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9-10-26

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, SS

PLYMOUTH SUPERIOR COURT

NO. 2383CR00198

COMMONWEALTH

VS.

LINDSAY CLANCY

RENEWED MOTION FOR REQUIRED FINDING OF NOT GUILTY

Now comes the defendant, Lindsay Clancy, in the above captioned matter, and moves this Court pursuant to Mass. R. Crim. P. 25(b)(2) for entry of a required finding of not guilty on each indictment.

BACKGROUND

Following the events of January 24, 2023, Ms. Clancy was charged by complaint and arraigned in Plymouth District Court on February 7, 2023, from Brigham and Women's Hospital, where she was being treated for life threatening injuries sustained in a suicide attempt. On September 15, 2023, a Plymouth County grand jury returned indictments charging three counts of murder and three counts of strangulation.

The jury deliberated over seven days. On September 4, 2026, after *Tuey-Rodriguez* instructions and repeated reports of deadlock, the jury reported it could not reach a unanimous verdict; eleven jurors were prepared to find Ms. Clancy not guilty by reason of lack of criminal responsibility and one was not. The foreperson's note to the Court stated that the one juror had acknowledged doubt but was refusing to apply it to the case as the law states. Ms. Clancy petitioned the Supreme Judicial Court under G. L. c. 211, § 3, for an order requiring inquiry of that juror; a

single justice denied the petition the same day. *Commonwealth v. Clancy*, No. SJ-2026-0402 (Sept. 4, 2026). This Court then declared a mistrial.

Ms. Clancy moved for a required finding of not guilty at the close of the Commonwealth's evidence and again at the close of all the evidence. To the extent the motion was denied, it is renewed under Rule 25(b)(2). To the extent decision was reserved under Rule 25(b)(1), Ms. Clancy requests that the Court now decide it. This motion is timely: Rule 25(b)(2) permits renewal within five days after the jury is discharged; under Mass. R. Crim. P. 46(a), intermediate Saturdays, Sundays, and legal holidays are excluded from a period shorter than seven days; and under Rule 46(b) the Court may not enlarge the period.

LEGAL STANDARD

On a motion under Rule 25, the question is “whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *Commonwealth v. Latimore*, 378 Mass. 671, 677 (1979). No element may rest on “conjecture.” *Commonwealth v. Combs*, 480 Mass. 55, 61-62 (2018).

The government has the burden of proving that the defendant is guilty of the offense charged. In the event there is a finding of guilt then the government must prove the defendant was not lacking the substantial capacity to appreciate the wrongfulness of her conduct or to conform her conduct to the requirements of the law, as a result of a mental disease or defect.” *Commonwealth v. Berry*, 457 Mass. 602, 612 (2010), quoting *Commonwealth v. McHoul*, 352 Mass. 544, 546-547 (1967). The Commonwealth may carry that burden in one of two ways: by proving that the accused had no mental disease or defect, or by proving that, despite one, she

retained the substantial capacity described. No presumption of sanity assists it. *Commonwealth v. Lawson*, 475 Mass. 806, 807, 814-815 & n.8 (2016).

Sufficiency review applies to criminal responsibility as to any other element: "[a] required finding of not guilty by reason of lack of criminal responsibility may rest on the failure of proof of criminal responsibility." *Lawson*, 475 Mass. at 812. The Appeals Court applied that rule this year, ordering entry of findings of not guilty by reason of lack of criminal responsibility where the conduct was undisputed but the Commonwealth's proof of criminal responsibility was legally insufficient. *Commonwealth v. Brunette-Silveira*, No. 24-P-1351, slip op. at 1 (Mass. App. Ct. May 12, 2026). *Lawson* cautions that this will be "the rare case." 475 Mass. at 817. It is this case.

ARGUMENT

The government did not present evidence that allows a juror earnestly seeking the truth to determine that the defendant's guilt on the crime was proved on each element of the offense

The first route to conviction was closed by the Commonwealth's own witnesses. All six forensic experts, three called by each side, agreed that Ms. Clancy suffered from a serious mental illness on January 24, 2023. The Commonwealth's rebuttal experts disputed the label, not the fact: a major depressive episode according to Dr. Mack; bipolar II disorder with dissociation according to Dr. Heilbrun. The treating clinicians who saw Ms. Clancy in the weeks before January 24 testified that she presented with postpartum depression and anxiety and that they did not observe psychosis; that testimony bears on which illness she had, not on whether she had one, and depression and anxiety of the severity that led to psychiatric admission are *themselves* a mental disease or defect. No rational jury could find beyond a reasonable doubt that she had no mental disease or defect when the Commonwealth's own proof established that she did.

