

9/18/26

213

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, SS

PLYMOUTH SUPERIOR COURT

NO. 2383CR00198

COMMONWEALTH

v.

LINDSAY CLANCY

FILED
COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPT. OF THE TRIAL COURT
PLYMOUTH COUNTY

SEP 18 2026

**SUPPLEMENTAL MEMORANDUM IN SUPPORT OF RENEWED MOTION
FOR REQUIRED FINDING OF NOT GUILTY**

Lindsay Clancy submits this supplemental memorandum in support of her Renewed Motion for Required Finding of Not Guilty, filed September 10, 2026. The jury deliberated six and one-half days and could not agree, and the Court declared a mistrial. Tr. (Sept. 4, 2026) at 1-17, 1-22. After a mistrial the Commonwealth may try a case a second time only if the evidence at the first trial was legally sufficient. Baxter v. Commonwealth, 489 Mass. 504, 507-08 (2022). That is the question Rule 25 asks, and on this record it has the same answer.

LEGAL STANDARD

A hung jury does not give the Commonwealth a second trial for the asking. Retrial is barred where the evidence at the first trial was legally insufficient. Baxter, 489 Mass. at 507-08, quoting Pinney v. Commonwealth, 479 Mass. 1001, 1001-02 (2018), quoting Brangan v. Commonwealth, 478 Mass. 361, 363 (2017) ("After a mistrial, the Commonwealth may retry a defendant [only] if it has presented evidence at the first trial that, if viewed in the light most favorable to the Commonwealth, would be sufficient for a rational trier of fact to find the defendant guilty of the crime charged beyond a reasonable doubt"). The test is the one this Court applies under Rule 25: whether "any rational trier of fact could have found the essential elements of the crimes beyond a

reasonable doubt.” Id. at 508, quoting Commonwealth v. Watson, 487 Mass. 156, 162 (2021); Commonwealth v. Latimore, 378 Mass. 671, 677 (1979). One record, one standard, one answer.

Criminal responsibility is an element the Commonwealth must prove. Once it is in issue, the Commonwealth must prove beyond a reasonable doubt “that the defendant did not lack 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, 546-47 (1967). It may do that in one of two ways: by proving no mental disease or defect, or by proving that despite one the accused retained that capacity. No presumption of sanity assists it, and failure of proof on this element supports a required finding. Commonwealth v. Lawson, 475 Mass. 806, 812, 814-15 & n.8 (2016) (“[a] required finding of not guilty by reason of lack of criminal responsibility may rest on the failure of proof of criminal responsibility”).

An element may not be supplied by an inference the evidence will not bear. Conduct that is consistent with the required mental state is not proof of it. Baxter, 489 Mass. at 510 (evidence “may have allowed the jury to infer” one intent but “fails to sustain a reasonable inference, beyond a reasonable doubt,” of the intent the Commonwealth had to prove), citing Commonwealth v. Mandile, 403 Mass. 93, 94 (1988). The Court has applied that limit on far stronger facts. Commonwealth v. Gonzalez, 475 Mass. 396, 415 (2016) (motive, a planned alibi, calls with the perpetrators, driving the shooter to the scene); Mandile, 403 Mass. at 95, 100-01 (helping steal the guns, presence at the scene, knowledge the coventurer was armed, driving the getaway car, disposing of the weapon).

That the trial motions were resolved against a defendant mid-trial does not end the inquiry. In Baxter the required-finding motions at both closes were denied, and the evidence was still held

insufficient after discharge. 489 Mass. at 507 n.2, 511-12. Rule 25(b)(2) exists so the question is taken up again on the complete record.

ARGUMENT

Six forensic experts testified, three called by each side, and all six agreed that Ms. Clancy suffered from a serious mental illness on January 24, 2023. The Commonwealth's own witnesses disputed the label, not the fact. No rational jury could find beyond a reasonable doubt that she had no mental disease or defect. The first route to conviction was closed by the Commonwealth's own proof.

