

MACDL
Amicus Committee Report

As of January 19, 2016

I. Amicus briefs filed by MACDL and currently pending.

A. *Commonwealth v. Allen*

1. main issue(s) in the case: Whether, as the defendant claims, the judge's charge on "defense of another" improperly conflated principles of self defense and defense of another by suggesting that the defendant may have had a duty to retreat, and improperly negated the possibility of a finding of so-called excessive force manslaughter by stating, among other things, that the defendant was required to "avail himself of available alternatives before employing deadly force."
2. source of amicus inquiry: SJC solicited amicus briefs in June 2015.
3. amicus brief writer(s): Stephen Poss, Esq and Levi Swank, Esq. (Goodwin Proctor). David Lewis, Esq. & Chauncey Wood, Esq. (MACDL).
4. status: #SJC-11850. Oral argument held December 10, 2015.

B. *Commonwealth v. Alleyne*

1. main issue(s) in the case: Whether the Court should prohibit police officers from offering defendants a choice to have a custodial interrogation recorded and whether the Court should prohibit trial judges from instructing juries that it is the defendant's right to choose not to have a custodial interrogation recorded.
2. source of amicus inquiry: Chauncey Wood, Esq.
3. amicus brief writer(s): B.J. Trach, Esq. (Latham & Watkins); Prof. David Siegel, Esq. (New England School of Law). David Lewis, Esq. (MACDL).
4. status: #SJC-11614. Oral argument scheduled March 11, 2016.

C. *Commonwealth v. Boucher*

1. main issue(s) in the case: Whether the SJC should adopt an intent requirement to elevate a murder from 2nd degree to 1st degree based on extreme atrocity or cruelty.
2. source of amicus inquiry: Appellate defense counsel (Leslie O'Brien, Esq).

3. amicus brief writer(s): Paul Nemser, Esq. and Joshua Daniels, Esq. (Goodwin Proctor). Chauncey Wood, Esq. (MACDL).
4. status: #SJC-11605. Oral argument held on September 11, 2015.

D. *Commonwealth v. Boyd*

1. main issue(s) in the case: Although the Commonwealth generally has authority to nol pros a conviction prior to sentencing, whether it may exercise that authority prior to resentencing on remand after appeal; and whether it may exercise that authority to nol pros the "second and subsequent" portion of the conviction in order to expose the defendant to a greater sentence than would be permitted under the sentencing enhancement provision for a "second or subsequent" offense (i.e., because the maximum sentence for the underlying crime is greater than the maximum under the enhancement provision).
2. source of amicus inquiry: SJC.
3. amicus brief writer(s): Tim St. Lawrence, Esq. Chauncey Wood (MACDL).
4. status: #SJC-11998. Oral argument held January 11, 2016.

E. *Commonwealth v. Celester*

1. main issue(s) in the case: Whether a defendant has a 5th Amendment right to the effective assistance of counsel in a custodial interrogation after the defendant has been arrested and counsel is present.
2. source of amicus inquiry: Chauncey Wood, Esq.
3. amicus brief writer(s): Kirsten Mayer, Esq, Maria Carboni, Esq, David Derusha, Esq (Ropes). David Lewis, Esq. (MACDL).
4. status: #SJC-07874. Oral argument held October 9, 2015.

F. *Commonwealth v. Chamberlin*

1. main issue(s) in the case: The case presents the question whether law enforcement need to seek a court order to get access to cell phone records during the investigation of a crime.
2. source of amicus inquiry: SJC solicited amicus briefs in June 2015.
3. amicus brief writer(s): Kevin Prussia, Esq. and Caitlin Monahan, Esq. (Wilmer Hale); Chauncey Wood (MACDL); Matthew Segal, Esq. and Jesse Rossman, Esq. (ACLUM)
4. status: #SJC-11877. Oral argument held October 6, 2015.

