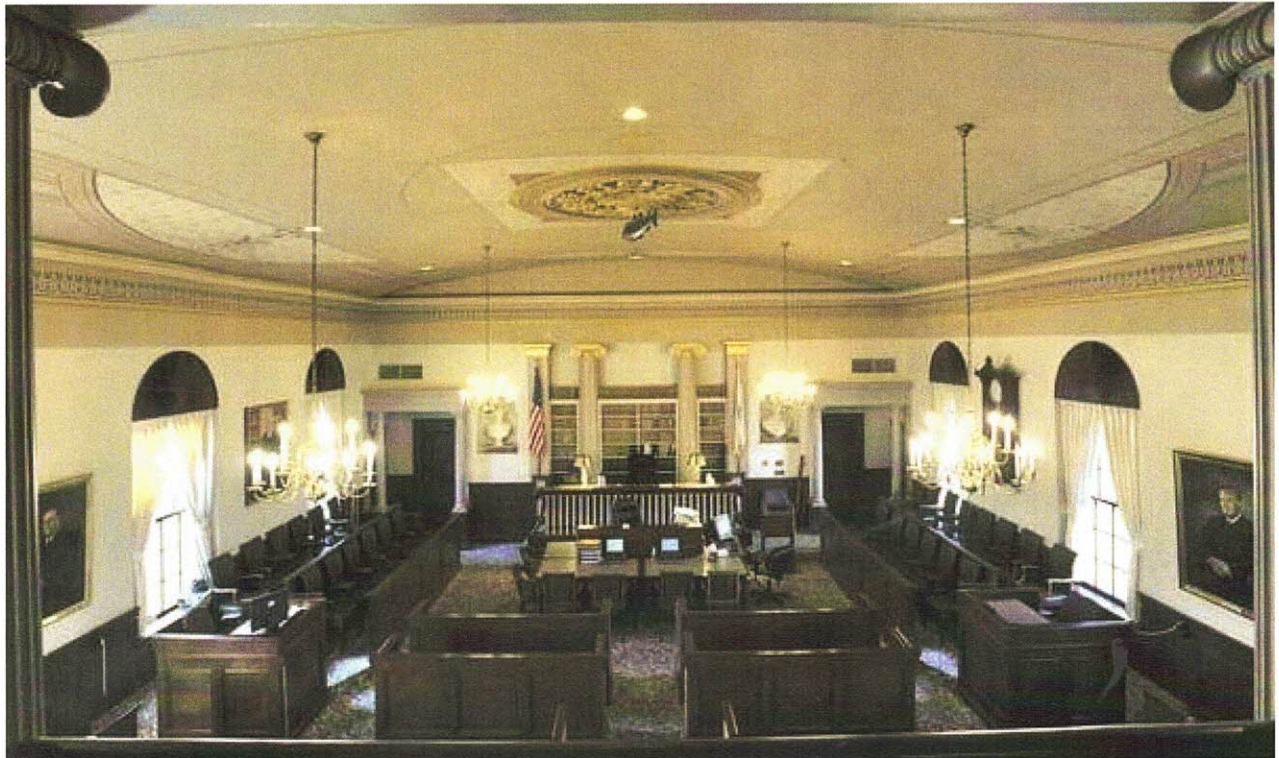


**MASSACHUSETTS
SUPREME JUDICIAL COURT
BARNSTABLE COUNTY SITTING**



**Barnstable County Superior Court
Barnstable, Massachusetts
October 2, 2019**

MASSACHUSETTS SUPREME JUDICIAL COURT



Seated, left to right: Hon. Barbara A. Lenk; Hon. Ralph D. Gants, Chief Justice; and Hon. Frank M. Gaziano

Standing, left to right: Hon. David A. Lowy; Hon. Kimberly S. Budd; Hon. Elspeth B. Cypher; and Hon. Scott L. Kafker

COMMONWEALTH OF MASSACHUSETTS

Supreme Judicial Court Order Re: Sitting of Court

Pursuant to Supreme Judicial Court Rule 1:02, the sitting of the Supreme Judicial Court scheduled for Wednesday, October 2, 2019, shall be held at 9:30 in the forenoon in the Barnstable County Superior Court, Barnstable, Massachusetts.

Ralph D. Gants, Chief Justice

Barbara A. Lenk, Associate Justice

Frank M. Gaziano, Associate Justice

David A. Lowy, Associate Justice

Kimberly S. Budd, Associate Justice

Elsbeth B. Cypher, Associate Justice

Scott L. Kafker, Associate Justice

AGENDA

The Justices of the Supreme Judicial Court

As seated on the bench, left to right: Hon. Scott L. Kafker; Hon. Kimberly S. Budd; Hon. Frank M. Gaziano; Hon. Ralph D. Gants, Chief Justice; Hon. David A. Lowy; and Hon. Elspeth B. Cypher

Order of the Court

Robert Vitale

Chief Court Officer, Supreme Judicial Court

Francis V. Kenneally

Clerk for the Commonwealth, Supreme Judicial Court

Scott W. Nickerson

Clerk of Courts, Barnstable County Superior Court

Remarks

Hon. Ralph D. Gants

Chief Justice, Supreme Judicial Court

The Supreme Judicial Court is conducting this special sitting in Barnstable County as part of a continuing effort to broaden public awareness, understanding, and accessibility of the Massachusetts court system. The Justices will hear oral arguments in cases on appeal during the remainder of the week in the John Adams Courthouse.

