COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss. **SUPERIOR COURT**
CRIMINAL ACTION NO. 8479CR02403

COMMONWEALTH

vs.

EDWARD G. WRIGHT

MEMORANDUM OF DECISION AND ORDER ON DEFENDANT'S SIXTH MOTION FOR NEW TRIAL

I. Introduction

Before the court is Edward Wright's sixth motion for new trial. On April 10, 1985, a Hampden County jury convicted the defendant of the first-degree murder of Penny Anderson (the victim) in her Springfield apartment. The victim had been stabbed dozens of times and died on May 14, 1984, sometime before 6:15 a.m. She was last seen alive at about 1 a.m. entering her apartment with the defendant, after the two left the nearby nightclub where the victim worked as a dancer.

In 1992, the Supreme Judicial Court (SJC) affirmed the defendant's conviction and the denials of his first and second new trial motions after conducting a plenary review under G.L. c. 278, § 33E. *Commonwealth v. Wright*, 411 Mass. 678 (1992). The defendant then filed his third, fourth, and fifth new trial motions, all of which were denied. A single justice of the SJC granted the defendant leave to appeal the denial of his fifth such motion. That appeal also failed. *Commonwealth v. Wright*, 469 Mass. 447 (2014).

In this, his sixth motion for new trial, pursuant to Mass. R. Crim. P. 30(b), the defendant argues that: (1) the prosecution presented false testimony about the preservation of the crime scene and until 2021 failed to disclose to the defendant exculpatory evidence that someone, who could

not have been the defendant, broke into the victim's apartment a few days after the murder and contaminated the crime scene before investigators collected shoe print evidence which was used at trial; and (2) newly discovered DNA evidence excludes Wright as a source of DNA found on items connected to the murder.[1]

On October 29, 2024, the court ruled that the materials submitted by the parties raised two substantial issues that required an evidentiary hearing in order to rule on the defendant's motion for new trial. The first was whether Springfield Police Department (SPD) Det. Alfred Ingham gave false or misleading trial testimony about the preservation of the crime scene evidence, including the shoe print evidence. The second was whether DNA testing and analyis on a washcloth found in the victim's apartment was reliable and admissible. The court held evidentiary hearings on December 18, 2024, when Det. Ingham testified, and on February 26 and February 27, 2025, regarding the DNA testing and analysis.

The court assumes the parties' familiarity with the proceedings in this case and incorporates by reference the two SJC decisions. The court recites below only those facts which are essential to address the defendant's latest motion for new trial, while reserving some facts, including those relating to DNA testing, for the legal analysis. The court views the facts in the light most favorable to the Commonwealth. See *Commonwealth v. Patterson,* 432 Mass. 767, 768 (2000), overruled on other grounds by *Commonwealth v. Britt*, 465 Mass. 87 (2013). For the reasons explained below, the defendant's sixth new trial motion is *allowed.*

II. Findings of Fact

A. Incriminating Evidence Presented at Trial

[1]The defendant's additional grounds for his motion have been considered by the court but lack merit and require no discussion in light of the ruling below.

The incriminating evidence against the defendant at trial included the following. The defendant was the last person to have been seen with the victim alive, arriving at her apartment at about 1 a.m. on May 14 in a car which the defendant borrowed from his friend, Vernal Archie. The medical examiner determined that the victim was dead by 6:15 that morning. At daybreak, the defendant returned the car to Archie, at his Springfield home, and at 8 a.m., Archie drove the defendant to Delaware. Two days after the murder, police obtained a statement, later recanted, from one Arthur Turner reporting that on May 14 at 4:30 p.m., he had received a phone call from the defendant, against whom Turner's mother had a restraining order, and in that call, the defendant said that he had fatally stabbed a "white bitch" at the victim's address. SPD Detective Alfred Ingham seized evidence from the murder scene, including a washcloth from the bathtub (collected on May 14, according to his trial testimony, or on May 16, according to his police report (R.A. 206[2])), and two kitchen linoleum floor tiles with shoe prints on them (collected on May 18). A chemist, Mark Grant, testified that there was occult blood[3] in many places in the motor vehicle which the defendant had borrowed on the night of the murder. The chemist also testified that there were traces of blood imprinted from a shoe on one of the linoleum kitchen floor tiles and that the pattern of the shoe print was similar to the shoes seized from the defendant when he was arrested in Delaware on May 16. From that evidence, the prosecution argued, *inter alia*, that the bloody shoe prints at the murder scene were consistent with the defendant's shoes. The court highlights key portions of those aspects of the trial.

1. Turner's Statements to Police Regarding Defendant's Confession

[2] Citations are to pages in the Record Appendix ("R.A.") filed by the defendant in support of his motion for new trial.

[3] Occult blood is blood which is invisible to the eye but detectable by chemicals.

Arthur Turner testified at the defendant's trial and read to the jury the first statement he had given to police on May 16, 1984, regarding a telephone call he said he had received on May 14 at about 4:30 p.m. from Delaware.[4] In that statement, Turner explained that his mother had been romantically involved with and living with the defendant, and that she wanted him to leave but could not get him to do so. Turner's mother wanted Turner to pay the defendant to go to Delaware and stay there. The defendant agreed to go to Delaware as soon as he was paid on May 12. On May 14, at about 4:30 p.m., Turner received a phone call from the defendant, who told him:

> "I killed someone. You know her because she's on tic.[5] He then told me she lived on Dwight Street Extension and that she was a white bitch. He said he had made love to her and he was lying on the bed with a knife strapped to his leg. She told him she had a gun and pulled it out and fired at him. He jumped up and grabbed her wrist and stabbed her and because she didn't turn the gun loose, he had to do what he had to do. He said he never thought he would have to kill the bitch. He went on to say he knew she was dead because he had a knife with a 14 inch blade. He also said no one would find it. He said he bought the knife at the pawn shop in the South End. He said after he did this, he had to catch the 3:05 out of Springfield in the morning."

On December 12, 1984, Turner gave police a second statement, witnessed and also signed by his mother, in which he changed his story. He told police that he had never spoken with the defendant on the telephone, and that he could not say that the person who called him on May 14 was the defendant. (R.A. 247). At trial, Turner testified that his rocky relationship with the defendant began in about 1981. Turner was unhappy that the defendant was living with him and his mother for "quite a few years," and that in May of 1984, their relationship was "very bad." (R.A. 1348). He went to the police after learning about the murder from the news.

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[4] As explained by the SJC,

> "At the time of that telephone call, the defendant and Turner's mother had had a falling out. She had obtained a restraining order against the defendant. Sometime later, after Turner had told the police of the substance of the call and had testified before the grand jury that indicted the defendant, Turner's mother and the defendant became reconciled. Thereafter, Turner recanted his testimony that the defendant had called him. Turner continued to agree to the substance of the conversation. He maintained at trial, however, that he did not know whether it was the defendant who had called him."

Wright, 411 Mass. at 685.

[5] "Tic" means being on drugs.

2. Detective Ingram's Trial Testimony Regarding the Shoe Prints

Ingham testified at the defendant's trial that at 3:30 p.m. on May 14, 1984, he went to the victim's apartment at 306 Dwight Street Extension, Apartment 4. Ingham was not assigned specifically to this case but was at the scene to help collect the evidence. The detective in charge was Captain Stelzer.