G. *Commonwealth v. Coggeshall*

1. main issue(s) in the case: Whether a defendant who is unaware of the risks created by his acts or omissions with respect to a child in his care can be guilty of reckless endangerment of the child under G. L. c. 265, § 13L; whether the defendant's intoxication can negate any requisite knowledge of the risks.
2. source of amicus inquiry: SJC solicited amicus briefs in July 2015.
3. amicus brief writer(s): Anthony Downs, Esq, Todd Marabella, Esq., Kara Harrington, Esq. (Goodwin); Chauncey Wood, Esq. (MACDL).
4. status: #SJC-11904. Oral argument held December 7, 2015.

H. *Commonwealth v. Magadini*

1. main issue(s) in the case: Whether, and how, the defense of necessity applies in the case of a homeless individual who trespasses on private property in order to find safe shelter in winter conditions; and to what extent must one go in such circumstances to pursue legal alternatives to trespass.
2. source of amicus inquiry: SJC solicited amicus briefs in June 2015.
3. amicus brief writer(s): MACDL anticipates signing onto a brief authored by ACLUM. Jesse Rosman, Esq. (ACLUM); Beth Eisenberg, Esq. (CPCS); Kirstin Mayer, Esq. (Ropes); Chauncey Wood, Esq. (MACDL).
4. status: #SJC-11874. Oral argument scheduled December 7, 2015.

I. *Commonwealth v. Teixeira*

1. main issue(s) in the case: In a prosecution commenced by complaint in the District Court or Municipal Court for crimes not within the final jurisdiction of the court, as to which the defendant has a right to be proceeded against by indictment, whether the Commonwealth can be ordered, in a judge's discretion, to provide discovery to the defendant in advance of the probable cause hearing to be held pursuant to G. L. c. 276, § 38, and Mass. R. Crim. P. 3 (f).
2. source of amicus inquiry: SJC.
3. amicus brief writer(s): John Donovan, Esq., Jesse Boodoo, Esq., Joshua Rovenger, Esq., and David Coriell, Esq. (Ropes & Gray).
4. status: #SJC-11929.

J. *Commonwealth v. Vargas*

1. main issue(s) in the case: Whether the defendant, a probationer who claimed to be a “qualifying patient” within the meaning of the 2012 act legalizing medical marijuana, see St. 2012, c. 369, with a physician-issued certification, was properly found to be in violation of his probation by virtue of marijuana use.
2. source of amicus inquiry: SJC solicited amicus briefs in July 2015.
3. amicus brief writer(s): Sarah Heaton Concannon, Esq., Robyn Schwartz, Esq. (Goodwin); David Lewis, Esq. (MACDL).
4. status: #SJC-11895. Oral argument held November 2, 2015.

K. *Commonwealth v. Wade (II)*

1. main issue(s) in the case: Whether, in order to obtain postconviction DNA testing under G. L. c. 278A and specifically, in order to support a finding under c. 278A, § 7 (b) (3), that the evidence or biological material has not been subjected to the requested analysis for any of the reasons in [c. 278A, § (3) (b) (5) (i)-(v)] it is sufficient for the defendant to establish that the requested analysis had not yet been developed at the time of the conviction, see c. 278A, § 3 (b) (5) (i), or whether the defendant must also show that a reasonably effective attorney would have in fact sought the analysis had it been available.
2. source of amicus inquiry: CPCS IP.
3. amicus brief writer(s): Matthew Burke, Esq., Dara Reppucci, Esq., Hillel Nadler, Esq., and Shivan Sarin, Esq. (Ropes & Gray); David Lewis, Esq. (MACDL).
4. status: #SJC-11913. Oral argument held on January 11, 2016.

L. *Commonwealth v. White*

1. main issue(s) in the case: Whether police lawfully searched the contents of the defendant’s cell phone, where the phone was obtained without a warrant from a locked cabinet at the defendant’s high school, where it had been stored pursuant to school policy on the defendant’s behalf; where it was held by the police for approximately ten weeks before they obtained a search warrant; and where during that time it was preserved in a manner that prevented a third party from remotely erasing its contents.
2. source of amicus inquiry: SJC solicited amicus briefs in August 2015.
3. amicus brief writer(s): Alexis Shapiro, Esq. and Christine Dieter, Esq. (Goodwin); David Lewis, Esq. (MACDL).
4. status: #SJC-11917. Oral argument held December 8, 2015.

