Rcd 11-9-26 (246)

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss. **SUPERIOR COURT**
2383CR00198

COMMONWEALTH

vs.

LINDSAY CLANCY

MEMORANDUM OF DECISION AND ORDER ON DEFENDANT'S MOTION TO DISMISS

Following a twenty-six-day jury trial, this Court declared a mistrial on September 4, 2026, due to a deadlocked jury. Defendant Lindsay Clancy now moves to dismiss the three murder indictments, arguing that a retrial is barred by the double jeopardy clause of the Fifth Amendment to the United States Constitution. For the reasons discussed below, Defendant's Motion to Dismiss is **DENIED**.

BACKGROUND

The jury began their deliberations on August 27, 2026, and continued deliberating on August 28 and August 31. On September 1, 2026, the jury sent the Court a note that stated: "After many hours of deliberation, we are unable to come to a unanimous verdict." The Court told the jury to keep its instructions in mind and asked them to resume their deliberations.

On September 2, 2026, the jury sent a note to the Court stating: "After much deliberation we are still unable to come to a unanimous agreement." The Court found that there had been due and thorough deliberations. The jury had been deliberating for approximately 27 hours over four days, following a trial that involved 90 witnesses, including multiple experts, and 300 exhibits.

The Court informed counsel that it intended to give the *Tuey-Rodriquez* charge[1] and solicited feedback from the parties. Neither party raised any objection to that course of action. The Court then gave the jury the *Tuey-Rodriquez* charge and the jury continued its deliberations.

On September 3, 2026, and on September 4, 2026 (and indeed on every day of trial and deliberations), the Court inquired of the jury if they had seen, heard or overheard anything that would affect their ability to be fair and impartial and if there was any serious matter or concern regarding their ability to be fair and impartial that anyone needed to bring to the Court's attention. No juror answered these questions in the affirmative. That includes all deliberating jurors, not just the juror identified as the holdout (hereinafter, "Juror Doe").

At 3:00 p.m. on September 3, 2026, the foreperson sent a note to the Court which stated: "A member of the jury is unable to follow the instructions regarding reasonable doubt. How should we proceed?" The Court proposed an individual voir dire of each juror to ask if he or she could follow the Court's instructions. The Court then solicited input from counsel. The Commonwealth opposed individual voir dire and instead proposed that the Court reinstruct the jury collectively on reasonable doubt. Defense counsel objected to the Court's proposal and requested that the juror identified in the note, Juror Doe, be discharged and replaced with an alternate.

Viewing the note in context, the Court was skeptical that Juror Doe, whom the foreperson had identified as the lone holdout, was genuinely unable to follow the instruction on reasonable doubt. The Court informed counsel that it intended to conduct a limited inquiry of each juror as to whether he or she was able to follow the law, with follow-up questions if necessary, and

[1]That "dynamite" charge states that it is desirable for the case to be decided and urges the jury to try to reach a verdict by giving more serious consideration to opposing points of view. *Commonwealth* v. *Chalue*, 486 Mass. 847, 860 (2021).

would discharge any juror who could not follow the law. The Court noted: "If they say they are able to follow it, in a sense who am I to say who's right or who's wrong?"

Defense counsel then asked the Court to inquire of the foreperson what her note meant and what the issue was in the jury room. The Commonwealth objected that such an inquiry would impermissibly intrude into the jury's deliberations. The Court agreed with that assessment and rejected defense counsel's proposal, given the mandate not to invade the jury's function and the need to avoid coercing a verdict. Defense counsel again objected, and the Court asked:

> How am I going to determine who is right and who's wrong in regards to following reasonable doubt? We've got one person who has sworn as a juror, it sounds like, is voting one way and the others are voting another way. I'm going to have to make a decision and align with one side or the other. What if I find that that one is the reasonable one, and we got to get rid of the other eleven? . . . Where is the line going to be?