The victim's body was in the living room. Most of the physical evidence for the murder investigation was taken from the victim's apartment between May 14 and May 16. That evidence included bloodied cushions, a couch cover and a throw pillow that on the couch. Ingham testified that in the bathroom, "[from] inside the tub . . . we seized towels and washcloths."[6] At no further point in the trial were the washcloths mentioned. Investigators also repeatedly dusted items in the apartment for fingerprints.

What had not been collected from that apartment until May 18 were two linoleum floor tiles bearing an impression or impressions from a shoe. Ingham testified at trial that "we collected samples of those footprints and whatever it was on the floor at that time," May 18. (R.A. 1011).

On cross-examination by defense counsel, Ingham testified again that on May 18, he lifted the two 10" or 12" square linoleum floor tiles from the kitchen and submitted them to the chemist for testing. That testimony sparked a flurry of questions about whether Ingham knew if anyone else had been at the murder scene. On redirect examination, the prosecutor asked Ingham how many other people had been at the apartment before Ingham. Ingham replied, "On what date, the

[6] A police report which was not admitted into evidence at trial shows that on May 14, police dusted for fingerprints and seized some items, including a blood-stained couch cover and a cushion cover; on May 15, Ingham seized from the victim's home a "throw pillow covered with blood possibly used to place over victim's face during the attack" and he took from the autopsy items such as hair, clothing, and nail scrapings; on May 16, Ingham seized from the victim's apartment the washcloths and towels (which were not noted to have blood); and on May 18, investigators seized "two sections of kitchen floor . . . because of possible sneaker pattern on the tile similar to suspect's sneakers" and other items which were sent to the chemist, Mark Grant, in Boston for testing. (R.A. 206-208). Nothing in the trial testimony or police reports suggests that police noticed shoe prints on the kitchen floor before May 17.

18th?" The prosecutor did not answer that question, but instead asked, "You knew other people had gone to the apartment before you?" to which Ingham answered, "That's correct." The prosecutor asked, "And did you know who they were?" Ingham replied, "Yes." When asked, "And they were there when you got there?" Ingham replied, "Yes."

The issue of exactly when Ingham removed the floor tiles and who was at the murder scene continued to be explored in his testimony. Ingham testified that on May 14, he made notations that there were scrapings on the floor (which were not the shoe prints on the linoleum tiles on the kitchen floor), but that he removed the floor tiles on a later date. The prosecutor returned to the issue of who had been in the apartment, and asked, "You don't know of your own knowledge what activity, if any, there was in the apartment between the 14th and the 28th when you were [ineligible]?" Ingham replied, "To the best of my knowledge, [illegible transcript] ones in there." (R.A. 1022-1023). "You mean the police?" "That's correct." The court understands Ingham's testimony to have been that, to the best of his knowledge, only the police had been in the apartment between May 14th and May 28th. On re-cross-examination by defense counsel, Ingham reiterated that he did not know the number of people that had been in the apartment between May 14 and May 18. (R.A. 1024).

3. Forensic Evidence at Trial

At trial, Mark Grant, a forensic chemist at the Department of Public Safety Crime Lab, testified for the prosecution. Grant testified that his job entailed testing blood, hairs, fibers, and seminal fluids. On May 17, 1984, he obtained some crime scene evidence materials for testing from the victim's apartment and from the SPD, where he examined the automobile the defendant had borrowed from Archie from 10 p.m. on May 13 to daybreak on May 14. Grant detected occult blood on the car's steering wheel, direction signal, headlamp switch, inside door handle, gas pedal,

and the underside of the dashboard, but was unable to determine the blood type on those items. Grant did not mention in his trial testimony the washcloths which Ingham had taken from the victim's apartment.

At the victim's apartment on May 17, Grant looked for forensic evidence. He "removed two blood extracts from the hallway of the apartment" five feet and twelve feet down the hall, but was unable to determine the blood type on those items. (R.A. 1135). On May 23, Grant received the two linoleum floor tiles which Ingham had seized from the apartment on May 18. Regarding his examination of them, Grant testified, "I noted the presence of a checkerboard or grid pattern that I believed to be an impression from a sole of a shoe and in that impression I noted the presence of blood and [in] one other area I noticed the presence of blood on these two tiles where they join together, [and that] there was a circular striation, there was the presence of blood in that." (R.A. 1136-1137).

When the prosecutor asked Grant if the markings indicated that they were the sole of a shoe or sneaker, Grant replied, "something of that nature." The prosecutor asked, "And that imprint was in blood, is that correct?" Grant replied, "Blood was contained. It was not a bloody imprint per se, but there was blood on the imprint." Grant testified that the tile and the defendant's shoes (which had been taken from the defendant on May 16 when he was arrested in Delaware) were delivered to him in Boston on May 23. Grant compared the marking on that tile with the defendant's footwear, and stated, "in my opinion, the mark on the tile was similar in nature to the sole of the sneaker." (R.A. 1139). Grant testified that although he found no blood on the sneaker, "within a reasonable degree of probability," between May 14 and May 23, "there's a strong possibility that the blood [on the defendant's shoes] would wear away." (R.A. 1141). Grant testified that occult blood was detected on the tiles, but he could not determine its blood type or if it was human blood.

Grant found type A blood, which is the victim's blood type, on couch covers, the ligature which bound the victim's hands, on a throw pillow, and on a pillowcase. Blood found on the victim's fingernail scrapings was not typed. Blood found in other locations was insufficient to determine its type or even if it was human. Grant did not testify as to what blood type the defendant has or whether any blood at the scene had his type.

After the prosecutor elicited Grant's testimony on all of the blood evidence he reviewed, the prosecutor asked Grant again about occult blood and the comparison of one of the linoleum floor tiles with the defendant's shoes. (R.A. 1146).

> Prosecutor: "Can you pick out that one tile which you indicated had the mark on it?"
> Grant: "It's right here."
> Prosecutor: "Is the mark something you can see?"
> Grant: "Yes, the mark is right here."
> Prosecutor to Court: "May I show that to the Jury?"
> . . .
> Court: "Yes."
> Prosecutor: "Now, sir, would you also take from the box the sneakers? Are those the sneakers that were turned over to you?"
> Grant: "Yes."
> Prosecutor: "Are those the bottoms of which you made a comparison with the markings on the tile?"
> Grant: "Yes."
> Prosecutor to Court: "I'm going to offer these, if I may, Your Honor, without objection. Your Honor, they are marked right and left. . . ."
> Prosecutor to Grant: "Now, would you show these to the jury with the Court's permission, and also the tile and show the markings on the bottom of the sneaker and that area that you made a comparison with on the tile without speaking?"
> Grant: [complying].
> Prosecutor: "Thank you."

On cross-examination, defense counsel began with and spent a considerable amount of time on Grant's opinion regarding the shoes and shoe prints on one of the linoleum floor tiles. Defense counsel elicited from Grant testimony that he initially could not tell whether the shoe print on one tile was from the left or right shoe. Grant opined that one of the shoe imprints appeared in that tile. (R.A. 1148). Grant also believed that the imprint was from a sliding movement, but he

could not say whether the imprint was from a sole or heel of the shoe. (R.A. 1149). Grant agreed that the type of sneaker, Nike, is common, and referred to blood on a second tile, but without any sneaker marks.

