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SJC-13818

COMMONWEALTH vs. CRAIG HOOD.

Suffolk. April 6, 2026. - August 31, 2026.

Present: Budd, C.J., Gaziano, Kafker, Wendlandt, Georges,
Dewar, & Wolohojian, JJ.

Homicide. Firearms. Assault and Battery by Means of a Dangerous Weapon. Constitutional Law, Plea, Assistance of counsel. Due Process of Law, Plea. Practice, Criminal, Plea, Assistance of counsel, Conduct of government agents, Disclosure of evidence, Voluntariness of confession, New trial. Evidence, Guilty plea, Exculpatory, Disclosure of evidence, Motive, Voluntariness of statement.

Indictments found and returned in the Superior Court Department on November 16, 1993.

A motion to withdraw guilty pleas and for a new trial, filed on July 2, 2020, was heard by Debra A. Squires-Lee, J.

The Supreme Judicial Court granted an application for direct appellate review.

Jennifer H. O'Brien for the defendant.
Sarah Montgomery Lewis, Assistant District Attorney, for the Commonwealth.

GEORGES, J. In June 1995, the defendant, Craig Hood, pleaded guilty to two counts of murder in the second degree and one count of unlawful possession of a firearm, in connection with the shooting deaths of twenty-three year old Tracy Brown and eighteen year old Celine Kirk.¹ In July 2020, the defendant filed a motion to vacate his guilty pleas, contending that the pleas should be vacated because of undisclosed exculpatory evidence, newly discovered evidence, ineffective assistance of his plea counsel, and the involuntariness of his pleas. After an evidentiary hearing, the motion was denied. Discerning no error of law or abuse of discretion, we affirm.

Background. 1. The murders of Kirk and Brown. We summarize the facts as recited by the prosecutor at the plea hearing and reserve certain details for later discussion. See Commonwealth v. Henry, 488 Mass. 484, 485 (2021). Where the plea colloquy did not identify an officer by name, we rely on the motion record only to supply that identifying context.

On September 29, 1993, Boston police officers responded to an apartment in the Mattapan section of Boston following a 911 call from a young child. When police arrived, they were let into the apartment by Brown's two year old son. Inside, they

¹ The defendant also pleaded guilty to one count of assault and battery by means of dangerous weapon and one count of unlawful possession of a firearm in connection with the unrelated, nonfatal shooting of Glenn McLaughlin.

found Brown's infant daughter asleep in her crib. Police also discovered the bodies of Brown and Kirk, who were both dead. Brown had sustained one gunshot wound to the head and another to her arm, while Kirk had sustained two gunshot wounds to her head.

In the following days, Detectives Daniel Keeler and John Brazil of the Boston police department interviewed, among other people, Nikki Coleman, one of Kirk's friends. Coleman told them that, on the afternoon of the murders, she spoke with Kirk on the telephone. During that call, Coleman could hear the voice of a man, whom Kirk identified as the defendant. Coleman was familiar with the defendant, having known him for several months. Coleman overheard Kirk and the defendant arguing about a gold chain that the defendant had loaned to Kirk, but that Kirk allegedly failed to return. In addition to describing her call with Kirk, Coleman gave police the defendant's Brockton address and identified him from a photograph.

Police discovered several outstanding warrants for the defendant, including one for the nonfatal shooting of Glenn McLaughlin in June of that year. The defendant had confronted McLaughlin and shot him once in the leg with a .25 caliber handgun. The bullet, which passed through McLaughlin's leg, was recovered by police and later compared to three bullets removed from Brown and Kirk's bodies. The Boston police department's

ballistics unit determined that the four bullets were fired from the same gun.

The defendant was arrested in Brockton on the outstanding warrants. While in custody, he asked to speak with the detectives who arrested him. He then gave Keeler and Sergeant Detective William Mahoney a detailed confession to the shootings of Brown and Kirk. The confession aligned with the physical evidence found in the apartment and included facts that only the killer would have known. The defendant also described what he had been wearing at the time of the shootings, including a green jacket and black boots. The police collected those items and sent them to the Boston police crime laboratory for testing. Preliminary tests were positive for blood, but the amount of blood was insufficient for blood typing.