The Court then proceeded to ask each juror individually: "Are you able to follow my instructions on the law that were given to you earlier in the trial?" The Court denied defense counsel's request to ask each juror whether he or she was able to follow the specific instruction on reasonable doubt. Each juror responded affirmatively and credibly that he or she was able to follow the law. The Court expressed reluctance to go any further, which might intrude into the deliberations. However, the Court again solicited feedback from counsel. The Commonwealth requested that the Court re-instruct the jury collectively on reasonable doubt, and defense counsel agreed with that course of action. The Court then reminded the jury that they were required to follow the instructions on the law, repeated the reasonable doubt instruction, and directed the jury to resume deliberations.

After the jury left the courtroom, defense counsel objected that the Court's question was not sufficient to allow any foundation for a motion to remove Juror Doe, who allegedly refused

to accept the instruction on reasonable doubt. Defense counsel requested a further inquiry and asked the Court to remove Juror Doe. The Court rejected a further inquiry, noting that the discharge of a deliberating juror is a sensitive undertaking and that each juror swore that he or she was able to follow the instructions.

At the end of the day on September 3, 2026, the foreperson sent a second note which stated: "[Juror Doe] has made statements acknowledging doubt but refuses to apply it to the verdict as the law states. This is why we cannot come to a unanimous decision." The Court sent the jury home for the night without addressing the note.

On the morning of September 4, before the jury resumed deliberations, the Court discussed the foreperson's second note with counsel. The Commonwealth suggested that the note did not require any further inquiry because it did not indicate a lack of impartiality, bias, extraneous influence, or inability to deliberate by Juror Doe. Defense counsel then expressed the opinion that Juror Doe had lied to the Court under oath during the individual voir dire. The Court noted that a deliberating juror can be discharged only for reasons personal to that juror, not for his or her relationship with fellow jurors or anything having to do with the issues in the case. The Court found that there was no showing of a need for further inquiry of Juror Doe. The Court stated:

> The note that we are referring to, the one from late yesterday afternoon, indicates that the juror as it says, acknowledged doubt, but refused to apply it to the verdict. Well, the instruction that the SJC has suggested we give in regards to reasonable doubt, and that both parties agreed to, says that, "Reasonable doubt does not mean proof beyond all possible doubt," and so in reading that note carefully and strictly the way that I have to before I possibly invade the province of the jury, that note does not indicate that this is a person who refused to follow the law. And in addition, as the parties recognized yesterday, we brought all the jurors, including the juror who is at issue here, and we asked – I asked whether or not those jurors could follow the instructions, including the instruction I just referred to. And all the jurors indicated that they could. This is not a case that there is any indication that the juror has refused to deliberate or has any reason – has indicated that they

> would not follow the law, or that they're physically suffering, or there's no note from the juror that indicates that the juror cannot or will not continue deliberating as some of the other cases talk about.

The Court declined to conduct any further individual inquiry of Juror Doe but agreed to remind the collective jury that they are obligated to accept the law as given to them whether they like it or not. Defense counsel asked for a more "forceful" reasonable doubt instruction, characterizing the Court's instruction as too "soft." The Court noted that it had given the model reasonable doubt instruction approved by the Supreme Judicial Court ("SJC").[2]

The Court then brought the jury into the courtroom and advised them that any future notes should not indicate where the jurors stood numerically. The Court reminded the jury that they were obligated:

> to accept the law as I state it to you. You should consider all of my instructions as a whole. You may not ignore any instruction or give special attention to any one instruction. You must follow the law as I give it to you whether you agree with it or not. The law that I'm instructing you on is the law that's been established by our legislature and our appellate courts and it applies to everyone, and you must apply the law as I have instructed you.

The jury continued to deliberate for two more hours. The jury then sent a note which stated: "With a heavy heart . . . we report that we are unable to come to a unanimous decision and will not be able to." At that point, the Commonwealth suggested that a mistrial was required. Defense counsel argued that the Court had the discretion to send the jury back for a "second" time because the September 1 report of a deadlock was not treated as such. However, the Court concluded that it could not send the jury back to deliberate without their consent and was required to declare a mistrial.

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[2]The Court twice gave the model instruction which includes the statement: "Proof beyond a reasonable doubt does not mean proof beyond all possible doubt, for everything in the lives of human beings is open to some possible or imaginary doubt." The jurors were each given written copies of the Court's instructions.

