

10/21/26

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss.

SUPERIOR COURT
2383CR00198

COMMONWEALTH

vs.

LINDSAY CLANCY

**MEMORANDUM OF DECISION AND ORDER ON DEFENDANT'S
MOTION FOR AN EVIDENTIARY HEARING ON ALL MOTIONS SET
FOR HEARING ON NOVEMBER 2, 2026, OR, IN THE ALTERNATIVE
TO CONTINUE THE HEARING IN ITS ENTIRETY**

Following a twenty-six-day jury trial, this Court declared a mistrial on September 4, 2026, due to a deadlocked jury. The parties are scheduled to argue the following motions on November 2, 2026: Paper # 212, Defendant's Motion to Preserve Juror Records, Produce Juror Questionnaire and Related Records, and For a Limited Inquiry into Juror Doe; and Paper # 215, Defendant's Motion to Dismiss. For the reasons discussed below, Defendant's Motion For an Evidentiary Hearing on November 2, 2026, or in the Alternative, to Continue the Hearing in its Entirety is **DENIED**.

BACKGROUND

The premise of the Motion to Dismiss is that retrial on the three murder indictments is barred by principles of double jeopardy. Clancy contends that there was no manifest necessity for a mistrial because the Court failed to consider the alternative of inquiring into the meaning of the foreperson's notes and questioning Juror Doe to determine whether there was good cause to discharge Juror Doe and restart the deliberations with an alternate juror. The theory of discharge

advanced in the motion to dismiss is that Juror Doe was unable to deliberate due to a refusal to apply the principle of reasonable doubt as instructed by the Court.

Clancy also has filed a Motion to Preserve Juror Records, Produce Juror Questionnaire and Related Records, and For a Limited Inquiry into Juror Doe. Clancy seeks to obtain, among other things, Juror Doe's confidential questionnaire, the court officer logs, and the sign-in sheets for jurors' cellphones during deliberations. In addition, Clancy seeks production of Juror Doe's record from the statewide domestic violence registry and Juror Doe's cellphone call and text messages and data log sessions during deliberations. Clancy requests an order that Juror Doe turn over their cellphone to a neutral examiner for a limited data extraction and further requests that this Court examine Juror Doe on the following subjects: the truthfulness of the questionnaire and voir dire answers; the sworn assurance of September 3, 2026, that the juror was able to follow the law; and the use of a cellphone or receipt of outside information during deliberations.

DISCUSSION

Clancy demands an evidentiary hearing on the above-described motions pursuant to Mass. R. Crim. P. 13(e), which states: "The parties shall have a right to a hearing on a pretrial motion. The opposing party shall be afforded an adequate opportunity to prepare and submit a memorandum of law prior to the hearing." Nothing in this rule entitles a defendant to an evidentiary hearing in all cases.

It appears that Clancy seeks an evidentiary hearing to determine whether Juror Doe lied on the jury questionnaire about prior involvement with the criminal justice system. See, e.g., *Commonwealth v. Mitchell*, 496 Mass. 66, 74 (2025) (juror's intentionally dishonest answer during voir dire may indicate juror bias); *Commonwealth v. Caldwell*, 45 Mass. App. Ct. 42, 45

(1998) (juror's intentional concealment of prior criminal convictions when filling out questionnaire was good cause for his discharge). However, potential evidence of good cause to dismiss a deliberating juror that came to light only after a mistrial was declared simply is not relevant to whether there was a manifest necessity for a mistrial. The existence of manifest necessity is assessed "based on what was known at the time of [the judge's] decision." *Read v. Commonwealth*, 495 Mass. 312, 322 (2025) (concluding that post-trial accounts of deliberations that are inconsistent with jurors' public communications in court cannot render mistrial improper).

Prior to the declaration of a mistrial, defense counsel raised no suggestion that Juror Doe had lied on the questionnaire. That information appears to have originated in post-trial media reports. "[A]llowing posttrial juror accounts to affect the analysis 'would create endless confusion and controversy' in cases where a mistrial has already been declared due to deadlock." *Read*, 495 Mass. at 322. Because post-trial information potentially affecting Juror Doe's impartiality cannot be used to attack the determination that a mistrial was manifestly necessary, Clancy is not entitled to an evidentiary hearing on that issue.

A similar analysis applies to the argument that there may have been grounds to replace Juror Doe with an alternate based on Juror Doe's cellphone use which may suggest exposure to extraneous evidence. See *Commonwealth v. Kamara*, 422 Mass. 614, 618 (1996) (trial judge properly discharged juror who presented extraneous information to other jurors and replaced him with an alternate). Cf. *Read*, 495 Mass. at 330 (judge has broad discretion in deciding whether post-trial inquiry is appropriate based on exposure to extraneous evidence). Prior to the declaration of a mistrial, defense counsel raised no suggestion that Juror Doe had been exposed to extraneous evidence or improperly used a cellphone during deliberations. Because post-trial

information cannot be used to attack the determination that a mistrial was manifestly necessary, Clancy is not entitled to an evidentiary hearing on that issue. See *Read*, 495 Mass. at 322, 324 (judge did not abuse discretion in failing to pursue alternatives suggested, after the fact, by defense counsel based on information obtained after mistrial was declared).

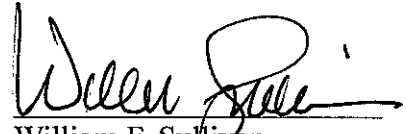
Finally, Clancy requests that this Court question Juror Doe about the sworn assurance on September 3, 2026, that they were able to follow the law and the foreperson's notes suggesting that Juror Doe was unwilling or unable to deliberate in accordance with the court's instructions. This Court concludes that any further judicial inquiry is inappropriate, given the mandate that the court must not delve into a juror's subjective reasoning, thought process, view of the case, or relationship to the other jurors, and must not inquire into the jury's deliberative content, collective thought process, or any disagreement among the jury. See *Read*, 495 Mass. at 330; *Commonwealth v. Ralph R.*, 490 Mass. 770, 780 (2022).

In addition, this Court disagrees that the foreperson's notes to the Court were ambiguous and therefore obligated the Court to conduct a preliminary inquiry. Cf. *Ralph R.*, 490 Mass. at 779, 782-785 (where foreperson's note reported "discriminating comments" and judge stated that he had "no idea" what it meant, he was required to investigate whether racially biased statement was made during deliberations). Read in context, where the jury deliberated for a substantial period of time and had declared themselves at an impasse, the Court gave the *Tuey-Rodriguez* charge, and the foreperson's notes identified Juror Doe as the lone "hold out," the notes were not ambiguous. Accordingly, the Court, in its discretion, concludes that an evidentiary hearing is not required to properly resolve Clancy's motion to dismiss.

The parties may be heard on their motions on the next scheduled date.

ORDER

For the foregoing reasons, it is hereby **ORDERED** that Defendant's Motion For an Evidentiary Hearing on November 2, 2026, or in the Alternative, to Continue the Hearing in its Entirety be **DENIED**.


William F. Sullivan
Justice of the Superior Court

DATED: October 21, 2026