Defense counsel then turned to cross-examine Grant regarding the car (i.e., the presence of occult blood but without blood type evidence), before returning, at the end of the cross-examination, to the subject of the shoe print on the linoleum floor tile. Defense counsel asked Grant whether he was able to say with any degree of certainty how old the blood was on the tile, and whether the blood he observed on the tile was one week old, two weeks old, or four weeks old. Grant replied, "Not really knowing the history of the traffic in the kitchen, I can't make an opinion as to that. . . ." Grant then testified again that he found no blood on either of the defendant's sneakers. (R.A. 1158).

4. Additional Trial Evidence

The defendant testified that he borrowed Archie's car from about 10 p.m. on May 13 to daybreak on May 14. While he had it, he drove the victim from the nightclub where she worked, where he saw the victim fight with her ex-boyfriend, Allen Smalls, and speak with another man, Andrew Jefferson. From the club, the defendant first drove the victim to her mother's house, to pick up her eight-month-old son. At some point, according to the defendant, he and the victim had sex in the car and then went to the victim's apartment to talk for an hour, before he left at 1 a.m. or 1:30 a.m.

The defendant's account lacked credibility. It was contradicted by the testimony of the victim's neighbor who saw the victim and the defendant arrive at about 12:45 or 1 a.m., and it is doubtful they would have had sex in the car if they were going to the victim's apartment. There was no corroboration of what the defendant did between 1 a.m. and daybreak, when he returned

the car to Archie. Another neighbor of the victim testified that he heard the victim crying for help for about ten to fifteen minutes shortly before 4 a.m., and then heard an automobile start up and leave. The fact that the chemist found occult blood in the car, particularly in the driver's area, casts further doubt on the defendant's version.

B. Counsels' Closing Arguments at Trial Regarding Shoe prints

In their closing arguments, both the defense and the prosecution discussed the shoe print evidence. Defense counsel told the jury,

> "One of the questions that came up relative to those sneakers and the chemist said, 'I performed certain tests on the sneakers.' What did he say? 'I could find no blood on the sneaker.' I want you to look at these sneakers as to whether or not those sneakers have been washed, recently cleaned. I will defy you to look at those sneakers and say that anybody has altered or changed those sneakers in the last six or seven weeks, whatever it was prior to when they were taken."

(R.A. 1613).

The prosecutor made the following statements to the jury in his closing argument.

> "Talk about the chemist Grant. . . . What did he say he did, talking about occult blood . . .? Grant said that he came to Springfield on May 17th for the first time and what did he do? He examined the automobile. He also went to the apartment, examined the apartment and saw all the materials. . . . (R.A. 1617-1618). Now the chemist testified, of course, they want you to avoid it, I'm going to talk about the sneakers, they were his sneakers, they were brought back here. He made an examination of the tile. He made an examination of the bottom of the sneakers and what did he say about the marking on the sneakers and the marking on the tile and the blood on the tile, that the dimensions of the markings on the sneaker were six millimeters by six millimeters, the markings on the tile were exactly the same dimension, indicating that someone who had blood either on their shoe or where there was blood on that tile made that marking."

The trial transcripts, particularly the testimony of Ingham and Grant, and the closing arguments, show that the shoe print evidence was significant. It was the only forensic evidence upon which the Commonwealth could ask the jury to infer that the defendant's shoes left the bloody footprints and, therefore, that the defendant was the murderer.

C. Post-Conviction Evidence Concerning the Break-In at the Murder Scene

1. Evidence that Smalls Broke into Murder Scene

The shoe print evidence was considered in the SJC's decision in 1992 rejecting the defendant's direct appeal and affirming the denials of his first two new trial motions. The SJC reasoned, "Evidence of blood in the victim's apartment . . . tended to prove the defendant's guilt. A bloody imprint made by a shoe on the tiled kitchen floor of the victim's apartment could have been made by a sneaker that the defendant was wearing when he was interviewed" after his arrest on May 16 in Delaware; that evidence was properly admitted and "relevant to the defendant's guilt." See *Wright*, 411 Mass. at 680, 683.

In the defendant's subsequent motions for new trial, he presented evidence that the victim's former boyfriend, Allen Smalls, had broken into the victim's apartment a few days after the murder, and that Smalls was likely the murderer. In support of that argument, the defendant submitted an affidavit dated January 13, 1986, from Smalls' mother, Lee Britt. See *Wright*, 469 Mass. at 452. Britt attested, *inter alia*, that a few days after the murder, Smalls told Britt that he had broken a window to enter the victim's apartment and that Britt had seen Smalls come home with items which Smalls said belonged to the victim. See *id.* The SJC accorded no probative weight to that testimony and reasoned, "There was no evidence of any forced entry into the apartment when the victim's body was discovered, and no corroborating evidence of any subsequent break-in. Even assuming its truth, it does not suggest that Smalls killed the victim." *Id.* at 464. The SJC was not asked to, and did not, consider whether evidence of the break-in several days after the body was discovered compromised the reliability or admissibility of the shoe print evidence. The SJC downplayed its significance, stating that "the footprint evidence from the defendant's sneaker was of marginal probative relevance . . . ." *Id.* at 468.

2. Disclosure in 2021 of Ingham's Break-In Report

On April 28, 2021, the Commonwealth disclosed to the defense an undated report by Ingham that an unidentified person had broken into the victim's apartment through the bathroom window sometime between 3 p.m. on May 16 and 12:30 p.m. on May 17. The break-in report states, "Losses unk[nown] at this time." It was only on May 18, the day after the break-in was discovered, that Ingham seized the two linoleum tiles, one with a bloody shoe print. The break-in report squarely contradicts Ingham's trial testimony that, to the best of his knowledge, only police had accessed the crime scene when the evidence was collected.

3. Ingham's Testimony in December 2024 Regarding Break-In

On December 18, 2024, Ingham, who no longer works for the SPD, testified at the evidentiary hearing on the defendant's sixth motion for new trial. The court makes the following findings based on Ingham's testimony.

On May 14, 1984, Ingham was assigned as the investigating case officer for the victim's murder at 306 Dwight Street Extension, Apartment 4, Springfield. At the time, Ingham had thirteen years of experience as a police officer investigating a number of offenses, and two years of focused experience investigating break-ins in particular.

Ingham collected some of the evidence, including a throw pillow and washcloths from the bathtub in the victim's apartment and other items from the autopsy. The murder scene was processed beween May 14 and approximately 3:00 p.m. on May 16. When Ingham left the apartment at that time, he locked the doors and did not notice any broken windows.

On May 17, 1984, at approximately 12:30 p.m., Ingham responded to a 911 call reporting a break-in at the apartment. When Ingham arrived, he saw that the bathroom window was broken. There was no follow-up investigation to identify who was responsible for the break-in. At the evidentiary hearing in December 2024, Ingham recalled the call for the break-in and was able to

identify his own writing on a police report he contemporaneously filled out. On that report, he identified the victim as the "Penny Anderson Estate" because the break-in occurred after her death (and not because the report had anything to do with a known insurance claim). Although the report is undated, the court finds that, consistent with Ingham's testimony, it was written by Ingham contemporaneously with his response to the report of a break-in on May 17.

