

**COMMONWEALTH OF MASSACHUSETTS**

**SUPREME JUDICIAL COURT**

Appeals Court No. 2019-P-0862

HAMPDEN, ss.

---

Commonwealth

vs.

Luis T. Claudio

---

Reported Question from the Superior Court

---

Application for Direct Appellate Review

---

Date: 06/12/2019

Andrew P. Power  
P.O. Box 1419  
Marblehead, MA 01945  
BBO # 685580  
(617) 202-9060  
appower@powerappeals.com

## **TABLE OF CONTENTS**

REQUEST FOR DIRECT APPELLATE REVIEW.....	3
STATEMENT OF PRIOR PROCEEDINGS .....	4
STATEMENT OF FACTS .....	6
STATEMENT OF THE ISSUE .....	10
ARGUMENT.....	11
1.    Ferrara-Scott Test .....	11
2.    Bridgeman I Protections .....	14
STATEMENT OF REASONS WHY DIRECT APPELLATE REVIEW IS APPROPRIATE .....	18
CERTIFICATE OF COMPLIANCE.....	21
CERTIFICATE OF SERVICE.....	22
ADDENDUM .....	23

## **REQUEST FOR DIRECT APPELLATE REVIEW**

Defendant Luis Claudio applies, pursuant to Mass. R. A. P. 11, for direct appellate review of the following question, reported to the Appeals Court by Superior Court Justice Mark D. Mason, pursuant to Mass. R. Crim. P. 34:

*Do the protections from harsher punishment established for “Dookhan defendants” in Bridgeman I apply to “Farak defendants” who are challenging pleas based upon Farak-related grounds relating to G. L. c. 279, § 25(a), predicate offenses?*

R. 10.<sup>1</sup> The reasons for this application are set forth below.

---

<sup>1</sup> Judge Mason’s Reservation and Report to the Appeals Court, appended hereto, is cited as “R.”; the Superior Court docket is cited as “D.”

## **STATEMENT OF PRIOR PROCEEDINGS**

In 2013, Mr. Claudio was indicted on two counts of aggravated statutory rape pursuant to G. L. c. 265, § 23A. Mr. Claudio was charged as a habitual criminal pursuant to G. L. c. 279, § 25(a). The habitual offender enhancements carried a mandatory sentence of life in prison. D. 5; R. 2.<sup>2</sup>

The habitual offender enhancements were predicated in part on a conviction for possession with intent to distribute heroin (docket no. 0579CR00960). Sonja Farak had signed the drug certificates supporting that predicate conviction. The Commonwealth did not timely disclose this fact to Mr. Claudio. R. 2.

In 2015, Mr. Claudio accepted negotiated pleas to lesser charges without habitual offender enhancements. Judge Mason conducted a plea colloquy, accepted Mr. Claudio's pleas, and imposed the recommended sentence of not less than six and not more than eight years in prison, with ten years' probation to run consecutively. R. 3; D. 9-10.

In 2018, Mr. Claudio was classified as a "Farak defendant," and his conviction on docket no. 0579CR00960 was vacated and dismissed with prejudice

---

<sup>2</sup> "G. L. c. 279, § 25 (a) ... requires that a 'habitual criminal' — a defendant who has been convicted of a felony and has two prior convictions resulting in State or Federal prison sentences of three years or more — be sentenced to the maximum term provided by law on the underlying conviction." Commonwealth v. Ruiz, 480 Mass. 683, 683-684 (2018).

pursuant to Committee for Pub. Counsel Servs. v. Attorney Gen., 480 Mass. 700, 721-722 (2018) (“CPCS”). R. 4.

In January 2019, Mr. Claudio filed a “Motion for Bridgeman I Protections” in the Superior Court. D. 11.

Mr. Claudio requested “that an order issue extending the protections established in Bridgeman v. District Attorney for the Suffolk Dist., 471 Mass. 465, 472-478 (2015) (“Bridgeman I”), prior to filing a motion to withdraw his guilty pleas.” R. 1. Mr. Claudio sought “a ruling that if he successfully withdraws his guilty pleas under Mass. R. Crim. P. 30(b), and the Commonwealth elects to re prosecute him, he will not be charged with more serious offenses than those which he was convicted of under the terms of his plea agreement.” R. 1. Mr. Claudio further requested that “if convicted, he will face no punishment beyond his current prison sentence of 6-8 years, with credit for time served, with 10 years’ probation from and after his incarceration.” R. 1.

In April 2019, Judge Mason held a hearing on Mr. Claudio’s motion, reviewed the evidence, found facts, and reported this case to the Appeals Court along with the parties’ agreed-upon question. R. 1-4; D. 11.

## **STATEMENT OF FACTS**

Judge Mason made factual findings, which are set forth in his report. See Commonwealth v. Yacobian, 393 Mass. 1005-1006 (1984), quoting Commonwealth v. O'Neil, 233 Mass. 535, 543 (1919) (“The report over the signature of the judge should ... recite or refer to facts or parts of the record sufficient to make intelligible the question or questions of law reported”). This statement of facts is derived from Judge Mason’s report.

During its prosecution of Mr. Claudio, the Commonwealth had been aware of Farak’s misconduct, to some extent, since January 2013. R. 2. However, from 2013-2015, the Commonwealth did not timely disclose to Mr. Claudio the Farak-signed drug certificates supporting habitual offender predicate conviction no. 0579CR00960. R. 2. The Commonwealth disclosed a drug certificate signed by another analyst, which supported the other habitual offender predicate conviction, but not the Farak-signed certificates. R. 2.

“Mr. Claudio’s plea negotiations began in June 2015. At that time, Mr. Claudio’s counsel advised him that, if convicted, he would receive a mandatory life sentence. Mr. Claudio’s counsel advised him that the Commonwealth’s case hinged on whether a jury believed his accuser’s testimony. The Commonwealth was having difficulties securing the accuser’s appearance at trial and offered to amend the indictments to indecent assault and battery on a child under 14 and to

recommend sentences of 2 ½ years in jail on the first count followed by 5 years' probation on the second count, with conditions including sex offender registration. Mr. Claudio sought a disposition which excluded sex offender registration. In general, he thought the Commonwealth's case was weak and, ultimately, rejected the plea offer." R. 2-3.

"On October 13, 2015, the day scheduled for trial, the accuser and her mother were present in the courtroom. The Commonwealth withdrew its offer. Ultimately, counsel brokered a plea agreement to lesser charges with a sentence of not less than 6 and not more than 8 years in prison, with 10 years' probation to run consecutively along with sex offender registration. Mr. Claudio accepted the negotiated plea." R. 3.

Judge Mason "conducted a plea colloquy during which the Commonwealth summarized the facts. [Judge Mason] asked Mr. Claudio if the facts as the Commonwealth had stated were true. Mr. Claudio responded, 'Not really, but under the circumstances, I have to accept it.' [Judge Mason] took a recess while Mr. Claudio conferred with his counsel. [Judge Mason] resumed the plea colloquy, and the Commonwealth repeated its statement of the facts. Mr. Claudio acknowledged he understood the facts and that the facts were true. [Judge Mason] accepted Mr. Claudio's plea and sentenced him to not less than 6 and not more

than 8 years in prison, with 10 years' probation to run consecutively with a number of conditions including sex offender registration." R. 3.

In 2019, in support of the instant motion, Mr. Claudio submitted his own affidavit, the affidavit of plea counsel, the affidavit of appellate counsel, the transcript of the plea at issue, and a record appendix. R. 2. "In his affidavit, Mr. Claudio attested that, 'Without the imminent threat of a mandatory life sentence, I would not have agreed to this plea bargain in 2015.'" R. 3.

Judge Mason found, "In light of Mr. Claudio's comments made during the plea colloquy, and, of equal importance, my personal observations of Mr. Claudio's demeanor during the plea colloquy, I accept Mr. Claudio's attestation as factually true and entirely reasonable under the circumstances." R. 3-4.