The defendant told detectives that he argued with Kirk about the gold chain on the night of the murders. When Kirk refused to return the chain, she began escorting the defendant out of the apartment. The defendant then shot Kirk in the head. Brown fled into the bedroom where her infant daughter was sleeping. The defendant followed and shot Brown twice. He then returned to Kirk and shot her again before Brown's son pushed him out of the apartment. When asked why he killed Brown, the defendant said she was a witness who needed to be eliminated.

2. The indictments and guilty pleas. In November 1993, a grand jury indicted the defendant on two counts of murder in the first degree for the killings of Brown and Kirk, in violation of G. L. c. 265, § 1; one count of assault and battery by means of a dangerous weapon for the shooting of McLaughlin, in violation of G. L. c. 265, § 15A; and two counts of unlawful possession of a firearm, in violation of G. L. c. 269, § 10 (a). In June 1995, the defendant, who was represented by counsel, pleaded guilty to two counts of murder in the second degree and to the remaining charges. For the murder charges, he was sentenced to two consecutive terms of life in State prison, with the possibility of parole after thirty years. Additionally, he received a concurrent sentence of from seven to ten years in State prison for the assault and battery by means of a dangerous weapon charge, and two concurrent sentences of from four to five years in State prison for the unlawful possession charges.

3. The murder of John Mulligan. The defendant's arguments on appeal are rooted in the investigation into the killing of Boston police Detective John Mulligan, the details of which are necessary context for our later discussion. The Mulligan murder has come before this court before. In Commonwealth v. Ellis, 432 Mass. 746 (2000) (Ellis I), S.C., 475 Mass. 459 (2016) (Ellis II), overruled in part by Commonwealth v. Britt, 465 Mass. 87, 100 (2013), we examined the investigation in detail.

We draw on pertinent portions of that discussion here, supplemented by the motion judge's findings.

On September 26, 1993, three days before Kirk and Brown were murdered, Mulligan was shot in his police vehicle outside a Walgreens pharmacy store in the Roslindale section of Boston. See Ellis I, 432 Mass. at 747. The investigation into Mulligan's death intersected with the investigation into the deaths of Kirk and Brown. The intersection stems from a police interview with Sean Ellis, who was living at the time with Kirk and Brown, his cousins. During that interview, Ellis placed himself, Kirk, and a third individual, Terry Patterson, at the same Roslindale Walgreens around the time of Mulligan's death. Ellis was later indicted and, after two mistrials, convicted of murder in the first degree for the killing of Mulligan. Id. at 749. Patterson was tried separately on a theory of joint venture and likewise convicted of murder in the first degree. See Commonwealth v. Patterson, 432 Mass. 767, 767-768, 770-771 (2000), S.C., 445 Mass. 626 (2005), overruled in part by Britt, 465 Mass. at 99-100.

Ellis filed a motion for a new trial, arguing that the police's investigation was tainted due to newly discovered evidence indicating that three detectives who investigated the Mulligan murder, including Brazil, were engaged in unrelated criminal conduct. See Ellis I, 432 Mass. at 764-765. At the

time of Ellis I, there was no evidence "suggesting that the subject detectives procured false evidence in connection with the investigation of [Ellis]" or that Mulligan was in any way involved in the criminal scheme. Id. at 765. Accordingly, this court affirmed Ellis's convictions and the order denying his motion for a new trial. Id. at 765-766.

In 2013, Ellis filed a second motion for a new trial based on newly discovered evidence tending to show that Mulligan participated in "crimes of police corruption" with the detectives who investigated his murder, and other information that "provided . . . the police [with] possible third-party culprits." Ellis II, 475 Mass. at 460. The motion was granted because six categories of newly discovered evidence established that the police did not vigorously pursue alternative leads and, coupled with the detectives' conflict of interest in investigating Mulligan's murder, provided a strong defense under Commonwealth v. Bowden, 379 Mass. 472, 485-486 (1980). See Ellis II, supra at 470.

We rejected the Commonwealth's contention that the newly discovered evidence added "nothing material" to what Ellis presented in his first motion for a new trial, reasoning that "[t]he complicity of [Mulligan] in the detectives' malfeasance fundamentally changes the significance of the detectives' corruption" because it provided a "powerful incentive to prevent

a prolonged or comprehensive investigation" that might reveal their own wrongdoing. Ellis II, 475 Mass. at 474-476.

Concluding that there was no abuse of discretion in granting Ellis's second motion for a new trial, we affirmed. Id. at 481.