Ingham forwarded the report to his captain to be placed in the case file. The case file would have been in the custody of the prosecution team during pretrial discovery. Following the break-in, Ingham returned to the apartment to collect more evidence, including the two linoleum floor tiles. Shortly after the May 18 collection of evidence from the apartment, Ingham was injured in an unrelated event and did not return to work as a police officer. Ingham testified at the evidentiary hearing that when he returned for his trial testimony in this case, he did not recall meeting with the prosecutor prior to his testimony.

As noted above, at trial Ingham testified that, to the best of his knowledge, only police had accessed the crime scene when the evidence was collected. That testimony was blatantly false. Ingham had responded to the break-in call, had seen the broken window, had written the contemporaneous break-in report, and knew that the break-in occurred sometime after May 16 at 3 p.m. and before 12:30 p.m. on May 17.

III. Legal Standard for Motion for New Trial

There is a presumption of regularity in convictions. See *Commonwealth v. Lopez*, 426 Mass. 657, 662 (1998). The disposition of a new trial motion is addressed to the sound discretion of the judge. *Commonwealth v. Schand*, 420 Mass. 783, 787 (1995). The judge may grant a new trial "at any time if it appears that justice may not have been done." Mass. R. Crim. P. 30(b). In ruling on a motion for new trial, the judge must determine whether there has been a significant

error of law or other abuse of discretion. *Commonwealth v. Milley*, 67 Mass. App. Ct. 685, 687 (2006). An error creates a substantial risk of a miscarriage of justice unless it did not materially influence the verdict. See *Commonwealth v. Alphas*, 430 Mass. 8, 13 (1999).

IV. Claims Relating to the Break-In

The record supports findings that (1) the prosecution, which includes its agents, knew of the break-in long before the April 1985 trial, because the case file presumably contained the break-in report shortly after May 17, 1984, yet withheld it from defense for decades until 2021; and (2) Ingham's trial testimony was false regarding whether anyone other than police had accessed the apartment before the linoleum floor tiles were collected.[7] The court evaluates the defendant's claims for post-conviction relief due to (1) the Commonwealth's failure to turn over to the defense exculpatory evidence, the break-in report; and (2) the Commonwealth's presentation of false trial testimony, left uncorrected by the prosecutor, in order to invite the very same inference which was not insignificant, but endorsed by the SJC in 1992. See *Wright*, 411 Mass. at 680, 683 ("Evidence of blood in the victim's apartment . . . tended to prove the defendant's guilt. A bloody imprint made by a shoe on the tiled kitchen floor of the victim's apartment could have been made by a sneaker that the defendant was wearing when he was interviewed" after his arrest on May 16 in Delaware; that evidence was properly admitted and "relevant to the defendant's guilt").

A. Commonwealth's Failure to Turn Over Exculpatory Evidence

To obtain a new trial based on the nondisclosure of exculpatory evidence, a defendant must establish that: (1) the evidence was in the possession, custody, or control of the prosecutor or a person subject to the prosecutor's control; (2) the evidence is exculpatory; and (3) the defendant

[7] When confronted with his prior trial testimony regarding whether other people had accessed the crime scene before police collected all of the evidence, Ingham could not explain why he had testified the way he had at trial.

suffered prejudice from the nondisclosure. *Commonwealth v. Caldwell*, 487 Mass. 370, 375 (2021); *Commonwealth v. Sullivan*, 478, Mass. 369, 380 (2017).

The defendant easily meets the first two requirements. The break-in report was unquestionably in the possession, custody, or control of the police who were subject to the prosecutor's control, and it was authored by Ingham, who had collected evidence and testified at trial for the prosecution. Moreover, it is reasonable to infer, and the court so infers, that the break-in report was placed in the case file and therefore was in the custody and control of the prosecution team. It was relevant and exculpatory because it cast serious doubt on the inference that the defendant made the shoe prints on the tiles, which evidence was heavily relied upon by the prosecutor because there was no other forensic evidence tying the defendant to the murder. The break-in report establishes that the crime scene was not preserved and that someone other than police contaminated the integrity of the crime scene before police collected the linoleum floor tiles. This fact substantially erodes the Commonwealth's heavy reliance on the shoe print as the only forensic link to the defendant at trial.[8]

The prosecution team knew of the break-in and was required to produce the break-in report to the defense in pretrial discovery under Mass. R. Crim. P. 14(a)(1)(A) (iii) (mandating discovery of "Any facts of an exculpatory nature"). The break-in report was also within the types of mandatory, automatic discovery the Commonwealth had to give the defendant before trial under

[8] Other police reports which were produced in pretrial discovery but not admitted into evidence at trial make the exculpatory nature of the break-in report even more obvious. The police reports describing the investigative work conducted on May 14, 15, and 16, list numerous items examined in the apartment, some repeated dustings for fingerprints, and many items, small and large, seized in the belief that they had potential evidentiary value. There is no mention of the shoe prints on the linoleum floor tiles before May 18. Absent any evidence to the contrary, it is reasonable to infer from that record that investigators did not note the shoe prints before May 18, despite days of numerous officers investigating and processing the murder scene, because the shoe prints were not there before the break-in.

Mass. R. Crim. P. 14(a)(1)(A)(vii) ("The prosecution shall disclose to the defense . . . [m]aterial and relevant police reports. . .").

At issue is whether the defendant suffered prejudice from the nondisclosure of the break-in report. "[W]hen the omission of the prosecution is knowing and intentional or follows a specific request, a standard of prejudice more favorable to the defendant is justified in order to motivate prosecutors to be alert to a defendant's rights to disclosure" (quotations omitted). *Commonwealth v. Pope*, 489 Mass. 790, 801 (2022), quoting *Commonwealth v. Tucceri*, 412 Mass. 401, 407 (1992). When items of mandatory disclosure under Rule 14(a)(1)(A) have been withheld from the defense, the prosecution is deemed to have been on notice of the defendant's specific interest in those items without the need for a specific request. See *Commonwealth v. Nieves-Rodriguez*, 487 Mass. 171, 179 n.12 (2021). Mandatory discovery is treated as a specific request by the defense, such that a new trial is required for nondisclosure of exculpatory evidence if the undisclosed evidence might have affected the outcome of the trial. *Commonwealth v. [William] Wright*, 101 Mass. App. Ct. 1116, 2022 Mass. App. Unpub. LEXIS 570, *4 (2022), citing *Matter of Grand Jury Investigation*, 485 Mass. 641, 648-649 (2020), and *Commonwealth v. Laguer*, 448 Mass. 585, 594 (2007).

Because the break-in and report were known to the prosecution team and its agents, including Ingham, the court finds that the failure to disclose it to defense counsel in pretrial discovery was knowing and intentional. Even if the failure to disclose it were not knowing and intentional, the exculpatory nature of the break-in report requires this court to apply a standard of prejudice more favorable to the defendant. See *Pope*, 489 Mass. at 801. Therefore, the defendant is entitled to post-conviction relief if the court determines that the break-in report might have affected the outcome of the trial, see *[William] Wright*, 101 Mass. App. Ct. 1116, 2022 Mass. App.

Unpub. LEXIS 570, *4, but not if the court concludes that the error did not influence the jury or that the error had only a slight effect, see *Commonwealth v. Lykus*, 451 Mass. 310, 326 (2008).