Acknowledgments

The Supreme Judicial Court would like to thank the judges and staff of the Barnstable County Superior Court and Barnstable County officials and personnel who have made this special sitting possible. In particular, we extend our thanks to the Honorable Robert C. Rufo for his assistance in planning and arranging today's event.

DOCKET OF CASES FOR ARGUMENT

The following summaries of the cases being argued today are drawn from the papers filed with the Supreme Judicial Court by the parties to the cases. They are intended to serve as background information for those who are attending the arguments, and not as comprehensive summaries of the cases. They do not necessarily describe all of the facts and issues raised by the parties. They do not necessarily reflect any thoughts or judgments of the Justices.

(* denotes the appellant in each case)

Commonwealth vs. Robert L. Upton* **SJC-11459**

For the Commonwealth: Elizabeth A. Sweeney

For the defendant: Theodore Riordan
Deborah Bates Riordan

The defendant was convicted of murder in the first degree based on theories of deliberate premeditation and felony-murder. He was also convicted of aggravated assault and battery with a dangerous weapon and armed assault in a dwelling. While his appeal has been pending in the Supreme Judicial Court, he twice filed motions for a new trial that were remanded to the Superior Court and were denied by the trial judge. This is his direct appeal from his convictions as well as his appeal from the rulings on the new trial motions.

The convictions stem from the shooting death of Aris Manoloules in 2009. In addition to the defendant, two other individuals were also indicted for murder: the victim's brother, Treefon Manoloules, and Treefon's son, Christopher Manoloules. The defendant is Treefon's brother-in-law.

Christopher Manoloules was the Commonwealth's main witness against both his father and the defendant at their respective trials. He testified, among other things, that his father sought revenge against the victim because he believed the victim had not taken good care of their mother, and because he believed the victim had unfairly inherited the mother's estate; that his father promised to pay the defendant \$165,000 to kill the victim; and that the defendant, who was in need of money, agreed. He further testified that he accompanied the defendant to the victim's house; that he was there to search for jewelry to steal; and that the defendant took the opportunity to shoot the victim four times, killing him.

Treefon Manoloules was tried first and acquitted. The defendant was tried next and convicted. The Commonwealth represented in both cases that Christopher Manoloules had not been given any promises, inducements, or rewards for his testimony, and the witness likewise

denied in his testimony that he had been promised anything. Then, approximately four months after the defendant's trial, Christopher Manoloules pleaded guilty to manslaughter and three lesser charges. On the Commonwealth's recommendation, he was sentenced to twelve to fifteen years for the manslaughter and concurrent mandatory minimum terms for the other charges.

The defendant claims on appeal that he is entitled to a new trial in light of various post-trial developments that suggest that Christopher Manoloules, his codefendant who became the Commonwealth's star witness, did in fact have an undisclosed agreement with the Commonwealth for favorable treatment when he testified against the defendant. To support his claims, the defendant relies in part on the following:

a. three-plus years after the trial in this case, in a wrongful death action brought by the victim's estate against Treefon Manoloules and Christopher Manoloules, Christopher testified that – although he had received “nothing in writing” and “nothing formal” from the prosecutor – he had been told that if he cooperated with the Commonwealth he would not receive a life sentence;

b. Christopher testified in the wrongful death case that he had no memory of his father and the defendant conspiring to kill the victim, and that his testimony to the contrary at their criminal trials was what the prosecution wanted to hear;

c. the jury in the wrongful death case found that Treefon Manoloules was not responsible for the victim's death, contrary to Christopher's testimony at the criminal trials, but that Christopher was liable;

d. the Commonwealth made significant concessions – both in terms of reduction of the murder charge and in its sentencing recommendations – when Christopher pleaded guilty; and

e. according to the defendant, various comments made by the prosecutor and by Christopher's attorney at his plea hearing support his contention that Christopher had an undisclosed agreement for favorable treatment at the time he testified.

The defendant also relies on an affidavit from an attorney who avers that, during Treefon Manoloules's trial, she overheard the prosecutor telling another attorney, during a break, that the case was a murder trial, and that it involved a son who was testifying against his father, for which the son would be “getting a ‘second.’”

The question for the court on appeal is whether the defendant should be entitled to a new trial because of an undisclosed cooperation agreement between the Commonwealth and Christopher Manoloules – or, at least, whether the defendant should be entitled to an evidentiary hearing on his new trial motion.