

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, S.S.

SUPREME JUDICIAL  
COURT No.

APPEALS COURT  
No. 2018-P-0733

COMMONWEALTH OF MASSACHUSETTS

v.

STANLEY WILLIAMS

**DEFENDANT'S APPLICATION FOR DIRECT APPELLATE REVIEW  
OF THE ORDER OF THE HAMPDEN SUPERIOR COURT**

Merritt Schnipper  
SCHNIPPER HENNESSY PC  
25 Bank Row Suite 2S  
Greenfield MA 01301  
(413) 325-8541  
mschnipper@schnipperhennessy.com  
BBO# 676543

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v.

STANLEY WILLIAMS

**APPLICATION FOR DIRECT APPELLATE REVIEW**

Defendant Stanley Williams applies pursuant to Mass. R. A. P. 11 for direct appellate review of the order of the Hampden Superior Court denying his Motion for Forensic Testing Pursuant to G.L. c.278A §3.

Defendant's appeal presents unresolved questions regarding the meaning of the phrases 'factually innocent' and 'material to the moving party's identification as the perpetrator of the crime in the underlying case' as used in G.L. c.278A, the post-conviction forensic testing statute, as well as the status of actions taken in lawful self-defense under Massachusetts law more generally. Mr. Williams was indicted for murder in 2004 based on a fistfight and shooting during which the Commonwealth alleged he drew a gun and shot his assailant, and plead guilty to manslaughter based on these factual allegations though

he has separately maintained it was his assailant Michael Owens, and not him, who brought the gun to their fight and attempted to use it there.

Both the clothing worn by Mr. Owens at the time he was killed and a number of cartridge casings discharged from the gun that shot him remain in the possession of Springfield police. The Defendant sought forensic testing of this evidence pursuant to G.L. c.278A to support his claim of factual innocence, arguing that because Mr. Owens was shot when Mr. Williams acted in self-defense by struggling for the gun Mr. Owens produced during their fistfight, the Defendant had committed no crime and therefore could not have been properly 'identified as the perpetrator of the crime in the underlying case' within the meaning of the forensic testing statute. The Defendant supported this claim with an affidavit pursuant to G.L. c.278A §3(d) in which he detailed his actions taken in lawful self-defense and asserted they demonstrated his factual, not merely legal, innocence. The Superior Court rejected these arguments and denied Mr. Williams' motion on the grounds there was no dispute he was properly identified as the individual who fought with Mr. Owens on the day in question, and

that a conviction based on the exercise of lawful self-defense, even in the context of simply attempting to prevent the use of deadly force against oneself, did not make out a case of factual innocence and wrongful conviction.

Defendant's appeal squarely raises the question of the scope of the class of factual innocence claimants the Legislature intended to include within c.278A's ambit, and whether forensic testing under its standards is available only to persons convicted based on mistaken identifications or to other categories of actual innocence claimants as well. It additionally presents the broader question of whether a person who is attacked and responds with acts of lawful self-defense—behavior this Court has called 'justified' and 'non-criminal'—is factually innocent and therefore wrongfully convicted of any crime or 'merely legally innocent' for purposes of Massachusetts law. These questions have far-reaching implications for the availability of post-conviction forensic testing and other factual innocence claims made by persons tried in the courts of the Commonwealth, and require resolution by this Court.

As further support for his Application, Defendant  
relies upon the attached Memorandum of Law.

June 25, 2018

Respectfully Submitted,

STANLEY WILLIAMS  
By His Attorney,

/s/ Merritt Schnipper  
Merritt Schnipper  
SCHNIPPER HENNESSY  
25 Bank Row Suite 2S  
Greenfield MA 01301  
(413) 325-8541  
mschnipper@schnipperhennessy.com  
BBO# 676543

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STANLEY WILLIAMS

**MEMORANDUM OF LAW IN SUPPORT OF  
APPLICATION FOR DIRECT APPELLATE REVIEW**

I. STATEMENT OF PRIOR PROCEEDINGS

Based on events that occurred on April 22, 2003, on April 16, 2004 a Hampden grand jury indicted Defendant Stanley Williams for murder, G.L. c.265 §1, in the shooting death of Michael Owens. Appx:1-2.<sup>1</sup> The Defendant pled guilty to manslaughter, G.L. c.265 §13, on April 15, 2005 and was sentenced to 18-20 years in state prison. Appx:3.

Mr. Williams filed *pro se* motions seeking forensic testing pursuant to G.L. c.278A in 2013 and 2016, both of which were denied. Appx:4-5. He filed the motion at issue on this appeal with the assistance of counsel on April 10, 2018 and the Superior Court

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<sup>1</sup> Citations to the docket entries and other materials contained in the appendix to this application are identified as Appx:Page.

denied it on April 25. Appx:6-7. The Defendant timely noticed his appeal, and the case entered the Appeals Court May 18, 2018.

## II. FACTS RELEVANT TO THE APPEAL

### 1. Defendant's Indictment and Guilty Plea

In April 2004 Mr. Williams was indicted for murder in the shooting death of Michael Owens a year earlier. Appx:1-2. The Defendant pled guilty to the lesser-included offense of manslaughter on April 15, 2005. Appx:3. At his plea colloquy, the Defendant agreed to the accuracy of the Commonwealth's statement that on the morning of April 22, 2003

Mr. Williams and Mr. Owens were both on foot coming at, sort of at a crossroads from different directions, where they—Mr. Williams immediately ran up to Mr. Owens, and a number of witnesses indicated...that the two came in contact with one another. And all the witnesses indicated that a rather loud verbal argument ensued, so loud that people on the upper floors of the buildings on Federal Street, their attention was directed out towards the yelling.

A physical fight ensued. And one witness that was on the street indicated he saw what ultimately was Mr. Owens (sic) appearing to be reaching in his waistband, upon which he saw the defendant take a firearm and shoot Mr. Owens, causing Mr. Owens to fall to the ground. The defendant shot again. He ran away for a short period of time, came back, and fired again, and then fled.

Appx:9. The Superior Court sentenced Mr. Williams to 18-20 years in state prison, and he remains incarcerated pursuant to that sentence. Appx:3.

2. Defendant's Motion for Forensic Testing

On April 10, 2018 the Defendant sought post-conviction forensic testing of the clothing Mr. Owens was wearing at the time he was shot, as well as of five cartridge casings discharged by the gun that shot him and recovered by police on an earlier date and at a different location, pursuant to G.L. c.278A.

Notwithstanding his agreement to the Commonwealth's recitation set forth *supra* in the context of his plea colloquy, the Defendant asserted his factual innocence in an affidavit submitted pursuant to G.L. c.278A

§3(d). See Appx:26-28. In his Affidavit, Mr. Williams explained:

I acted in self-defense on the day Mr. Owens died. I did not have a gun with me that day. The only gun present, and the gun that fired the shots that killed Mr. Owens, was the one he was carrying when he confronted me on Federal Street in Springfield on April 22, 2003.

On the day in question I was walking to my car on Federal Street when I saw Mr. Owens and two other men running towards me. Mr. Owens had one hand in his pants, and when he got close to me he threw a punch at me. I tried to wrap my arms around him but he was bigger than me and threw them off.



Then Mr. Owens pulled his hand out of his pants. When I saw a black gun in his hand I put my head down, grabbed his wrist with both my hands, and pushed against him with all my strength. I then heard two shots very close together, and Mr. Owens screamed and fell to the ground.

After Mr. Owens fell to the ground I ran and ducked into an alley. I did not take the gun with me, and did not return to where he was and shoot him again. I did return to near where he was and tried to get into my car, but I did not have the keys. I then ran back to the alley and kept running from the scene.

Appx:26-27.

The Defendant's motion for forensic testing addressed the five statutory factors set forth in G.L. c.278A §3(b). See Appx:10-25. With regard to the requirement that he set forth "information demonstrating that the analysis has the potential to result in evidence that is material to the moving party's identification as the perpetrator of the crime in the underlying case," G.L. c.278A §3(b)(4), Mr. Williams acknowledged that "[w]hether c.278A provides access to forensic testing by defendants who claim factual innocence on the basis of the lawful exercise of self-defense, rather than only in cases of mistaken identification, is a question of first impression" but argued "the Legislature did not intend to exclude this

class of factual innocence claimants from access to forensic testing and its exculpatory power." Appx:16.

With regard to the utility of the testing he proposed to conduct, the Defendant proffered the affidavit of a firearms expert who explained

Gunpowder residue testing...on the clothing, and more particularly the sweatshirt, Mr. Owens was wearing at the time he was shot could tend to support Mr. Williams' statements that Mr. Owens was shot as the two men struggled for the gun, rather than that Mr. Williams shot Mr. Owens once at close range and a second time from a greater distance as alleged by the Commonwealth.

Gunshot residue testing of areas of Mr. Owens' clothing that would not have been exposed to the plume emitted when the firearm was discharged, such as the insides of his pockets or the interior lining of his clothing, could tend to show that Mr. Owens had carried a firearm recently and thus support Mr. Williams's statement that it was Mr. Owens, not Mr. Williams, who brought the gun to their confrontation.

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If the five cartridge casings referenced in the ballistics report recently produced by the Commonwealth were tested and found to bear the prints of someone other than Mr. Williams, it would tend to show that someone other than Mr. Williams had been handling the gun that discharged the casing found at the scene of the Williams/Owens incident in the weeks preceding it.

Appx:15-16. Mr. Williams then argued that "[b]y its plain language, G.L. c.278A §3(b)(4)'s materiality requirement does not relate solely to the

identification of an individual, but rather to that person's identification as 'the perpetrator of the crime' of which he or she was convicted." Appx:17. He asserted that "[i]n the case of a moving party who claims to have been convicted of a homicide crime based on the exercise of lawful self-defense, his or her theory of the case is premised on the idea that no crime occurred at all, meaning there is no perpetrator who could legitimately be identified, charged, and convicted," and pointed out that G.L. c.278A §1 "defines a 'factually innocent' person as one convicted of a criminal offense who did not commit that offense,' without any reference to mistaken identification." Appx:17-18.