Defense counsel requested an emergency stay to petition the SJC for relief from a single justice under G.L. c. 211, § 3. The Court allowed a stay of one hour. The single justice (Wendlandt, J.) summarily denied relief. Defense counsel again requested an inquiry into the basis for the foreperson's notes to determine whether there was good cause to discharge Juror Doe for refusal to follow the law. The Court denied that request and reluctantly declared a mistrial.

DISCUSSION

Clancy moves to dismiss the murder indictments, arguing that a retrial is constitutionally prohibited because it would place her twice in jeopardy for the same crimes.

Double Jeopardy and Manifest Necessity

The double jeopardy clause of the Fifth Amendment to the United States Constitution precludes the Commonwealth from trying a defendant more than once for the same offense. *Read* v. *Commonwealth*, 495 Mass. 312, 319 (2025). However, there is an exception to this rule when a mistrial is declared due to a manifest necessity. *Id.* See also *Commonwealth* v. *Taylor*, 486 Mass. 469, 477, 481 (2020) (noting that no expectation of finality attaches to a properly granted mistrial). In declaring a mistrial for manifest necessity, the judge must balance the defendant's right to have her trial completed by a particular tribunal against the public's interest in fair trials designed to end in just judgments. *Read*, 495 Mass. at 319; *Taylor*, 486 Mass. at 484. The Commonwealth bears the heavy burden of demonstrating that there was a manifest necessity for a mistrial. *Cruz* v. *Commonwealth*, 461 Mass. 664, 670 (2012); *Couto* v. *Commonwealth*, 18 Mass. App. Ct. 913, 913 (1984).

A hung jury is a traditional example of manifest necessity that permits retrial without offending double jeopardy. *Read*, 495 Mass. at 319. The decision to declare a mistrial is entrusted to the judge's sound discretion, in order "to avoid the possibility of coercive measures being used to force jury agreement, thereby protecting the fairness of the proceedings." *Id.* Nonetheless, principles of double jeopardy prohibit a retrial where the judge abuses his discretion in declaring a mistrial, over the defendant's objection, without a manifest necessity. *Gaston* v. *Commonwealth*, 496 Mass. 1005, 1009 (2025). Before declaring a mistrial, the judge must carefully explore alternatives to a mistrial and give counsel a full opportunity to be heard. *Id.*; *Read*, 495 Mass. at 319. If those principles are followed, double jeopardy will not prevent retrial of the defendant. *Read*, 495 Mass. at 319.

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. Cf. *Collins* v. *Commonwealth*, 412 Mass. 349, 352 (1992) (court erred in declaring mistrial based on prosecutor's unavailability for one week without first polling jury to see if it was feasible for jurors to return a week later); *Barton* v. *Commonwealth*, 385 Mass. 517, 519 (1982) (court erred in declaring mistrial based on juror's fear for her life and expressing that fear to one other juror, without first making inquiry of all jurors to determine their knowledge of incident and its effect on their ability to render impartial verdict, or exploring alternative of severance of defendants); *United States* v. *Lara-Ramirez*, 519 F.3d 76, 86-87 (1st Cir. 2008) (where there is allegation that jury deliberations were tainted by extraneous evidence, court does not have discretion to refuse to conduct any inquiry into magnitude of taint-producing event and extent of resulting prejudice before declaring mistrial).

Good Cause to Dismiss Juror

Clancy insists that a mistrial for jury deadlock was unnecessary because there may have been good cause to discharge Juror Doe and begin the deliberations anew with an alternate. By statute, "[t]he court shall have the discretionary authority to dismiss a juror at any time in the best interests of justice . . . The court shall have authority to excuse and discharge a juror participating in jury deliberations after a hearing only upon a finding of an emergency or other compelling reason." G.L. c. 234A, § 39. This statute requires good cause to discharge a deliberating juror, which means only reasons that are personal to that juror, having nothing to do with the issues in the case or the juror's relationship with the other jurors. *Commonwealth* v. *Tiscione*, 482 Mass. 485, 489 (2019); *Commonwealth* v. *Connor*, 392 Mass. 838, 844-845 (1984). The reason for this rule is to ensure that the discharge of a juror will not affect the substance or course of the deliberations. *Commonwealth* v. *Swafford*, 441 Mass. 329, 336 (2004). See, e.g., *Commonwealth* v. *Rodriguez*, 63 Mass. App. Ct. 660, 674 (2005) (it was error to discharge holdout juror for violating judge's instructions by discussing deliberations with her mother and complaining that other jurors were angry at her and trying to remove her from jury, because where foreperson had announced that jury was at impasse and requested an alternate juror and jury received *Tuey-Rodriquez* instruction, juror's improper conversation was inextricably linked to jury's deadlock and her holdout status, such that discharge was not for personal reason unrelated to case).

