

MACDL
Amicus Committee Report

As of September 11, 2017

I. Amicus Briefs Filed by MACDL – Currently Pending

A. *Commonwealth v. James Keown*, SJC-10593

1. **Main Issue in the Case:** In this first-degree murder appeal, the defendant is asking the Supreme Judicial Court to require a judge issuing a search warrant to approve in advance a search protocol for the forensic examination of digital devices. His argument is that the particularity requirement of the Fourth Amendment should not allow general, wide-ranging digital searches.
2. **Source of Amicus Inquiry:** Claudia Bolgen
3. **Amicus Brief Writer:** Alexis Shapiro (Goodwin Proctor); Jesse Rossman (ACLU); Chauncey Wood (MACDL)
4. **Status:** Awaiting decision; oral argument held February 10, 2017.

B. *Commonwealth v. Sharris*, SJC-12165

1. **Main Issue in the Case:** Whether Mr. Sharris has a due process right to have his murder indictment dismissed after 20+ years of incompetency that both parties agree will never change.
2. **Source of Amicus Inquiry:** Paul Rudof
3. **Amicus Brief Writers:** Kevin Prussia, Matthew Tymann, Annaleigh Curtis (WilmerHale)
4. **Status:** Awaiting oral argument

C. *Commonwealth v. Morin*, SJC-11591

1. **Main Issue in the Case:** Whether the felony-murder rule should be abolished
2. **Source of Amicus Inquiry:** Robert Shaw
3. **Amicus Brief Writers:** Kristopher Austin, Christopher Hart, and Kelly Caiazzo (Foley Hoag); Chauncey Wood (MACDL)
4. **Status:** Awaiting decision; oral argument held May 5, 2017

II. Amicus Briefs Signed by MACDL - Currently Pending

A. *Commonwealth v. Dew*, SJC-12225

1. Main Issue in the Case: Whether a witness's in-court identification of a defendant is inadmissible where it was preceded by an unequivocal pretrial identification by the witness that allegedly was the product of a suggestive procedure (although, apparently, not so suggestive as to require suppression); whether the degree of the suggestiveness of the pretrial identification is relevant in determining whether that identification was "unequivocal."
2. Source of Amicus Inquiry: SJC Amicus Solicitation
3. Amicus Brief Writer: Patrick Levin, CPCS
4. Status: Awaiting decision; oral argument held May 1, 2017

B. *Commonwealth v. Ehiabhi*, SJC-12259

1. Main Issue in the Case: Does G. L. c. 94C, § 32A, vest improper discretion in the prosecutor to determine what subsection an individual will be charged under [i.e., G. L. c. 94C, § 32A (b) or § 32A (d),] particularly in light of the statement made to [the trial judge] that generally, prosecutors charge individuals under the more stringent subsections of the statute without further explanation or justification; and/or is the statute ambiguous in imposing contradictory mandatory minimum sentences on the same subsequent offense, requiring application of the rule of lenity
2. Source of Amicus Inquiry: SJC amicus announcement
3. Amicus Brief Writer: Patrick Levin (CPCS)
4. Status: Awaiting decision; oral argument held May 4, 2017

C. *Commonwealth v. Wolfe*, SJC-12257

1. Main Issue in the Case: Whether the Appeals Court's holding in *Commonwealth v. Downs*, 53 Mass. App. Ct. 195 (2001) (concluding that there was no error in instructing the jury, in prosecution for operating under the influence of alcohol, that they were not to consider absence of evidence of breathalyzer test results), is incorrect and should be overruled.
2. Source of Amicus Inquiry: SJC amicus announcement

3. Amicus Brief Writer: Suffolk Law School Supreme Court Clinic, Chauncey Wood
4. Status: Awaiting decision; oral argument held May 2, 2017

D. *Commonwealth v. Delmore D.*, FAR-25341

1. Main Issue in the Case: Whether a showup made more unnecessarily suggestive by the fact that the suspect was put in a lineup with dissimilar fillers violates due process.
2. Source of Amicus Inquiry: Brandon Campbell
3. Amicus Letter Writer: Merritt Schnipper, Radha Natarajan (NEIP)
4. Status: Letter in support of AFAR filed June 16, 2017; AFAR pending