4. Motion to withdraw guilty pleas. Over the past several decades, the defendant has filed multiple motions to vacate his guilty pleas and for a new trial.² In July 2020, the defendant filed the motion for a new trial that gives rise to this appeal. He sought to withdraw his guilty pleas on four grounds: the Commonwealth failed to disclose exculpatory evidence relevant to a possible third-party culprit defense, newly discovered evidence cast doubt on his guilt, his plea counsel was ineffective for failing to challenge a pretrial protective order, and his pleas were not voluntary. The evidence on which the defendant relied fell generally into two categories. The first consisted of materials from the Mulligan investigation, which were subject to a protective order that barred plea

² The first motion, filed pro se, was withdrawn without prejudice. The second motion, also filed pro se, was denied without an evidentiary hearing by the same Superior Court judge who accepted the defendant's plea. The Appeals Court affirmed the denial in an unpublished decision. Commonwealth v. Hood, 56 Mass. App. Ct. 1106 (2002). The third motion, for which the defendant was represented by counsel, was denied by the same Superior Court judge who accepted his plea and denied his prior motion. The Appeals Court again affirmed in an unpublished decision. Commonwealth v. Hood, 87 Mass. App. Ct. 1105 (2015).

counsel from sharing them with the defendant. The second consisted of evidence of police misconduct in the Ellis matter.

The defendant filed two affidavits in support of the motion. In his first affidavit, he averred that (1) plea counsel told him that he had "no chance at trial" in light of his confession; (2) plea counsel sought discovery related to the Ellis and Patterson matters, but could not discuss or share it with the defendant; (3) the defendant never considered any of the information that "may have been in" the Ellis and Patterson matters; and (4) had the defendant known about this information, he would not have pleaded guilty.

In his second affidavit, the defendant averred that had he known about Mulligan's misconduct and that of the investigating detectives, some of whom were involved in the investigation of the Kirk and Brown murders, he would not have pleaded guilty. He further averred that his decision to plead guilty was based on several conversations he had with plea counsel, having weighed the Commonwealth's evidence, and plea counsel's opinion that the defendant's confession weighed heavily against a third-party culprit defense. Finally, he averred that he did not know that his plea counsel was prevented from sharing evidence from the Ellis and Patterson matters with him and, had he known this, he would not have pleaded guilty.

An evidentiary hearing was held by a different Superior Court judge (motion judge) from the one who accepted the defendant's guilty pleas.³ The evidentiary hearing was limited to two issues: the alleged failure to disclose exculpatory material from the Mulligan investigation in violation of Brady v. Maryland, 373 U.S. 83, 87 (1963); and the defendant's claim of ineffective assistance of counsel. The defendant's plea counsel and the prosecutor were the only witnesses to testify.

a. Factual findings. Based on the testimony and exhibits introduced at the evidentiary hearing, the motion judge found the following facts.

Between January 1994 and May 1995, the prosecutor sent plea counsel at least twenty-one transmittal letters detailing discovery material provided to the defendant. Based on the prosecutor's credited testimony, the motion judge found that the prosecutor's general practice was to review discovery packages to ensure they included everything that was described in the accompanying transmittal letter, and that the prosecutor followed that practice in the defendant's case. The motion judge further found that the defendant received the discovery materials referenced in those twenty-one letters because she credited plea counsel's testimony that he would have notified

³ The plea judge had since retired.

the prosecutor if he had not received something that was identified in a transmittal letter.

Because plea counsel was aware that Kirk was Ellis's cousin and that she was alleged to have been with Ellis the night of Mulligan's murder, plea counsel sought discovery from the Mulligan investigation concerning Ellis and Patterson to support a third-party culprit defense that whoever killed Mulligan also killed Brown and Kirk. Between January and July 1994, plea counsel made various requests for discovery concerning the Mulligan investigation. He particularly sought any information that placed Kirk at the scene of Mulligan's murder, believing such information would help demonstrate a motive for whoever shot Mulligan to kill Kirk.

Ellis's counsel opposed the production of discovery prior to the conclusion of Ellis's trial, raising concerns that the material produced would be made public and deny Ellis a fair trial. After Ellis's second mistrial, a Superior Court judge (who was neither the plea judge nor the motion judge) ordered that the material be provided to plea counsel and his associate subject to a protective order barring them from discussing the material with or providing the material to anyone else, including the defendant. The subsequent discovery, detailed in an eleven-page discovery letter, was provided to plea counsel in April 1995, over one month before the defendant pleaded guilty.