The Defendant further argued that identification of a perpetrator, in the context of a self-defense claim like his, meant determination of who brought a gun to the fight and first attempted to use it there. He explained that G.L. c.278A §3(b)(4)'s

materiality standard is satisfied by the fact that testing of the clothing Mr. Owens was wearing at the time of the incident could support his contention that it was Mr. Owens who brought the gun to their fight, and that he was shot and killed when the two fought for control of it [and that if the cartridge casings he sought to test] bore the fingerprints of Mr. Owens or someone else

other than the Defendant, it would tend to support his claim he did not bring the gun to their fatal encounter. Testing of both the clothing and the cartridge casings at issue has the potential to produce evidence relevant to the identity of the person who carried a gun to the Williams/Owens incident, and thus to whether the Defendant was properly identified as the perpetrator of a crime.

Appx:18-19. Finally, Mr. Williams pointed to this Court's decision in *Commonwealth v. Moffatt*, which rejected the "suggest[ion] that postconviction forensic testing under G.L. c.278A is limited to direct evidence of the perpetrator's identity" and instead emphasized a direct connection between the crime of conviction and the evidence sought to be tested, as well as assessment of each case based on "the facts and circumstances of the crime." Appx:19-20 (quoting 478 Mass. 292, 300-01 (2017)).

### 3. Denial of Defendant's Motion

The Superior Court denied Mr. Williams' motion for forensic testing "for the reasons set forth in the Comm[onwealth]'s opposition." Appx:29. With regard to the Defendant's assertion of factual innocence, the Commonwealth's Opposition stated

[h]e does not assert that he is factually innocent of the crime. The defendant's motion conflates factual innocence with legal innocence. He does not claim that he

did not shoot the victim. He claims that it was legally justifiable...The defendant has alleged that he 'might be' entitled to a not guilty verdict at trial, which is at best a claim of legal innocence. He does not assert factual innocence, i.e., that he did not shoot and kill the victim. He does not assert that the testing would establish that someone else committed the offense, only that the defendant might be entitled to dismissal, acquittal, or reversal of a criminal charge on other grounds. The statute does not provide for defendants looking to raise a post-hoc defense to a crime, it is for defendants who claim factual innocence.

Appx:32-34 (quotations and citations omitted). With regard to whether the Defendant's filing satisfied G.L. c.278A §3(b)(4)'s materiality requirement, the Commonwealth's Opposition asserted

[t]he statutory language here is clear and unambiguous, and the defendant's proposed construction would contradict the plain language of the statute.

Under G.L. c.278A §1, identity is defined as 'the moving party's identity as the perpetrator of the offense for which the moving party was convicted in the underlying case'...The defendant claims that because self-defense would negate the element of malice, testing could show that there was no 'offense' within the meaning of the statute. This twists the words of the statute past their breaking point. Had the legislature intended to open testing up to anyone seeking to have their conviction overturned for any reason, they would not have limited to testing that 'has the potential to result in evidence that is material to the moving party's identity as the perpetrator of the crime in the underlying case.'

The Legislature could have provided for testing to those seeking to establish a defense to the crime charged or to those who claimed legal innocence, but elected not to do so.

Appx:35 (quotations and citations omitted). The Commonwealth agreed that, other than failing to properly assert factual innocence and satisfy the materiality standard, the Defendant's motion met the requirements of G.L. c.278A §3(b) and (c). Appx:34, 38.

### III. ISSUES OF LAW RAISED BY THE APPEAL

1. Has a movant who affirms he or she was convicted of a crime based on actions taken in the exercise of lawful and proportionate self-defense asserted a claims of 'factual innocence' within the meaning of G.L. c.278A?

2. Is evidence tending to show a movant who concededly participated in the acts for which he or she stands convicted acted lawfully and committed no crime material to his or her 'identification as the perpetrator of the crime in the underlying case' within the meaning of G.L. c.278A §3(b)(4)?

These issues are preserved for the Court's review. They were raised and argued in his Motion for Forensic Testing Pursuant to G.L. c.278A §3(b), and the Commonwealth's negative responses to them provided the basis for the Superior Court ruling at issue on appeal.

#### IV. ARGUMENT

1. Actions Taken in the Exercise of Lawful and Proportionate Self-Defense are Non-Criminal Under Massachusetts Law, and a Person Convicted Based on Them Is Therefore Factually Innocent of the Underlying Crime

In Mr. Williams' G.L. c.278A §3(d) affidavit, he asserted his innocence of the crime of manslaughter and explained how he was set upon by Mr. Owens, who was shot when the Defendant struggled for the gun Mr. Owens had drawn and fought to prevent it from being used against him. Adopting the Commonwealth's reasoning, the Superior Court held that these facts, if accepted, showed the Defendant was 'merely legally innocent' and not factually innocent as required by G.L. c.278A. This ruling contradicted more than 150 years of jurisprudence holding that actions taken in justified self-defense are entirely lawful and non-criminal. It also runs against decisions in a wide variety of contexts associating factual innocence with positive evidence of non-criminality and 'mere legal innocence' with governmental failures of proof or procedural violations. The Court should hold that a moving party that has alleged facts showing he or she was convicted based on acts taken in lawful self-



defense has made out a claim of factual innocence within the meaning of G.L. c.278A.

In *Commonwealth v. Webster* this Court observed that 'homicide,' the "generic [term] embracing every mode by which the life of one man is taken by the act of another," can "be justifiable, and of course lawful, in necessary self-defense." 59 Mass. 295, 303 (1850); see also *Commonwealth v. Rodriguez*, 370 Mass. 684, 688 (1976) ("we have long recognized that self-defense negates the element of 'unlawfulness'" in murder and manslaughter cases). This principle remains a staple of murder and manslaughter prosecutions today. See, e.g., *Commonwealth v. Fantauzzi*, 91 Mass.App.Ct. 194, 198 (2017) (noting that model homicide instructions provide "[a] person is not guilty of any crime if he acted in proper self-defense"). And the Appeals Court has recognized that if—as averred by Mr. Williams in his affidavit—a defendant is attacked and "accidentally administered the fatal wound while attempting to defend himself, it cannot be said that his conduct is unlawful." *Commonwealth v. Turner*, 24 Mass.App.Ct. 902, 903 (1987) (quotation omitted). It is thus well

established that a person who acts in justified self-defense is innocent of any crime.

This Court has noted the direct connection between the offense-specific requirement of G.L. c.278A §3(d) affidavits and the concept of factual innocence when interpreting the forensic testing statute itself. In *Commonwealth v. Wade*, the Court said “[b]y employing the phrase ‘factually innocent’ in G.L. c.278A §3(d), the Legislature clearly intended to require a moving party to assert that the party did not commit the offense of which the party was convicted” but rejected the notion that an affidavit was insufficient because it “did not disavow having caused injury to the victim.” 467 Mass. 496, 513-15 (2014) (“*Wade I*”). As in *Wade I*, Mr. Williams’s affidavit did not disavow causing injury to Mr. Williams, but simply asserts he did not commit the offense of manslaughter for which he was convicted.

The *Wade I* court looked to *Bousley v. United States* to define the concept of factual innocence, see 467 Mass. at 514; in that case, the Supreme Court said “[t]o establish actual innocence, [a defendant] must demonstrate that, in light of all the evidence, it is more likely than not that no reasonable juror would

have convicted him.” 523 U.S. 614, 623 (1998). And in the related context of interpreting the phrase ‘grounds tending to establish innocence’ in G.L. c.258D, the wrongful conviction compensation statute, this Court said that standard is satisfied if jurors were “forestalled from making a fully informed decision as to the defendant’s guilt or innocence because of the absence of critical evidence.” *Drumgold v. Commonwealth*, 458 Mass. 367, 378 (2010); see also *Wade I*, 467 Mass. at 514-15 (citing *Drumgold* while construing ‘factual innocence’ in G.L. c.278A).

The Superior Court was thus mistaken when it implicitly ruled a claim new evidence could lead to acquittal is predicated on ‘mere legal,’ rather than factual, innocence. Given that G.L. c.278A is addressed to *convictions* of innocent persons, it is difficult to see how potential new evidence of innocence can be assessed other than by its likely impact on the adjudicative process. See *Calderon v. Thompson*, 523 U.S. 538, 559 (1998) (“To be credible, a claim of actual innocence must be based on reliable evidence not presented at trial”). The fact a moving party’s claimed “entitlement to a reversal based on insufficient evidence or a procedural fault [does not]

meet the plain terms of the statute," *Wade I*, 467 Mass. at 51, says nothing about whether the exercise of lawful self-defense, which if shown at trial would require a judgment of acquittal, states a claim of factual innocence for purposes of G.L. c.278A. Indeed, the statute requires only "an affidavit stating that the moving party is factually innocent of the offense of conviction and that the requested forensic or scientific analysis will support the claim of innocence." G.L. c.278A §3(d). The Court may not read a requirement that innocence be asserted under a particular theory into this plain language.

If his version of the events leading to Mr. Owens' death is accepted as true—which it must be at the "essentially nonadversarial" G.L. c.278A §3 stage, *Commonwealth v. Moffatt*, 478 Mass. 292, 296 (2017)—Mr. Williams' claim to innocence is as valid as any other, since he acted non-criminally and in conformance with the law. Moreover, the testing he sought could support this claim with evidence Mr. Owens was shot while the two men struggled for the gun, or by showing that Mr. Owens or someone else other than the Defendant possessed the weapon in the weeks before the charged incident. The Court should hold that Mr. Williams'

affidavit states he is factually innocent of the crime of manslaughter within the meaning of G.L. c.278A.

2. Evidence a Defendant Was Convicted for Takings Actions that Are Not Unlawful Is Necessarily Material to His or Her Identification 'as the Perpetrator of the Crime in the Underlying Case'

In denying Mr. Williams' motion, the Superior Court adopted the Commonwealth's reasoning that G.L. c.278A testing is available only to defendants claiming misidentification through flawed procedures or other means of mistaken identification. But the statute and cases interpreting it do not impose such a limitation, and instead focus on the goal of reaching more factually correct verdicts based on the potentially exculpatory power of objective forensic evidence. This remedial goal, along with generally applicable principles of statutory construction, support interpreting G.L. c.278A §3(b)(4)'s materiality standard as being satisfied in cases where a defendant shows testing has the potential to show he or she did nothing illegal, and therefore was mistakenly "identif[ied] as the perpetrator of the crime in the underlying case."