As explained above, evidence of the break-in plainly constitutes significant exculpatory evidence. At trial, both the prosecution and the defense repeatedly focused on the shoe print evidence. After the prosecutor elicited Grant's opinion that the dimensions of those prints matched the defendant's shoes, the prosecutor repeatedly returned to this issue and had Grant show the floor tiles to the jury, and then had them admitted as evidence. The prosecutor reiterated in his closing argument that the shoe prints matched the defendant's shoes, and that "someone who had blood either on their shoe or where there was blood on that tile made that marking." The subjects of the linoleum floor tiles and shoe prints dominated the testimony given by Ingham and Grant. Because there was no other forensic evidence linking the defendant to the murder, neither party treated the shoe print evidence as being only marginally relevant.

Had the defendant known at trial that the prosecution team possessed evidence that someone had compromised the crime scene before Ingham obtained those tiles, the defendant would have been able to mount a credible challenge to the evidentiary relevance of the shoe print, and the import of Grant's subsequent comparison. The defense also would have been able to impeach Ingham, raise serious questions about his credibility, and point out that the investigation was flawed due to the compromised integrity of the crime scene evidence.

As set forth above and in the two SJC decisions, the incriminating evidence against the defendant was quite strong. Nonetheless, it was circumstantial and not overwhelming. There was no credible evidence of the defendant having a motive to kill the victim.[9] Nor was there any

[9] According to Turner's statement to police and read to the jury, the defendant stabbed the victim after she fired a gun at him, yet there is no evidence of a gunshot being heard by neighbors nor is there forensic evidence of a gun being fired in the apartment. The defendant has submitted with his latest motion a plethora of police reports, including another report which was only turned over to the defense in 2021. The information in these reports, if presented to a

forensic evidence that the defendant was at the victim's apartment during or after the murder, except for the significant, and now believed to be highly unreliable, shoe print evidence repeatedly highlighted by the prosecutor at trial. Therefore, despite the considerable incriminating evidence against the defendant, the court finds and rules that the defendant has met his relatively low burden of showing that the break-in report was exculpatory evidence which *might* have affected the outcome of the trial. See *[William] Wright*, 101 Mass. App. Ct. 1116, 2022 Mass. App. Unpub. LEXIS 570, *4. The record does not support a conclusion that the nondisclosure of the break-in report would have had only a slight effect at the trial. See *Lykus*, 451 Mass. at 326. Accordingly, the defendant's motion for new trial must be allowed due to the Commonwealth's nondisclosure of the break-in report.

B. The Commonwealth's Presentation of False Testimony

The defendant also contends that he is entitled to a new trial because the Commonwealth presented false trial testimony, through Ingham, that to the best of his knowledge, only police had been at the victim's apartment between the time the body was discovered on May 14 and when evidence was collected. Post-conviction relief is appropriate when there is any reasonable likelihood that the intentional introduction of blatantly false testimony has affected the jury's judgment in any way. See *Commonwealth v. Ware*, 482 Mass. 717, 725-726 (2019) (officer's testimony that defendant stated he was extremely close to crime scene was blatantly false and central to prosecutions' case). This rule applies when the false testimony is central to the prosecution's case. *Id.* at 726. False testimony which is likely to have influenced the jury's

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jury in an admissible form, could support inferences that the victim had not only argued, hours before her death, with her ex-boyfriend, Allen Smalls, but that in the weeks and days before her murder, the victim fought with Andrew Jefferson, who is the father of the victim's eight-month-old son and who lived with the victim in the apartment. According to one of the police reports disclosed to the defense in 2021, Lee Grassel, another dancer at the nightclub where the victim worked, became sexually involved with the victim two weeks before the murder. According to another police report, one of the victim's neighbors heard and saw a loud fight between the victim and Jefferson a few days before the murder.

conclusion creates a substantial likelihood of miscarriage of justice. *Id.* Even if a prosecutor has not solicited false evidence, the prosecutor may not allow the falsity to go uncorrected when it appears. *Commonwealth v. O'Brien*, 494 Mass. 288, 302 (2024).

The fact that Ingham wrote the break-in report compels the conclusion that he knew, when he testified at trial, about the break-in and that the shoe print evidence was collected after the break-in. Ingham knowingly misled the jury by testifying falsely that, to his knowledge, only police officers had been at the crime scene during the period in which the evidence, including the linoleum floor tiles, were collected.

Ingham's false testimony concerned at least the weight (and possibly the admissibility) of evidence central to the prosecution's case, as it was the only forensic evidence tying the defendant to the blood in the apartment. Grant's testimony and opinion linking the defendant to that bloody shoe print evidence were premised upon the assumption (consistent with Ingham's false testimony) that the crime scene evidence had not been contaminated. The court finds that Ingham's blatantly false testimony on this key aspect of the prosecution's case was intentional and was reasonably likely to have affected the jury's judgment. See *Ware*, 482 Mass. at 725-726. Such false testimony supplies the defendant with a second reason for which he is entitled to a new trial. See *id.*

V. Newly Discovered Evidence Which Wright Claims Excludes Him as a Source of DNA on Several Items Connected to the Murder

The defendant argues that newly discovered evidence of DNA testing and analysis, along with conclusions from his expert witness, Steven Laken, support his claim of innocence because this evidence shows that he is excluded as a contributor to the DNA on four items seized during the investigation of the murder: (1) a hair found on the victim's tee shirt, (2) blood on a throw pillow which investigators believed was used to cover the victim's face during the murder, (3) blood detected on a washcloth found in the victim's bathtub, and (4) the pants the victim was

wearing when her body was discovered. The defendant further contends that the DNA test results increase the likelihood that the perpetrator is another male.

In pertinent part, the Commonwealth argues in its opposition that: (1) some of the DNA evidence at issue could have been presented with the defendant's fifth motion for new trial in 2012, and therefore that the evidence is not newly discovered and that the defendant's arguments as to that evidence are waived; and (2) any exculpatory value in the new evidence is so minimal that it does not aid the defendant, in light of the incriminating evidence against him.

Before summarizing the facts relevant to the DNA-related arguments, the court begins with the legal standard applicable to post-conviction motions premised on newly discovered evidence. A defendant seeking a new trial on such grounds must demonstrate that the evidence is newly discovered, that it is credible and material, and that it casts real doubt on the justice of the conviction. *Commonwealth v. Pina*, 481 Mass. 413, 435 (2019). Evidence is newly discovered if it was unknown to the defendant or trial counsel and not reasonably discoverable at the time of trial or at the time the defendant filed an earlier new trial motion. See *Commonwealth v. Ellis*, 475 Mass. 459, 472 (2016); *Commonwealth v. Grace*, 397 Mass. 303, 306 (1986). Newly discovered evidence "must be weighty and of such nature as to its credibility, potency, and pertinency to fundamental issues in the case as to be worthy of careful consideration." *Commonwealth v. Flynn*, 100 Mass. App. Ct. 1111, 1113, 2021 Mass. App. Unpub. LEXIS 673, *7 (2021).

