

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, SS.

SUPERIOR COURT
NO: 0383-CR-00300

COMMONWEALTH

VS.

FRANCES Y. CHOY

NOLLE PROSEQUI

Now comes the Commonwealth, who hereby enters a nolle prosequi pursuant to Mass. R. Criminal Procedure 16(a) in regard to the above-numbered indictment, for the following reasons:

The failure of the defendant's trial counsel to properly investigate and present witnesses at the Defendant's trial calls into question whether the Defendant received a fair trial. Evidence of a confession of Kenneth Choy, made to a friend prior to the trial of the defendant, was not discovered and presented by defendant's trial counsel even though he had this person on his witness list. Additionally, the defendant's trial counsel failed to hire an analytical chemist prior to trial, despite the provision of funds by the Court for this purpose, and appellate counsel has now provided the opinion of an analytical chemist that contradicts the Commonwealth's expert at trial about whether the defendant had gasoline on her pants.

Further, among other concerns, the same prosecutor who argued at Kenneth Choy's trial that the defendant's statements to police were not inculpatory, and therefore not admissible, then argued to the contrary in this defendant's trial. This inconsistency would arguably allow a judge to exclude this statement.

Given the current state of the available evidence, the Commonwealth would not be able to sustain its burden beyond a reasonable doubt at this time. For these reasons, it is in the interests of justice that the Commonwealth files this nolle prosequi.

The District Attorney will conduct an internal review of the homicide cases prosecuted by these former employee trial attorneys, and plans to seek the assistance of the Boston College Innocence Program for this review.

Respectfully submitted,
TIMOTHY J. CRUZ
Plymouth County District Attorney

By his assistant,
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Dated: September 29, 2020