"At the time Mr. Claudio tendered his plea, neither he nor his counsel were aware that Sonja Farak had signed the drug certificates supporting Indictment No. 0579CR00960. It was not until 2018 that Mr. Claudio learned that Indictment No. 0579CR00960 had been vacated and dismissed with prejudice because he had been classified as a so-called 'Farak defendant.'" R. 4.

"Mr. Claudio has attested that, 'as a "Farak defendant," I will not exercise my postconviction right of moving to withdraw my guilty pleas solely on the grounds set forth above — risking exposure to much harsher punishment — unless



my sentence, if I am reprosecuted, is capped at what it was under the plea agreement, including time served.” R. 4

## **STATEMENT OF THE ISSUE**

The parties have agreed upon the language of the question reported:

*Do the protections from harsher punishment established for “Dookhan defendants” in Bridgeman I apply to “Farak defendants” who are challenging pleas based upon Farak-related grounds relating to G. L. c. 279, § 25(a), predicate offenses?*

R. 10. No Massachusetts appellate court has ruled on this question. R. 8.

## **ARGUMENT**

### **1. Ferrara-Scott Test**

Judge Mason found that Mr. Claudio's intended motion to withdraw his guilty pleas was viable. R. 4-7.

Said motion would be decided, pursuant to Commonwealth v. Scott, 467 Mass. 336 (2014), under the two-pronged test derived from Ferrara v. United States, 456 F.3d 278, 290 (1st Cir. 2006). The Ferrara-Scott test is "a general framework for determining whether government misconduct of any sort could have been sufficiently egregious to render the defendant's guilty plea involuntary." Scott, 467 Mass. at 347 n.6.

Under the first prong of the test, "the defendant first must show that egregious government misconduct preceded the entry of his guilty plea and that it is the sort of conduct that implicates the defendant's due process rights." Id. at 347. "[T]he defendant must show that the guilty plea was preceded by 'particularly pernicious' government misconduct that was the source of the defendant's misapprehension of some aspect of his case." Id. (emphasis original). Moreover, "the defendant is required to show a nexus between the government misconduct and the defendant's own case." Id. at 351.

Judge Mason found the first prong of the test was met. R. 5. Mr. Claudio's Farak-tainted conviction was a predicate for the habitual offender enhancements.

R. 5. The habitual offender enhancements were the source of Mr. Claudio's misapprehension of an aspect of the instant case, namely the mandatory life sentence he would have faced if convicted after trial. R. 5. Thus, governmental misconduct in the predicate conviction contaminated the instant case — the contamination flowing from one case to the next through the habitual offender enhancements. R. 5-6.

Under the second prong of the test, “the defendant must demonstrate a reasonable probability that he would not have pleaded guilty had he known of [the government's] misconduct.” *Id.* at 354-355. The “reasonable probability test” is “a totality of the circumstances test and identifies several factors that may be relevant to the defendant's showing under this prong.” *Id.* at 355. “These factors include ... whether the evidence would have influenced counsel's recommendation as to whether to accept a particular plea offer[.]” *Id.* at 355-356. Other “factors may include ... whether any other special circumstances were present on which the defendant may have placed particular emphasis in deciding whether to accept the government's offer of a plea agreement.” *Id.* at 356, citing Commonwealth v. Clarke, 460 Mass. 30, 47-48 (2011).

Judge Mason found that the second prong of the test was also met. R. 5. Mr. Claudio reasonably considered the Commonwealth's case to be weak. R. 5-6. Nevertheless, with the advice of counsel, Mr. Claudio reasonably placed particular

emphasis during plea negotiations on “special circumstances,” namely the prospect of a mandatory life sentence were he to be convicted after trial. R. 5-7.

Judge Mason also found guidance in Commonwealth v. Williams, 89 Mass. App. Ct. 383 (2016), in which the Appeals Court reasoned, “To the extent the defendant's plea resulted from a desire to avoid the risk of a twenty-year prison term, a sentence that would not have been permitted after the predicate offense was vacated, the defendant's decision to plead guilty was not a correctly informed one.” Id. at 389-390.<sup>3</sup>

Judge Mason concluded that the reasoning in Williams would apply here, because a predicate conviction supporting the mandatory life sentence upon which Mr. Claudio premised his plea was dismissed with prejudice as a result of Farak-related governmental misconduct. R. 7.

---

<sup>3</sup> The Appeals Court in Williams remanded the case to the Superior Court for further proceedings and findings. Id. at 391. Thereafter, a Superior Court justice allowed the defendant’s motion to withdraw his guilty pleas. See generally Commonwealth vs. Williams, Plymouth Superior Court, Nos. PLCR2010-00432, PLCR2011-00211 (Aug. 18, 2017).

## 2. **Bridgeman I Protections**

The parties agree that Mr. Claudio is a “Farak defendant.” R. 5. See CPCS, 480 Mass. at 705 (defining “Farak defendant”).

The parties also agree that Bridgeman principles may apply to Farak defendants as well as to Dookhan defendants. R. 8. See Bridgeman I, 471 Mass. at 467 n.4 (defining “Dookhan defendants”); CPCS, 480 Mass. at 725 (governmental misconduct behind Farak crisis more egregious than governmental misconduct behind Dookhan crisis).

Indeed, prior to CPCS, the Hampden District Attorney’s Office agreed to extend Bridgeman I protections to defendants “in Farak cases in which convictions are set aside but remain subject to prosecution.” See Commonwealth vs. Cotto, Hampden Superior Court, No. 2007-770, at 78 n.38 (Jun. 26, 2017); R. 8-10 & n.1. See also CPCS, 480 Mass. at 720 n.9 (factual findings in Cotto were uncontested).

Applying Bridgeman I protections to Farak defendants makes sense, because the Dookhan and Farak crises have raised similar due-process concerns. See, e.g., Bridgeman v. District Attorney for the Suffolk Dist., 476 Mass. 298, 333 (2017) (“Bridgeman II”) (Lenk, J., concurring) (“we cannot turn a blind eye to the potential costs of the looming crisis of thus far undetermined magnitude caused in western Massachusetts by Sonja Farak, yet another rogue chemist employed by a State laboratory”); Commonwealth v. Martinez, 480 Mass. 777, 796 (2018) (“Drug

convictions in more than 21,000 cases have been invalidated as a result of the misconduct of Annie Dookhan at the Hinton laboratory, and drug convictions in thousands of other cases have been invalidated as a result of the misconduct of Sonja Farak at the State Laboratory Institute in Amherst”).

This Court, when it fashioned a remedy for Farak defendants in CPCS, proceeded from the “Bridgeman framework” and the “four fundamental principles of our criminal justice system” underlying Bridgeman II. See CPCS, 480 Mass. at 722-725, quoting Bridgeman II, 476 Mass. at 315-317.

One of the fundamental principles in the Bridgeman framework is that “relief from a conviction generally requires the defendant to file a motion for a new trial.’ Such a motion is usually required because, without it, ‘we cannot be sure that a defendant wishes to accept the risk that the Commonwealth will retry the defendant rather than issue a nolle prosequi.” Id. at 723-724, quoting Bridgeman II, 476 Mass. at 316 & 323.

Mindful of that principle, this Court “identified concerns that were discouraging these defendants from seeking that relief. The most significant was the risk that, if their motion for a new trial were granted, the Commonwealth could re prosecute them not only on the charge to which the defendants had pleaded guilty but also on any charge that was dismissed at the time of the plea, and seek a

more severe sentence, especially where the dismissed charge carried a mandatory minimum sentence upon conviction.” Bridgeman II, 476 Mass. at 307.

To address those concerns, this Court created a rule, “removing the barriers that made defendants reluctant to file motions to withdraw their guilty pleas.” Bridgeman II, 476 Mass. at 308.

