

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

**SUPERIOR COURT
NO. 10-1181, 09-1068, 11-461**

COMMONWEALTH

v.

**RAFAEL RODRIGUEZ
JERMAINE WATT
CHARLES DEON**

HAMPDEN COUNTY
SUPERIOR COURT
FILED
FEB 20 2015
[Signature]
CLERK OF COURTS

ORDER ON DEFENDANTS' MOTION TO COMPEL DISCOVERY

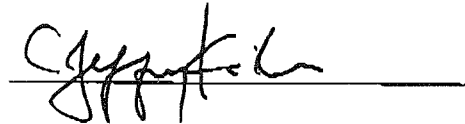
The defendants in these actions previously pled guilty to controlled substance offenses in the above-captioned unrelated cases. They moved to withdraw their guilty pleas based upon the criminal conduct of Sonja Farak ("Farak"), the chemist who tested the suspected controlled substances at the Amherst Laboratory. I conducted an evidentiary hearing regarding the scope and timing of Farak's misconduct and thereafter denied the motions, concluding, among other things, that the defendants had failed to establish that Farak's misconduct antedated their guilty pleas. Before me now are the defendants' motions for additional post-conviction discovery. The motions are based on a claim that evidence seized from Farak's vehicle, which the defendants describe as newly discovered, suggests that Farak was using cocaine earlier than I originally found. They now seek discovery in two broad categories. First, the defendants request an order allowing the issuance of Rule 17 subpoenas to various third-party record holders regarding Farak's drug treatment records on the theory that those records may reveal more information about the scope and timing of Farak's drug use. Second, pursuant to Rule 30(c)(4) they seek a variety of records related to historical testing at the Amherst laboratory by Farak and others, and Farak's personnel file.

After hearing at which the record holders and Sonja Farak participated through counsel and objected to issuance of the summonses, I find, as to the records held by Kristen Joyce, Anna Kogan, Servicenet, Inc., and the Hampden County Sheriff, that the records are relevant within the meaning of Commonwealth v. Lampron, 441 Mass. 265 (2004), and are presumptively privileged. Accordingly the motions seeking issuance of Rule 17 Subpoenas to those record holders is **ALLOWED**. Summons will issue to those record holders for any and all records related to the treatment of Sonja Farak. The records will be maintained by the clerk's office, will be subject to a protective order and will not be available for public inspection unless otherwise ordered by the Court. Only counsel for the Commonwealth and the defendants will have access to the documents.

As to the documents the defendants seek to discover pursuant to Mass. R. Crim. P. 30(c)(4), I find, essentially for the reasons set forth in the Commonwealth's written opposition, that the defendants have failed to establish a *prima facie* case for relief. The records sought: (1) GC/MS testing data for all tests conducted by Farak; (2) her laboratory notes; (3) records for reagent preparation; (4) all of the evidence logs for samples assigned to Farak; and (5) Farak's personnel file; are not directly related to testing in these cases or the timing of Farak's drug use. Rather, the motions appear to seek records to support a claim that Farak was "dry labbing" or reporting positive test results without conducting tests. The issue of dry labbing was raised in the evidentiary hearing on the defendants' first motions for new trial, but I found no evidence of such a practice by Farak, and I am not persuaded that there is new evidence which warrants revisiting that conclusion. In short, on the record before me, the defendants are not

entitled to a second bite at the apple. Accordingly, as to these records, the motion for post-conviction discovery is DENIED.

So ordered:

A handwritten signature in black ink, appearing to read "C. Jeffrey Kinder", is written over a solid horizontal line.

C. Jeffrey Kinder
Associate Justice of the Superior Court
February 20, 2015