As it does with all statutes, this Court has looked to legislative intent, as shown by plain

language and remedial purposes, to interpret G.L. c.278A. See *Commonwealth v. Wade*, 475 Mass. 54, 60 (2016) (“*Wade III*”). The Legislature’s intent in enacting G.L. c.278A “was to remedy the injustice of wrongful convictions of factually innocent persons by allowing access to analyses of biological material with newer forensic and scientific techniques [and to] provide a more reliable basis for establishing a factually correct verdict than the evidence available at the time of the original conviction.” *Id.* at 55. It goes without saying that a wrongful conviction is unjust whether it flows from mistaken identification, criminalization of lawful conduct, or some other theory of innocence. Indeed, “[g]iven [the Legislature’s] compelling interest in remedying wrongful convictions of factually innocent persons,” this Court has said G.L. c.278A should be construed “in a manner that is generous to the moving party.” *Commonwealth v. Clark*, 472 Mass. 120, 136 (2015).

By its plain language, G.L. c.278A §3(b)(4)’s materiality requirement does not relate solely to the identification of an individual, but rather to that person’s identification as “the perpetrator of the crime” of which he or she was convicted. As discussed

*supra*, in the case of a moving party convicted of a homicide crime based on the exercise of lawful self-defense no crime occurred at all, meaning there is no perpetrator who could legitimately be identified, charged, and convicted. The restrictive interpretation of the materiality requirement endorsed below impermissibly reads the requirement of identification *as the person who has committed a particular criminal act*, not just as someone the government elected to charge criminally, out of the statute. See *Commonwealth v. Millican*, 449 Mass. 298, 300 (2007) (“[n]one of the words of a statute is to be regarded as superfluous”). If the Legislature wished to restrict the availability of testing to cases of mistaken identification, or to cases where convictions were obtained through particular identification procedures, it could have said so in plain language. But no such restrictions appear in G.L. c.278A.

In *Moffatt*, this Court rejected the “suggest[ion] that postconviction forensic testing under G.L. c.278A is limited to direct evidence of the perpetrator’s identity,” and instead emphasized a direct connection between the crime of conviction and the evidence sought to be tested, as well as assessment of each

case based on "the facts and circumstances of the crime." 478 Mass. at 300-01. Here, the facts and circumstances of the charged crime are important to the materiality inquiry.

In his G.L. c.278A §3(d) affidavit, the Defendant did not simply state that he was factually innocent of the crime of manslaughter. He went much farther, and proffered an alternate version of the events leading to his conviction that, if shown, would demonstrate that the only person who engaged in criminal activity on April 22, 2003 was Mr. Owens, and that Mr. Williams acted innocently in walking down the street and lawfully in his own defense after being attacked. Evidence tending to support this version of events, which the forensic testing the Defendant seeks has the potential to do, would be highly material to his (mis)identification as a perpetrator of the crime of manslaughter and would show instead that he was factually innocent of that offense because the acts alleged to be criminal by the Commonwealth were taken in the lawful exercise of self-defense. In the context of the Defendant's case, correctly identifying the person who brought a gun to his confrontation with Mr. Owens, which forensic testing has the potential to do,



is the key to determining whether Mr. Williams was mistakenly identified as a perpetrator of manslaughter in the underlying case. See G.L. c.278A §1 (defining a “factually innocent” person as one “convicted of a criminal offense who *did not commit that offense*”) (emphasis added).

The purpose of G.L. c.278A is not to ensure that identification procedures are backstopped with objective evidence wherever possible (though that is an important goal). It is to remedy the injustice of wrongful convictions of innocent persons through examination of forensic evidence likely to correlate with more factually accurate verdicts, and the Court must interpret G.L. c.278A §3(b)(4)’s materiality requirement with that purpose in mind. Because forensic testing of the clothing and cartridge casings at issue here has the potential to show the Defendant was convicted of a crime he did not commit, it is material to his identification as a perpetrator within the meaning of the statute.

V. REASONS DIRECT REVIEW IS APPROPRIATE

In passing G.L. c.278A, the Legislature recognized both the urgency of the problem of wrongful convictions and the power of forensic testing to address it. The scope of the class of convicted persons claiming factual innocence who may access forensic testing pursuant to the statute's relatively forgiving standards is therefore of paramount importance to its remedial purpose, as is the related question of whether persons convicted of crimes based on justified and lawful conduct are considered factually innocent under Massachusetts law. These issues are important to the fair administration of justice in the Commonwealth, and therefore merit direct review by this Court.

June 25, 2018

Respectfully Submitted,

STANLEY WILLIAMS  
By His Attorney,

/s/ Merritt Schnipper  
Merritt Schnipper  
SCHNIPPER HENNESSY  
25 Bank Row Suite 2S  
Greenfield MA 01301  
(413) 325-8541  
mschnipper@schnipperhennessy.com  
BBO# 676543

CERTIFICATE OF COMPLIANCE

I certify that the foregoing complies with the applicable rules of appellate procedure.

/s/ Merritt Schnipper  
Merritt Schnipper

CERTIFICATE OF SERVICE

I certify that I electronically filed this Application for Direct Appellate Review through the Court's e-filing system, which will deliver an electronic copy of the same to Katherine McMahon, counsel for the Commonwealth.

/s/ Merritt Schnipper  
Merritt Schnipper

# APPENDIX

**0479CR00463 Commonwealth vs. Williams, Stanley CKA Williams, Stanley**

**Case Type** Indictment  
**Case Status** Open  
**File Date** 04/16/2004  
**DCM Track:** I - Inventory  
**Initiating Action:** MURDER c265 §1  
**Status Date:** 04/16/2004  
**Case Judge:**  
**Next Event:**

[All Information](#) [Party](#) [Charge](#) [Event](#) [Docket](#) [Disposition](#)

**Party Information****Commonwealth - Prosecutor**

**Alias**

**Party Attorney**

**Attorney** McMahon, Esq., Katherine E  
**Bar Code** 338410  
**Address** Office of the District Attorney  
Roderick L Ireland Courthouse  
50 State Street  
Springfield, MA 01102  
**Phone Number** (413)505-5905  
**Attorney** Sheppard-Brick, Esq., David L  
**Bar Code** 687596  
**Address** 50 State St 3rd Floor  
Springfield, MA 01102  
**Phone Number** (413)505-5655

[More Party Information](#)

**Williams, Stanley - Defendant**

**Alias**

**CKA** Williams, Stanley

**Party Attorney**

**Attorney** Schnipper, Esq., Merritt  
Spencer  
**Bar Code** 676543  
**Address** Schnipper Hennessy  
25 Bank Row  
Suite 2S  
Greenfield, MA 01301  
**Phone Number** (413)325-8541

[More Party Information](#)

**Party Charge Information****Williams, Stanley - Defendant****Charge # 1 :**

**265/1-0 - Felony** MURDER c265 §1

**Original Charge** 265/1-0 MURDER c265 §1 (Felony)

**Indicted Charge**

**Amended Charge**

**Charge Disposition**

**Disposition Date**

**Disposition**

04/15/2005

Guilty Plea - Lesser Included

**Williams, Stanley - Defendant**

**Charge # 2 :****269/10/J-0 - Felony** FIREARM, CARRY WITHOUT LICENSE c269 §10(a)**Original Charge** 269/10/J-0 FIREARM, CARRY WITHOUT LICENSE  
c269 §10(a) (Felony)**Indicted Charge**  
**Amended Charge****Charge Disposition**Disposition Date  
Disposition  
04/15/2005  
Guilty Plea**Williams, Stanley** - Defendant**Charge # 3 :****269/10/G-1 - Misdemeanor - more than 100 days incarceration** FIREARM WITHOUT FID CARD, POSSESS c269 §10(h)**Original Charge** 269/10/G-1 FIREARM WITHOUT FID CARD,  
POSSESS c269 §10(h) (Misdemeanor - more than 100  
days incarceration)**Indicted Charge**  
**Amended Charge****Charge Disposition**Disposition Date  
Disposition  
04/15/2005  
Guilty Plea**Events**

Date	Session	Location	Type	Event Judge	Result
04/27/2004 09:00 AM	Criminal 1 - Ct. Rm. 1		Arraignment		Held as Scheduled
05/19/2004 09:00 AM	Criminal 1 - Ct. Rm. 1		Pre-Trial Conference		Rescheduled
06/04/2004 09:00 AM	Criminal 1 - Ct. Rm. 1		Pre-Trial Conference		Held as Scheduled
06/10/2004 09:00 AM	Criminal 1 - Ct. Rm. 1		Trial Assignment Conference		Held as Scheduled
08/17/2004 09:00 AM	Criminal 1 - Ct. Rm. 1		Hearing		Held as Scheduled
10/26/2004 09:00 AM	Criminal 1 - Ct. Rm. 1		Hearing		Held as Scheduled
12/08/2004 09:00 AM	Criminal 1 - Ct. Rm. 1		Jury Trial		Rescheduled
04/14/2005 09:00 AM	Criminal 1 - Ct. Rm. 1		Jury Trial		Not Held
04/14/2005 09:00 AM	CR session 3 - Ct. Rm 5		Hearing for Change of Plea		Not Held
04/15/2005 09:00 AM	Criminal 1 - Ct. Rm. 1		Hearing for Change of Plea		Held as Scheduled
05/02/2005 09:00 AM	Criminal 1 - Ct. Rm. 1		Hearing		Held as Scheduled

**Docket Information**

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
04/16/2004	Indictment returned	1	
04/16/2004	RE: offense #2 Penalty Enhancement Under 269/10G(a):		