That left the second route, and it required proof beyond a reasonable doubt that Ms. Clancy nonetheless retained the substantial capacity to appreciate the wrongfulness of her conduct or to conform it to the law. The Commonwealth's proof on that point was that she could drive, place a call to a pediatrician, send her husband on errands, act in sequence, and had run internet searches in the preceding weeks. That evidence shows she was oriented and could carry out familiar tasks. It does not show she retained the capacity the law requires.

Dr. Zeizel testified, without contradiction, 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. Functioning is therefore consistent with psychosis, not proof against it. Evidence equally consistent with responsibility and with psychosis proves neither beyond a reasonable doubt. Proving that Ms. Clancy could function is not proving that she could appreciate wrongfulness. That is the element, and inference cannot supply it.

The rest of the record points the other way. Ms. Clancy tried to take her own life that same night. In the weeks before, she had sought help from multiple providers, called a suicide hotline, gone to an emergency department, and admitted herself to a psychiatric hospital. And the

Commonwealth's own rebuttal expert described the event as a serious suicide attempt accompanied by the killing of the children out of love, by a mentally ill mother who believed they would suffer without her. That is an account of delusional reasoning. It does not supply the missing element. It confirms its absence.

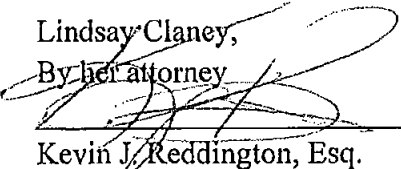
The Commonwealth will answer that a defendant who functions can still be criminally responsible. Its cases prove the distinction rather than defeat it. In Commonwealth v. Fujita, 497 Mass. 46, 59-62 (2026), the evidence was sufficient because the defendant had a clear motive and took “calculated steps to avoid detection.” Id. at 61. In Commonwealth v. Griffin, 475 Mass. 848, 851-53, 856 (2016), it was sufficient where the defendant “appeared to be acting normally in the days leading up to the killing” and prepared a “last will and testament” before setting out to kill. What made that evidence sufficient was not that those defendants could function. It was that their functioning was aimed at escaping the consequences. Concealment and preparation prove criminal responsibility because they show an actor who knew the conduct was wrong and expected to answer for it. Ms. Clancy concealed nothing, fled nothing, and prepared nothing. Conduct directed at self-destruction rather than evasion points away from an appreciation of wrongfulness.

The question should be answered now, and by this Court. Sufficiency does not go away if this motion is denied; it returns in the double jeopardy motion filed separately, and again on review before any retrial. Deciding it now, on the record this Court heard, is the orderly course. In Baxter the post-mistrial motion “was denied by a judge who was not the trial judge.” 489 Mass. at 507. This Court sat through the whole of this trial — some ninety witnesses, roughly three hundred exhibits, and multiple experts, by the Court's own account in finding the deliberations due and thorough. Tr. (Sept. 2, 2026) at 1-3. No court that follows will know this record better.

The finding that follows is the one the law supplies. Where the failure of proof goes to criminal responsibility, the required finding is not guilty by reason of lack of criminal responsibility. Lawson, 475 Mass. at 812. The Appeals Court entered such findings this year on that reasoning. Commonwealth v. Brunette-Silveira, No. 24-P-1351, slip op. at 1 (Mass. App. Ct. May 12, 2026) (holding the trial evidence insufficient on criminal responsibility notwithstanding ample uncontested evidence of the conduct). Ms. Clancy does not ask to go home. The finding she seeks carries the proceedings prescribed by G. L. c. 123, § 16. She asks only that the Commonwealth not get a second trial to prove what its own evidence could not prove the first time.

Lindsay Clancy requests that this Court allow the Renewed Motion for Required Finding of Not Guilty and enter a finding of not guilty by reason of lack of criminal responsibility on each indictment, and that this memorandum be considered with that motion on September 29, 2026, the date the Court set for hearing the Rule 25 motion. Tr. (Sept. 4, 2026) at 1-26.

Lindsay Clancy,
By her attorney



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