The defendant's burden has also been described as a two-part test in which the defendant must first establish that the evidence is newly discovered and then that it casts real doubt on the justice of the conviction. See *Commonwealth v. Cowels*, 470 Mass. 607, 616 (2015). With respect to the second part of the test, "the judge must find there is a substantial risk that the jury would have reached a different conclusion had the evidence been admitted at trial." *Grace*, 397 Mass. at

306. In making this assessment, the motion judge does not decide whether the verdict would have been different, but whether the new evidence "would probably have been a real factor in the jury's deliberations." *Id.*

A. DNA Testing of Hair Found on Victim's Shirt

In May of 2018, Bode Cellmark Forensics ("Bode Cellmark") conducted mitochondrial DNA (mtDNA) testing on a human hair found on the victim's shirt, and concluded that the hair did not belong to the victim or the defendant. This DNA test result does not qualify as newly discovered evidence for two reasons. First, the defendant has not established that mtDNA testing is new, and that it could not have been conducted before the defendant's fifth new trial motion in 2012. See, e.g., *Commonwealth v. Carnes*, 457 Mass. 812, 841-842 (2010) (mtDNA used to compare saliva and hair samples); *Commonwealth v. Linton*, 483 Mass. 227, 236 (2019) (stating that mtDNA testing was available at time of defendant's 2006 trial). Nothing in the record suggests that the defendant's attorneys in his earlier new trial motions were unable to submit the hair to mtDNA testing. Therefore, the mtDNA testing was reasonably discoverable well before the defendant's fifth new trial motion, and the test result from the hair found on the victim's shirt does not constitute newly discovered evidence. See *Ellis*, 475 Mass. at 472.

Even if it were newly discovered evidence, it would have little to no exculpatory value and casts no real doubt on the justice of the conviction. There was no evidence at trial that any hair was tested and found to be consistent with the defendant. (The only evidence at trial about hair was that a pubic hair was found on the victim's body, was tested and, like the hair tested post-conviction, has no DNA matching the defendant or the victim). The conclusion from post-conviction DNA testing that the hair found on the victim's tee shirt did not belong to either the victim or to the defendant does not show that the evidence at trial was inaccurate, nor would it

impact any evidence that the jury did consider at trial. See *Commonwealth v. Lessieur*, 488 Mass. 620, 628 (2021) (no error to conclude that new test results did not cast real doubt on justice of conviction, where discovery of single nonmatching allele did not show that trial evidence was inaccurate nor that it would have removed from jury's consideration any evidence that was before them at trial); *Cowels*, 470 Mass. at 616.

Test results on the hair found on the victim's shirt, whether or not it matched the defendant's DNA, would not lend any "measure of strength in support of the defendant's position" so as to create a substantial risk that the jury would have reached a different conclusion had the evidence been admitted at trial. It would not have been surprising, given the defendant's testimony that he was with the victim for hours on May 13-May 14, and that they had sexual relations. The conclusion the hair did not belong to the defendant or the victim is also unsurprising, where the evidence at trial supports a reasonable inference that the hair on the victim's shirt could have come from one of many people with whom the victim had contact in the hours before her death.[10] For these reasons, the mtDNA test result on the hair found on the victim's tee shirt is neither newly discovered evidence nor is it "weighty and of such nature as to its credibility, potency, and pertinency to fundamental issues in the case as to be worthy of careful consideration." *Flynn*, 100 Mass. App. Ct. at 1113. This new evidence would probably not have been a real factor in the jury's deliberations. See *Grace*, 397 Mass. at 306.

B. DNA Testing of the Pillow

In 1984, investigators determined that blood on a throw pillow which had been at the victim's apartment matched the victim's blood type, A. Investigators viewed that as providing some

[10] There was evidence that on May 13, the victim had been working as a dancer at the nightclub where patrons were present. While there, she was seen arguing with Smalls and speaking with Jefferson and another male. She then left with the defendant and made a series of stops, first at her mother's house to get her baby, then to a store to buy diapers, then to buy beer, before reaching her apartment with the defendant.

corroboration for their theory that the murderer used the pillow to cover the victim's face during the murder. It produced no clues about the identity of the murderer.

The only recent testing on the pillow was done in May of 2018, when Bode Cellmark developed a mixed Y-STR profile, meaning that male DNA was on the pillow. In its May 2018 report, Bode Cellmark stated that a partial mixture Y-STR profile was obtained from the pillow, but that "due to the limited data obtained," no conclusions could be made. In other words, Bode Cellmark did not conclude that the defendant could be excluded from the Y-STR profiles on the pillow. No probabilistic genotyping ("PG") testing has been conducted on that pillow.

The pillow sample was tested by analysis of short tandem repeat (STR) loci specific to the male Y chromosome (Y-STR) using the Promega PowerPlex Y23 kit. The defendant has not established that this type of analysis was not available in 2012. To the contrary, case law shows that Y-STR testing was admitted as evidence before 2012. See *Commonwealth v. Abbott*, 72 Mass. App. Ct. 1110, 2008 Mass. App. Unpub. LEXIS 293, *10-11 (2008), F.A.R. Denied 452 Mass. 1108 (Y-STR tests ordered by judge and results admitted as evidence). Accordingly, the defendant has not shown the results of that Y-STR testing qualify as newly discovered evidence. See *Ellis*, 475 Mass. at 472; *Grace*, 397 Mass. at 306 (new evidence must not have been reasonably discoverable by defendant or his counsel at time of presentation of prior motion for new trial). Contrast *Commonwealth v. Duguay*, 492 Mass. 520, 532 (2023) (defendant satisfied burden of showing that DNA test was newly available because although STR DNA testing existed at time of defendant's 1997 trial, the particular testing relied upon in new trial motion was PowerPlex Fusion 6C DNA test, which was not available in 1997).

Even assuming for the sake of argument only that the Y-STR testing on the pillow could be viewed as newly discovered, the result does not create a "substantial risk that the jury would

have reached a different conclusion had the evidence been admitted at trial." See *Grace*, 397 Mass. at 305-306. The pillow was collected as evidence because it was bloody and because investigators believed that it may have been used to cover the victim's face during the stabbing and that she fought back, such that the murderer's DNA might be detected on the pillow. But that did not happen and those inferences were not raised at trial. The pillow was briefly mentioned in the trial but was not crucial evidence; it was not linked to the defendant. Ingham testified only that he found the throw pillow on the sofa, and Grant testified only that the pillow had Group A blood, which was the victim's type. The pillow was not mentioned in the closing arguments.

The defendant asserts that the lack of evidence of his DNA on the pillow significantly aids him. It does not. The defendant cannot show how detection of male DNA on the pillow, without any further test conclusion, does anything to aid his defense. This evidence does not exclude the defendant. It lacks the requisite measure of strength in support of the defense and therefore does not create a substantial risk that the jury would have reached a different conclusion had this evidence been admitted. See *Lessieur*, 488 Mass. at 628.

C. Probabilistic Genotyping DNA Testing on the Washcloth and Pants

In contrast to the DNA testing of the hair and the pillow, two remaining items of evidence, a washcloth taken from the bathtub in the victim's apartment and the victim's pants seized during the autopsy, underwent probabilistic genotyping (PG) testing. At issue is whether the PG evidence on the DNA samples from the washcloth and pants qualifies as newly discovered evidence and, if so, whether it is material and casts real doubt on the justice of the conviction. See *Pina*, 481 Mass. at 435.