Consistent with the protective order, plea counsel did not discuss the produced material with the defendant prior to his plea. At the evidentiary hearing, plea counsel could not recall any specific material that he believed he "should" have discussed with the defendant. He testified, however, that if he had received such material, he would have sought relief from the protective order. He did not do so. The motion judge therefore inferred that plea counsel did not view anything in the Mulligan investigation materials as necessary to discuss with the defendant before the guilty pleas.

The motion judge found that plea counsel had received most of the documents the defendant claimed had not been produced. The motion judge did not determine whether any particular document had been withheld from the defendant. Instead, the motion judge assumed that certain materials had not been produced and considered whether their absence mattered.

Those materials consisted of (1) two Federal Bureau of Investigation (FBI) reports describing information provided by a confidential informant, who claimed that Ellis admitted to assisting in Mulligan's murder; (2) two police reports that recounted statements made by Raven James -- an associate of Ellis -- that Ellis, who had access to a .25 caliber handgun before the Mulligan murder, "smiled and then looked at Patterson" when James asked who had killed Mulligan; (3) two

recorded interviews of Evoney Chung, who was in the Walgreens parking lot around the time of Mulligan's death and saw two Black males in the parking lot; and (4) various telephone hotline tips related to the murders of Kirk and Brown, including a tip from their neighbor, Ada Jackson, who reported seeing a person leaving Kirk and Brown's apartment on the day of the murders,⁴ and another from a tipster who allegedly overheard two school children on the subway say that a boyfriend had killed the victims.

b. Denial of motion to withdraw guilty pleas. After discrediting the defendant's "self-serving" averments that he would not have pleaded guilty had he known of the Mulligan investigation material or the evidence of police misconduct from Ellis II, the motion judge concluded that this information would not have materially affected the defendant's decision to plead guilty. The motion judge reasoned that the material was either cumulative of other information already known by the defendant, did not significantly add to the "wealth" of information the defendant already possessed, or was unconnected to the investigation of Kirk and Brown's killings. For many of the

⁴ In her later statement to the police, Jackson described the person she saw as a "[B]lack male wearing a green jacket." The record reflects that the defendant is Black.

same reasons, the motion judge rejected the defendant's argument that his pleas were involuntary.

The motion judge also concluded that rejecting the plea offers would not have been rational in light of the Commonwealth's strong case. That case included the defendant's detailed confession, ballistic evidence linking the firearm used to shoot McLaughlin to the firearm used to shoot Kirk and Brown, and evidence placing the defendant at the scene at around the time of the murders. The judge also considered the benefit the defendant received from the pleas. By pleading guilty to murder in the second degree, he avoided mandatory sentences of life without the possibility of parole for murder in the first degree.

For those reasons, the motion judge was not persuaded that justice may not have been done and denied the defendant's motion. The defendant appealed, and we allowed his application for direct appellate review.

Discussion. A motion to vacate a guilty plea is treated as a motion for a new trial pursuant to Mass. R. Crim. P. 30 (b), as appearing in 435 Mass. 1501 (2001), and may be granted "any time it appears that justice may not have been done."

Commonwealth v. Scott, 467 Mass. 336, 344 (2014). "We review . . . to determine whether the judge abused [his or her] discretion or committed a significant error of law" (citation

omitted). Henry, 488 Mass. at 490. Where, as here, an evidentiary hearing has been held, "we accept the [judge's] findings where they are supported by substantial evidence in the record, and we defer to the judge's assessment of the credibility of witnesses" (quotations and citation omitted). Commonwealth v. Dew, 492 Mass. 254, 260-261 (2023). "However, we make an independent determination as to the correctness of the judge's application of constitutional principles to the facts as found" (quotation and citation omitted). Id. at 261.

The defendant's claims arise against a troubling historical backdrop. The investigation into Mulligan's murder was later shown to have been compromised by serious police corruption, and that investigation intersected in important respects with the investigation into the murders of Kirk and Brown. That backdrop, however, does not relieve the defendant of his burden to connect the undisclosed or later-discovered information to his own case and to his own decision to plead guilty. After an evidentiary hearing, the motion judge concluded that the defendant failed to make that showing. The record supports that conclusion.