Prohibition on Inquiry into Deliberative Process

Although the court may discharge a deliberating juror for a compelling reason, the SJC has cautioned that any questioning of a juror is a sensitive undertaking fraught with the potential for error. See *Commonwealth* v. *Ronchi*, 491 Mass. 284, 308 (2023). Because the secrecy of jury

deliberations is a bedrock of our judicial system, any inquiry into the jury's deliberative process would improperly intrude into the jury's function. *Commonwealth* v. *Ralph R.*, 490 Mass. 770, 780 (2022). Judicial inquiry "cannot delve into jurors' subjective reasoning or deliberative content." *Read*, 495 Mass. at 330. The issues in the case, the juror's relationship with his or her fellow jurors, their views on the case, and any disagreement among the jurors cannot be discussed. *Ronchi*, 491 Mass. at 308; *Ralph R.*, 490 Mass. at 780. There must not be any inquiry into a juror's individual or the jury's collective thought process or the reasons for their decisions. *Commonwealth* v. *Blanchard*, 476 Mass. 1026, 1028 (2017). This Court held these principles about the deliberative process firmly in mind when considering whether questioning Juror Doe individually was an appropriate alternative to declaring a mistrial.

Juror's Inability to Deliberate

Clancy argues that the foreperson's notes required the Court to question Juror Doe to determine whether there was good cause to discharge Juror Doe. During deliberations, a judge should conduct a voir dire of a juror if reliable information suggests an inability to deliberate on the part of the juror. *Ronchi*, 491 Mass. at 307.[3] The question is whether the circumstances raise the genuine possibility of a problem unique to the juror that might constitute good cause for discharge. *Commonwealth* v. *Torres*, 453 Mass. 722, 733 (2009). In the Court's view, the foreperson's notes did not reasonably suggest Juror Doe's inability to deliberate or refusal to follow the law.

Clancy cites numerous cases in which it was deemed appropriate to question a juror based on a note suggesting an inability to deliberate. However, those cases involved notes which were quite specific with respect to a juror's inability to deliberate, and in many cases, the

[3]A voir dire also is required upon reliable information suggesting a lack of impartiality, bias, or extraneous influence. See *Ronchi*, 491 Mass. at 307. Clancy's motion does not raise those issues.

notes quoted detailed comments from the juror himself expressing an inability or unwillingness to deliberate. See, e.g., *Ronchi*, 491 Mass. at 307 (foreperson's note stated: "We are concerned that one juror is not able to productively contribute to deliberations," and judge questioned foreperson, who stated that juror "several times refused to participate" in deliberations and seemed mentally unstable); *Commonwealth* v. *Williams*, 486 Mass. 646, 649-651 (2021) (after one juror was discharged and jury was ordered to start deliberations anew with alternate, another juror sent judge note stating: "I fully feel at this point I am not capable of starting over the deliberations with an unbiased opinion nor able to engage in a discussion with any of the fellow jurors."); *Tiscione*, 482 Mass. at 487, 490 (court officer stated that juror had removed herself from jury room and stated that she "could not continue to deliberate"); *Commonwealth* v. *Swafford*, 441 Mass. 329, 335 (2004) (foreperson's note stated that juror "doesn't think she [can] work through the case" and court officer stated that juror told him she was not participating in deliberations and wanted to leave); *Connor*, 392 Mass. at 842-843 (notes stated that one juror "would not associate with or speak to other jurors" and "stated that he would not deliberate," and note from foreperson stated that "a particular juror says he cannot keep the oath"); *United States* v. *Zabriskie*, 415 F.3d 1139, 1142 (1st Cir. 2005) (note stated: "there's a juror who absolutely, positively will not deliberate with us. He says he feels this way and he will have nothing more to say. We are trying to explain what deliberation means to him, but he doesn't care and is uninterested. You previously reminded us that we are jurors and we have sworn to follow your rules, but he says he won't and he doesn't care. He won't speak to us. He won't deliberate with us. He just says 'I feel this way and I will never change'"). Cf. *Commonwealth* v. *Alicea*, 464 Mass. 837, 849 n.10 (2013) (judge could have inquired but was not required to inquire where one