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
04/16/2004	RE: offense #3 Penalty Enhancement Under 269/10G(a):		
04/16/2004	Order of notice of finding of murder indictment	2	
04/27/2004	Deft arraigned before Court		
04/27/2004	Appointment of Counsel Greg T Schubert, pursuant to Rule 53		
04/27/2004	Deft waives reading of indictment on Counts 32 & #3; formal reading on Count #1.		
04/27/2004	Bail set: Held without right to bail (Sweeney, J.)		
04/27/2004	Bail: mittimus issued	4	
05/13/2004	Exparte Motion by Deft: for expert ballistician	5	
05/13/2004	Exparte Motion by Deft: for private investigative expenses	6	
05/13/2004	Motion by Deft: to preserve evidence	7	
05/24/2004	Motion by Commonwealth: for reciprocal discovery	8	
06/04/2004	Pre-trial conference report filed	9	
06/07/2004	ExParte Motion by Deft: for Ballistician	10	
06/07/2004	Motion by Deft: to Preserve Evidence	11	
06/07/2004	ExParte Motion by Deft: for Private Investigative Expenses	12	
06/10/2004	Pre-trial conference report filed	13	
06/25/2004	Ex parte Motion by Deft: for expert ballistician	14	
06/25/2004	Ex parte Motion by Deft: for private investigative expenses	15	
06/25/2004	Motion by Deft: to preserve evidence	16	
08/17/2004	Motion (P#14) allowed (see pleading)(Constance M. Sweeney, Justice).		
08/17/2004	Motion (P#15) allowed (please see pleading) (Constance M. Sweeney, Justice)		
09/10/2004	Motion by Deft: for photographs	17	
10/26/2004	Motion by Deft: to continue	18	
10/26/2004	Affidavit of Greg T. Schubert, Esquire	18.1	
10/26/2004	Pre-trial conference report filed	19	
10/26/2004	Motion (P#18) allowed by agreement (please see pleading) (Josephson, J.)		
11/24/2004	ExParte Motion by Deft: for additional Investigative Expenses	20	
03/29/2005	Motion by Deft: Ex-Parte motion for additional investigative expenses	21	
04/15/2005	RE Offense 1:Guilty plea (lesser offense) as to Voluntary Manslaughter 265/13		
04/15/2005	RE Offense 2:Guilty plea		
04/15/2005	RE Offense 3:Guilty plea		
04/15/2005	Finding on plea of guilty (Sweeney,J.)	22	
04/15/2005	Defendant sentenced to Count 1: MCI-Cedar Junction for the term of not more than 20 years and not less than 18 years. Counts 2 & 3: MCI-Cedar Junction for the term of not more than 5 years and not less than 3 years. Concurrent with 04-463-1. (Constance M. Sweeney, Justice)	23	

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
04/15/2005	Victim-witness fee assessed: \$90.00		
04/20/2005	Notice sent on April 20, 2005- Re: credit of 387 days		
05/02/2005	Motion (P#21) Allowed (Constance M. Sweeney, Justice).		
05/10/2005	Motion by Deft: to revise and revoke	24	
05/10/2005	Affidavit in support of motion for revise and revoke	24.1	
05/10/2005	Notice sent on May 10, 2005 to The Honorable Constance M. Sweeney, Regional Administrative Justice		
05/11/2005	Victim-witness fee paid as assessed	25	
05/12/2005	Motion (P#24) Motion to revise & revoke is denied (Constance M. Sweeney, Justice). Copies mailed 5/12/05		
05/13/2005	Notice sent on May 13, 2005 to The Honorable Constance M. Sweeney		
05/13/2005	Motion (P#26) I will consider this as a motion to withdraw. Attorney Schubert's request to withdraw is allowed after the 60 day period to file a motin to revise and revoke expires. (Constance M. Sweeney, Justice). Copies mailed May 26, 2005		
05/25/2005	Motion by Deft: for reconsideration	27	
05/25/2005	Affidavit in support of motion for reconsideration	27.1	
05/26/2005	Notice sent on May 26, 2005 to The Honorable Constance M. Sweeney, R.A.J. &		
05/26/2005	Motion (P#27) denied (Constance M. Sweeney, Justice). Copies mailed 5/31/05		
06/23/2005	NOTICE of APPEAL FILED by Stanley Williams. N.7/6/05	28	
06/23/2005	Motion by Deft: for appointment of Appellate Counsel. N.7/6/05	29	
07/07/2005	Motion (P#29) See pleading. (Sweeney, J.) N.7/27/05		
07/07/2005	Notice of assignment of counsel filed.	30	
09/07/2005	Notice from Committee for Public Counsel Services -Boston: Indicating an Attorney will not be assigned to represent defendant.	30	
09/20/2005	Notice of assembly of record; mailed to Appeals Court per Rule 9(d)	31	
09/28/2005	Notice of Entry of appeal received from the Appeals Court	32	
01/03/2006	AT APPEALS COURT, BOSTON: Dismissal under Standing Order #17A filed.	33	
06/27/2008	MOTION by Deft: for a required finding on the motion for the production of free plea hearing transcripts	34	
07/01/2008	MOTION (P#34) denied (Sweeney, Justice). Copies mailed		
11/15/2010	MOTION by Deft: to receive free guilty plea transcripts	35	
11/15/2010	Notice sent to Judge Sweeney re: pleading #35		
11/16/2010	MOTION (P#35) denied (Sweeney, Justice). Copies mailed 11/16		
11/05/2013	MOTION by Deft: for forensic analysis pursuant to M.G.L. ch. 278A, sec 3	36	
11/05/2013	MOTION by Deft: for appointment of counsel	37	
11/05/2013	Affidavit of Stanley Williams	37.1	
11/05/2013	MOTION by Deft: for discovery	38	
11/05/2013	Affidavit of Stanley Williams in support of Motion for discovery	38.1	



Docket Date	Docket Text	File Ref Nbr.	Image Avail.
11/05/2013	MOTION by Deft: for evidentiary hearing	39	
11/05/2013	MOTION by Deft: for funds for forensic expert (pathologist)	40	
11/05/2013	MOTION by Deft: for funds for private investigator	41	
11/05/2013	Notice sent to Judge Sweeney		
11/06/2013	MOTION (P#40) denied (see pleading) (Sweeney, J.) N.		
11/06/2013	MOTION (P#36, 37, 38, 39 and 41) denied (Sweeney, J.) N.		
11/18/2013	NOTICE of APPEAL FILED by Stanley Williams RE: Denial of Motion for Forensic Analysis and all accompanying motions N. 11/19/13	42	
11/19/2013	Notice of assembly of record; mailed to Appeals Court per Rule 9(d)	43	
12/06/2013	Notice of Entry of appeal received from the Appeals Court	44	
12/19/2014	Rescript received from Appeals Court; Orders denying November, 2013, motions AFFIRMED	45	
06/13/2015	CKA alias created for party #1 Party Name: Stanley Williams Alias Name: Stanley Williams		
10/05/2016	Pro Se Defendant 's Motion for appointment of counsel to prepare and file motion for forensic and scientific testing analysis pursuant to G.L.c. 278A, & 5	46	
10/05/2016	Affidavit filed by Defendant Stanley Williams in support of pro se motion for appointment of counsel to prepare and file motion for forensic and scientific analysis pursuant to G.L.c. 278A & 5	46.1	
10/13/2016	Endorsement on Motion for appointment of counsel to prepare and file motion for forensic and scientific testing analysis pursuant to G.L.c. 278A, &5, (#46.0): Other action taken The court will not appoint counsel. The Appeals Court has reviewed the court's earlier denial of defendant's motion for forensic testing. (see rescript Doc#45)		
11/18/2016	Notice of appeal filed.RE: G.L.c.278A petition  Applies To: Williams, Stanley (Defendant)	46.2	<a href="#">Image</a>
11/25/2016	Defendant 's Motion for scientific testing	47	
11/25/2016	Affidavit filed by Defendant Stanley Williams in support of motion for scientific testing	47.1	
11/28/2016	Endorsement on Motion for scientific testing, (#47.0): DENIED The court has already ruled on this issue in a previous motion and the Appeals court has reviewed and denied the defendant's request for relief.		<a href="#">Image</a>
11/29/2016	General correspondence regarding Appeal on Defendant's G.L.c.278A Petition was assembled and Rescript Received on December 19, 2014. Copy mailed to Mr. Stanley Williams (Defendant) this date 11/29/16	48	
12/30/2016	Defendant 's Motion for Preparation of transcripts and to Waive Transcription Fees ( N. 12/30/16 Sweeney, J.)	50	
12/30/2016	Notice of appeal filed.  Applies To: Williams, Stanley (Defendant)	51	
01/04/2017	Endorsement on Motion for preparation of transcripts and to waive transcription and copying fees, (#50.0): ALLOWED if they still exist		<a href="#">Image</a>
01/25/2017	General correspondence regarding from Defendant, Stanley Williams requesting all action stopped on all his pro se motions, as CPCS has appointed him counsel.	52	

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
11/28/2017	Defendant 's Motion for Discovery of Ballistics Report and Associated Bench Notes N. 11/29/17 Sweeney,J	53	<a href="#">Image</a>
12/04/2017	Endorsement on Motion for discovery of ballistics report and associated bench notes, (#53.0): Other action taken Commonwealth to file opposition to the motion, if any, no later than 1/15/18 n. by email and copy to ADA 12/5/17  Judge: Sweeney, Hon. Constance M		<a href="#">Image</a>
01/11/2018	Commonwealth 's Response to the defendant's motion for discovery of ballistics report and associated bench notes (n. judge Sweeney)	54	<a href="#">Image</a>
01/11/2018	Affidavit of Heidi M. Ohrt-Gaskill	54.1	
02/22/2018	Defendant 's Motion to Compel Production of Ballistics Report and Associated Bench Notes, N. Judge Sweeney	55	<a href="#">Image</a>
02/26/2018	The following form was generated:		
02/26/2018	The following form was generated:  Clerk's Notice Sent On: 02/26/2018 09:09:18		
02/26/2018	Endorsement on Motion to compel production of ballistics report and associated bench notes, (#55.0): Other action taken Commonwealth must provide material forthwith, N 2/26/18 to Da's office  Judge: Sweeney, Hon. Constance M		<a href="#">Image</a>
03/09/2018	General correspondence regarding Endorsement on Motion to compel production of ballistics report and associated bench notes, (#55.0): Other action taken Commonwealth must provide material forthwith Atty. Schnipper confirms receipt of discovery. n. copy to DA		
04/10/2018	Defendant 's Motion for Forensic Testing Pursuant to GL C. 278A (b)	56	<a href="#">Image</a>
04/13/2018	The following form was generated:		
04/13/2018	The following form was generated:  Clerk's Notice Sent On: 04/13/2018 10:01:17		
04/13/2018	Defendant 's Motion for Discovery on Location and Chain of Custody	57	<a href="#">Image</a>
04/13/2018	The following form was generated:		
04/13/2018	The following form was generated:  Clerk's Notice Sent On: 04/13/2018 10:03:09		
04/19/2018	Opposition to Commonwealth's Preliminary to the Defendant's GL C. 278A Motion for Post-Conviction forensic testing filed by Commonwealth N. Judge Sweeney	58	<a href="#">Image</a>
04/19/2018	Commonwealth 's Response to the Defendant's Motion for Post-Conviction discovery N. Judge Sweeney	59	<a href="#">Image</a>
04/19/2018	Affidavit of of Counsel in response to the Defendant's Request for Discovery	59.1	<a href="#">Image</a>