PG is used to interpret DNA profile characteristics and analyze complex genetic mixtures. It can provide information about the statistical probability that an individual's DNA is included in

a mixture. In contrast to ordinary DNA testing, PG can yield results when complex DNA mixtures are present. See *Randolph v. Commonwealth*, 488 Mass. 1, 12 (2021). PG analysis has become recognized as reliable and admissible since the defendant filed his last new trial motion in 2012. See *United States v. Gissantaner*, 990 F.3d 457, 462-466 (6th Cir. 2021).[11]

The PG testing at issue here was done by two DNA testing companies, Bode Technology,[12] using its own PG software tool, STRMix, and Cybergenetics, based on its PG software, TrueAllele. The Commonwealth does not dispute that PG testing by Bode Technology and Cybergenetics is reliable and has been found to be admissible. This court finds that PG testing and analysis by Bode Technology and Cybergenetics is well-established as reliable and credible. See *id.*[13]

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[11] The Commonwealth asserts that PG testing was available in 2012. For that assertion, it cites a case which does not support that assertion nor even mention PG. See *Cowels*, 470 Mass. at 616.

[12] Bode Techology appears to have some affiliation with Bode Cellmark.

[13] At the February 27, 2025, evidentiary hearing on the admissibility and reliability of the PG and related testing conducted on the washcloth, the defendant called Amy Barber Annese from the Massachusetts State Police Crime Laboratory (MSPCL). Annese is the technical leader of the DNA Unit with twenty years of experience in the field of DNA analysis. It is undisputed that she was well qualified to offer testimony at the evidentiary hearing. Moreover, the court notes that Annese was the expert who offered an affidavit in support of the Commonwealth's opposition but was called by the defendant for the purposes of the evidentiary hearing. Annese testified that the PG analysis conducted by both Bode Technology and Cybergenetics were reliable, generally accepted in the scientific community, that the MSPCL recommends cases to both Bode Technology and Cybergenetics, and that PG analysis from both labs have been admitted in courts throughout Massachusetts.

Annese was more familiar with the software used by Bode Technology because the MSPCL used the same software, STRMix. The MSPCL, which is an accredited lab, has run independent validation studies on STRMix. Annese was aware, however, that Cybergenetics had run validation studies on the software that it uses, TrueAllele. Annese was also aware that Cybergenetics markets TrueAllele as a software that is capable of using/calculating DNA data below the testing threshold of other labs.

DNA data is generally reflected in computer generated graphs with peaks at the location of various alleles that are being analyzed. DNA analysts use those peaks to determine the genetic composition of the DNA in order to generate a profile(s) of the potential source(s) of the DNA. Generally speaking, the analyst uses the potential DNA profile(s) to calculate conclusions about whether to include or exclude a particular person as the source of the DNA profile.

Thresholds are data cutoffs on the peaks that are seen in the computer-generated graphs. Data above the threshold can be counted as DNA usable to calculate inclusions and exclusions. Data below the threshold cannot be counted as DNA usable to calculate inclusions and exclusions. Thresholds are developed during validation studies because there is a base level noise that all machinery used to process DNA produces. Noise levels vary from machine to machine. That noise can appear to look like DNA data and to avoid mistakenly calculating that noise as usable DNA data labs create thresholds to ensure that the calculations are reliable. The result of this normal validation process is that there are peaks below threshold that are DNA that cannot be used for analysis by labs.

TrueAllele is a software program that was developed in part to find a way to make use of the DNA that is below the validation threshold in a reliable manner. Cybergenetics markets TrueAllele as a software program that analyzes the raw computer-generated data and the software filters out the noise and generates profiles from all usable DNA data. TrueAllele's resulting analysis, therefore, uses more DNA data (because it is using data below the threshold

1. DNA Testing of the Washcloth

In 2018, Bode Cellmark tested the three washcloths seized from the victim's bathtub. With respect to all three washcloths, presumptive testing for the presence of blood was positive. (R.A. 174). Male DNA was found on only one of those washcloths (identified as E08, "Washcloth #2"). On the two other washcloths, the samples were inconclusive for the presence of male DNA due to the limited data contained, and they were not processed further. (R.A. 175). On the washcloth that was further processed, Bode Cellmark conducted STR testing using PowerPlex Fusion 6C kit,[14] and concluded that the DNA on it was consistent with a mixture of at least two individuals, including at least one male contributor," but that "[d]ue to the possibility of allelic drop out, no conclusions can be made on this mixture profile." (R.A. 175-176).

In January 2021, Cybergenetics, using its PG software, TrueAllele, analyzed the data extracted from the washcloth by Bode Cellmark in 2018 (using the PowerPlex Fusion 6C DNA test kit). Cybergenetics concluded that both the victim and the defendant were excluded as sources of DNA on the washcloth by significant statistical margins.[15]

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but above the ever-present noise), thereby creating outcomes with higher statistical significance than those constrained by higher thresholds, such as STRMix.

Jennifer Bracanontes is the casework manager and an employee of Cybergenetics. Bracanontes has worked as an analyst at Cybergenetics since 2012. It is uncontroverted that she was well qualified to offer testimony at the hearing that was focused on various aspects of Cybergenetics and the use of the TrueAllele software. Bracanontes noted that in one validation study, the use of the TrueAllele software produced approximately one million times more data than a manual analysis. Cybergenetics' use of DNA below the threshold used by Bode Technology appears to account for the significant variation in the statistical significance of their conclusions. In either case, the PG analysis of both Bode Technology and Cybergenetics likely represents admissible evidence from which a fact finder could conclude that the defendant's DNA was not on the bloody washcloth.

[14] In this processing, Bode Cellmark developed a major short tandem repeat (STR) profile using the PowerPlex Fusion 6C DNA test kit, a new generation of DNA technology that looked at twenty-three allele locations. Prior to the release of PowerPlex Fusion 6C DNA test kit, DNA kits looked at fifteen locations. Generally, the higher the number of allele locations tested, the higher the statistical significance of the conclusions reached will be.

[15] Cybergenetics' conclusion that there was strong statistical evidence to exclude both the victim and the defendant from the DNA profile taken from the washcloth was based upon its calculation that the defendant, who is an African American, is 475 million times less likely to be the source of the DNA profiles on the washcloth than a random African American in the United States. Cybergenetics concluded that only 1 in 1.88 trillion people would be excluded as strongly.

Although the PowerPlex Fusion 6C DNA test kit was released in 2015 or 2016, Cybergenetics did not complete a validation study – demonstrating that TrueAllele could reliably interpret data extracted using PowerPlex

Over two years later, in September 2023, Bode Technology conducted its own PG analysis using STRMix software. That analysis also resulted in the exclusion of both the victim and the defendant as sources of DNA on the washcloth, albeit by much less statistically significant margins.[16] The court finds that the PG analysis conducted by both Bode Technology and Cybergenetics is newly discovered and likely represents admissible evidence from which a fact finder could conclude that the defendant's DNA was not on the washcloth.

What remains to be resolved is whether the defendant has met his burden on the second part of the test. The defendant must show that the new evidence excluding the defendant from being a contributor to the DNA on the washcloth is material and credible, and that it carries a measure of strength in support of the defendant's position. See *Cowels*, 470 Mass. at 617. Moreover, to grant post-conviction relief, the motion judge must find that there is a substantial risk that the jury would have reached a different conclusion had the newly discovered evidence been admitted at trial. See *id.* In other words, the new evidence would probably have been a real factor in the jury's deliberations and that its absence casts real doubt on the justice of the conviction. See *Commonwealth v. Gaines*, 494 Mass. 525, 539 (2024).