This Court held “that in cases in which a defendant seeks to withdraw a guilty plea under Mass. R. Crim. P. 30 (b) as a result of the revelation of Dookhan’s misconduct, and where the motion is allowed, the defendant cannot (1) be charged with a more serious offense than that of which he or she initially was convicted under the terms of a plea agreement; and (2) if convicted again, cannot be given a more severe sentence than that which originally was imposed. In essence, a defendant's sentence is capped at what it was under the plea agreement.” See Bridgeman I, 471 Mass. at 477.

Bridgeman I protections “account for the due process rights of defendants ... [and] the integrity of the criminal justice system.” Id. at 476. They also rest on the equitable principle that, in cases of egregious government misconduct, “the Commonwealth cannot simply re prosecute the [defendants] as if the plea agreements had never existed, thereby giving the Commonwealth a second bite at the proverbial apple in its efforts to convict the [defendants]. Instead, the Commonwealth must be held to the terms of its plea agreements.” Id. at 476-477.



Here, Judge Mason found that Mr. Claudio's intended motion to withdraw his pleas implicated Bridgeman I principles. R. 9. Mr. Claudio planned to challenge his pleas solely on Farak-related grounds. R. 7. But Mr. Claudio would not move to withdraw his pleas and risk exposure to substantially harsher punishment unless granted Bridgeman I protections first. R. 7.

Judge Mason found, "The risk Mr. Claudio would undertake were he to proceed without Bridgeman I type protections is considerable. His concern is reasonable. Presuming Mr. Claudio successfully argues a motion to withdraw guilty plea, he would face a minimum mandatory sentence of 10 years on each of two counts of aggravated statutory rape pursuant to G. L. c. 265, § 23A." R. 7-8.

Judge Mason thereby concluded that it would be consistent with Bridgeman principles and policies to extend Bridgeman I protections to a Farak defendant, such as Mr. Claudio, seeking to withdraw guilty pleas under Mass. R. Crim. P. 30 (b), as a result of the revelation of Farak's misconduct. R. 8.

## **STATEMENT OF REASONS WHY DIRECT APPELLATE REVIEW IS APPROPRIATE**

Judge Mason, with the consent of the parties, determined that the question of law presented herein is sufficiently important to report to the Appeals Court under Mass. R. Crim. P. 34. Indeed, the reported question is a question of first impression which is of such public interest that justice requires a final determination by this Court. See Mass. R. A. P. 11(a).<sup>4</sup>

In Bridgeman II, this Court created a “new protocol for case-by-case adjudication” of “thousands of drug cases affected by Dookhan's misconduct”; in CPCS, this Court caused “the drug convictions of the so-called Farak defendants” to be vacated and dismissed with prejudice. See Martinez, 480 Mass. at 797.

However, other issues stemming from the drug lab crises are yet to be resolved. For example, “the constitutional due process obligation to refund fees, court costs, and restitution paid as a consequence of an invalidated conviction” may apply to “a sizeable percentage of the defendants whose convictions have been invalidated because of Dookhan and Farak’s misconduct[.]” Id.

---

<sup>4</sup> This Court recently granted an application for direct appellate review presenting a question of whether Bridgeman I should be applied retroactively. See Commonwealth vs. Camacho, DAR-26637 (Feb. 6, 2019). In Camacho, a Dookhan defendant withdrew his prior plea and tendered a new guilty plea in 2013, without the benefit of Bridgeman I protections. Id. at 2. He now avers that, when he repleaded, “He did so under the belief that if he went to trial, he was facing a maximum penalty of 22.5 years and not the 6-8 years he was originally sentenced to.” Id.

Likewise, a sizeable percentage of the defendants whose convictions have been invalidated because of Dookhan or Farak's misconduct may seek to withdraw guilty pleas, pursuant to Commonwealth v. Scott, 467 Mass. 336 (2014), because an invalidated conviction served as a predicate for a habitual offender sentencing enhancement that bore on a decision to plead guilty in a subsequent case.

Depending on the facts, some motion judges may find that "Farak's misconduct in the [prior] case is far too attenuated from the defendant's [instant] case to meet the express egregious misconduct requirements set out in Scott and Ferrara." See Commonwealth v. Wallace, 92 Mass. App. Ct. 7, 9-12 (2017).

However, among the tens of thousands of defendants afflicted by Dookhan or Farak's misconduct, there is also "the possibility that governmental misconduct in one case could contaminate another case[.]" Id. at 12.

As Judge Mason recognized, "That sort of 'contamination' is at the core of Mr. Claudio's motion." R. 5.

Therefore, where, as here, a motion judge finds a defendant to be legitimately concerned about the harsher punishment which could follow the allowance of a viable Ferrara-Scott motion based on drug lab misconduct, that defendant should be afforded the due process protections of Bridgeman I, regardless of the whether the analyst was Dookhan or Farak.

This Court should continue “removing the barriers that made defendants reluctant to file motions to withdraw their guilty pleas.” Bridgeman II, 476 Mass. at 308. “The due process rights at stake here, ‘the opportunity to be heard at a meaningful time and in a meaningful manner’ weigh heavily in Scott's remedial calculus for two reasons: the serious and ongoing collateral consequences to the class of defendants convicted on the strength of Dookhan’s [or Farak’s] tainted evidence; and the necessity to avoid unnecessary delay ... in providing these defendants a ‘meaningful’ opportunity to establish prejudice from Dookhan’s [or Farak’s] misconduct.” Id. at 336 (Hines, J., dissenting), quoting Bridgeman I, 471 Mass. at 479.

Respectfully submitted,

/s/ Andrew P. Power

Andrew P. Power

P.O. Box 1419

Marblehead, MA 01945

BBO # 685580

(617) 202-9060

appower@powerappeals.com

Date: 06/12/2019

## **CERTIFICATE OF COMPLIANCE**

### **Pursuant to Rule 16(k) of the Massachusetts Rules of Appellate Procedure**

I, Andrew P. Power, hereby certify that the foregoing application complies with Mass. R. A. P. 20 (a). It is produced in the proportional font Times New Roman at size 14. The argument consists of 1,530 words as counted using the word count feature of Microsoft Word 2013.

## **CERTIFICATE OF SERVICE**

Pursuant to Mass.R.A.P. 13(d), I hereby certify, under the penalties of perjury, that on 06/12/2019, I have made service of this application by the Electronic Filing System on

Katherine E. McMahon  
Office of the District Attorney/Hampden  
Hall of Justice/Tower Square  
50 State Street  
Springfield, MA 01102  
413-505-5905

/s/ Andrew P. Power  
Andrew P. Power  
P.O. Box 1419  
Marblehead, MA 01945  
BBO # 685580  
(617) 202-9060  
appower@powerappeals.com

## **ADDENDUM**

1. Trial Court Docket.....D. 1-11
2. Reservation & Report to the Appeals Court.....R. 1-10



COMMONWEALTH OF MASSACHUSETTS  
HAMPDEN COUNTY  
Public Docket Report

1379CR01314 Commonwealth vs. Claudio, Luis T

<b>CASE TYPE:</b> Indictment	<b>FILE DATE:</b> 11/21/2013
<b>ACTION CODE:</b> 265/23/A-1	<b>CASE TRACK:</b> C - Most Complex
<b>DESCRIPTION:</b> RAPE OF CHILD c265 §23	
<b>CASE DISPOSITION DATE:</b> 10/14/2015	<b>CASE STATUS:</b> Open
<b>CASE DISPOSITION:</b> Disposed by Plea	<b>STATUS DATE:</b> 11/21/2013
<b>CASE JUDGE:</b>	<b>CASE SESSION:</b> Criminal 1 - Ct. Rm. 1

DCM TRACK

Tickler Description	Due Date	Completion Date
Pre-Trial Hearing	12/12/2013	10/14/2015
Final Pre-Trial Conference	11/23/2014	10/14/2015
Case Disposition	12/07/2014	10/14/2015

PARTIES

**Prosecutor**  
Commonwealth

**Attorney for the Commonwealth** 691272  
John A Wendel  
Hampden County District Attorney's Office  
Hampden County District Attorney's Office  
50 State St  
Springfield, MA 01102  
Work Phone (413) 747-1000  
Added Date: 04/17/2019

