felonies may result in the court rejecting a plea.<sup>5</sup> The rejection of a guilty plea in these cases are grounded in the notion that the interests of justice are not served in these circumstances. There appears to be no Massachusetts case where a defendant's effort to enter a non-Alford plea and was fully prepared to comport with the procedural requirements of Mass. R. Crim. P. 12 was rejected.

Mr. Walshe is attempting, by pleading, to simply admit his wrongful conduct as it concerns misleading police and disinterment. To comport with constitutional due process rights, a decision to not accept an otherwise valid plea must be reasoned. See Santobello v. New York, 404 U.S. 257, 262 (1971) (stating there is no federal constitutional right to plead guilty but noting that "[a] court may reject a plea in exercise of sound judicial discretion."); Accord U.S. v. Williams, 47 F.3d 658, 664 (4<sup>th</sup> Cir. 1995) (a defendant is entitled to have his plea accepted absent a sound reason articulated by the court for

---

(...continued)

where defendant refused to admit he killed the victim; Commonwealth v. Watson, 393 Mass. 297 (1984) (attempt to plea rejected where the defendant was "evasive" when questioned by the plea judge and the offer occurred after the Commonwealth rested and overwhelming evidence had been introduced).

5 See Commonwealth v. Kelleher, 28 Mass. App. Ct. 915 (1989) (plea rejected where defendant's prior convictions of rape, armed robbery and armed burglary were considered to be "very similar" to the case at bar).

rejecting the plea); U.S. v. Washington, 969 F.2d 1073 (1992), cert. denied, 507 U.S. 922 (1993) (a court's rejection of an otherwise valid plea would not withstand appellate scrutiny if based on a reason that has no relevance to furthering the interests of justice); United States v. Severino, 800 F.2d 42 (2<sup>nd</sup> Cir. 1986) cert. denied, 479 U.S. 1056 (1987) (holding that rejection of a plea valid where the court "has reasonable grounds for believing that acceptance of the plea would be contrary to the sound administration of justice"). See also, Rossman, 2 Criminal Law Advocacy, § 37.04 The Judicial Function in the Guilty Plea Process, at 60.<sup>6</sup>

While the Commonwealth may reject the defendant's offer and may refuse to negotiate, that decision does not prevent this Court from accepting Mr. Walshe's plea to the two indictments. Pursuant to Mass. R. Crim. P. 12, a defendant may enter a plea without any agreement with the Commonwealth. And if the Court so

---

<sup>6</sup> Many of the federal cases cited above are set forth in Professor Rossman's current publication cited. His earlier version is referenced in the Reporter's Notes to Mass. R. Crim. P. 12. In his most current publication, Professor Rossman states in relevant part that "[e]xcept in jurisdictions like Virginia, which give defendants the right to enter guilty pleas, the judge's discretion to refuse to accept a plea is quite broad. But it is not limitless. As a general rule of law, a judge may not exercise his or her discretion in any area arbitrarily or on the basis of an impermissible factor. A judge may refuse to accept a guilty plea only if the decision is based on circumstances reasonably related to a legitimate goal of the criminal justice system."

decides, it may reject Mr. Walshe's sentencing recommendation and inform him of the Court's intended sentence, or alternatively, in these circumstances, defer sentencing until a verdict is rendered on the remaining indictment.<sup>7</sup>

For all of these reasons, and where Mr. Walshe's due process rights are implicated in his effort to plead guilty, he requests that this Court accept his plea pursuant to Rule 12 procedure notwithstanding the Commonwealth's objection.

BRIAN WALSH  
By His Attorneys,  
**Larry Tipton**  
Digitally signed by Larry Tipton  
DN: cn=Larry Tipton, o=LLC, email=lawyer@larrytipton@gmail.com, c=US  
Date: 2025.11.14 07:28:39 -0500  
Larry Tipton BBO # 552557  
TiptonLaw  
100 Independence Drive  
Suite 7-780  
Hyannis, MA 02601  
(617) 947-6281  
[lawyertipton@gmail.com](mailto:lawyertipton@gmail.com)

Kelli Porges, BBO# 659834  
Iglehart & Porges LLC  
55 Union Street, 3<sup>rd</sup> Fl.  
Boston, MA 02108  
(617) 335-3398  
[kelli@iglehartandporges.com](mailto:kelli@iglehartandporges.com)

Dated: November 14, 2025

---

<sup>7</sup> While G.L. c. 258B, §3, cited by the Commonwealth in its email, does not create any right supporting the Commonwealth's position. See e.g., Del Gallo, Third v. District Attorney for the Suffolk District, 488 Mass. 1008, 1009-1010 (2021) ("But while the statute confers important rights on victims vis-à-vis criminal prosecutions, 'it does not confer on them the status of a party or grant them the rights that belong to parties.' [citation omitted]. Put another way, the victim of a crime has no 'judicially cognizable interest' in the prosecution of the offender, and the statute does not change that.") (citations omitted).

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

NORFOLK SUPERIOR COURT  
2382 CR 0091

COMMONWEALTH

v.