Docket Date	Docket Text	File Ref Nbr.	Image Avail.
04/25/2018	Endorsement on Motion for forensic testing pursuant to GL c. 278A Sec. 3(b), (#56.0): DENIED for the reasons set forth in the Commonwealth's opposition n. 4/26/18  Judge: Sweeney, Hon. Constance M		<a href="#">Image</a>
04/25/2018	Endorsement on Motion for discovery on location and chain of custody, (#57.0): DENIED the Commonwealth has provided post-conviction discovery to the defendant (see docket #59)  Judge: Sweeney, Hon. Constance M		<a href="#">Image</a>
05/16/2018	Notice of appeal filed.  Applies To: Commonwealth (Prosecutor); Williams, Stanley (Defendant); McMahon, Esq., Katherine E (Attorney) on behalf of Commonwealth (Prosecutor); Schnipper, Esq., Merritt Spencer (Attorney) on behalf of Williams, Stanley (Defendant)	61	<a href="#">Image</a>
05/16/2018	Appeal: notice of assembly of record sent to Counsel  Applies To: Commonwealth (Prosecutor); Williams, Stanley (Defendant); McMahon, Esq., Katherine E (Attorney) on behalf of Commonwealth (Prosecutor); Schnipper, Esq., Merritt Spencer (Attorney) on behalf of Williams, Stanley (Defendant)	62	
05/16/2018	Appeal: Statement of the Case on Appeal (Cover Sheet).  Applies To: Commonwealth (Prosecutor); Williams, Stanley (Defendant); McMahon, Esq., Katherine E (Attorney) on behalf of Commonwealth (Prosecutor); Schnipper, Esq., Merritt Spencer (Attorney) on behalf of Williams, Stanley (Defendant)	63	
05/30/2018	Notice of Entry of appeal received from the Appeals Court	64	<a href="#">Image</a>

**Case Disposition**

Disposition	Date	Case Judge
Disposed by Plea	12/19/2014	

HAMPDEN, S.S.

TRIAL COURT OF THE COMMONWEALTH  
SUPERIOR COURT DEPARTMENT  
HAMPDEN DIVISION

COMMONWEALTH OF MASSACHUSETTS

V.

STANLEY WILLIAMS

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) 0479CR00463  
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**DEFENDANT' S MOTION FOR FORENSIC TESTING**  
**PURSUANT TO G.L. c.278A §3 (b)**

Defendant Stanley Williams hereby seeks post-conviction forensic testing of certain materials relevant to his identification as the perpetrator of the crime charged in the above-captioned case. Defendant's filing makes out a prima facie case of entitlement to post-conviction forensic testing under G.L. c.278A §3(b).

Concurrently with this filing the Defendant has submitted a motion for discovery pursuant to G.L. c.278A §3(c). The requested discovery will enable the Defendant to make the evidentiary showing regarding the existence and chain of custody of the materials he wishes to test required by G.L. c.278A §7.

## Relevant Background

On April 16, 2004 a Hampden grand jury indicted the Defendant for murder, G.L. c.265 §1, in the shooting death

of Michael Owens. The Defendant pled guilty to manslaughter on April 15, 2005. At his plea colloquy, the Defendant agreed to the accuracy of the Commonwealth's statement that on the morning of April 22, 2003

Mr. Williams and Mr. Owens were both on foot coming at, sort of at a crossroads from different directions, where they—Mr. Williams immediately ran up to Mr. Owens, and a number of witnesses indicated...that the two came in contact with one another. And all the witnesses indicated that a rather loud verbal argument ensued, so loud that people on the upper floors of the buildings on Federal Street, their attention was directed out towards the yelling.

A physical fight ensued. And one witness that was on the street indicated he saw what ultimately was Mr. Owens (sic) appearing to be reaching in his waistband, upon which he saw the defendant take a firearm and shoot Mr. Owens, causing Mr. Owens to fall to the ground. The defendant shot again. He ran away for a short period of time, came back, and fired again, and then fled.

See excerpt from plea colloquy transcript, attached as Exhibit A. Notwithstanding his agreement to these statements in the context of his plea, the Defendant has asserted his factual innocence in an affidavit submitted pursuant to G.L. c.278A §3(d). See Affidavit of Stanley Williams ("Williams Affidavit"), attached as Exhibit B. In his Affidavit, Mr. Williams explains:

I acted in self-defense on the day Mr. Owens died. I did not have a gun with me that day. The only gun present, and the gun that fired the shots that killed Mr. Owens, was the one he was

carrying when he confronted me on Federal Street in Springfield on April 22, 2003.

On the day in question I was walking to my car on Federal Street when I saw Mr. Owens and two other men running towards me. Mr. Owens had one hand in his pants, and when he got close to me he threw a punch at me. I tried to wrap my arms around him but he was bigger than me and threw them off.

Then Mr. Owens pulled his hand out of his pants. When I saw a black gun in his hand I put my head down, grabbed his wrist with both my hands, and pushed against him with all my strength. I then heard two shots very close together, and Mr. Owens screamed and fell to the ground.

After Mr. Owens fell to the ground I ran and ducked into an alley. I did not take the gun with me, and did not return to where he was and shoot him again. I did return to near where he was and tried to get into my car, but I did not have the keys. I then ran back to the alley and kept running from the scene.

Williams Affidavit at ¶¶3-6.

### **The G.L. c.278A §3(b) Factors**

As set forth below, the Defendant seeks forensic testing of (1) the clothing Mr. Owens was wearing at the time of the incident and (2) cartridge casings found (a) at the scene and (b) at a nearby location approximately three weeks earlier.

1. The Defendant Seeks Gunshot Residue, Gunpowder Residue, and Fingerprint Analysis of the Evidence in Question

G.L. c.278A §3(b)(1) requires a defendant to state "the name and a description of the requested forensic or scientific analysis" he or she seeks. The Defendant seeks

gunshot residue, gunshot powder, and fingerprint testing of the various pieces of evidence at issue.

As set forth in the Affidavit of Greg Danas, the Defendant's firearms expert ("Danas Affidavit"), attached as Exhibit C, gunpowder residue testing uses chemical analysis of the plume emitted when a firearm is discharged to assess the distance the gun was from the target at the time it was fired. *Id.* at ¶6. Gunshot residue testing uses electron microscopy to locate microscopic particles of gunpowder that can remain on surfaces indefinitely. *Id.* at ¶7. Although Mr. Danas does not perform fingerprint examinations himself, he is aware through his work in ballistics that it is possible to lift latent fingerprints from cartridge casings. *Id.* at ¶8.

2. The Results of Gunshot Residue, Gunpowder Residue, and Fingerprint Testing Are Admissible as Evidence in the Courts of the Commonwealth

G.L. c.278A §3(b)(2) requires a defendant to provide "information demonstrating that the requested analysis is admissible as evidence in courts of the commonwealth." The results of gunshot residue testing are regularly introduced and are the subject of expert testimony in the courts of the Commonwealth. See, e.g., *Commonwealth v. Johnson*, 463 Mass. 95, 106-09 (2012). The results of gunpowder residue testing are also admissible in the courts of the

Commonwealth. See, e.g., *Commonwealth v. Tolan*, 453 Mass. 634, 638 (2009). Fingerprint evidence is also admissible in the courts of the Commonwealth and is used to establish identity. See, e.g., *Commonwealth v. Joyner*, 467 Mass. 176, 180-86 (2014).

Mr. Danas, the Defendant's firearms expert, has testified in Massachusetts courts dozens of times in reference to both gunshot residue and gunpowder residue testing. Danas Affidavit at ¶5.

3. The Defendant Seeks Testing of Clothing Worn by Mr. Owens at the Time of the Incident and Five Discharged Casings Found Near the Scene. These Items Are Currently Located at the Property Division of the Springfield Police Department

G.L. c.278A §3(b)(3) requires a defendant to provide "a description of the evidence or biological material that the moving party seeks to have analyzed or tested, including its location and chain of custody *if known*" (emphasis added). The Supreme Judicial Court has held "[t]his ['if known'] language plainly suggests that there may be instances when such information is not known to the moving party, and this circumstance will not be an impediment to satisfying §3(b)(3)" and that "describing the current location of the [evidence sought to be tested] as well as its chain of custody to the extent [a defendant] ha[s] knowledge of the matter" is sufficient to meet this



requirement. *Commonwealth v. Clark*, 472 Mass. 120, 131 (2015).

The Defendant seeks forensic testing of the clothing Michael Owens, the person Mr. Williams was convicted of shooting and killing, was wearing at the time of the incident at issue as well as five discharged cartridge casings found nearby the scene a few weeks earlier and which appear to have been discharged by the same gun as the casing found at the scene. Counsel has communicated with Sergeant James McCoy of the Springfield Police Department, who has confirmed that Mr. Owens' clothing is in the possession of the Springfield Police Property Division. See Affidavit of Merritt Schnipper ("Schnipper Affidavit"), attached as Exhibit D, at ¶2; see also Evidence List provided by Springfield Police, attached as Exhibit E. It is counsel's understanding that these materials were all collected from the scene; that Mr. Owens's clothing was transported along with his body to the site of his autopsy; and that Mr. Owens' clothing was returned from the site of his autopsy to the Springfield Police Department. Schnipper Affidavit at ¶3.

With regard to the five cartridge casings found at a nearby location approximately three weeks prior to the Williams/Owens incident, a Ballistics Report produced by

the Commonwealth in late February 2018 states that they were discharged from the same firearm that discharged the casing found at the scene of Mr. Owens' death. See Ballistics Report, attached as Exhibit F. Counsel first learned of the existence of these casings upon the Commonwealth's production of the Ballistics Report. Schnipper Affidavit at ¶4. He has since made multiple inquiries of Sergeant McCoy asking into their location, but has received no response. *Id.* at ¶5.

