

**SUPREME JUDICIAL COURT
COUNTY OF SUFFOLK**

NO. SJ-2026-0402

COMMONWEALTH

V.

LINDSAY CLANCY

EMERGENCY REQUEST FOR RELIEF

Pursuant to G.L. c. 211, § 3, the Petitioner, Lindsay Clancy, here asks this court to exercise its superintendence power.

Pursuant to G.L. c. 249, § 5, the Petitioner asks this court to issue an order in the nature of mandamus for the Plymouth Superior Court to fulfil its non-discretionary duty to preserve the integrity of the criminal petit jury.

Specifically, Petitioner asks this court to order the Plymouth County Superior Court, in Commonwealth v. Lindsay Clancy, Docket Number 2383CR0019, currently in session, **(1) to inquire into the ability of the identified juror to apply the law or (2) prohibit the further deliberations of a juror identified by the jury foreperson as biased and refusing to follow the court's instructions on reasonable doubt unless and until the court determines by individual voir dire that the juror is willing and able to follow the court's instructions.**

FACTS

This is a first degree murder case in which the Defendant has raised an NGI defense.

The foreperson has sent a note to the judge indicating that one of the jurors has acknowledged doubt but is refusing to apply it to the case “as the law states.” The Defendant has requested that the court either excuse the juror who is allegedly refusing to follow instructions or inquire further to determine whether the juror can in fact follow instructions.

The court has declined either to excuse the juror or to inquire further, citing deliberative privilege.

ARGUMENT

1. 211-3

The court’s refusal to *consider* evidence that a juror is refusing to follow the applicable law regarding criminal responsibility should be corrected promptly to preserve the integrity of the court system. Under *Commonwealth v. Swafford*, 441 Mass 329 (2004) a juror’s refusal to follow the law is always personal, and not a matter of protected deliberative privilege, and requires removal. Here, the removal is particularly important because the juror’s reasoning reflects a bias against those who suffer from debilitating mental illness, a protected category under both the Fifth and Fourteenth Amendments and Article 114 of the Massachusetts

This court has “general superintendence of all courts of inferior jurisdiction to correct and prevent errors and abuses therein if no other remedy is expressly provided; and it may issue all writs and processes to such courts and to corporations and individuals which may be necessary to the furtherance of justice and to the regular execution of the laws.” G.L. c. 211, § 3, In general, this court may not step in unless “no other remedy is expressly provided.” *Id.* However, the

court may also intervene, regardless of available remedies, where it is “necessary or desirable for the furtherance of justice, the regular execution of the laws, the improvement of the administration of such courts, and the securing of their proper and efficient administration.” *Id.*

Intervention is necessary in this case to avoid an avoidable mistrial of a case that is so time and labor intensive and that has captured so much public attention. It is also necessary to preserve the Defendant’s right to a fair trial by unbiased jurors applying the law and to avoid violating the Equal Protection Clause of the Fifth and Fourteenth amendments and Article 114, which makes mental illness a protected category.

A criminal defendant is entitled to a trial by an impartial jury pursuant to the Sixth Amendment to the United States Constitution and art. 12 of the Massachusetts Declaration of Rights.” *Commonwealth v. McCalop*, 485 Mass. 790, 798 (2020), other citations omitted. See also, *Peña-Rodriguez v. Colorado*, 580 U.S. 206, 223 (2017). This Court has long held that the “presence of even one juror who is not impartial violates a defendant's right to trial by an impartial jury.” *Commonwealth v. McCowen*, 458 Mass. 461, 494 (2010), other citations omitted.

The possibility that unconstitutional bias “has infected jury deliberations ‘cannot be ignored’ because it ‘might well offend fundamental fairness.’” *Commonwealth v. Ralph R.*, a juvenile, 490 Mass. 770, 779-780 (2022), quoting *McCalop*, *supra* at 790, 798-799. *Commonwealth v. Laguer*, 410 Mass. 89, 97 (1991) and *Commonwealth v. Tavares*, 385 Mass. 140, 155 n.25, cert. denied, 457 U.S. 1137 (1982).

The right to be tried by an impartial jury is basic to a fair trial, and “errors that undermine the right to an impartial jury are structural errors.” *Commonwealth v. Vasquez*, 495 Mass. 279, 285 (2025); *Commonwealth v. Ralph R.* a juvenile, 490 Mass. at 785. For example, whenever a defendant has been subject to racial or ethnic bias in jury deliberations, he has not received a fair trial and thus structural error applies. *See, Commonwealth v. McCalop*, 485 Mass. at 790-791 (“It is a fundamental tenet of our system of justice that a conviction cannot stand if the defendant proves that the jury's deliberations were infected by racial or ethnic bias.”). *See also, Commonwealth v. Vasquez*, *supra* at 284. (substantial risk of miscarriage of justice where evidence existed of racially biased comments that caused conflict between jurors during deliberations); *Laguer*, 410 Mass. at 97 (“the possibility ... that the defendant did not receive a trial by an impartial jury, which was his fundamental right, cannot be ignored”).

Concerns about bias extend beyond any single case. Such a bias, in the context of race, has been observed to pose “a substantial risk of a miscarriage of justice but also, ‘if left unaddressed, would risk systemic injury to the administration of justice.’” *Vasquez*, *supra* at 798-799, citing *Peña-Rodriguez v. Colorado*, 580 U.S. at 224 (“racial and ethnic bias “implicated unique historical, constitutional, and institutional concerns...””).

In *Commonwealth v. McCalop*, *supra* at 792, this Court outlined the judicial protocol in cases where juror racial and/or ethnic bias is alleged. In such cases, the judge must determine whether the defendant has proved by a preponderance of the evidence that the offending juror was actually biased

because of the defendant's race or ethnicity, considering the content of the statement in context. *Id.*, citing *McCowen*, 458 Mass. at 495-496.

The same considerations apply here in the context of mental illness.

2. .GL c. 249, § 5

The Superior Court has abdicated its responsibility to ensure the integrity of the jury by refusing either to inquire further or to dismiss the juror who is refusing to consider doubt "as the law states."

The judge need not simply accept the juror's professions of fidelity and impartiality. The judge is entitled to make credibility determinations and discredit the juror's answers in light of the other jurors' statements. The judge appears to be abdicating the responsibility to weight the evidence of juror malfeasance. In other words, this is not abuse of discretion; it is failure to exercise discretion at all.

The fact that this touches on deliberations does not make the subject off limits. Once the jury has chosen to reveal information, "that information cannot be ignored. See *Commonwealth v. Cuffie*, supra at 638, 609 N.E.2d 437 ("The judge, having ventured into the forbidden area of the deliberative process ... cannot ignore the fruits of his excursion")." *Com. v. Kincaid*, 444 Mass. 381, 391-92 (2005). See also *Commonwealth v. Ralph R.*, 490 Mass. 770, 779 (2022) (error not to inquire where court is uncertain of meaning of foreperson's comment).

A mistrial at this point is entirely avoidable, but only if the court does its job.

CONCLUSION

For the reasons stated above, the petition or complaint for mandamus should be allowed.

Respectfully submitted,
Lindsay Clancy
By Counsel:

/s/ Dana Goldblatt

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CERTIFICATE OF SERVICE

I, Dana Goldblatt, here certify that the foregoing Petition was served on the Commonwealth through its representative, Jennifer Sprague, at the following verified email address:

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/s/ Dana Goldblatt

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