II. Amicus briefs signed onto by MACDL and currently pending.

A. *Commonwealth v. Epps*

1. main issue(s) in the case: Whether the defendant, tried and convicted in 2007 on a charge of assault and battery on a child causing substantial bodily injury, see G. L. c. 265, § 13J (b), second par., is entitled to a new trial because of newly discovered evidence (i.e., changes since the time of trial in the state of the scientific research on shaken baby syndrome and abusive head trauma) or on the ground of ineffective assistance of counsel (i.e., counsel's alleged failure to use to the defendant's advantage the state of the research as it existed at the time of trial).
2. source of amicus inquiry: SJC.
3. amicus brief writer(s): Matthew Segal, Esq. (ACLUM); Dennis Shedd, Esq. (CPCS); Chauncey Wood, Esq. (MACDL).
4. status: #SJC-11921. Oral argument held December 7, 2015.

B. *Commonwealth v. Johnson*

1. main issue(s) in the case: In a case involving an eyewitness identification made without the participation of the Commonwealth, whether the principles of *Commonwealth v. Jones*, 423 Mass. 99 (1996), should be revisited in light of the 2013 report and recommendations of the Supreme Judicial Court's Study Group on Eyewitness Evidence; for purposes of an in-court identification, whether the court should revisit the independent source doctrine in light of *Commonwealth v. Crayton*, 470 Mass. 228 (2014), and *Commonwealth v. Collins*, 470 Mass. 255 (2014).
2. source of amicus inquiry: SJC solicited amicus briefs in June 2015.
3. amicus brief writer(s): Radha Natarajan, Esq. (CPCS); David Lewis, Esq. (MACDL).
4. status: #SJC-11876. Oral argument held on October 6, 2015.

C. *Commonwealth v. Wade (II)*

1. main issue(s) in the case: Whether, in order to obtain postconviction DNA testing under G. L. c. 278A and specifically, in order to support a finding under c. 278A, § 7 (b) (3), that the evidence or biological material has not been subjected to the requested analysis for any of the reasons in [c. 278A, § (3) (b) (5) (i)-(v)] it is sufficient for the defendant to establish that the requested analysis had not yet been

developed at the time of the conviction, see c. 278A, § 3 (b) (5) (i), or whether the defendant must also show that a reasonably effective attorney would have in fact sought the analysis had it been available.

2. source of amicus inquiry: CPCS IP.
3. amicus brief writer(s): Ira Gant, Esq. (CPCS); David Lewis, Esq. (MACDL).
4. status: #SJC-11913. Oral argument held on January 11, 2016.

D. *Reid v. Donelon*

1. main issue(s) in the case: Whether the immigration system provides constitutionally mandated procedural safeguards required under common principles of due process to the class of individuals who are or will be detained within the Commonwealth of Massachusetts pursuant to 8 U.S.C. § 1226(c) for over six months without an individualized bond hearing.
2. source of amicus inquiry: CPCS Innocence Project.
3. amicus brief writer(s): James Farrell, Esq., James H. Moon, Esq., and Nathan M. Saper, Esq. (Bazelon Center for Mental Health) and Chauncey Wood, Esq. (MACDL).
4. status: #14-1270, 14-1803, and 14-1823. The amicus brief was filed on March 5, 2015. Oral argument on November 3, 2015. The case remains pending.

III. Pending projects - amicus briefs not yet filed.

A. *Commonwealth v. Moore*

1. main issue(s) in the case: Whether the 2015 amendment to S.J.C. Rule 3:07 (Rules of Professional Conduct), Rule 3.5 – which provides in relevant part that “[a] lawyer shall not . . . communicate with a juror . . . after discharge of the jury if . . . the communication is prohibited by law or court order” – effectively superseded the holding in *Commonwealth v. Fidler*, 377 Mass. 192, 201-204 (1979), that counsel may not contact jurors after a verdict is rendered except as directed and supervised by the judge; if so, whether the rule now permits attorneys to initiate contact with jurors who were discharged prior to the effective date of the amendment.
2. source of amicus inquiry: SJC.
3. amicus brief writer(s):
4. status:#SJC-11582.