The foregoing information satisfies the Defendant's initial burden of describing the evidence he seeks to test and providing the information known to him as to its current location and chain of custody under G.L. c.278A §3(b)(3). In the Discovery Motion filed concurrently with this motion, the Defendant seeks additional information concerning, *inter alia*, the location and chain of custody of the evidence he wishes to test.

4. Evidence Supporting the Defendant's Claim He Acted in Lawful Self-Defense When He Fought with and Shot Mr. Owens Is 'Material to His Identification as the Perpetrator' for Purposes of G.L. c.278A §3(b)(4)

G.L. c.278A §3(b)(4) requires a Defendant to set forth "information demonstrating that the analysis has the potential to result in evidence that is material to the moving party's identification as the perpetrator of the

crime in the underlying case." As set forth *supra* and in the Williams Affidavit, the Defendant has said he

acted in self-defense on the day Mr. Owens died. I did not have a gun with me that day. The only gun present, and the gun that fired the shots that killed Mr. Owens, was the one he was carrying when he confronted me on Federal Street in Springfield on April 22, 2003. On the day in question I was walking to my car on Federal Street when I saw Mr. Owens and two other men running towards me. Mr. Owens had one hand in his pants, and when he got close to me he threw a punch at me. I tried to wrap my arms around him but he was bigger than me and threw them off. Then Mr. Owens pulled his hand out of his pants. When I saw a black gun in his hand I put my head down, grabbed his wrist with both my hands, and pushed against him with all my strength. I then heard two shots very close together, and Mr. Owens screamed and fell to the ground.

Williams Affidavit at ¶¶3-5. As the Defendant's firearms expert explains,

Gunpowder residue testing...on the clothing, and more particularly the sweatshirt, Mr. Owens was wearing at the time he was shot could tend to support Mr. Williams' statements that Mr. Owens was shot as the two men struggled for the gun, rather than that Mr. Williams shot Mr. Owens once at close range and a second time from a greater distance as alleged by the Commonwealth.

Gunshot residue testing of areas of Mr. Owens' clothing that would not have been exposed to the plume emitted when the firearm was discharged, such as the insides of his pockets or the interior lining of his clothing, could tend to show that Mr. Owens had carried a firearm recently and thus support Mr. Williams's statement that it was Mr. Owens, not Mr. Williams, who brought the gun to their confrontation.

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If the five cartridge casings referenced in the ballistics report recently produced by the Commonwealth were tested and found to bear the prints of someone other than Mr. Williams, it would tend to show that someone other than Mr. Williams had been handling the gun that discharged the casing found at the scene of the Williams/Owens incident in the weeks preceding it.

Danas Affidavit at ¶¶6-8.

Whether c.278A provides access to forensic testing by defendants who claim factual innocence on the basis of the lawful exercise of self-defense, rather than only in cases of mistaken identification, is a question of first impression. However, the Supreme Judicial Court's prior cases interpreting c.278A, as well as more generally applicable canons of statutory construction, show the Legislature did not intend to exclude this class of factual innocence claimants from access to forensic testing and its exculpatory power.

"[A] statute must be interpreted according to the intent of the Legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished." *Commonwealth v. Wade*, 475 Mass. 54, 60 (2016) ("*Wade III*") (quotation omitted). The legislative purpose behind c.278A "was to remedy the

injustice of wrongful convictions of factually innocent persons by allowing access to analyses of biological material with newer forensic and scientific techniques [and to] provide a more reliable basis for establishing a factually correct verdict than the evidence available at the time of the original conviction.” *Id.* at 55. “Given [the Legislature’s] compelling interest in remedying wrongful convictions of factually innocent persons,” the Supreme Judicial Court has said c.278A should be construed “in a manner that is generous to the moving party.” *Clark*, 472 Mass. at 136.

By its plain language, G.L. c.278A §3(b)(4)’s materiality requirement does not relate solely to the identification of an individual, but rather to that person’s identification as “the perpetrator of the crime” of which he or she was convicted. In the case of a moving party who claims to have been convicted of a homicide crime based on the exercise of lawful self-defense, his or her theory of the case is premised on the idea that no crime occurred at all, meaning there is no perpetrator who could legitimately be identified, charged, and convicted. See Supreme Judicial Court Model Jury Instructions on Homicide (2013) at 19 (“A homicide committed in the proper exercise of self-defense is excused and therefore not a crime”); see

also *Commonwealth v. Rogers*, 459 Mass. 249, 269 (2011) (“if the defendant acted with reasonable force in self-defense, he was entitled not to a verdict of manslaughter, but to a verdict of not guilty”). Hence, any evidence that tends to support this theory of factual innocence is material to the moving party’s identification as that term is used in c.278A. In this vein, it is notable that the statute defines a “factually innocent” person as one “convicted of a criminal offense who did not commit that offense,” without any reference to mistaken identification. See G.L. c.278A §1.

The Supreme Judicial Court has called G.L. c.278A §3(b)(4)’s materiality standard a “modest threshold requirement” under which “it is necessary to consider only whether the test results could be material to the question of the identity of the person who committed the criminal act of which the moving party was convicted.” *Commonwealth v. Wade*, 467 Mass. 496, 507-08 (2014) (“*Wade II*”). In the Defendant’s case, this materiality standard is satisfied by the fact that testing of the clothing Mr. Owens was wearing at the time of the incident could support his contention that it was Mr. Owens who brought the gun to their fight, and that he was shot and killed when the two fought for control of it. See *Commonwealth v. Santos*, 454 Mass. 770,

787 (2009) (Gants, J., dissenting) (if jurors had credited testimony "the gunshots were fired during the defendant's struggle with the victim for the gun [then] the jury would have found the defendant not guilty of any crime"). Similarly, if examination of the cartridge casing found at the scene and the five casings found nearby a few weeks earlier—which the Ballistics Report shows were fired from the gun that shot Mr. Owens—showed they bore the fingerprints of Mr. Owens or someone else other than the Defendant, it would tend to support his claim he did not bring the gun to their fatal encounter. Testing of both the clothing and the cartridge casings at issue has the potential to produce evidence relevant to the identity of the person who carried a gun to the Williams/Owens incident, and thus to whether the Defendant was properly identified as the perpetrator of a crime.

Though the Supreme Judicial Court has not directly addressed the interpretation of G.L. c.278A §3(b)(4) advanced by the Defendant, its most recent case on the materiality requirement has emphasized a broad approach consistent with the law's remedial purpose. Thus, in *Commonwealth v. Moffatt* the Court rejected the "suggest[ion] that postconviction forensic testing under G.L. c.278A is limited to direct evidence of the

perpetrator's identity." 478 Mass. 292, 301 (2017).

Instead, the Court emphasized a direct connection between the crime of conviction and the evidence sought to be tested, as well as assessment of each case based on "the facts and circumstances of the crime." *Id.* at 300-01.

Here, the evidence the Defendant seeks to test is directly tied to the crime of conviction: the clothing was gathered from Mr. Owens' body in the aftermath of the incident, and the casings may provide evidence of who handled the gun that killed Mr. Owens in the preceding weeks. Testing that has the potential to support the Defendant's claim he acted in lawful self-defense after Mr. Owens produced a gun during their fight is material to the determination of whether a crime occurred and thus to Mr. Williams' "identification" as that term is used in G.L. c.278A §3(b)(4).

5. The Requested Analysis Has Not Previously Been Performed Because the Defendant's Prior Counsel Did Not Seek the Analysis Even Though a Reasonably Effective Attorney Would Have. In Addition, Changes in Testing Procedures and Standards Since 2004 Mean Testing Now Would Be More Reliable than Testing at the Time Mr. Williams Was Charged

G.L. c.278A §3(b)(5) requires a Defendant, in relevant part, to set forth "information demonstrating that the evidence or biological material has not been subjected to the requested analysis because...(i) the requested analysis



had not yet been developed at the time of the conviction [or] (iv) the moving party's attorney in the underlying case was aware at the time of the conviction of the existence of the evidence or biological material, the results of the requested analysis were admissible as evidence in courts of the commonwealth, a reasonably effective attorney would have sought the analysis [but] the moving party's attorney failed to seek the analysis."

Subsection 3(b) (5) (iii) also provides for testing where "the moving party and the moving party's attorney were not aware of and did not have reason to be aware of the existence of the evidence or biological material at the time of the underlying case and conviction."

As explained by the Defendant's firearms expert,

the methods for performing gunshot residue and gunpowder residue testing are largely the same now as they were in 2003-2005, when the incident at issue here was investigated. However, procedural changes have made the results of such testing more reliable and consistent. Labs that perform such testing are now accredited and follow regularized procedures. These changes mean that the testing leaves less room for error and produces more consistent results than it would have in 2003-2005.

Danas Affidavit at ¶9. In an analogous situation (where a defendant sought to re-perform testing that had previously been done), the Supreme Judicial Court has said §3(b) (5) (i) can be satisfied by "information demonstrating that the

requested analysis offers a material improvement over any previously conducted analysis” and that a “moving party might meet this requirement, for example, by offering information that the requested analysis uses a different technology that is designed to reduce error, or applies a more comprehensive technique, or offers a significant increase in statistical accuracy.” *Commonwealth v. Donald*, 468 Mass. 37, 44 (2014). The improvement in standards and procedures used in gunshot and gunpowder residue testing described in the Danas Affidavit, which means more consistent and reliable results than those that would have been produced had the requested testing been performed at the time Mr. Williams was prosecuted, satisfies §3(b)(5)(i) as explicated in *Donald*. See 468 Mass. at 47 (§3(b)(5)(i) showing can be made, *inter alia*, with “affidavit from an expert in the field in which the testing is sought”).

Alternatively, if the Court finds gunshot and gunpowder residue testing was available at the time of trial for §3(b)(5)(i) purposes, a reasonably effective attorney would have pursued it to support the Defendant’s claim he acted in lawful self-defense. The Supreme Judicial Court has emphasized that this analysis “does not require that a defendant satisfy the general ineffective assistance [of counsel] standard...but, rather, that he or she

demonstrate only that 'a' reasonably effective attorney would have sought the requested analysis, not that every reasonably effective attorney would have done so." *Moffatt*, 478 Mass. at 302 (quoting *Wade II*, 467 Mass. at 511). This determination "is an objective one," and "a moving party is not required to explain the tactical or strategic reasoning of the party's trial counsel in not seeking the requested analysis." *Id.* (quoting *Wade III*, 475 Mass. at 63).