1. Exculpatory and newly discovered evidence, protective order, and ineffective assistance claims. The defendant first raises several claims that turn on what he did not know about the Mulligan investigation before entering his guilty pleas. He

argues that the Mulligan investigation material constituted withheld exculpatory evidence or newly discovered evidence. He also argues that the judge who entered the protective order abused her discretion in doing so, particularly where the order precluded plea counsel from sharing that material with him.⁵ Finally, he claims that plea counsel was constitutionally ineffective for failing to object to the protective order, failing to seek modification of the order once plea negotiations began, and failing to review all the Mulligan investigation material or pursue leads from that material before advising him to plead guilty.

These claims are doctrinally distinct, but they all rest on the same showing of prejudice or materiality. See Henry, 488 Mass. at 495, citing Scott, 467 Mass. at 360-361 (in context of motion to withdraw guilty plea, standard for newly discovered and withheld exculpatory evidence "borrow[s] from our

⁵ To the extent the defendant argues that the protective order itself violated his due process rights, apart from his other claims, that argument is waived. Such a challenge to the protective order could have been -- but was not -- raised in the defendant's first motion for a new trial. See Mass. R. Crim. P. 30 (c) (2), 378 Mass. 900 (1979). Our review is therefore limited to whether the protective order created a substantial risk of a miscarriage of justice. See Commonwealth v. Randolph, 438 Mass. 290, 294 (2002). For essentially the same reasons that the defendant failed to establish prejudice on his other claims, the protective order did not create a substantial risk of a miscarriage of justice.

jurisprudence on claims that the ineffective assistance of counsel induced a guilty plea"); Commonwealth v. Clarke, 460 Mass. 30, 47 (2011), abrogated in part by Chaidez v. United States, 568 U.S. 342 (2013) (outlining prejudice for ineffective assistance of counsel in context of guilty plea); Commonwealth v. Holliday, 450 Mass. 794, 805, cert. denied, 555 U.S. 947 (2008) (challenge to protective order requires showing of prejudice).⁶ Specifically, the defendant must show that there is a reasonable probability that he would not have pleaded guilty had he known of the Mulligan investigation material, and that rejecting the plea offer would have been rational under the circumstances.⁷ See Commonwealth v. Lastowski, 478 Mass. 572, 577 (2018); Scott, supra at 361-362. The question is not whether the information would have had some arguable value. The question is whether it "would have materially influenced [the defendant's] decision to plead guilty." Scott, supra at 360.

⁶ The defendant's protective order argument substantially overlaps with his Brady violation argument. Cf. United States v. Simels, 636 Fed. Appx. 13, 15 (2d Cir. 2015) (analyzing defendant's argument that "because the government used the protective order to withhold what he asserts is exculpatory information, the government violated his due process rights under Brady"). In the circumstances of this case, we therefore analyze prejudice on those claims together.

⁷ As in prior cases, we need not decide whether a defendant who enters a voluntary and intelligent plea thereby "waive[s] the right to contest the claims of newly discovered evidence or prosecutorial nondisclosure." Henry, 488 Mass. at 496 n.6.

The defendant claims that the information from the Mulligan investigation would have been material because it provides additional evidence that Ellis killed Mulligan, which in turn bolsters the theory that Ellis had a motive to kill Kirk. We are not convinced. Motive may be important, but motive alone does not make a third-party culprit theory materially stronger for plea-withdrawal purposes. Cf. Commonwealth v. Andrade, 488 Mass. 522, 533 (2021), citing Commonwealth v. Scott, 470 Mass. 320, 328 (2014). Our case law requires a defendant to show that the third party's acts are "so closely connected in point of time and method of operation" that it raises doubt as to the defendant's identification as the culprit (citation omitted). Andrade, supra at 532. Similar principles apply to a Bowden defense based on the police's failure to investigate a third-party culprit. See Commonwealth v. Bright, 463 Mass. 421, 440-441 (2012) (for Bowden defense, "mere fact that" others might have had "motive to murder the victim was of minimal probative value absent other information that potentially linked [such persons] to the crime" [quotation and citation omitted])).