III. Amicus Projects - Pending - No Briefs Yet

A. *Commonwealth v. Dabney*, SJC-12349

1. Main Issue in the Case: Whether, where an attorney seeks to conduct voir dire of prospective jurors pursuant to G. L. c. 234A, § 67D, it is an abuse of the trial judge's discretion to disallow a question after initially allow it and after it has been asked to some but not all of the prospective jurors; whether, if so, or if the trial judge other abuses his or her discretion in allowing or disallowing attorney-conducted voir dire, the error results in a presumption of prejudice.
2. Source of Amicus Inquiry: SJC Amicus Solicitation
3. Amicus Brief Writer: Emma Quinn-Judge
4. Status: Brief due October 18, 2017

B. *In re Care and Protection of M.C.*, SJC-12339

1. Main Issue in the Case: Does a defendant waive her 5th amendment rights by testifying at a C&P proceeding and does she waive the patient therapist privilege by providing therapy records and calling her therapist to testify at a C&P proceeding? What should the standard be and who had the burden of proof to overcome the impoundment of the proceedings?
2. Source of Amicus Inquiry: SJC Amicus Solicitation

3. Amicus Brief Writers: Robert McDonnell, Amanda McGee, Samuel Rowley, Bryan Connor (Morgan Lewis)
4. Status: Brief due September 18, 2017

C. *Commonwealth v. Buckley*, SJC-12344

1. Main Issue in the Case: Whether the SJC should reconsider its holding in Commonwealth v. Santana that pretextual traffic stops do not violate article 14.
2. Source of Amicus Inquiry: SJC Amicus Solicitation
3. Amicus Brief Writers: Rebecca Kiley – CPCS; Lawyers from Morgan Lewis – ACLUM
4. Status: Brief due September 18, 2017

IV. Amicus Projects – Cases Decided Since Last Update

A. *Weaver v. Massachusetts*, 16-240

1. Main Issue in the Case: In an IAC claim where the ineffectiveness is failing to object to a closed courtroom, whether the defendant must prove prejudice of the closure to satisfy prong II of *Safarian/Strickland* or whether prejudice is presumed because it is a structural error
2. Source of Amicus Inquiry: Ruth Greenberg
3. Amicus Brief Writers: Kirsten Mayer, Daniel Fine, Joshua Asher (Ropes & Gray); Chauncey Wood (MACDL)
4. Holding: Defendant must prove prejudice on collateral closed courtroom claim

B. *Commonwealth v. Lunn*, SJC-12276

1. Main Issue in the Case: Can state law enforcement or court officers hold people solely on ICE detainees
2. Source of Inquiry: ACLU
3. Amicus Brief Writers: Matt Segal, Jessie Rossman, Laura Rotolo, Carlton Williams (ACLU); Kirsten Meyer, Kim Nemirow (Ropes & Gray); Laura Murray-Tjan (Federal Immigration Appeals Project)
4. Holding: court officers may not hold people on civil ICE detainees

- C. *United States v. Phillipos*, 15-1716
 - 1. Main Issue in the Case: Support of petition for rehearing en banc on issue of when an evidentiary hearing on a pretrial motion to suppress is required
 - 2. Source of Amicus Inquiry:
 - 3. Amicus Brief Writers: John Cunha (MACDL)
 - 4. Holding: Petition for rehearing en banc denied

- D. *Commonwealth v. Wagle*, SJ-2016-0334
 - 5. Main Issue in the Case: Whether the setting of bail without considering a defendant's ability to pay is unconstitutional; whether this case should be reported to the full bench
 - 6. Source of Amicus Inquiry:
 - 7. Amicus Signer of Letter: Matthew Segal (ACLU); Howard Cooper Todd and Weld); Chauncey Wood (MACDL)
 - 8. Holding: petition denied