**Defendant**  
Claudio, Luis T  
161 Quincy Street  
Springfield, MA 01109

**Limited Appearance Counsel** 685580  
Andrew Paul Power  
The Law Offices of Andrew P. Power  
The Law Offices of Andrew P. Power  
PO Box 1419  
27 Smith Street  
Marblehead, MA 01945  
Work Phone (617) 202-9060  
Added Date: 11/09/2018

**Surety**  
Information Unavailable





COMMONWEALTH OF MASSACHUSETTS  
HAMPDEN COUNTY  
Public Docket Report

PARTY CHARGES					
#	Offense Date/ Charge	Code	Town	Disposition	Disposition Date
1	06/01/2013 RAPE OF CHILD c265 §23 Sentence Date: 10/14/2015 Not greater than	265/23/A-1	Springfield	State Prison Sentence Yrs 8 Mos 0 Days 0 Not less than Yrs 6 Mos 0 Days 0 Guilty Plea	10/14/2015
2	06/01/2013 INDECENT A&B ON CHILD UNDER 14 c265 §13B Sentence Date: 10/14/2015 Probation Type: Risk/Need Probation	265/13B/A-5	Springfield	Guilty Plea	10/14/2015



**COMMONWEALTH OF MASSACHUSETTS  
HAMPDEN COUNTY  
Public Docket Report**

EVENTS				
Date	Session	Event	Result	Resulting Judge
12/10/2013	Criminal 1 - Ct. Rm. 1	Arraignment	Rescheduled	
12/12/2013	Criminal 1 - Ct. Rm. 1	Arraignment	Held as Scheduled	
06/10/2014	Criminal 1 - Ct. Rm. 1	Pre-Trial Hearing	Held as Scheduled	
07/30/2014	Criminal 1 - Ct. Rm. 1	Hearing on Dwyer Motion	Held as Scheduled	
12/16/2014	Criminal 1 - Ct. Rm. 1	Final Pre-Trial Conference	Rescheduled	
01/13/2015	Criminal 1 - Ct. Rm. 1	Jury Trial	Rescheduled	
02/25/2015	Criminal 1 - Ct. Rm. 1	Hearing on Motion to Continue	Held as Scheduled	
02/25/2015	Criminal 1 - Ct. Rm. 1	Final Pre-Trial Conference	Not Held	
02/27/2015	Criminal 1 - Ct. Rm. 1	Final Pre-Trial Conference	Rescheduled	
03/11/2015	Criminal 1 - Ct. Rm. 1	Jury Trial	Rescheduled	
04/14/2015	Criminal 1 - Ct. Rm. 1	Final Pre-Trial Conference	Rescheduled	
04/21/2015	Criminal 1 - Ct. Rm. 1	Final Pre-Trial Conference	Rescheduled	
04/22/2015	Criminal 1 - Ct. Rm. 1	Final Pre-Trial Conference	Rescheduled	
04/27/2015	Criminal 1 - Ct. Rm. 1	Jury Trial	Rescheduled	
04/27/2015	Criminal 1 - Ct. Rm. 1	Status Review	Rescheduled	
05/06/2015	Criminal 1 - Ct. Rm. 1	Hearing on Dwyer Motion	Held as Scheduled	
05/06/2015	Criminal 1 - Ct. Rm. 1	Status Review	Held as Scheduled	
05/26/2015	Criminal 1 - Ct. Rm. 1	Final Pre-Trial Conference	Rescheduled	
06/03/2015	Criminal 1 - Ct. Rm. 1	Final Pre-Trial Conference	Held as Scheduled	
06/24/2015	Criminal 1 - Ct. Rm. 1	Jury Trial	Rescheduled	
07/13/2015	CR Session 4 - Ct. Rm 6	Jury Trial	Rescheduled	Page



**COMMONWEALTH OF MASSACHUSETTS  
HAMPDEN COUNTY  
Public Docket Report**

07/14/2015	CR Session 4 - Ct. Rm 8	Jury Trial	Not Held	Rup
10/06/2015	Criminal 1 - Ct. Rm. 1	Final Pre-Trial Conference	Held as Scheduled	McDonough
10/13/2015	CR Session 6 - Ct. Rm 8	Jury Trial	Not Held	Mason
10/13/2015	Criminal 1 - Ct. Rm. 1	Jury Trial	Not Held	McDonough
10/14/2015	CR Session 8 - Ct. Rm 8	Jury Trial	Not Held as Scheduled - Plea	Mason
04/17/2019	Criminal 1 - Ct. Rm. 1	Motion Hearing	Held as Scheduled	Mason

**FINANCIAL SUMMARY**

	<b>Fees/Fines/Costs/Charge</b>	<b>Assessed</b>	<b>Paid</b>	<b>Dismissed</b>	<b>Balance</b>
<b>Total</b>		<b>7,950.00</b>	<b>150.00</b>	<b>0.00</b>	<b>7,800.00</b>

<b>Deposit Account(s) Summary</b>	<b>Received</b>	<b>Applied</b>	<b>Checks Paid</b>	<b>Balance</b>
<b>Total</b>	<b>2,500.00</b>		<b>2,500.00</b>	<b>0.00</b>



COMMONWEALTH OF MASSACHUSETTS  
HAMPDEN COUNTY  
Public Docket Report

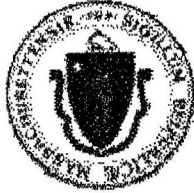
## INFORMATIONAL DOCKET ENTRIES

Date	Ref	Description	Judge
11/21/2013	1	Indictment returned	
11/21/2013		RE: offense #1 Penalty Enhancement Under 279/25(a):	
11/21/2013		RE: offense #2 Penalty Enhancement Under 279/25(a):	
11/26/2013		Habe for arraignment issued ret 12/10/13	
11/29/2013	2	Appearance of Deft's Atty: Nicholas J. Raring	
12/12/2013		Deft arraigned before Court	
12/12/2013		Committee for Public Counsel Services appointed, pursuant to Rule 53	
12/12/2013		Deft waives reading of indictments	
12/12/2013		RE Offense 1: Plea of not guilty	
12/12/2013		RE Offense 2: Plea of not guilty	
12/12/2013		Bail set: by agreement \$25,000.00 cash/ \$250,000.00 surety without prejudice as posted in 1323CR8277 ordered transferred with conditions: stay away & no contact from victim in case, no unsupervised contact with children under the age of 16 (John S. Ferrara, Justice)	
12/12/2013		Bail warning read (Ferrara, J)	
12/12/2013	3	Letter sent to Springfield District Court requesting bail in case #1323cr8277	
12/12/2013		Assigned to track "C" see scheduling order	
12/31/2013	4	Recognizance form filed.	
05/22/2014		Tracking deadlines Active since return date	
06/10/2014	5	Pre-trial conference report filed	
07/24/2014	6	MOTION by Deft: for issuance of pre-trial summons for third-party records	
07/24/2014	6.1	Affidavit of counsel in support of defendant's motion for summons of third-party records	
07/30/2014		MOTION (P#6) allowed (Mary Lou Rup, Justice).	
07/30/2014	7	(Dwyer) Notice and Summons issued on 7/30/2014 to the Keeper of the Records of Department of Children & Families, Holyoke to produce records by 8/29/2014 to the Clerk of the Superior Court	
07/30/2014	8	(Dwyer) Notice and Summons issued on 7/30/2014 to the Keeper of the Records of Department of Children & Families, Springfield to produce records by 8/29/2014 to the Clerk of the Superior Court	
07/30/2014	9	(Dwyer) Notice and Summons issued on 7/30/2014 to the Keeper of the Records of Dr. Elizabeth Baker, MD to produce records by 8/29/2014 to the Clerk of the Superior Court	
07/30/2014	10	(Dwyer) Notice and Summons issued on 7/30/2014 to the Keeper of the Records of Baystate Childrens Specialty Center to produce records by 8/29/2014 to the Clerk of the Superior Court	