The Mulligan investigation information did not add any material evidence connecting Ellis, Patterson, or another third party to the killings of Kirk and Brown. For example, the FBI reports addressed Ellis's alleged role in Mulligan's murder, not the Kirk and Brown killings. Likewise, the Chung interviews

bore on who was at the Walgreens the night Mulligan was shot, not who killed Kirk or Brown three days later. At best, the James reports suggested that Ellis had access to a .25 caliber handgun, the same caliber as the firearm used to kill Kirk and Brown. The motion judge addressed that point but concluded that it did not materially change the plea calculus. See Andrade, 488 Mass. at 533-534 (evidence that other individuals possessed same caliber of ammunition as that used to kill victim was inadequate to support third-party culprit defense). Additionally, although one of the hotline tips implicates a boyfriend in the killings and therefore provides a possible third-party culprit other than Ellis, it is speculative. See Commonwealth v. Acevedo, 492 Mass. 381, 390 (2023) (evidence proffered to mount third-party culprit defense "cannot be too remote or speculative" [citation omitted]). Without more, as the motion judge concluded, the Mulligan investigation material did not "significantly increase[] the strength or viability of any [of] Hood's defenses."

In addition to the lack of connection, the Mulligan investigation material also was cumulative in important respects. Cf. Commonwealth v. Lykus, 451 Mass. 310, 326 (2008) ("Newly discovered evidence that is merely cumulative of evidence admitted at the trial will carry little weight"); Commonwealth v. Tucceri, 412 Mass. 401, 414 (1992) ("If the

undisclosed evidence is cumulative, . . . the failure to disclose that evidence does not warrant the granting of a new trial"). For example, plea counsel already possessed Jackson's statement to police describing a Black male wearing a green jacket leaving Kirk and Brown's apartment, and another witness's statement implicating a boyfriend as the shooter. More generally, before the defendant pleaded guilty, plea counsel already knew the core facts forming the basis of the defense that Kirk had been killed because of what she knew about the Mulligan murder. This included facts tending to show Kirk's alleged connection to Ellis, as well as Ellis's and Patterson's alleged connections to the Mulligan murder.

In sum, with the evidence in the Mulligan investigation material lacking connection to the victims' murders, being cumulative, or both, the motion judge had adequate grounds to conclude that the defendant failed to establish a reasonable probability that he would not have pleaded guilty. While the defendant asserts, without explanation, that the material would have led him to reject the plea, the judge was not required to accept that assertion. See Commonwealth v. Mosso, 496 Mass. 768, 780 (2025) ("Proof of prejudice cannot be based on mere conjecture or speculation as to outcome" [quotation and citation omitted]).

The record also supports the motion judge's determination that the defendant failed to show that rejecting the guilty pleas would have been rational under the circumstances. A defendant may make that showing by demonstrating that he had an "available, substantial ground of defence." Commonwealth v. Saferian, 366 Mass. 89, 96 (1974). The defendant made no such showing here.

The Commonwealth's case was strong. See Commonwealth v. Lavrinenko, 473 Mass. 42, 59 n.20 (2015) (strength of prosecution's case may be considered in assessing prejudice). Coleman identified the defendant as the man who had been speaking with Kirk in her apartment about the gold chain, placing him inside the apartment on the day of the murders. Jackson saw a Black male wearing a green jacket leaving Kirk and Brown's apartment around the time of the murders. In his confession, the defendant told police that he had been wearing a green coat when he committed the murders. Police later recovered a green coat with blood on it from the defendant's girlfriend's home. Ballistics evidence tied the firearm used in the murders to the firearm used to shoot McLaughlin, who identified the defendant in a photographic array. Most significantly, the defendant gave a detailed confession to the killings.

Against that evidence, the defendant has not identified a substantial defense that would have made it rational to reject pleas that made the defendant eligible for parole, where he otherwise faced the risk of mandatory life sentences without the possibility of parole. See Henry, 488 Mass. at 493 (discussing severity of sentence avoided by guilty plea). Cf. Commonwealth v. Price, 106 Mass. App. Ct. 376, 379 (2025) (defendant's knowledge "that he had the ability to avoid a mandatory life sentence without parole if he accepted the plea deal" was relevant to voluntariness analysis).

For these reasons, the motion judge did not err in concluding that the defendant failed to prove prejudice or materiality arising from the alleged nondisclosure, the later-discovered evidence, the protective order, or plea counsel's handling of that order.