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The Commonwealth's case therefore rested entirely on the second route: proof beyond a reasonable doubt that, despite that illness, Ms. Clancy retained the substantial capacity to appreciate the wrongfulness of her conduct or to conform it to the law. The Commonwealth had to prove that a woman all six experts agreed was mentally ill nonetheless kept the capacity the law demands. It did not.

The rebuttal experts' capacity opinions rested on four categories of evidence: that Ms. Clancy could drive, place a call to a pediatrician, and send her husband on errands that day; that the killings involved a sequence of choices over roughly eighteen to twenty minutes; that she had searched the internet about medications, psychosis, and related topics in the preceding weeks; and that her later accounts of the voice she heard were inconsistent. Taken at their strongest, these show that Ms. Clancy could perform familiar tasks and act in sequence. They do not show that she could appreciate wrongfulness or conform her conduct to the law. That is the element. Nothing else counts. Dr. Zeizel's unrebutted testimony was that a person in psychosis can carry out practiced activities such as driving or using a computer, and that hallucinations are intermittent rather than constant.

Dr. Heilbrun's own characterization, a suicide attempt in which the children were killed out of love, by a mentally ill mother who believed they would suffer without her — describes delusional reasoning, not a preserved capacity to appreciate that the conduct was wrong. Competence at routine tasks, during a crisis every witness agreed was acute, is not proof of criminal responsibility beyond a reasonable doubt. It is the conjecture *Combs* forbids.

The undisputed circumstances of the offense confirm the point. Immediately after the killings, Ms. Clancy cut her wrists and neck and threw herself from a second-story window, sustaining injuries that left her paralyzed from the waist down. In the preceding weeks she had

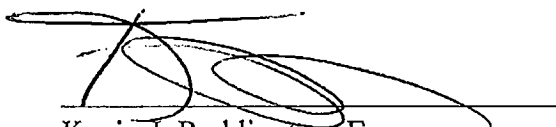
sought help from multiple providers, a suicide hotline, and an emergency department, and had been self-admitted to a psychiatric hospital. She has remained in institutional psychiatric care, under one-to-one suicide supervision, ever since.

This motion does not rest on the jury's division. Eleven of twelve jurors could not find criminal responsibility, and the twelfth, by the foreperson's account, acknowledged doubt and declined to apply it. That is not the test, and Ms. Clancy does not ask the Court to count votes or to revisit the single justice's ruling. A hung jury is not a verdict; jeopardy does not terminate on a hung jury, and a mistrial ordinarily permits retrial. *Richardson v. United States*, 468 U.S. 317 (1984). The Supreme Judicial Court reaffirmed that principle in 2025 in rejecting an argument, advanced in the Karen Read litigation, that jurors' post-discharge statements amounted to an unannounced verdict. What Rule 25 requires is independent of the vote: the Court decides whether the record, viewed most favorably to the Commonwealth, could support the finding the Commonwealth needed. On this record it could not, and every juror who applied the reasonable doubt standard reached that conclusion. *See Latimore*, 378 Mass. at 677.

The Court should decide the question now. A required finding for insufficiency of the evidence is an acquittal that bars retrial. *Smith v. Massachusetts*, 543 U.S. 462 (2005). Without it, the Commonwealth may retry Ms. Clancy on the same record. Rule 25 exists so that a case the evidence cannot sustain is not tried twice. This motion is filed within the period fixed by Rule 25(b)(2) and is ripe for decision.

Wherefore, Lindsay Clancy moves that this Court allow this motion and enter a finding of not guilty by reason of lack of criminal responsibility on each indictment, and thereafter proceed as provided in G. L. c. 123, § 16. Ms. Clancy requests that this motion be heard at the conference scheduled before this Court on September 29, 2026.

Lindsay Clancy,
By her attorney

A handwritten signature in dark ink, appearing to read 'Kevin J. Reddington', is written over a horizontal line.

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