**COMMONWEALTH OF MASSACHUSETTS  
HAMPDEN COUNTY  
Public Docket Report**

07/30/2014	11	(Dwyer) Notice and Summons issued on 7/30/2014 to the Keeper of the Records of John Ashley Kindergarten to produce records by 8/28/2014 to the Clerk of the Superior Court
08/12/2014		Dwyer records from John Ashley Kindergarten received
08/25/2014		Dwyer records from Department of Children & Families received
09/30/2014	12	Protective Order issued for defense counsel access to presumptively privileged records (C. Jeffrey Kinder, Justice)
12/10/2014	13	Request for Interpreter by Luis Claudio
12/16/2014	14	Defendant files MOTION to continue Final Pre-Trial Conference and Trial
12/16/2014		MOTION (P#14) Allowed w/o objection. 3/11/15 Trial 2/25/15 PFTC. (Tina S. Page, Justice).
12/16/2014	15	MOTION by Deft. to Modify Protective Order
12/16/2014		MOTION (P#15) Allowed, parties to execute protective order (Tina S. Page, Justice). Copies faxed 12/16/2014
02/25/2015	16	MOTION by Commonwealth: to Continue FPTH to Friday 2/27/15
02/25/2015		MOTION (P#16) allowed (C. Jeffrey Kinder, Justice)
02/26/2015	17	Commonwealth files Witness List
02/26/2015	18	MOTION by Commonwealth: for Admission of Expert Testimony
02/26/2015	19	Commonwealth files Notification of Intent to Introduce Testimony Regarding First Complaint
02/27/2015	20	MOTION by Commonwealth: for an Individual Examination of the prospective Jurors, or Alternatively for Attorney Conducted Voir Dire
02/27/2015	21	Commonwealth files Joint Motion to Continue Trial Date
02/27/2015		MOTION (P#21) allowed without opposition (Kinder, J.)
02/27/2015	22	Appearance of Commonwealth's Atty: Carrie M. Russell
02/27/2015	23	Commonwealth files Statement of Impact Pursuant to M.G.L. C. 278 Section 16F
02/27/2015	24	Protective Order issued for Prosecuting Attorney access to presumptively privileged records (Kinder, J.)
04/27/2015	25	MOTION by Deft. for issuance of pre-trial summons for third-party records
04/27/2015	25.1	Affidavit of counsel in support of defendant's motion for summons of third-party records
05/01/2015	26	Request for Interpreter by Luis Claudio
05/06/2015		MOTION (P#25) allowed (Daniel A. Ford, Justice).
05/11/2015	27	(Dwyer) Notice and Summons issued on 5/11/2015 to the Keeper of the Records of Department of Children & Families, 140 High Street, Springfield, MA to produce records by 6/11/2015 to the Clerk of the Superior Court



**COMMONWEALTH OF MASSACHUSETTS  
HAMPDEN COUNTY  
Public Docket Report**

05/11/2015	28	(Dwyer) Notice and Summons issued on 5/11/2015 to the Keeper of the Records of Department of Children & Families, 261 High Street, Holyoke, MA to produce records by 6/11/2015 to the Clerk of the Superior Court	
05/26/2015	29	MOTION by Commonwealth: to modify the protective order to permit copying of Dwyer records	
05/26/2015		MOTION (P#29) allowed (Tina S. Page, Justice).	
05/29/2015		Dwyer records from Department of Children & Families received	
05/29/2015	30	Protective Order issued for defense counsel access to presumptively privileged records (Tina S. Page, Justice)	
06/02/2015	31	Request for Interpreter by Luis Claudio	
06/03/2015	32	Filed: Joint Pre-Trial Memorandum	
06/03/2015	33	MOTION by Deft: to modify protective order	
06/03/2015		MOTION (P#33) allowed (Tina S. Page, Justice).	
06/03/2015	34	MOTION by Commonwealth: for session assignment and date certain	
06/03/2015		MOTION (P#34) allowed (Tina S. Page, Justice).	
06/03/2015	35	Deft files anticipated witnesses for the defendant	
06/13/2015		**Converted and manual data; Converted from MassCourt Lite, BasCot or ForeCourt(06/13/2015). Refer to case file for assessments, disbursements, and receipt validations.**	
06/13/2015		** On 12/31/2013 \$2,500.00 was received for case HDCR2013-01314, funds received by the surety Edwin Ramirez Valentin. The defendant in the case is Luis Claudio.	
		As of the date of conversion a remaining balance of \$2,500.00 was converted for BAIL.	
07/09/2015		Event Result: The following event: Jury Trial scheduled for 07/13/2015 09:00 AM has been resulted as follows: Result: Rescheduled Reason: By Court prior to date Appeared:	Page
07/13/2015	36	Commonwealth's Motion to continue	
07/13/2015		Event Result: The following event: Jury Trial scheduled for 07/14/2015 09:00 AM has been resulted as follows: Result: Not Held Reason: Request of Defendant Appeared:	Rup
07/13/2015	37	MEMORANDUM & ORDER:  of findings pursuant to G.L.c.278.s.16F	Rup
08/28/2015	38	Commonwealth's Application for certificate in support of action to secure attendance of out-of-state witness	
08/28/2015	38.1	Affidavit of	





**COMMONWEALTH OF MASSACHUSETTS  
HAMPDEN COUNTY  
Public Docket Report**

10/06/2015		Event Result: The following event: Final Pre-Trial Conference scheduled for 10/06/2015 09:39 AM has been resulted as follows: Result: Held as Scheduled	McDonough
10/06/2015	39	Joint Pre-Trial Memorandum filed:	
10/08/2015	40	Interpreter requested.	
10/13/2015		Event Result: The following event: Jury Trial scheduled for 10/13/2015 09:07 AM has been resulted as follows: Result: Not Held Reason: Transferred to another session	McDonough
10/13/2015		Event Result: The following event: Jury Trial scheduled for 10/13/2015 09:00 AM has been resulted as follows: Result: Not Held Reason: Request of Commonwealth	Mason
10/13/2015		Endorsement on Motion in limine to , (#53.0): ALLOWED	Mason
10/13/2015	41	Interpreter requested.  Applies To: Claudio, Luis T (Defendant)	
10/13/2015	42	Witness list  of Anticipated Witnesses for the Defendant  Applies To: Claudio, Luis T (Defendant)	
10/13/2015	43	Witness list  Commonwealth  Applies To: Commonwealth (Prosecutor)	
10/13/2015	44	Defendant's Motion in limine to to Preclude Introduction of Additional Complaint Evidence	
10/13/2015		Endorsement on Motion in limine to , (#44.0): ALLOWED	Mason
10/13/2015	45	Defendant's Motion in limine to Exclude Proposed Expert Testimony on the Lack of Physical Trauma to the Complaining Witness	
10/13/2015		Endorsement on Motion in limine to , (#45.0): DENIED	Mason
10/13/2015	46	Defendant's Motion in limine to Exclude Proposed Expert Testimony on the Dynamics of Child Sexual Abuse and or Request for Voir Dire Hearing on its Reliability	
10/13/2015	47	Defendant's Motion in limine for Order Prohibiting Use of the term "Victim"	Mason
10/13/2015		Endorsement on Motion in limine for , (#47.0): ALLOWED	Mason
10/13/2015		Endorsement on Motion in limine to , (#46.0): DENIED	Mason
10/13/2015	48	Defendant's Motion in limine for Order Prohibiting the terms "Special Victims Unit" and "SVU"	Mason