B. *Commonwealth v. Stevenson*

1. main issue(s) in the case: Did the trial court abuse its discretion in dismissing a sexual assault indictment based entirely on hearsay provided by the the investigating police officer where the acts allegedly occurred 14 years earlier, there was no physical evidence, there were no eye-witnesses other than the complainant and the defendant, and the complainant was available to testify.
2. source of amicus inquiry: SJC.
3. amicus brief writer(s): John J. Barter, Esq. & Chauncey Wood, Esq. (MACDL)
4. status:#SJC-11962.

IV. Recent amicus projects - cases decided since July 1, 2015

A. *Commonwealth v. DiPiero*

1. main issue(s) in the case: Whether, and if so how, the Supreme Court's decision in *Navarette v. California*, 134 S.Ct. 1684 (2014) – that an anonymous tipster's "use of the 911 system is . . . one of the relevant circumstances that, taken together . . . [can justify an] officer's reliance on the information reported in the 911 call" – will apply in Massachusetts, where, under the Federal Constitution, the reliability of a tip is measured by the totality of circumstances test, whereas Massachusetts employs the more stringent Aguilar-Spinelli test
2. source of amicus inquiry: SJC solicited amicus briefs in July 2015.
3. amicus brief writer(s): Dahlia S. Fetouh, Esq., Nancy Dinsmore, Esq., Benjamin Cox, Esq., Kara Harrington, Esq. (Goodwin); Chauncey Wood, Esq. (MACDL).
4. status: #SJC-11893. Case decided January 4, 2016 . The Court accepted MACDL's argument and rejected the Supreme Court's treatment of anonymous 911 tipsters as inherently reliable ("We decline to endorse the Supreme Court's reliance on the use of the 911 system as an independent indicium of reliability for an anonymous tip. That being said, the information gleaned from the anonymous call in the present case, corroborated by other information, was sufficiently reliable to warrant a finding that the officer had reasonable suspicion to stop the defendant's vehicle. The denial of the defendant's motion to suppress is therefore affirmed").

B. *Commonwealth v. Jones*

1. main issue(s) in the case: Whether the closure of the court room to the public, including the defendant's family and friends, over the defendant's objection, during a voir dire of a witness purportedly conducted pursuant to the rape shield statute, G. L. c. 233, § 21B, was structural error that deprived the defendant of a public trial.
2. source of amicus inquiry: SJC solicited amicus briefs on December 1, 2014.
3. amicus brief writer(s): Brad A. Compston, Esq.
4. status: #SJC-11775. The SJC issued its decision on September 21, 2015. Reversed and remanded for a new trial. "We hold that the judge erred in permitting the expert to testify about how the various swabs she tested had been collected, and that the preserved error was prejudicial. We therefore vacate the defendant's convictions and remand for a new trial. We further conclude that the judge erred in

closing the rape shield hearing without conducting the four-prong analysis required for court room closures under *Waller v. Georgia*, 467 U.S. 39, 48 (1984)(Waller).”

C. *Commonwealth v. Augustine*

1. main issue(s) in the case: Whether the motion judge erred in allowing the defendant's motion to suppress cell site location information.
2. source of amicus inquiry: SJC amicus announcements.
3. amicus brief writer(s): Kevin S. Prussia, Esq., Kelly E. Halford, Esq., Elizabeth A. Lunt, Esq., Chauncey B. Wood, Esq.
4. status: #SJC-11803. The SJC issued its decision on August 18, 2015. “In *Commonwealth v. Augustine*, 467 Mass. 230, 232 (2014) (Augustine I), S.C., 470 Mass. 837 (2015), this court held that the defendant had a reasonable expectation of privacy in the historical cell site location information (CSLI) relating to his cellular telephone, and that therefore, the warrant requirement of art. 14 of the Massachusetts Declaration of Rights applied to that information. We remanded the case to the Superior Court to determine whether, in the particular circumstances of this case, the Commonwealth is able to meet that warrant requirement through a demonstration of probable cause. *Id.* For the reasons to be discussed, we conclude that the Commonwealth has done so with respect to the defendant's CSLI records for the period from August 24 to August 26, 2004.”