Mr. Williams' prior counsel Greg Schubert no longer had his file on the Defendant's case by the time his current counsel appeared and contacted him about the case. See Schnipper Affidavit at ¶6. Nor does Attorney Schubert have any independent recollection of Mr. Williams' case, *id.*, and it does not appear any of the requested types of testing have previously been performed. However, the docket entries show that Attorney Schubert did in fact seek funds to retain a firearms expert, demonstrating that at the time he was working the case prior counsel recognized the utility of expert opinion on some aspect of ballistics or firearm-related evidence. See Papers #10, 14. Although the results of any ballistics work that may have been done is now unavailable, Attorney Schubert's pursuit of such evidence shows a reasonably effective attorney would have pursued the requested testing for the same reasons the

testing is material to the Defendant's identification as the perpetrator of the crime for which he stands convicted: because it has the potential to support his claim of factual innocence. See *Moffatt*, 478 Mass. at 302 ('reasonably effective attorney' analysis informed by materiality analysis). Where a jury's verdict would have turned largely on who it found brought a gun to the Williams/Owens confrontation and the credibility of the Defendant's claim he shot Mr. Owens at close quarters in a struggle for it, a reasonably effective attorney would have sought such objective forensic evidence to support his or her client's position.

With regard to the requested fingerprint testing of five cartridge casings found nearby and subsequently determined to have been discharged by the same gun as the casing from the scene, the Defendant and his current counsel only recently learned of the contents of the Ballistics Report and the connection it draws between evidence from the Williams/Owens incident and other, previously undisclosed evidence located nearby in the preceding weeks. Schnipper Affidavit at ¶4. The Commonwealth has provided counsel with a full set of the discovery it produced to Attorney Schubert at the time he was representing Mr. Williams, and the Ballistics Report

was not included in its production. *Id.* at ¶7. It is therefore plain that Mr. Williams and Attorney Schubert “did not have reason to be aware of the existence of the evidence or biological material at the time of the underlying case and conviction” and should be permitted to seek testing of it now. G.L. c.278A §3(b)(5)(iii).

### **Conclusion**

For the foregoing reasons, Defendant Stanley Williams respectfully requests that the Court GRANT his motion under G.L. c.278A §3(b) and order the Commonwealth to produce the discovery requested in his concurrently filed motion under G.L. c.278A §3(c) so the Defendant can carry his burden at a hearing conducted under the standards of G.L. c.278A §7.

April 5, 2018

Respectfully Submitted,  
STANLEY WILLIAMS  
By His Attorney



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Merritt Schnipper  
SCHNIPPER HENNESSY PC  
25 Bank Row Suite 2S  
Greenfield MA 01301  
(413) 325-8541  
mschnipper@schnipperhennessy.com  
BBO# 676543

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, S.S.

TRIAL COURT OF THE COMMONWEALTH  
SUPERIOR COURT DEPARTMENT  
HAMPDEN DIVISION

COMMONWEALTH OF MASSACHUSETTS

v.

STANLEY WILLIAMS

)  
)  
)  
) 0479CR00463  
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)  
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AFFIDAVIT OF STANLEY WILLIAMS

Stanley Williams deposes and states:

1. My name is Stanley Williams. I am the Defendant in this case. I make the following statements based on personal knowledge in support of my motion for forensic testing under G.L. c.278A.

2. On April 15, 2005 I pled guilty to manslaughter. In the context of that guilty plea I made self-incriminating statements. However, I am asserting my factual innocence of manslaughter or any other crime committed in connection with the death of Michael Owens, notwithstanding my guilty plea and statements made.

3. I acted in self-defense on the day Mr. Owens died. I did not have a gun with me that day. The only gun present, and the gun that fired the shots that killed Mr. Owens, was

the one he was carrying when he confronted me on Federal Street in Springfield on April 22, 2003.

4. On the day in question I was walking to my car on Federal Street when I saw Mr. Owens and two other men running towards me. Mr. Owens had one hand in his pants, and when he got close to me he threw a punch at me. I tried to wrap my arms around him but he was bigger than me and threw them off.

5. Then Mr. Owens pulled his hand out of his pants. When I saw a black gun in his hand I put my head down, grabbed his wrist with both my hands, and pushed against him with all my strength. I then heard two shots very close together, and Mr. Owens screamed and fell to the ground.

6. After Mr. Owens fell to the ground I ran and ducked into an alley. I did not take the gun with me, and did not return to where he was and shoot him again. I did return to near where he was and tried to get into my car, but I did not have the keys. I then ran back to the alley and kept running from the scene.

7. I am seeking forensic analysis of the sweatshirt Mr. Owens was wearing on the day of this incident. Specifically, I am seeking gunshot residue testing of the sweatshirt, which will show that the shots that killed Mr. Owens were fired at very close range and will support my

testimony that we were struggling over his gun when they were fired.


8. My attorney informs me he has spoken with the Springfield Police Department, confirmed it still has the sweatshirt in evidence, and that the sweatshirt can be made available for testing if the Court allows this Motion.

9. My attorney informs me that gunshot residue testing is admissible in the courts of the Commonwealth and was available and admissible at the time I was charged and pled guilty.

10. Attorney Greg Schubert represented me at the time of my plea. I do not know why he did not seek gunshot residue testing of Mr. Owens' sweatshirt.

SWORN UNDER PENALTY OF PERJURY

Date: 3.20.17

  
Stanley Williams



COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, S.S.

TRIAL COURT OF THE COMMONWEALTH  
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HAMPDEN DIVISION

COMMONWEALTH OF MASSACHUSETTS

v.

STANLEY WILLIAMS

0479CR00463

HAMPDEN COUNTY  
SUPERIOR COURT  
FILED

APR 10 2018

CLERK OF COURTS

**DEFENDANT'S MOTION FOR FORENSIC TESTING**  
**PURSUANT TO G.L. c.278A §3(b)**

Defendant Stanley Williams hereby seeks post-conviction forensic testing of certain materials relevant to his identification as the perpetrator of the crime charged in the above-captioned case. Defendant's filing makes out a prima facie case of entitlement to post-conviction forensic testing under G.L. c.278A §3(b).

Concurrently with this filing the Defendant has submitted a motion for discovery pursuant to G.L. c.278A §3(c). The requested discovery will enable the Defendant to make the evidentiary showing regarding the existence and chain of custody of the materials he wishes to test required by G.L. c.278A §7.

**Relevant Background**

On April 16, 2004 a Hampden grand jury indicted the Defendant for murder, G.L. c.265 §1, in the shooting death

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

SUPERIOR COURT DEPARTMENT  
NO. 0479-CR-00463

COMMONWEALTH

v.

STANLEY WILLIAMS

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**COMMONWEALTH'S PRELIMINARY OPPOSITION TO THE DEFENDANT'S G. L.  
C. 278A MOTION FOR POST-CONVICTION FORENSIC TESTING**

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**I. Introduction**

On April 16, 2004, a Hampden County Grand Jury returned a three-count indictment against the defendant, Stanley Williams, charging him with one count of murder in violation of G. L. c. 265, § 1 (Count 1), one count of unlawful possession of a firearm in violation of G. L. c. 269, § 10(a) (Count 2), and one count of unlawful possession of ammunition in violation of G. L. c. 269, § 10(h) (Count 3). On April 15, 2005, the defendant pleaded guilty to so much of Count 1 as alleged manslaughter, and to Counts 2 and 3. On November 5, 2013, the defendant filed his first motion for post-conviction forensic testing pursuant to G. L. c. 278A, which this Court, Sweeney, J., denied on November 6, 2013. The defendant appealed and on November 19, 2014, the Massachusetts Appeals Court affirmed the order denying the defendant's motion for forensic testing in an unpublished memorandum pursuant to its Rule 1:28 (attached to this pleading). On

November 25, 2016, the defendant filed a second motion for post-conviction forensic testing pursuant to G. L. c. 278A, which this Court, Sweeney, J., denied on November 28, 2016.<sup>1</sup>

On April 10, 2018, the defendant filed his third motion for post-conviction forensic testing pursuant to G. L. c. 278A. The defendant requests two different types of testing. He has requested that the clothing recovered from the victim be tested for gunshot residue.<sup>2</sup> He also requested that shell casings, recovered from the same street weeks prior to the killing that ballistically matched the single shell-casing recovered after the killing, be tested for fingerprints. The defendant has complied with most, but not all, of the preliminary requirements under G. L. c. 278A. The defendant has failed to allege “factual innocence of the crime for which [he] has been convicted.” G. L. c. 278A § 2. The defendant has also failed to allege that “the analysis has the potential to result in evidence that is material to the moving party’s identification as the perpetrator of the crime in the underlying case.” G. L. c. 278A, § 3(b)(4); see generally Commonwealth v. Wade, 475 Mass. 54 (2016) as amended (Oct. 28, 2016) (Wade II); Commonwealth v. Clark, 472 Mass. 120 (2012). As such, the defendant’s motion is fatally deficient, and should be dismissed. See G. L. c. 278A, § 3(e).

## **II. Discussion**

General Laws chapter 278A “permits access to forensic and scientific evidence on the filing of a motion by an individual who has been convicted of a criminal offense, who consequently has been incarcerated, and who asserts factual innocence.” Commonwealth v. Wade, 467 Mass. 496, 497 (2014) (Wade I), citing G.L. c. 278A, §2.

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<sup>1</sup> The defendant filed a notice of appeal from this order, which the defendant requested be stayed because he was subsequently appointed counsel.

<sup>2</sup> The defendant made the same request in his second pro se motion for post-conviction forensic testing, which this Court denied.

[I]f a defendant meets the minimal threshold under G. L. c. 278A, § 3, the proceedings advance to the next stage: an evidentiary hearing. See G. L. c. 278A, § 6 (a). At such a hearing, the motion judge determines whether the defendant “has established by a preponderance of the evidence sufficient facts” to meet the criteria outlined in G. L. c. 278A, § 7 (b) (1)–(6).

Commonwealth v. Moffat, 478 Mass. 292, 297 (2017), citing Commonwealth v. Wade, 467 Mass. 496, 501 (2014) (Wade I). As this is the initial procedural step, the Commonwealth proceeds to set forth all of the requirements of the statute and the sufficiency of the defendant’s submission as to each requirement.

