

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
No. SJ-2025-0310

Suffolk Superior Court
No. 1484CR10203

COMMONWEALTH

v.

JAVAINÉ WATSON

MEMORANDUM OF DECISION AND ORDER ALLOWING COMMONWEALTH'S
APPLICATION FOR LEAVE TO APPEAL

Pursuant to the gatekeeper provision of G. L. c. 278, § 33E, the Commonwealth seeks leave to appeal an order of the Suffolk Superior Court issued pursuant to G. L. c. 278A. The defendant stands convicted of murder in the first degree on the theories of deliberate premeditation and extreme atrocity or cruelty, which was affirmed by this court on direct appeal. See Commonwealth v. Watson, 487 Mass. 156 (2021). On May 1, 2023, the defendant filed a motion pursuant to G. L. c. 278A, § 3 (b), seeking postconviction forensic analysis of five cell phones that were seized from a codefendant during incidents unrelated

to the murder. More specifically, the motion concerned two phones that were seized in July 2013, five months before the murder (2013 phones),¹ and three phones that were seized in February 2014, two months after the murder (2014 phones).² The defendant argued that such testing could yield evidence bolstering the defense theory presented at trial. Notably, the defendant had moved for access to the 2014 phones prior to trial, but that motion had been denied. Upon consideration of the defendant's postconviction motion under G. L. c. 278A, a judge in the Superior Court (motion judge)³ granted the motion and ordered analysis of all five phones. Presently before the court is the Commonwealth's petition for leave to appeal that order.

Where, as here, a defendant's conviction for murder in the first degree has been affirmed by this court on plenary review, no appeal from the denial of a post-conviction motion will be available "unless the appeal is allowed by a single justice of the supreme judicial court on the ground that it presents a new and substantial question which ought to be determined by the

¹ The 2013 phones consisted of a Blackberry and a Kyocera, the latter of which is an Android device.

² The 2014 phones consisted of an Apple iPhone, a Samsung, and a Huawei, the latter two of which are Android devices.

³ The motion judge was not the trial judge, who had since retired.

full court." G. L. c. 278, § 33E. This provision applies with equal force to applications filed by the Commonwealth, although in considering such requests "the single justice's primary focus should be on the meritoriousness or 'substantiality' of the Commonwealth's position on appeal and less on the newness of the underlying issue." Commonwealth v. Smith, 460 Mass. 318, 322 (2011). Having reviewed the parties' submissions, I conclude that the arguments raised are "substantial" enough to be "worthy of consideration by an appellate court." Commonwealth v. Gunter, 459 Mass. 480, 487 (2011) ("The bar for establishing that an issue is 'substantial' in the context of the gatekeeper provision of § 33E is not high").

Accordingly, it is therefore ORDERED that:

1. the Commonwealth's application under the gatekeeper provision of G. L. c. 278, § 33E, for leave to appeal the grant of the defendant's motion for postconviction forensic testing, is ALLOWED; and
2. the Suffolk County Superior Court Criminal Clerk's Office shall assemble forthwith the record in docket no. 1484CR10203 and transmit the same to the Clerk's Office of the Supreme Judicial Court for the Commonwealth, John Adams Courthouse, One Pemberton Square, Room 1-400, Boston, Massachusetts 02108.

By the Court, (Kafker, J.)



Allison S. Cartwright, Clerk

Dated: November 10, 2025