The defendant fails at this step. The trial evidence concerning the washcloth was negligible at best. There was no direct testimony or evidence linking the washcloth to the murder or the defendant. The sole reference to washcloths at any point in the trial was when Ingham said that he

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Fusion 6C DNA test kits – until 2018. Thus, 2018 marked the earliest time that the PG analysis could have been accomplished using TrueAllele. This evidence defeats the Commonwealth's assertion, in its opposition to the motion for a new trial with respect to the DNA testing of the washcloth, that the DNA reports by Bode Cellmark, Bode Technology, and Cybergenetics were reasonably discoverable by 2012, when the defendant filed his fifth motion for new trial.

[16] Specifically, Bode Technology concluded, based on its PG testing: "Assuming a mixture of two individuals, this mixture DNA profile is at least 6.5 times more likely to be observed if it originated from two unknown, unrelated individuals than if from [the defendant] and one unknown, unrelated individual. This statistical result provides limited support for exclusion." (R.A. 183).

had collected washcloths from the bathtub, nowhere near where the victim's body was found. Ingham did not testify that there was blood on the washcloths and he did not refer to them as being connected to the murder in any way. Contrast *Cowels,* 470 Mass. at 620 (where prosecution argued in 1994 murder trial that blood on two towels were used by defendants to clean themselves after stabbing victim, but testing on blood was inconclusive at time of trial, and new DNA testing showed that blood belonged to neither victim nor defendants, but to unidentified male, defendants were entitled to new trial because new evidence would probably have been real factor in jury's deliberations).

The only possible connection between the defendant and any of the washcloths was the defendant's testimony that he used the bathroom "to take a leak" (R.A. 1477) while he was in the apartment, but even that speculative inference was not invited by the Commonwealth at trial.[17] The washcloth played no substantive role in the trial.

On this record, there is no substantial risk that the jury would have reached a different conclusion had it been presented with evidence that the defendant's DNA is excluded from one washcloth found in the bathtub. See *Duguay,* 492 Mass. at 535 (new evidence would not have been real factor in jury deliberations where Commonwealth's case was built on largely circumstantial evidence of defendant's guilt, including his hostility to victim, proximity to victim's house, and evidence of consciousness of guilt, and new largely inconclusive DNA evidence would only impeach credibility of already impeached witness). It lacks the "materiality, weight, and significance" to warrant a new trial. See *Lessieur*, 488 Mass. at 629. The defendant has not shown

[17] The defendant has submitted police reports containing information that, according to witnesses, the victim lived at the apartment not only with her eight-month-old son, but with the baby's father, Andrew Jefferson, who the victim stabbed two months before the murder. The defendant's own submissions would, if credible and admissible, diminish further the significance of DNA tests from which a factfinder could conclude that the defendant's DNA was not on the washcloth.

that, had it been admitted at this trial, the newly discovered evidence excluding his DNA from one washcloth would probably have been a real factor in the jury's deliberations. Contrast *Commonwealth v. Marrero*, 493 Mass. 338, 339 (2024) (new trial ordered where blood on defendant's jacket was strongest physical evidence tying defendant to murder, and Commonwealth used it at trial to corroborate testimony of vital witness with credibility issues, such that new DNA testing of blood on jacket excluding victim's DNA would be a real factor in jury's deliberation); *Cowels*, 470 Mass. at 620.

2. DNA Testing of the Victim's Pants

Ingham seized the victim's blue corduroy pants at the autopsy on May 15. In 2018, Bode Cellmark performed STR DNA and Y-STR testing on the pants. Using the PowerPlex Fusion 6C kit for STR processing, Bode Cellmark determined that the pants had a DNA mixture from three or more individuals, with a female contributor - determined to be the victim - and at least one male contributor. (R.A. 175-176). Bode Cellmark was unable to draw conclusions about the other DNA profiles in the mixture on the pants (R.A. 176), and did not then conclude that the defendant could be excluded from the Y-STR profiles on the pants.

In 2021, Cybergenetics conducted PG analysis using its TrueAllele system and concluded that a match between the defendant and the STR profile on the pants was 50.1 times less probable than a coincidental match to an unrelated person in the African American population and that only one in 9.32 thousand people would be as strongly excluded.

In its DNA report dated September 20, 2023, Bode Technology conducted further testing and analysis using its STRMix PG software and concluded that the major STR profile matched the victim's DNA profile and that the mixture DNA profile - assuming that it is a mixture of four individuals - "is at least 780 times more likely to be observed if it originated from [the victim] and

three unknown, unrelated individuals than if from [the defendant, the victim], and two unknown, unrelated individuals.This statistical result provides moderate support for exclusion [of the defendant]." (R.A. 182).

As explained above, the recent testing performed by Bode Technology and Cybergenetics (using TrueAllele) qualifies as newly discovered evidence. At issue is whether the new evidence excluding the defendant from being a contributor to the DNA on the pants is material and credible, that it carries a measure of strength in support of the defendant's position, and that there is a substantial risk that the jury would have reached a different conclusion had the newly discovered evidence been admitted at trial. See *Cowels*, 470 Mass. at 617; *Gaines*, 494 Mass. at 539.

The newly discovered evidence supports the defendant's argument that he was not a contributor to the DNA on the pants. Nonetheless, this new evidence probably would not have been a real factor in the jury's deliberations. The victim was seen wearing the same blue pants when she arrived at her apartment with the defendant at about 1 a.m. It is reasonable to infer that she was wearing those pants when she had been at the club where she worked and, and therefore when she interacted there with Smalls and others. She was also likely wearing them during stops she and the defendant made on their way between the club and her apartment. In these circumstances, it would hardly be surprising for another person's DNA to be on the victim's pants.[18]

It would be equally unsurprising (and not necessarily incriminating) had the new test results shown that the defendant's DNA was on the pants, as the defendant testified that he was with the

[18] The voluminous record submitted by the defendant further diminishes the significance of the test results on the pants because the DNA from the pants could have come from many sources. The record submitted by the defendant contains information that, if credible, would show that around the time of the murder: (1) the victim was sexually involved with the defendant and with fellow club dancer Lee Grassel; (2) the victim was living with Jefferson and their eight-month-old son; (3) the victim had interactions with Jefferson in the club where she worked and she argued there with Smalls; (4) earlier on the evening before the murder, the victim had been socializing at another bar with her mother; (5) after she left the club with the defendant, the victim went to her mother's home to pick up her son; and (6) the victim had been working just a few hours before the murder as a dancer in a club where there were about sixteen patrons present at the time she left.

victim from late on May 13 and into the early morning hours of May 14, and that they had sexual relations during that time. Their close, physical contact made it likely that the defendant's DNA would have been transferred to the victim's clothing, irrespective of who murdered her. Therefore, on this record, the newly discovered DNA evidence excluding the defendant as a contributor to the DNA on the victim's pants does not present a substantial risk that the jury would have reached a different conclusion had the newly discovered DNA evidence been admitted at trial. See *Grace*, 397 Mass. at 306.[19]

ORDER

For the reasons explained above, the Defendant's Sixth Motion for New Trial is **ALLOWED**.

Jeremy C. Bucci
Associate Justice, Superior Court

DATED: April 11, 2025

[19] The court's assessment of the DNA test results obviates the need to address the opinions of Steven Laken.