D. *Commonwealth v. Brewer*

1. main issue(s) in the case: Whether a defendant is deprived of due process and his right to present a defense when the prosecutor obtains a grant of immunity for a witness whose testimony is important to the prosecution, but refuses to request immunity for a potential defense witness whose testimony allegedly would have directly contradicted that of the immunized prosecution witness; whether this case presents unique circumstances that required the granting of some form of defense witness immunity.
2. source of amicus inquiry: SJC amicus announcements.
3. amicus brief writer(s): Kirsten Mayer, Esq., Anthony Biagioli, Esq., Chauncey B. Wood, Esq. (MACDL).
4. status: #SJC-11819. The SJC issued its decision on July 24, 2015 (“On the facts of this case, a judicial grant of immunity to Verdieu and to Stewart was not required under constitutional principles and, as in *Vacher*, we find no basis to depart from our established law on this subject. In addition, we find no “unique circumstances” requiring a grant of judicial immunity to Verdieu and to Stewart. The following observations inform our decision.”)

E. Commonwealth v. Clark

1. main issue(s) in the case: whether the judge erred in interpreting G.L. c.278A, § 7(b) to require proof of a reasonable possibility that biological material is present on the crime scene item, where neither the plain language nor the legislative history of the statute support such a requirement and where imposing such a requirement ignores important scientific and policy lessons gleaned from cold case investigations and past DNA exonerations.
2. source of amicus inquiry: CPCS Innocence Project.
3. amicus brief writer(s): Lisa Kavanaugh, Esq., Ira Gant, Esq. (CPCS IP) and Chauncey M. Wood, Esq. (MACDL).
4. status: #SJC-11815. The case was decided on July 9, 2015 (“The judge's order denying Clark's § 3 motion is reversed, except insofar as it denied Clark's request for discovery. We remand this case to the Superior Court for further proceedings consistent with this opinion”).

F. Commonwealth v. Michael Jackson

1. main issue(s) in the case: waiver of public trial right.
2. source of amicus inquiry: Emanuel Howard, Esq.
3. amicus brief writer(s): Mary Rogers, Esq., Chauncey Wood, Esq., David Lewis, Esq. (MACDL)
4. status: #SJC-10398. FAR denied June 24, 2015.

V. Recent amicus projects - cases decided between January 1, 2015 and June 30, 2015

A. *Commonwealth v. Wallace*

1. main issue(s) in the case: (1) whether the Court should presume prejudice for a violation of the defendants' speedy trial rights, and (2) whether defendants' failure to demand a speedy trial can be held against them when they were neither informed of the pending indictment nor informed of their right to request a speedy trial. The case is related to the ACLUM amicus in *Commonwealth v. Arzola*, SJC-11679 (argument heard in Nov. 2014): Whether the extraction of DNA evidence from an item seized without a warrant constitutes a separate search for which a warrant is required prior to conducting any testing of the DNA evidence.
2. source of amicus inquiry: ACLUM.
3. amicus brief writer(s): Jesse Rosman, Esq. (ACLUM).
4. status: #SJC-11705 & SJC-11707. The SJC issued its decision on June 30, 2015. ("In considering this question in motions to dismiss due to delays totaling more than nine years, a judge of the Superior Court found that Timi's right to a speedy trial had not been violated but that of Nickoyan had.... We affirm the decision of the trial court to deny Timi's motion and to allow Nickoyan's motion.").