juror told court officer that several jurors were concerned that particular juror "had made up his mind" on second day of trial).

In contrast, the foreperson's notes in this case stated that "a member of the jury is unable to follow the instructions regarding reasonable doubt" and that Juror Doe "has made statements acknowledging doubt but refuses to apply it to the verdict as the law states." Viewed in the context of the jury's deadlock, these statements strongly suggest a disagreement among the jury with respect to the substance of the deliberations rather than Juror Doe's inability to deliberate.[4] The foreperson's notes did not plausibly suggest that Juror Doe refused to consider the trial evidence or disagreed with the law as explained by the Court in its instructions. Cf. *Commonwealth* v. *Chambers*, 93 Mass. App. Ct. 806, 814, rev. den., 480 Mass. 1110 (2018) (inquiry was warranted where juror sent judge note stating he may know information that would affect his ability to decide case based only on trial evidence, then during voir dire, expressed disagreement with point of law in instructions); *Commonwealth* v. *Olavarria*, 71 Mass. App. Ct. 612, 615, 620, rev. den., 451 Mass. 1109 (2008) (judge properly conducted inquiry based on note reporting that holdout juror looked up definition of reasonable doubt in three dictionaries and brought definitions into jury room).

Nor did the notes indicate that Juror Doe had announced an intent to disregard the Court's instructions and therefore refused to follow the law. Cf. *United States* v. *Godwin*, 765

[4]If the judge does not know what the foreperson means by a comment in a note about another juror, the judge is obligated to conduct a preliminary inquiry. *Commonwealth* v. *Vasquez*, 495 Mass. 279, 281, 284 (2025) (where note from one juror stated that another juror had called him a racist and note from foreperson stated that juror voiced "preconceived biases" to the group, judge was required to inquire further to determine if racist comments had been made during deliberations and if they had infected other jurors); *Ralph R.*, 490 Mass. at 779, 782-785 (where foreperson's note reported "discriminating comments" and judge had "no idea" what that meant, he was required to investigate whether racially biased statement was made during deliberations). The Court is not persuaded that the foreperson's notes were ambiguous, requiring the Court to ask the foreperson what she meant.

F.3d 1306, 1315 (11th Cir.), cert. den., 574 U.S. 997 (2014) (note stated that juror "disagrees with your instructions" and after judge reminded jury of sworn duty to follow instructions, jury sent second note stating: "he will not agree with your instructions"); *United States* v. *Augustin*, 661 F.3d 1105, 1130-1131 (11th Cir. 2011), cert. den., 566 U.S. 1015 (2012) (note reported that one juror stated during deliberations that she did not trust the law and did not believe in the law); *United States* v. *Abbell*, 271 F.3d 1286, 1303-1304 (11th Cir. 2001) (jurors complained that holdout juror made comments that she did not have to follow law and believed court's instructions were only advisory, not binding); *United States* v. *Wilkerson*, 966 F.3d 828, 833 (D.C. Cir. 2020), cert. den., 141 S.Ct. 2503 (2021) (juror sent note stating that he strongly disagreed with the laws and instructions and could not follow them); *State* v. *Elmore*, 123 P.3d 72, 74 (Wash. 2005) (two different jurors reported that another juror stated he did not care what the law says and commented: "the law is shit and I won't convict anyone based on what the law says").

Viewed in the context of everything that had happened in this case to that point, the foreperson's report that Juror Doe "acknowledg[ed] doubt but refuses to apply it to the verdict as the law states" did not plausibly suggest that Juror Doe refused to apply the standard of reasonable doubt. Indeed, the Court's instructions, which followed the SJC's model reasonable doubt instruction, stated that reasonable doubt does not require proof beyond all possible doubt. Juror Doe's "acknowledged doubt" therefore was consistent with the law given to the jury.

