

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO: SJ-2017-347

COMMITTEE FOR PUBLIC COUNSEL SERVICES & others¹

vs.

ATTORNEY GENERAL & others²

RESERVATION & REPORT

After preliminary proceedings, the case before me has progressed to the point that the District Attorneys have agreed to vacate more than 8,000 convictions that were obtained using drug certificates signed by Sonja Farak, and to dismiss those charges with prejudice. The parties currently are engaged in developing and implementing a protocol, similar to the protocol prescribed by this court in Bridgeman v. District Attorney for the Suffolk Dist., 476 Mass. 298 (2017) (Bridgeman II), to accomplish that. For these purposes, the District Attorneys define "Farak defendants" as defendants who pleaded guilty to a

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² District Attorney for Berkshire County, District Attorney for Bristol County, District Attorney for the Cape and Islands, District Attorney for Essex County, District Attorney for Hampden County, District Attorney for Middlesex County, District Attorney for Norfolk County, District Attorney for the Northwestern District, District Attorney for Plymouth County, District Attorney for Suffolk County, and District Attorney for Worcester County.

drug charge, admitted to sufficient facts to warrant a finding of guilty on a drug charge, or were found guilty of a drug charge in any case in which Farak signed a drug certificate as an analyst between August, 2004 and January, 2013, while she was employed at the Department of Public Health's laboratory in Amherst, except for the so-called "Ruffin defendants." See Commonwealth v. Ruffin, 475 Mass. 1003 (2016).

There remain, however, approximately forty-five cases from Berkshire and Bristol counties that the District Attorneys have not agreed to dismiss with prejudice. Those cases are the equivalent of the "third letter" cases in phase one of the Bridgeman II protocol, i.e., cases that the District Attorneys intend to re-prosecute if motions for new trial are allowed, and that they represent can be prosecuted independently of any drug certificate signed by Farak, or related testimony.

Having carefully considered the parties' submissions to date, I hereby reserve and report the following questions to the full court:

1. Whether the defendants in some or all of the "third letter" cases are entitled to have their convictions vacated, and the drug charges against them dismissed with prejudice, given the undisputed misconduct of the assistant Attorneys General found by Judge Carey in Commonwealth vs. Erick Cotto, Hampden Sup. Ct., No. 2007-770 (June 26, 2017) (memorandum and order on postconviction motions), and given the conduct of the District Attorneys that the petitioners allege was improper.

2. Whether the definition of "Farak defendants" being employed by the District Attorneys in this case is too

narrow; specifically, based on the material in the record of this case, whether the appropriate definition of the class should be expanded to include all defendants who pleaded guilty to a drug charge, admitted to sufficient facts on a drug charge, or were found guilty of a drug charge, if the alleged drugs were tested at the Amherst Laboratory during Farak's employment there, regardless whether Farak was the analyst or signed the certificates in their cases.

3. Whether, as the petitioners request, the record in this case supports the court's adoption of additional prophylactic measures to address future cases involving widespread prosecutorial misconduct, and whether the court would adopt any such measures in this case.

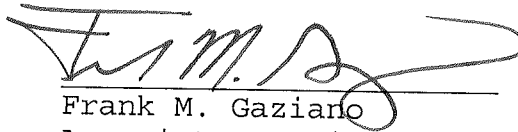
In addition, the parties may address in their briefs any other issues of law relative to the cases that the District Attorneys intend to retry. I will retain jurisdiction over the remaining matters in this case. Pending receipt of the answers from the full court, the parties shall continue working toward the dismissal with prejudice of all cases that the District Attorneys have identified (or will identify) for such treatment. Upon receipt of the response from the full court, I will make further orders as appropriate toward the disposition of the entire petition.

The record before the full court shall consist of the following:

- 1) All items that have been filed in the case thus far;
- 2) Judge Carey's order of June 26, 2017, in the Cotto case;
- 3) all of the interim orders issued by this court;
- 4) the docket sheet in SJ-2017-347; and
- 5) this reservation and report.

The clerk of the county court shall assemble the record of all material that has been filed thus far and notify the clerk of the full court. The petitioners are designated as the appellants. The case shall be scheduled for argument in May, 2018. The petitioners' brief shall be due no later than March 13, 2018; the District Attorneys' and the Attorney General's briefs shall be due no later than April 12, 2018; and any reply brief shall be due no later than April 26, 2018. No extensions of time are to be anticipated. This matter shall proceed in all respects in conformance with the Massachusetts Rules of Appellate Procedure.

By the Court


Frank M. Gaziano
Associate Justice

Entered: *January 26, 2018*