2. Egregious police misconduct. The defendant next argues that his pleas should be vacated because they were rendered involuntary by egregious police misconduct. Specifically, he points to the police misconduct detailed in Ellis II and argues that because many of the same police officers and detectives -- including Keeler and Brazil -- were involved with the investigations of the murders of Mulligan, Brown, and Kirk, his guilty pleas should be vacated.

"Due process requires that a plea of guilty be accepted only where the contemporaneous record contains an affirmative showing that the defendant's plea was intelligently and voluntarily made" (quotation and citation omitted). Scott, 467 Mass. at 345. "A plea may be defective . . . where it has been involuntarily induced by government misconduct that since has been discovered" (quotation and citation omitted). Commonwealth v. Ruffin, 475 Mass. 1003, 1003 (2016). We previously "adopted a two-pronged test to determine when government misconduct is so egregious that it renders a guilty plea involuntary, and thus in violation of a defendant's rights to due process." Commonwealth v. Hallinan, 491 Mass. 730, 744 (2023). To withdraw a guilty plea in these circumstances, the defendant must show that "(1) egregious government misconduct took place in connection with the defendant's case and preceded the entry of the guilty plea; and (2) the misconduct was material to the defendant's decision to plead guilty." Commonwealth v. Claudio, 484 Mass. 203, 206 (2020).

A defendant claiming egregious government misconduct must show that the misconduct "preceded the entry of his or her guilty plea," was "undertaken by government agents," and "occurred in the defendant's case." Hallinan, 491 Mass. at 745. The last requirement is critical here. It requires "a nexus between the government misconduct and the defendant's own case."

Ruffin, 475 Mass. at 1004. We agree with the motion judge that the defendant did not make that showing.

The additional misconduct evidence examined in Ellis II changed the significance of police corruption in the investigation of Mulligan's murder. It did not establish, however, that every intersecting investigation was infected. In Ellis I, 432 Mass. at 764-765, although Ellis had presented evidence of corrupt practices by detectives involved in his investigation, he was not entitled to relief in the absence of evidence suggesting that the detectives engaged in misconduct "in connection with the investigation of this defendant" (emphasis added). The same principle controls here.

The defendant failed to establish a link between the alleged police corruption and the investigation of the murders of Brown and Kirk. Ellis II involved corrupt officers who had specific incentive to short circuit the investigation into Mulligan's murder because Mulligan participated in the same criminal misconduct they sought to conceal. No comparable evidence exists here. There is no evidence that Brown or Kirk were involved in police corruption with Mulligan or with any of the corrupt officers.

The defendant argues that, if the Mulligan investigation was "poisoned" by police corruption, then the Brown and Kirk investigation was necessarily poisoned as well because the

investigations "were one in the same and to any extent they were not, one informed the other." That premise is too broad. The investigations crossed in important respects, and those intersections gave plea counsel a basis to pursue discovery for purposes of a third-party culprit defense. But the nexus inquiry asks whether misconduct infected the investigation of this defendant, not whether some of the same detectives worked both files or the investigations shared witnesses and leads. See Ruffin, 475 Mass. at 1004 (defendant must "show a nexus between the government misconduct and the defendant's own case" [emphasis added]). Corruption in one investigation does not become corruption in another merely because the investigations intersected. See Ellis I, 432 Mass. at 765, citing Commonwealth v. Campiti, 41 Mass. App. Ct. 43, 62-66 (1996) (no error to deny motion for new trial based on evidence of unrelated police misconduct).

At most, the defendant speculates that exculpatory evidence could have been "overlooked" because the Mulligan investigation was "rushed, biased, or inadequate." That is not enough to establish a nexus between the alleged misconduct and the defendant's case. Cf. Commonwealth v. Cotto, 471 Mass. 97, 113 (2015) ("The defendant has offered no supporting evidence to substantiate this claim, and, in our view, it is wholly speculative"); Commonwealth v. Nelson, 90 Mass. App. Ct. 594,

596 (2016) ("it is not enough simply to show that problems occurred . . . , however egregious they were; [the defendant] needed to demonstrate a connection between those problems and his case").⁸

3. Voluntariness of defendant's confession. Finally, the defendant challenges the voluntariness of his confession. He argues that the corrupt police officers coerced his confession and that, because the confession influenced his decision to plead guilty, he should be allowed to withdraw his guilty pleas. We disagree.