BRIAN WALSH

MEMORANDUM IN SUPPORT OF DEFENDANT'S REQUEST FOR SENTENCE

Now here comes defendant and requests this Honorable Court accept the Defendant's request regarding sentencing.

- 1) Not to exceed **4-6 years** in state prison concurrent with the Federal sentence now serving on the indictment alleging Misleading the Police as defined under MGL ch. 268 sec. 13B.
- 2) **2-3 years** in state prison concurrent with the Federal sentence now serving and the indictment alleging Misleading the Police on the indictment alleging Disinterring a Body as defined by MGL ch. 272 sec. 71.

\*The defendant will be on Federal supervised release upon completing the incarcerated portion of his Federal sentence and does not object to a concurrent period or probation on one of the state indictments commencing after his release from incarceration.

Mr. Walshe has offered to plead guilty and take responsibility for the two indictments listed above while maintaining his innocence on the indictment alleging Murder. The defendant does not take the time to discuss the factual basis for said indictments as this Honorable Court is more than well versed in the factual and procedural history of this case. The Commonwealth

declined to engage in any plea negotiations with the defendant “that does not include resolution of the murder charge”. Neither the Commonwealth’s refusal to engage in plea negotiations, or their objection to the defendant’s tender of plea on two of the three indictments prohibit this Court from accepting the defendant’s plea of guilty. Certainly the Court can delay sentencing if the Commonwealth requests time to speak to any friends or family members for any impact statements.

### GUIDELINES

Mr. Walshe has one prior arrest/criminal charge and one felony conviction stemming from the same. The Massachusetts sentencing guidelines suggests he “scores out” as an “C”, (See page 43 of the Massachusetts Sentencing Guidelines). A review of the defendant’s Federal sentencing hearing states the Federal Judge found the defendant to have a criminal history of 1 with an offense level of 21, carrying a sentence of incarceration of 37-46 months. The defendant suggests his Federal criminal history translates to his “C” status, one conviction for a level 5 offense<sup>1</sup>.

**Witness Intimidation/Misleading** (G.L. ch. 268 sec. 13(B) – carrying up to 2.5 years in the HOC or up to 20 years in prison)

The sentencing guidelines suggest a sentence NOT TO EXCEED 50-75 months (4 – 6 years).

**Disinterring a Body** (G.L. ch. 272 sec. 71 carrying up to 2.5 years in the HOC or up to 3 years in state prison)

The sentencing guidelines suggest a sentence NOT TO EXCEED 6-36 months

---

<sup>1</sup> Larceny over 1200 with over 50,000 is a level 5 offense. MGL ch 266 sec 30(1).

The Massachusetts guidelines suggest these numbers are at the "top" of the sentence with the bottom number set at 2/3's the top number. Ergo, the sentence the defendant is requesting this Court impose is *above* guidelines to accommodate for any perceived aggravating factors.

#### AGGREVATING FACTORS

1. The victim was especially vulnerable due to age or physical or mental disability. NOT PRESENT.
2. The victim was treated with particular cruelty. NOT PRESENT.
3. The defendant used position or status to facilitate commission of the offense, such as a position of trust, confidence, or fiduciary relationship.
4. The defendant was a leader in the commission of an offense involving two or more criminal actors. NOT PRESENT.
5. The defendant committed the offense while on probation, on parole, or during escape. The defendant was awaiting sentencing in Federal Court at the time of the allegations.
6. The defendant has committed repeated offenses against the same victim. NOT PRESENT.
7. The defendant's criminal history category understates the seriousness of the defendant's prior record. NOT PRESENT.

#### MITIGATING FACTORS

1. The defendant was a minor participant in the criminal conduct.
2. The defendant was suffering from a mental or physical condition that significantly reduced his culpability for the offense.
3. The victim was an initiator, aggressor, or provoker of the offense.
4. The sentence was imposed in accordance with a jointly agreed recommendation. THE COMMONWEALTH REFUSED TO ENGAGE IN PLEA NEGOTIAONS.
5. The age of the defendant at the time of the offense.
6. The defendant verifies current involvement in, or successful completion of, a substance abuse or other treatment program that began after the date of the offense.
7. The defendant's criminal history category overstates the seriousness of the defendant's prior record.

8. The defendant's residence in a poor or minority area with deep police penetration causes overstatement of the seriousness of the criminal record.
9. The defendant is determined to be the primary caretaker of a dependent child pursuant to G.L. c. 279, § 6B

#### ARGUMENT

Mr. Walshe, 50 years old, asks this Court to accept his request for sentence. He understands the Court's obligation for punishment, deterrence, community safety and rehabilitation when considering sentencing. The state prison sentence requested by the defendant is in line with both his criminal conduct, age and lack of serious record.

#### CONCLUSION

For the reasons above and arguments made during the sentencing hearing before this Honorable Court, Mr. Walshe respectfully requests his request for sentence be imposed.