COMMONWEALTH OF MASSACHUSETTS  
HAMPDEN COUNTY  
Public Docket Report

10/13/2015		Endorsement on Motion in limine for , (#48.0): ALLOWED	Mason
10/13/2015	49	Defendant's Motion in limine to be seated at Table with Counsel	Mason
10/13/2015		Endorsement on Motion in limine for , (#49.0): ALLOWED	Mason
10/13/2015	50	Defendant's Motion in limine for Sequestration of All Witnesses	Mason
10/13/2015		Endorsement on Motion in limine for , (#50.0): ALLOWED	Mason
10/13/2015	51	Defendant's Motion in limine to suppress Order Excluding Evidence and Testimony Regarding the Defendant's Prior Convictions	Mason
10/13/2015		Endorsement on Motion in limine for , (#51.0): ALLOWED	Mason
		In part and denied in part see pleading	
10/13/2015	52	Defendant's Motion for Voir Dire of Child Witness to determine competence to testify	Mason
10/13/2015		Endorsement on Motion for , (#52.0): ALLOWED	Mason
10/13/2015	53	Commonwealth's Motion in limine to Admit Statements of the Defendant	Mason
10/13/2015	54	Commonwealth's Motion in limine to impeach the defendant with prior convictions should he testify	Mason
10/13/2015		Endorsement on Motion in limine to , (#54.0): ALLOWED	Mason
10/14/2015	55	General correspondence regarding Change of Plea form	
10/14/2015	56	Defendant waives rights	Mason
10/14/2015	57	Finding on plea of guilty.	Mason
10/14/2015		Event Result: The following event: Jury Trial scheduled for 10/14/2015 09:07 AM has been resulted as follows: Result: Not Held as Scheduled - Plea Reason: Plea Offered	Mason
10/14/2015		Defendant sentenced: Sentence Date: 10/14/2015 Judge: Mason, Hon. Mark D  Charge #: 1 RAPE OF CHILD, STATUTORY c265 §23 State Prison Sentence State Prison Sentence-Not Less Than: 8 Years, 0 Months, 0 Days  State Prison Sentence-Not More Than: 8 Years, 0 Months, 0 Days  Served Primary Charge  Committed to MCI - Cedar Junction (at Walpole)  Credits 41 Days  Financials Docket Type Legal Counsel Fee assessed. Amount \$150.00  Miscellaneous Options Further Orders of the Court: Credit by agreement	





COMMONWEALTH OF MASSACHUSETTS  
HAMPDEN COUNTY  
Public Docket Report

10/14/2015	58	Issued on this date:  Mitt For Sentence (First 6 charges) Sent On: 10/14/2015 14:50:35	
10/14/2015		Defendant warned pursuant to alien status, G.L. c. 278, § 28D.	Mason
10/14/2015		Defendant warned pursuant to habitual offender statute G.L. c. 279, § 25(d)	Mason
10/14/2015		Notice given to defendant of duty to register as a sex offender.	Mason
10/14/2015		Defendant warned as to submission of DNA G.L. c. 22E, § 3	Mason
10/14/2015		Defendant sentenced: Sentence Date: 10/14/2015 Judge: Mason, Hon. Mark D  Charge #: 2 INDECENT A&B ON CHILD UNDER 14 c265 §13B Miscellaneous Options Further Orders of the Court: from and after 13-1314-1, see Proposed conditions of Probation  Probation Probation Type: Risk/Need Probation Duration: 10 Years, 0 Months, 0 Days	
10/14/2015		Offense Disposition: Charge #1 RAPE OF CHILD, STATUTORY c265 §23 265/23/A-1 Date: 10/14/2015 Method: Hearing on Plea Offer/Change Code: Guilty Plea Judge: Mason, Hon. Mark D  Charge #2 INDECENT A&B ON CHILD UNDER 14 c265 §13B 265/13B/A-4 Date: 10/14/2015 Method: Hearing on Plea Offer/Change Code: Guilty Plea Judge: Mason, Hon. Mark D	
10/14/2015	59	General correspondence regarding Commonwealth's Proposed conditions of Probation	
10/14/2015		Endorsement on Notice of, (#59.0): ALLOWED	Mason
10/14/2015		Disposed for statistical purposes	
11/30/2015	80	Defendant's Motion to revise and revoke sentence pursuant to Mass. R. Crim. P. 29	
12/11/2015		Endorsement on Motion to Revise and Revoke Sentence (Pursuant to Mass. R. Crim. P. 29), (#60.0): DENIED without prejudice. Defendant may refile his Motion appending an Affidavit referencing and including the medical records set forth in Paragraph 1.	Mason
12/11/2015		The following form was generated: A Clerk's Notice was generated and sent to: Defendant: Luis T Claudio Attorney: Carrie Marie Russell, Esq.	
12/14/2015	61	Defendant's Motion to waive fees (Legal fee)	
12/15/2015	61.1	Affidavit of Luis T. Claudio	



COMMONWEALTH OF MASSACHUSETTS  
HAMPDEN COUNTY  
Public Docket Report

12/15/2015		Endorsement on Motion to waive fees, (#61.0): ALLOWED	Mason
11/09/2018		Attorney appearance On this date Nicholas John Raring, Esq. dismissed/withdrawn as Appointed - Indigent Defendant for Defendant Luis T Claudio	
11/09/2018	62	Attorney appearance On this date Andrew Paul Power, Esq. added as Limited Appearance Counsel for Defendant Luis T Claudio	
11/09/2018	63	Defendant's Motion for transcript	
11/15/2018		Endorsement on Motion for transcript, (#63.0): ALLOWED	Mason
		Judge: Mason, Hon. Mark D	
01/28/2019	64	Defendant's Motion for Bridgeman/protectio n. Mason, J. in Franklin County	
01/28/2019	64.1	Affidavit of appellate counsel	
01/28/2019	64.2	Affidavit of plea counsel	
01/28/2018	64.3	Affidavit of defendant	
02/26/2019	65	Commonwealth's Memorandum in opposition to defendant's motion for Bridgeman I protection	
04/16/2019	66	Habeas Corpus for defendant issued to Massachusetts Treatment Center - Bridgewater returnable for 04/17/2019 02:00 PM Motion Hearing. for transport to Hampshire County, to be heard before Judge Mason.	
04/16/2019	66	Interpreter requested.	
04/17/2019		Attorney appearance On this date Carrie Marie Russell, Esq. dismissed/withdrawn as Attorney for the Commonwealth for Prosecutor Commonwealth	
04/17/2019	67	Attorney appearance On this date John A Wendel, Esq. added as Attorney for the Commonwealth for Prosecutor Commonwealth	
04/17/2019		Event Result: Motion Hearing scheduled on: 04/17/2019 02:00 PM Has been: Held as Scheduled Comments: Held in Hampshire Superior Court Hon. Mark D Mason, Presiding Staff: Brian Dolaher, Assistant Clerk Magistrate Michael T Sarnacki, Esq., Assistant Clerk Magistrate	Mason
04/26/2019	68	's Notice of reservation and report to the appeals court (J. Mason) N. 6/7/19 Appeals Court	
		Applies To: Event Judge: Mason, Hon. Mark D	

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

SUPERIOR COURT  
CRIMINAL ACTION  
No. 1379CR1314


COMMONWEALTH

HAMPDEN COUNTY  
SUPERIOR COURT  
FILED

vs.

APR 26 2019

LUIS CLAUDIO

  
CLERK OF COURTS

RESERVATION AND REPORT TO THE APPEALS COURT

This action arises out of the Defendant's request that an order issue extending the protections established in *Bridgeman v. District Attorney for the Suffolk Dist.*, 471 Mass. 465, 472 – 478 (2015) ("*Bridgeman I*"), prior to filing a motion to withdraw his guilty pleas. In particular, the Defendant seeks a ruling that if he successfully withdraws his guilty pleas under Mass. R. Crim. P. 30(b), and the Commonwealth elects to re prosecute him, he will not be charged with more serious offenses than those which he was convicted of under the terms of his plea agreement. He further requests that, if convicted, he will face no punishment beyond his current prison sentence of 6 – 8 years, with credit for time served, with 10 years probation from and after his incarceration.