B. *Sara Johnson v. United States of America*

1. main issue(s) in the case (from explanation in amicus brief) Whether *Apprendi* and its progeny apply to restitution and thus require that any facts necessary to impose or determine the amount of restitution be found by a jury, rather than a judge... Amici, whose members routinely represent clients in federal and state proceedings across the country, believe that this Court's intervention is needed to resolve confusion among state courts regarding *Apprendi*'s application to restitution.
2. source of amicus inquiry: see below.
3. amicus brief writer(s): 21 state defender organizations.
4. status: #14-1006. The amicus brief was filed on January 16, 2015. The Court requested a response from the Government which has been filed. The Court denied the petition on June 22, 2015.

C. *Commonwealth v. Kostka*

1. main issue(s) in the case: Whether, in a prosecution for murder in the first degree, Mass. R. Crim. P. 17 (a) (2) and the Fourth Amendment permit the compelled production of a saliva sample from a third party who is the defendant's twin brother, where the Commonwealth argues that the sample is necessary to determine whether he and the defendant are fraternal or identical twins. See *Commonwealth v. Draheim*, 447 Mass. 113 (2006).
2. source of amicus inquiry: Jack Cunha, Esq.
3. amicus brief writer(s): B.J. Trach, Esq., Laura Carey, Esq., Peter Roni Goldstone, Esq., Chauncey B. Wood, Esq. (MACDL).
4. status: #SJC-11766. The SJC issued its decision on June 17, 2015. (“We conclude that the Commonwealth has not made the requisite showing, see *Commonwealth v. Draheim*, 447 Mass. 113 (2006), to support the compelled production of a DNA sample from an uncharged third party in a criminal proceeding and, accordingly, that the judgment of contempt must be reversed.”).

D. *Kevin Bridgeman v. District Attorney for Suffolk County*

1. main issue(s) in the case: When, on behalf of the Commonwealth, one of its employees repeatedly, systematically, and in bad faith falsifies evidence against criminal defendants to induce plea agreements or guilty verdicts, is the Commonwealth required to timely disclose its misconduct to the affected defendants, or their counsel, if it wants to avoid having the convictions vacated and the underlying charges dismissed with prejudice?
2. source of amicus inquiry: NACDL and Center for Public Representation.
3. amicus brief writer(s): Jean-Jacques Cabou , Esq. (NACDL) and Liza Lunt, Esq. (MACDL).
4. status: #SJC-11764. The SJC issued its decision on May 18, 2015. (“For the reasons that follow, we now conclude that (1) a defendant who has been granted a new trial based on Dookhan's misconduct at the Hinton drug lab cannot be charged with a more serious offense than that of which he or she initially was convicted under the terms of a plea agreement and, if convicted again, cannot be given a more severe sentence than that which originally was imposed; (2) the motion to intervene filed by CPCS is allowed; (3) a so-called "global remedy" will not be implemented at this time; (4) a lawyer who represented a Dookhan defendant at the plea stage of criminal proceedings is not barred by the advocate-witness rule from subsequently representing that defendant and testifying at an

evidentiary hearing on the defendant's motion to withdraw a guilty plea; (5) the scope of cross-examination of a Dookhan defendant at a hearing on a motion to withdraw a guilty plea is left to the broad discretion of the motion judge; and (6) the testimony of a Dookhan defendant at a hearing on a motion to withdraw a guilty plea is only admissible at a subsequent trial for impeachment purposes if the defendant chooses to testify.”).

E. *Commonwealth v. Diachenko*

1. main issue(s) in the case: Whether juveniles serving life sentence are entitled to the representation of counsel at Parole Board hearings.
2. source of amicus inquiry: The issue was not addressed in other amicus filings in the case.
3. amicus brief writer(s): Afton M. Templin, Esq.
4. status: #SJC-11688. The SJC issued its decision on March 23, 2015 (“Specifically, Gregory Diatchenko and Jeffrey S. Roberio, each of whom was convicted of murder in the first degree many years ago for a crime committed when he was seventeen years old, argue that in order to ensure that their opportunity for release through parole is meaningful, they must have, in connection with a petition for release before the parole board (board), access to counsel, access to funds for counsel and for expert witnesses because they are indigent, and an opportunity for judicial review of the decision on their parole applications. For the reasons discussed below, we agree in substance with Diatchenko and Roberio.