Brian Walshe,

By His Attorneys:



---

Kelli Porges, B.B.O. # 659834  
Iglehart & Porges  
55 Union Street, 3<sup>rd</sup> Fl  
Boston, MA 02108  
617-335-3398



---

Larry Tipton, BBO# 552557  
TiptonLaw  
100 Independence Drive  
Suite 7-780  
Hyannis, MA 02601  
(617) 947-6281  
lawyertipton@gmail.com

DATE: November 14, 2025

I hereby swear I served the same to the Commonwealth this same day via electronic mail.

<b>WAIVER OF DEFENDANT'S RIGHTS</b>	DOCKET NUMBER <u>2382CR91</u>	Trial Court of Massachusetts The Superior Court 
CASE NAME: <u>CW</u> vs. <u>Brian Walshe</u>		<u>Norfolk</u> Clerk of Courts County
		COURT NAME & ADDRESS

I have discussed the above case(s) with my attorney. I understand that by entering a plea of guilty, I will be giving up the following constitutional and statutory rights: to a trial by a jury or to a trial before a judge; to confront and cross-examine witnesses; to call my own witnesses and present evidence in my defense; to remain silent and assert my privilege against self-incrimination; to be presumed innocent until proven guilty beyond a reasonable doubt; and to pursue any motions in my case. I also understand that I will be giving up the right to appeal any rulings already made by the Court, unless, by written agreement between me and the prosecutor, filed with the court, I have reserved the right to appeal from any specific ruling or rulings that, if reversed on appeal, would render the Commonwealth's case not viable on one or more charges.

I have been advised by my attorney of the nature and elements of the charge(s) to which I am entering my guilty plea, and of the nature and range of the possible sentence(s) on the charge(s), including the maximum possible sentence(s), any mandatory minimum sentence(s) that might be applicable, the consequences if probation is imposed and conditions are violated, and any different or additional punishment for subsequent offenses.

N/A  [CHECK IF APPLICABLE] I have been advised of the habitual offender law and of the consequences of pleading guilty to the present charges.  
 [CHECK IF APPLICABLE] I have been advised that by pleading guilty to the present charges, I may be subject to adjudication as a sexually dangerous person and required to register as a sex offender.

I have been advised of the recommendation on sentencing to be made by the Prosecution.

My guilty plea is not the result of force, threats, assurance or promises. I have decided to plead guilty voluntarily, willingly, and freely, rather than at the direction of or because of the recommendation of any other person.

I am satisfied that my defense attorney has represented me in an effective and competent manner. I have had enough time to speak with him/her regarding any possible defenses I may have to the above charges, and he/she has explained the consequences of my pleading guilty, and the waiver of any constitutional or statutory rights.

I am not now on, or under the influence of, any drug, medication, liquor or other intoxicant or depressant that would impair my ability to fully understand the constitutional and statutory rights that I am waiving when I plead guilty.

I understand that if I am not a citizen of the United States, a conviction in the above case(s) may result in my deportation, exclusion from admission to the United States, or denial of naturalization.

Date 11.14.25 Print Name of Defendant Brian R. Walshe  
 Signature of Defendant Brian Walshe

**DEFENSE ATTORNEY'S APPROVAL**

I have discussed the facts in this case and the plea recommendation with my client in detail, and I have advised the Defendant of all matters within the scope of Massachusetts Rules of Criminal Procedure Rule 12 that are pertinent to the Defendant's plea, including informing the defendant of his/her constitutional and statutory rights, the factual basis for and the nature and elements of the offense(s) to which the guilty plea will be tendered, possible defenses, and the consequences of the guilty plea.

After explaining the above to the Defendant, I am satisfied that the Defendant has understood my explanation and the consequences of his/her guilty plea. Moreover, I am satisfied that the Defendant is not under the influence of any drug, medication, liquor, or other intoxicant that can impair the Defendant's ability to fully understand all the constitutional, statutory and/or other rights that the Defendant would waive by tendering a plea of guilty to the above indictment(s).

I represent to the Court that the Defendant has signed this document in my presence freely, willingly, and voluntarily.

Date 11/14/25 Attorney for Defendant [Signature]  
 BBO Number 659F34

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT  
DOCKET NO. 2382CR00091

COMMONWEALTH

V.

BRIAN WALSH

(SPECIALLY ASSIGNED TO JUDGE DIANE FRENIERE)

---

**Commonwealth's Motion to Impound Commonwealth's Response to Defendant's  
November 13, 2025 Filings and November 14, 2025 Memorandum**

---

The Commonwealth respectfully moves for an order impounding the Commonwealth's Response to the Defendant's November 13, 2025 Request until the completion of the trial of this matter. As grounds, empanelment is scheduled to begin on November 18, 2025, and public release of the pleading less than a week before trial could affect the ability to promptly select an impartial jury.

Respectfully submitted  
For the Commonwealth,

*/s/ Greg Connor*  
Greg Connor  
Tracey Cusick  
Anne S. Yas  
Assistant District Attorneys  
45 Shawmut Rd.  
Canton, MA 02021  
(781) 830-4800

November 14, 2025

**Certificate of Service**

On November 14, 2025, I served this document on Attorneys Larry Tipton and Kelli Porges, counsel for the defendant, by email.

*/s/ Greg Connor*  
Assistant District Attorney