Mr. Claudio's case presents the question whether protections from harsher punishment established for "Dookhan defendants" in *Bridgeman I* apply to "Farak defendants" who are challenging pleas based upon Farak-related grounds relating to G. L. c. 279, § 25A, predicate offenses. After consideration of the parties' written filings and oral argument, I am reporting Mr. Claudio's case to the Appeals Court along with the parties' agreed upon question.

## I. Procedural Background

The affidavit of Mr. Claudio, the affidavit of Mr. Claudio's plea counsel, the affidavit of Mr. Claudio's appellate counsel, the transcript of the plea at issue, and affidavit appendix establish the following facts:

In 2013, the Defendant, Luis Claudio ("Mr. Claudio") was indicted on two counts of aggravated statutory rape pursuant to G. L. c. 265, § 23A. Mr. Claudio was charged as an habitual offender pursuant to G. L. c. 279, § 25A, based, in part, on a predicate conviction for possession with intent to distribute heroin (Indictment No. 0579CR00960). As such, Mr. Claudio was facing a mandatory sentence of life in prison if convicted after trial. See *Commonwealth v. Ruiz*, 480 Mass. 683, 683 - 684 (2018).

During its prosecution of Mr. Claudio, between December 2013 and March 2014, the Commonwealth released 113 pages of discovery including two copies of a drug certificate signed by Assistant Analyst James Hanchett in 1998, which supported one of the habitual offender predicate convictions. The Commonwealth did not timely disclose, however, the drug certificates supporting the other predicate conviction -- Indictment No. 0579CR00960. Those certificates were signed by Assistant Analyst Sonja Farak.

In fact, the Commonwealth had been aware of Ms. Farak's misconduct, to some extent, since January 2013. Ms. Farak was convicted in January 2014, of evidence tampering, unlawful drug possession, and theft of a controlled substance. At the time Mr. Claudio tendered his plea on October 13, 2015, various investigations into Ms. Farak were ongoing. See *Committee for Pub. Counsel Servs. v. Attorney Gen.*, 480 Mass. 700, 706 -720 (2018).

Mr. Claudio's plea negotiations began in June 2015. At that time, Mr. Claudio's counsel advised him that, if convicted, he would receive a mandatory life sentence. Mr. Claudio's

counsel advised him that the Commonwealth's case hinged on whether a jury believed his accuser's testimony. The Commonwealth was having difficulties securing the accuser's appearance at trial and offered to amend the indictments to indecent assault and battery on a child under 14 and to recommend sentences of 2 ½ years in jail on the first count followed by 5 years probation on the second count, with conditions including sex offender registration. Mr. Claudio sought a disposition which excluded sex offender registration. In general, he thought the Commonwealth's case was weak and, ultimately, rejected the plea offer.

On October 13, 2015, the day scheduled for trial, the accuser and her mother were present in the courtroom. The Commonwealth withdrew its offer. Ultimately, counsel brokered a plea agreement to lesser charges with a sentence of not less than 6 and not more than 8 years in prison, with 10 years' probation to run consecutively along with sex offender registration. Mr. Claudio accepted the negotiated plea.

I conducted a plea colloquy during which the Commonwealth summarized the facts. I asked Mr. Claudio if the facts as the Commonwealth had stated were true. Mr. Claudio responded, "Not really, but under the circumstances, I have to accept it." I took a recess while Mr. Claudio conferred with his counsel. I resumed the plea colloquy, and the Commonwealth repeated its statement of the facts. Mr. Claudio acknowledged he understood the facts and that the facts were true. I accepted Mr. Claudio's plea and sentenced him to not less than 6 and not more than 8 years in prison, with 10 years' probation to run consecutively with a number of conditions including sex offender registration.

In his affidavit, Mr. Claudio attested that, "Without the imminent threat of a mandatory life sentence, I would not have agreed to this plea bargain in 2015." Claudio Affidavit at para. 8. In light of Mr. Claudio's comments made during the plea colloquy, and, of equal importance, my

personal observations of Mr. Claudio's demeanor during the plea colloquy, I accept Mr. Claudio's attestation as factually true and entirely reasonable under the circumstances.

At the time Mr. Claudio tendered his plea, neither he nor his counsel were aware that Sonja Farak had signed the drug certificates supporting Indictment No. 0579CR00960. It was not until 2018 that Mr. Claudio learned that Indictment No. 0579CR00960 had been vacated and dismissed with prejudice because he had been classified as a so – called "Farak defendant."

Mr. Claudio has attested that, "as a 'Farak defendant,' I will not exercise my postconviction right of moving to withdraw my guilty pleas solely on the grounds set forth above – risking exposure to much harsher punishment – unless my sentence, if I am reprosecuted, is capped at what was under the plea agreement, including time served." *Id.* at para. 14. He consents to the report of a question to the Appeals Court, pursuant to Mass. R. Crim. P. 34, as to whether the protections from harsher punishment established for "Dookhan defendants" in *Bridgeman I* apply to "Farak defendants" who are challenging pleas solely on Farak-related grounds relating to G. L. c. 279, § 25A, predicate offenses.

## **II. Rationale for the Reservation and Report**

### **A. Ferrara – Scott test**

Before reporting the question presented, I have considered whether Mr. Claudio's putative motion to withdraw his guilty plea would bear scrutiny pursuant to the "*Ferrara-Scott* test." See *Ferrara v. United States*, 465 F.3d 271 (1st Cir. 2006); *Commonwealth v. Scott*, 467 Mass. 336, 351 (2014). *Scott* was a case involving the convicted chemist Annie Dookhan. In *Scott*, the Supreme Judicial Court defined a two-prong test for analyzing a defendant's motion to withdraw a guilty plea for governmental misconduct relying on *Ferrara v. United States*, 465 F.3d 271 (1st Cir. 2006). See *Scott* at 346. First, the "defendant must show egregious

misconduct by the government that preceded the entry of the defendant's guilty plea and that occurred in the defendant's case." *Commonwealth v. Cotto*, 471 Mass. 97, 106 (2015). Second, the "defendant must demonstrate a reasonable probability that he or she would not have pleaded guilty had he or she known of the government misconduct." *Id.*

Mr. Claudio meets the first prong of the *Ferrara – Scott* test. That Mr. Claudio was designated a "Farak defendant" on Indictment No. 0579CR00960 is established. It is uncontroverted, further, that Mr. Claudio's conviction on Indictment No. 0579CR00960 served as a predicate offense in the plea at issue. Importantly, in *Commonwealth v. Wallace*, 92 Mass. App. Ct. 7, 12 (2017), the Appeals Court did "not rule out the possibility that governmental misconduct in one case could contaminate another case." That sort of "contamination" is at the core of Mr. Claudio's motion. Mr. Claudio's attestation that, "[w]ithout the imminent threat of a mandatory life sentence, I would not have agreed to this plea bargain in 2015," evinces the sort of "contamination" necessary to meet the second prong of the *Ferrara – Scott* test. Claudio Affidavit at para. 8.

Mr. Claudio satisfies the second prong of the *Ferrara – Scott* test. Under the second prong of the *Ferrara – Scott* test, "the defendant must demonstrate a reasonable probability that he would not have pleaded guilty had he known of [the government's] misconduct." *Scott, supra* at 354-355. "At a minimum, the defendant must aver to this fact." *Id.*

Mr. Claudio not only averred that he would have insisted on going to trial, but he has met his burden in demonstrating "that a decision to reject the plea bargain would have been rational under the circumstances." *Id.* at 356, quoting from *Commonwealth v. Clarke*, 460 Mass. 30, 47 (2011); *Padilla v. Kentucky*, 559 U.S. 356, 372 (2010). In this regard, Mr. Claudio's belief in the weakness of the Commonwealth's case was borne out by the Commonwealth's difficulties in

securing the accuser's presence. When coupled with the prospect of a life sentence were Mr. Claudio to have been convicted after trial, Mr. Claudio demonstrated "special circumstances" upon which he placed "particular emphasis in deciding whether to accept the government's offer of a plea agreement." *Wallace, supra* at 13, quoting *Scott, supra*.