F. *Commonwealth v. Okoro*

1. main issue(s) in the case: Whether juvenile charged with murder is entitled to present expert evidence on, and have jury consider, his youth as a factor negating malice; whether a juvenile convicted of murder in second degree, and sentenced to statutorily mandated term of life with possibility of parole after 15 yrs, suffers constitutional violation because sentencing judge has no opportunity to consider juvenile’s youth.
2. source of amicus inquiry: SJC solicited amicus briefs on June 17, 2014.
3. amicus brief writer(s): Laura B. Banwarth, Esq.
4. status: #SJC-116859 The SJC issued its decision on March 23, 2015 (“we conclude that the defendant's sentence does meet the requirements of the Eighth Amendment and art. 26, as well as other constitutional rights, and we reject the defendant's challenges to his underlying conviction.”)

G. *Lavrinenko v. Horgan, et al.*

1. main issue(s) in the case: Whether due process requires that detained noncitizens be provided with: (1) a hearing where the government must justify detention by clear and convincing evidence; (2) subsequent periodic hearings to consider whether continued detention is justified; and (3) adequate procedural safeguards to make these hearings meaningful.
2. source of amicus inquiry: NACDL and Center for Public Representation.
3. amicus brief writer(s): James J. Farrell, Esq., James H. Moon, Esq., and Nathan M. Saper (NACDL), Robert Fleischner, Esq (Center for Public Representation), and Chauncey Wood, Esq. (MACDL).
4. status: First Circuit, #14-1627. The amicus brief was filed in the First Circuit on October 14, 2014. The case was dismissed on March 20, 2015.

H. *Commonwealth v. Evelyn*

1. main issue(s) in the case: Whether defense counsel's concession in opening and closing statements of a lesser-included offense that the defendant had pleaded not guilty to and had not consented to the concession, and had not had a plea colloquy regarding was a violation of his constitutional due process rights.
2. source of amicus inquiry: CPCS
3. amicus brief writer(s): Donald Harwood, Esq. (CPCS) and David Lewis, Esq. (MACDL).
4. status: #SJC-11643. The SJC issued its decision on March 2, 2015 ("We conclude that, in these circumstances, no colloquy between the judge and the defendant is required. We note that the defendant in this case expressly did not claim ineffective assistance of counsel and there is nothing in the record to suggest that the defendant did not consent to his attorney's strategic concession.")

I. *Commonwealth v. DiCicco*

1. main issue(s) in the case: Whether the trial court judge erred and abused his discretion in excluding the defense expert's opinions regarding the use of a low-level DNA allele to exclude the defendant under *Daubert-Lanigan* and denying the defendant funds.
2. source of amicus inquiry: CPCS Innocence Project.
3. amicus brief writer(s): Ira Gant, Esq. & Lisa Kavanaugh, Esq. (CPCS Innocence Project) and Elizabeth Lunt, Esq. (MACDL)

4. status: #SJC-11672. The SJC issued its decision on February 26, 2015 (“[We] conclude that the motion judge did not abuse her discretion in determining that, under *Commonwealth v. Lanigan*, 419 Mass. 15, 25-26 (1994), Carita's opinion was not sufficiently reliable to be placed before a jury, and the defendant's motion for a new trial was properly denied.”)

J. *Commonwealth v. Santiago*

1. main issue(s) in the case: Whether the SJC should recognize target standing under Article 14.
2. source of amicus inquiry: The ACLUM was a co-signatory.
3. amicus brief writer(s): Michael K. Fee, Esq. & P.R. Goldstone, Esq. (ACLUM) and Alex G. Philipson, Esq. (MACDL)
4. status: #SJC-11619. The SJC issued its decision on February 4, 2015 (“We conclude that this is not an appropriate case in which to consider the adoption of target standing. Accordingly, we reverse the order allowing the defendant's motion to suppress.”)