"A voluntary statement is one that is the product of a rational intellect and a free will, and not induced by physical or psychological coercion" (quotations and citation omitted). Commonwealth v. Williams, 486 Mass. 646, 659 (2021). The defendant bears the initial burden of "produc[ing] evidence

⁸ Notwithstanding the lack of any nexus, the defendant argues that he should be entitled to a conclusive presumption that egregious police misconduct occurred in his case. We disagree. In Scott, 467 Mass. at 352, we established a conclusive presumption of egregious government misconduct as a global remedy for defendants affected by a State police chemist's misconduct because, under the circumstances there, "it would have been impossible for the defendant[s] to show the requisite nexus between the government misconduct and [their] conviction[s]." Hallinan, 491 Mass. at 747. The same concerns are not present here. The defendant has not argued that it is impossible for him to establish a nexus between the alleged misconduct and his guilty pleas. Nor does the record support such an assertion.

tending to show that his statement was involuntary; if he satisfies this burden, the Commonwealth is required to prove beyond a reasonable doubt that the statement was voluntarily made" (citation omitted). Id. at 659-660. See Commonwealth v. Hart, 493 Mass. 130, 135 (2023), S.C., 497 Mass. 1 (2025) ("A statement is presumed voluntary until a defendant produces any evidence showing otherwise"). Although the defendant raises several challenges to his confession, we focus on his principal contention that the misconduct evidence of Keeler and Brazil shows that his confession was "poisoned."⁹

⁹ The Commonwealth notes that, in an earlier motion to withdraw his pleas, the defendant argued that plea counsel was ineffective for allowing him to plead guilty without first moving to suppress his confession as involuntary. The motion judge also recognized that the defendant previously had challenged the confession and concluded that his current arguments were waived because "[a] defendant is not entitled to . . . rais[e] new, slightly different bases for the arguments already raised and rejected."

The record shows that the defendant previously raised many of the same arguments regarding the voluntariness of his confession. The parties do not brief whether direct estoppel bars him from raising those arguments again. See generally Commonwealth v. Rodriguez, 443 Mass. 707, 710 (2005). Even assuming direct estoppel does not apply, the defendant's arguments do not raise a substantial risk of a miscarriage of justice. See Randolph, 438 Mass. at 293-294. Nor do they warrant any further discussion. See Commonwealth v. Sosa, 493 Mass. 104, 124 n.12 (2023), cert. denied, 145 S. Ct. 306 (2024). Many are unsupported by citation to legal authority and therefore do not rise to the level of appellate argument. See Commonwealth v. Cassidy, 470 Mass. 201, 209 n.9 (2014).

Evidence that an officer engaged in misconduct in other matters may provide impeachment material. See Matter of a Grand Jury Investigation, 485 Mass. 641, 652 (2020). It does not, without more, establish that a defendant's statement in a separate case was involuntary. The defendant identifies no specific act by Keeler, Mahoney, or Brazil that would render his confession suspect, such as "coercive tactics during the interrogation." Commonwealth v. Estabrook, 496 Mass. 467, 477 (2025).¹⁰ See Commonwealth v. Medina, 485 Mass. 296, 307 (2020) ("There is no indication that police officers employed coercion or deception to elicit any of his statements"). Instead, he argues that Keeler's and Brazil's involvement alone tainted the confession because they engaged in unrelated misconduct. Our law requires more. Cf. Ellis I, 432 Mass. at 765, citing Campiti, 41 Mass. App. Ct. at 62-66 (no error to deny motion for new trial based on evidence of unrelated police misconduct).

¹⁰ The defendant's argument that his confession was involuntary because Keeler and Mahoney first questioned him during an unrecorded portion of his interrogation rests on speculation. He identifies no conduct by either officer during that unrecorded questioning suggesting that his statements were not "the product of a rational intellect and a free will" (quotations and citation omitted). Commonwealth v. Woodbine, 461 Mass. 720, 729 (2012). See Commonwealth v. DiGiambattista, 442 Mass. 423, 448-449 (2004) (mandating instruction cautioning jury about reliability of unrecorded statements but declining to require recording).

Additionally, the content of the confession does not support the defendant's claim. The defendant described the sequence of events, his clothing, and details about the crime scene that only the killer would have known, all of which the police independently corroborated. Those details support the motion judge's conclusion that the confession was reliable and not the product of coercion.

Order denying motion to
vacate guilty pleas and for
a new trial affirmed.