Special Concerns When Jury Is at an Impasse

In determining whether the foreperson's notes raised a genuine possibility of a problem unique to Juror Doe that might constitute good cause for discharge, the Court viewed the notes in the following context: after deliberating for a substantial period of time, the jury had declared

themselves at an impasse, prompting the Court to give the *Tuey-Rodriquez* charge. The foreperson's notes inappropriately volunteered that Juror Doe was the lone holdout who favored finding Clancy criminally responsible for the murders. Having learned inappropriate information about the jury's deliberations, the Court could not ignore that information in deciding what course of action to take. See *Commonwealth* v. *Kincaid*, 444 Mass. 381, 392 (2005).

Given that the jury was deadlocked and the foreperson accused the lone holdout of refusing to apply the law, questioning Juror Doe would have been impermissibly coercive. The SJC has long recognized that deadlocked juries are particularly susceptible to coercion. *Read*, 495 Mass. at 322. "Judges must carefully avoid actions that might pressure jurors into compromising their genuine views of the evidence." *Id.* Further, "[g]reat care must be taken to ensure that a lone dissenting juror is not permitted to evade his responsibilities." *Ronchi*, 491 Mass. at 308. The SJC has noted that there is an inherent risk of coercion in questioning jurors individually. See *Commonwealth* v. *Chalue*, 486 Mass. 847, 865 (2021).

"Accusations that a juror is attempting nullification by refusing to follow the law present a difficult situation. The trial court must balance the cardinal principle of jury secrecy against the need to protect the right of both parties to an impartial jury and the defendant's right to a unanimous jury verdict." *State* v. *Elmore*, 123 P.3d at 79. Here, where the foreperson's notes stated that the holdout juror was "unable to follow the instructions regarding reasonable doubt" and asserted that Juror Doe "made statements acknowledging doubt but refuses to apply it to the verdict as the law states," any questioning of the foreperson or Juror Doe would inevitably delve into the jurors' views of the case and their subjective reasoning, and the jury's deliberative content. Moreover, any individual questioning of Juror Doe about the nature of the doubt harbored would undoubtedly have a coercive effect. Cf. *Chalue*, 486 Mass. at 863 (it was

improper and coercive for judge to have sidebar colloquy with holdout juror who refused to reenter jury room, urging her to listen to fellow jurors with open mind and try to reach verdict).

The SJC has recognized that where the jury is at an impasse, an asserted inability to perform the functions of a juror may be a euphemism for persistence in asserting a minority position during deliberations. See *Connor*, 392 Mass. at 846 (discussing juror's own assertion of inability to perform duties). See also *Commonwealth* v. *Worrell*, 2003 WL 21488177 at *2 (Mass. App. Ct.) (Rule 1:28), rev. den., 440 Mass. 1102 (2003) (noting that reluctance or refusal to participate in deliberations may be due to relationship with other jurors, and friction due to differing views of case or from deliberation process itself does not qualify as "good cause" to discharge juror). Cf. *United States* v. *Abbell*, 271 F.3d at 1302 (noting risk that majority of jury at impasse might characterize holdout juror as refusing to apply the law as instructed instead of honestly disagreeing about the merits). "In most circumstances it may well be a mistake for the judge to conduct a personal interview with a juror, based on messages of alarm from the jury room. A more orthodox approach would be to decline to take at face value any message which does not describe difficulties which are personal to a juror, and to treat the problem as one of a deadlocked jury." *Connor*, 392 Mass. at 846 n.5.

Here, where the foreperson inappropriately disclosed that Juror Doe was the lone holdout in deliberations, the notes did not reasonably suggest good cause personal to Juror Doe that might warrant discharge. Cf. *Commonwealth* v. *Torres*, 453 Mass. 722, 725, 733 (2009) (foreperson's note that one juror was "unable to deliberate in a coherent and logical manner" warranted judicial inquiry because it raised genuine possibility of problem unique to juror that might constitute good cause for discharge, where jury had only deliberated for forty-five minutes and was unlikely to be at impasse). In context, the notes appear to express the foreperson's

belief that Juror Doe must be refusing to follow the law because Juror Doe would not agree with the majority's view of the case. Given that the jury unquestionably had reached an impasse, the Court did not and does not view the foreperson's notes as reliable evidence of Juror Doe's inability or refusal to deliberate or follow the law.