The Commonwealth's citations to *Commonwealth v. Wallace*, 92 Mass. App. Ct. at 12, and *Commonwealth v. Williams*, 89 Mass. App. Ct. 383 (2016), are instructive but do not advance its argument. The facts in both of those cases are distinguishable from those presented herein. In *Wallace*, the defendant sought to withdraw his guilty plea based upon his claim that he considered his sentence to be interrelated with a concurrent sentence he had received in a prior case. The conviction in that prior case was vacated due to Ms. Farak's misconduct. But Ms. Farak's misconduct was not implicated in the motion to withdraw guilty plea before the court. The Appeals Court held that the defendant's claim of Ms. Farak's misconduct in the earlier case far too attenuated from the case before the court to meet the express egregious misconduct requirements set forth in the *Ferrara – Scott* test. See *Wallace, supra* at 12. Moreover, the defendant failed to meet the second prong of the *Ferrara-Scott* framework, which requires that he demonstrate a reasonable probability that, had he known of the government misconduct, he would have insisted on taking his chances at trial. In contrast to the present case, *Wallace* did not even aver that, but for Farak's misconduct, he would not have pleaded guilty in the the later case. *Id.* at 12-13.

In *Williams*, the defendant pled guilty to two sets of indictments including charges which subjected him to enhanced sentencing as an armed career criminal (ACC). The defendant sought to withdraw his guilty pleas based, in part, upon a claim that Ms. Dookhan engaged in wrongdoing in one of the ACC predicate offenses. The Appeals Court held that the defendant's



appeal was premature and remanded the case for further proceedings, and noted that "Whether the defendant would have insisted on going to trial in these circumstances is a fact – intensive determination that must in the first instance be evaluated in the trial court." *Id.* at 390. Here, the affidavits of Mr. Claudio and his counsel, the transcripts of the plea hearing and, indeed, my own observations amount to the sort of fact – finding which *Williams* addressed.

*Williams* nonetheless provides guidance. As the Appeals Court explained, "A mistake regarding the direct consequences of pleading guilty, including the maximum possible sentence of the crime charged, undermines the validity of a guilty plea." *Williams*, 89 Mass. App. Ct. at 389-390. That principle finds force in Mr. Claudio's case whereas one of the predicate convictions upon which Mr. Claudio premised his plea has been dismissed with prejudice.

#### **B. *Bridgeman I* Protection**

Mr. Claudio has attested that he will not move to withdraw his plea and risk exposure to substantially harsher punishment unless, if reprosecuted, his sentence "is capped at what it was under the plea agreement." *Bridgeman I*, at 477. Were he to move to withdraw his guilty pleas, he would do so "solely on the grounds of Ms. Farak's egregious misconduct and the Commonwealth's failure to disclose the Farak-signed drug certificates prior to his plea." Defendant's Motion for *Bridgeman I* protections at pages 10 – 11. Mr. Claudio maintains that, "A denial of this motion would amount to a final order of this Court, because no motion for new trial would follow." *Id.* at 12.

The risk Mr. Claudio would undertake were he to proceed without *Bridgeman I* type protections is considerable. His concern is reasonable. Presuming Mr. Claudio successfully argues a motion to withdraw guilty plea, he would face a minimum mandatory sentence of 10 years on each of two counts of aggravated statutory rape pursuant to G. L. c. 265, § 23A.

Technically, those sentences might run consecutively, resulting in a sentence of 20 years. By contrast, Mr. Claudio is serving a sentence of not less than 6 and not more than 8 years in prison, with 10 years' probation to run consecutively along with sex offender registration.

No Massachusetts appellate court has ruled on the question of whether a Farak defendant is entitled to a *Bridgeman I* type protection ensuring that if a defendant successfully withdraws his guilty pleas based upon Farak-related grounds relating to G. L. c. 279, § 25A, predicate offenses, and the Commonwealth elects to re prosecute, the defendant will face no punishment beyond his or her current sentence. In *Bridgeman I*, the SJC stated that, "the Commonwealth cannot simply re prosecute the [defendant] as if the plea agreement [] had never existed, thereby giving the Commonwealth a second bite at the proverbial apple in its efforts to convict the [defendant]. Instead, the Commonwealth must be held to the terms of its plea agreement[.]" *Bridgeman I*, at 476 -477. That principle resonates in Mr. Claudio's case.

While *Bridgeman I* does not, on its face, apply to Farak cases, the parties agree that, "it is not unreasonable to apply the *Bridgeman I* principle to the Farak situation because the Supreme Judicial Court found that the misconduct surrounding the Farak situation was, if anything, more egregious than Dookhan's misconduct." Commonwealth's Memorandum in Opposition to Defendant's Motion for *Bridgeman I* Protection at page 4. See *Committee for Public Counsel Services v. Attorney General*, 480 Mass. 700, 725 (2018) ("The government misconduct by Farak and the assistant attorneys general was 'so intentional and so egregious' that harsher sanctions than the *Bridgeman II* protocol are warranted"). Indeed, the Commonwealth acknowledged that it would extend *Bridgeman I* – type protections to Farak defendants. See *Commonwealth v. Cotto*, Hampden County Indictment No. 2007-770, *Memorandum of Decision and Order on Motions for Post-Conviction Relief*, at fn. 38.

The Commonwealth maintains that its acquiescence does not extend to pleas taken on G. L. c. 279, § 25A, offenses. The Commonwealth posits that Mr. Claudio is not otherwise entitled to *Bridgeman I* protections because “*Bridgeman* applies only to challenges of ‘convictions of *drug crimes* based on tainted evidence.’” Commonwealth’s Opposition at page 5 citing to *Bridgeman I*, at 478. The Commonwealth’s argument falls short.

In *Bridgeman I*, the SJC stated:

“Therefore, we hold that *in cases in which a defendant seeks to withdraw a guilty plea under Mass. R. Crim. P. 30 (b) as a result of the revelation of Dookhan’s misconduct*, and where the motion is allowed, the defendant cannot (1) be charged with a more serious offense than that of which he or she initially was convicted under the terms of a plea agreement; and (2) if convicted again, cannot be given a more severe sentence than that which originally was imposed. In essence, a defendant’s sentence is capped at what it was under the plea agreement.”

*Id.*, citing *Ferrara v. United States*, 372 F. Supp. 2d 108, 111 (D. Mass. 2005), *aff’d*, 456 F.3d 278 (1st Cir. 2006)(emphasis added). The SJC went on to state, “[O]ur holding also will safeguard the integrity of the criminal justice system by ensuring that defendants may challenge convictions of *drug crimes* based on tainted evidence.” *Id.* (emphasis added).

Mr. Claudio’s plea implicates the principles articulated in *Bridgeman I*. First, Mr. Claudio seeks to withdraw his guilty plea as a result of the revelation of Ms. Farak’s conduct. Second, Mr. Claudio has challenged the drug conviction borne of Indictment No. 0579CR00960. Nothing in *Bridgeman I* specifically delimits its protections to predicate offenses. Moreover, it seems consistent with the policy underlying the protections the SJC afforded in *Bridgeman I* for *Bridgeman I* type protections to be extended to Mr. Claudio.

### **The Question Reported**

For the foregoing reasons, the trial court respectfully reports the following question for the Appeals Court pursuant to Mass. R. Crim. P. 34:

Do the protections from harsher punishment established for “Dookhan defendants” in *Bridgeman I* apply to “Farak defendants” who are challenging pleas based upon Farak-related grounds relating to G. L. c. 279, § 25A, predicate offenses?<sup>1</sup>

### III. Stay Order

Further proceedings in this case are stayed in the Superior Court until further order of the Appeals Court.

  
\_\_\_\_\_  
MARK D MASON

Justice of the Superior Court

DATE: April 26, 2019

---

<sup>1</sup> While the Commonwealth has opposed Mr. Claudio’s Motion for *Bridgeman I* protection, counsel have agreed upon the language of the question reported.