Before declaring a mistrial, the Court gave counsel a full opportunity to be heard and carefully considered defense counsel's proposed course of action. See *Read*, 495 Mass. at 319. However, based on the imperative to avoid intrusion into the substance of deliberations and to avoid jury coercion, the Court, in its discretion, concluded that it was inappropriate to investigate by questioning the holdout juror about any doubt Juror Doe harbored. Having reinstructed the jury to follow the Court's instructions and having reinstructed the jury on the law of reasonable doubt, the Court was required to declare a mistrial. See G.L. c. 234A, § 68C.[5] Cf. *Alicea*, 464 Mass. at 849 n.10 (where one juror told court officer that several jurors were concerned that particular juror "had made up his mind" on second day of trial, judge did not abuse discretion in declining to question juror but instead reinstructing entire jury to keep open mind and remain indifferent until evidence closed and they received legal instructions); *Commonwealth* v. *Nunes*, 2012 WL 2438101 at *4 (Mass. App. Ct. Rule 1:28), rev. den., 463 Mass. 1106 (2012) (given good cause standard to discharge a juror, where note stated: "One of the jurors appears to be having difficulty in using reasonable doubt in making a determination of the defendant's guilt or

[5]That statute states: "If a jury, after due and thorough deliberation, returns to court without having agreed on a verdict, the court may state anew the evidence or any part of the evidence, explain to them anew the law applicable to the case and send them out for further deliberation; but if they return a second time without having agreed on a verdict, they shall not be sent out again without their own consent, unless they ask from the court some further explanation of the law." There is no requirement that the Court ask for the jury's consent to continue deliberating before declaring a mistrial and in deciding whether to do so, the Court must consider whether asking would risk coercing a verdict. *Sicellon* v. *Commonwealth*. 495 Mass. 1023, 1024 (2025).

innocence. It seems that this juror cannot make a decision without knowing with absolute certainty the occurrences during the night of July 13th, 2009. Should we use an alternate juror?" the court did not abuse its discretion "by retention of the juror, and reinstruction upon the burden of proof beyond a reasonable doubt. The circumstances did not require [the court] to perform any further inquiry before making this decision.").

Clancy's proposed juror inquiry was not a permissible means of breaking the jury's deadlock, and the Commonwealth thus has met its heavy burden to demonstrate that there was a manifest necessity for a mistrial. The Court understands the frustration of the defendant and the jurors that despite the utmost diligence, the jury ultimately was unable to reach a verdict in this emotionally grueling and complicated case. While a party may desire a procedure that increases the odds of receiving a favorable outcome to the case, the Court's primary concern must be protecting the fairness of the proceedings and avoiding the possibility of a coerced verdict.

The Court declared a mistrial after giving counsel a full opportunity to be heard and after carefully considering the alternatives proposed by defense counsel. The Court made its decision based on what was known at the time. Information that has since come to light cannot serve to undermine that decision. See *Read*, 495 Mass. at 322 (existence of manifest necessity is assessed based on what was known at time of judge's decision, and post-trial accounts of deliberations that are inconsistent with jurors' public communications in court cannot render mistrial improper).

"Although a mistrial may be expensive in both human and monetary costs, it is not to be avoided by intrusion into the jury's domain. The possibility that an unreasonably stubborn or eccentric juror will be seated is an unavoidable risk of the jury system." *Connor*, 392 Mass. at 844. Because the Court concludes that there was a manifest necessity for a mistrial based on the

jury's deadlock, a retrial on the murder indictments does not violate Clancy's right not to be placed in double jeopardy.

ORDER

For the foregoing reasons, the Defendant's Motion to Dismiss is **DENIED**.

WILLIAM F. SULLIVAN
Justice of the Superior Court

DATED: November 9, 2026