## **Section §2**

In order to file for relief pursuant to G.L. c. 278A the defendant must allege that he:

(1) has been convicted of a criminal offense in a court of the commonwealth; (2) is incarcerated in a state prison, house of correction, is on parole or probation or whose liberty has been otherwise restrained as the result of a conviction; and (3) asserts factual innocence of the crime for which the person has been convicted.

G.L. c. 278A, § 2. On April 15, 2005, the defendant pleaded guilty to manslaughter and was sentenced to not less than eighteen and not more than twenty years in state prison. As of this date, he is held in custody at MCI-Norfolk in Norfolk, Massachusetts, serving that sentence. The defendant has also submitted an affidavit averring that he shot the victim in self-defense. The defendant’s submission meets the first two requirements of § 2, but fails to allege the third. He does not assert that he is factually innocent of the crime. The defendant’s motion conflates factual innocence with legal innocence. He does not claim that he did not shoot the victim. He claims that it was legally justifiable. See Commonwealth v. Ware, 53 Mass. App. Ct. 238, 241 (2001), *aff’d*, 438 Mass. 1014 (2003) (noting that self-defense is a “legal justification or excuse”). This difference is not technical; it strikes at the very heart of the purpose of the statute.

Under G. L. c. 278A, § 1, “factually innocent” is defined as “a person convicted of a criminal offense who did not commit that offense.” (emphasis added). The Supreme Judicial

Court has recognized in the context of interpreting section 3(d) of this statute, which addresses the same requirement as section 2, that the “meaning generally attributed to the phrase ‘factually innocent’ [is] distinct from the phrase ‘legally innocent.’” Wade I, 467 Mass. at 514–515; see Bousley v. United States, 523 U.S. 614, 623 (1998) (“‘actual innocence’ means factual innocence, not mere legal insufficiency”); Drumgold v. Commonwealth, 458 Mass. 367, 379 (2010) (Cowan, J., dissenting) (“The Legislature is presumably aware of the important distinction between grounds tending to establish innocence and those tending to support dismissal, acquittal, or reversal of a criminal charge on other grounds”); see also Peterson v. Commonwealth, 478 Mass. 434, 439 (2017) (where the defendant’s conviction was reversed “on the basis of insufficient evidence to prove that [he] was the person who committed the crimes charged [that] constituted ‘grounds which tend to establish’ innocence under G. L. c. 258D, § 1 (B) (ii).” [emphasis added]); Guzman v. Commonwealth, 458 Mass. 354, 365 (2010) (where a defendant’s motion for a new trial was allowed based on the fact that his “defense of misidentification was prejudiced by defense counsel's conflicting interests” he stated a claim that he was actually innocent).

The Supreme Judicial Court explained that

By employing the phrase “factually innocent” in G.L. c. 278A, § 3 (d), the Legislature clearly intended to require a moving party to assert that the party did not commit the offense of which the party was convicted; an assertion of legal innocence, such as a belief in an entitlement to a reversal based on insufficient evidence or a procedural fault, would not meet the plain terms of the statute.

Wade I, 467 Mass. at 515 (emphasis added). The defendant has alleged that he “might be” entitled to a not guilty verdict at trial, which is at best a claim of legal innocence. He does not assert factual innocence, i.e., that he did not shoot and kill the victim. See id. He does not assert that the testing would establish that someone else committed the offense, only that the defendant

might be entitled to “dismissal, acquittal, or reversal of a criminal charge on other grounds.” Drumgold, 458 Mass. at 379 (Cowan, J., dissenting) (emphasis added). The statute does not provide for defendants looking to raise a post-hoc defense to a crime, it is for defendants who claim factual innocence. See G. L. c. 287A, § 2. If the legislature wished to make testing available for the former, it could have easily crafted the statute to do so. The proper method for obtaining the testing that the defendant seeks in this case would be for him to file a motion for a new trial and seek funds for an expert under Mass. R. Crim. P. 30(c).

### **Section 3(b)(1)**

Under this section, the defendant must provide “the name and a description of the requested forensic or scientific analysis.” G. L. c. 278A, § 3(b)(1). The Commonwealth agrees that the defendant has sufficiently defined the requested testing for procedural purposes.

### **Section 3(b)(2)**

Under this section, the defendant must provide “information demonstrating that the requested analysis is admissible as evidence in courts of the commonwealth[.]” G. L. c. 278A, § 3(b)(2). The Commonwealth agrees that the defendant has met this requirement.

### **Section 3(b)(3)**

Under this section, the defendant must provide “a description of the evidence or biological material that the moving party seeks to have analyzed or tested, including its location and chain of custody if known[.]” G. L. c. 278A, § 3(b)(3). The Commonwealth agrees that the defendant has provided a description of the evidence and a description of the chain of custody so much that it is known to him.<sup>3</sup>

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<sup>3</sup> To the extent the defendant has not provided the chain of custody, the Commonwealth is providing the discovery requested by the defendant, to the extent that it exists and can be located.

### Section 3(b)(4)

Under this section, the defendant must assert that “the analysis has the potential to result in evidence that is material to the moving party’s identification as the perpetrator of the crime in the underlying case[.]” G. L. c. 278A, § 3(b)(4). The defendant asserts that the testing he requests will demonstrate that he acted in self-defense. He then makes a strained argument as to why “identity as the perpetrator” in G. L. c. 278A, § 1 does not mean “identity as the perpetrator” as that phrase is commonly used and understood. This argument should be rejected.

“Courts must ascertain the intent of a statute from all its parts and from the subject matter to which it relates, and must interpret the statute so as to render the legislation effective, consonant with sound reason and common sense.” DiGiacomo v. Metropolitan Property & Cas. Ins. Co., 66 Mass. App. Ct. 343, 346 (2006), citing Champigny v. Commonwealth, 422 Mass. 249, 251 (1996).

Statutes are to be interpreted, not alone according to their simple, literal or strict verbal meaning, but in connection with their development, their progression through the legislative body, the history of the times, [and] prior legislation. . . . General expressions may be restrained by relevant circumstances showing a legislative intent that they be narrowed and used in a particular sense[.]

Sullivan v. Chief Justice for Admin. & Mgmt. of the Trial Court, 448 Mass. 15, 24 (2006)

(citation omitted) (Sullivan). Additionally, “no word in a statute is to be treated as superfluous, unless no other possible course is open.” Commonwealth v. McMenimon, 295 Mass. 467, 470 (1936). While the Supreme Judicial Court has stated that “it is entirely appropriate that we construe the language of G.L. c. 278A . . . in a manner that is generous to the moving party”

Clark, 472 Mass. at 136, “[i]t is a well-established canon of construction that, where the statutory language is clear, the courts must impart to the language its plain and ordinary meaning.”

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The Commonwealth does not dispute the chain of custody of the items once they were taken into evidence by the Springfield Police Department.

Commonwealth v. One 1987 Mercury Cougar Auto., 413 Mass. 534, 537 (1992). The statutory language here is clear and unambiguous, and the defendant's proposed construction would contradict the plain language of the statute.

Under G. L. c. 278A, § 1, "[i]dentity" is defined as "the moving party's identity as the perpetrator of the offense for which the moving party was convicted in the underlying case." The Supreme Judicial Court held that in order "[t]o determine whether a moving party meets this requirement, it is necessary to consider only whether the test results could be material to the question of the identity of the person who committed the criminal act of which the moving party was convicted." Wade I, 467 Mass. at 507–508 (emphasis added). The defendant claims that because self-defense would negate the element of malice, testing could show that there was no "offense" within the meaning of the statute. See Connolly v. Commonwealth, 377 Mass. 527, 529 (1979) ("a proper exercise of self-defense negates malice"). This twists the words of the statute past their breaking point. Had the legislature intended to open testing up to anyone seeking to have their conviction overturned for any reason, they would not have limited it to testing that "has the potential to result in evidence that is material to the moving party's identification as the perpetrator of the crime in the underlying case[.]" G. L. c. 278A § 3(b)(4).

The Legislature could have provided for testing to those seeking to establish a defense to the crime charged or to those who claimed legal innocence, but elected not to do so. See First Nat'l Bank of Boston v. Judge Baker Guidance Ctr., 13 Mass. App. Ct. 144, 153 (1982) ("[w]here the Legislature has carefully employed specific language in one paragraph of the statute. . . but not in others which treat the same topic . . . the language should not be implied where it is not present"). The legislature used specific language to dictate when testing is permitted and to whom it is available, and it did not provide for people in the defendant's



position in this statute. The legislature did not preclude testing for the defendant. See G. L. c. 278A, § 2 (“This chapter shall not be construed to prohibit the performance of forensic or scientific analysis under any other circumstances, including by agreement between the person convicted of a criminal offense and the prosecuting attorney”).<sup>4</sup> It just did not provide for the testing he seeks under this statute.

The defendant’s proposed construction of the statute also contradicts the legislature’s expressed purpose. See Wade I, 467 Mass. at 504.

The Legislature’s stated purpose in enacting G.L. c. 278A was “to remedy the injustice of wrongful convictions of factually innocent persons by allowing access to analyses of biological material with newer forensic and scientific techniques . . . [to] provide a more reliable basis for establishing a factually correct verdict than the evidence available at the time of the original conviction.”

Wade II, 475 Mass. at 55, quoting Wade I, 467 Mass. at 504 (alterations in original, emphasis added). While the statute is to be interpreted broadly, see Clark, 472 Mass. at 136, it cannot be interpreted so as to contradict its plain and ordinary meaning. One 1987 Mercury Cougar Auto., 413 Mass. at 537; see Wade I, 467 Mass. at 515 (defendant is required to assert factual innocence, not legal innocence under § 3(d)).

The Supreme Judicial Court’s decision in Moffat, does not require a different result here. In Moffat, the Court observed that “a defendant may utilize G. L. c. 278A to seek forensic testing of evidence in an effort to establish a direct link to the perpetrator’s identity.” Moffat, 478 Mass. at 301. The Court was careful to say that its decision was not meant to “suggest that postconviction forensic testing under G. L. c. 278A is limited to direct evidence of the perpetrator’s identity.” Id. The Court clarified that “it might be possible, or, indeed, likely, depending on the facts of a particular case, that DNA evidence could be used in conjunction with

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<sup>4</sup> The Commonwealth is more than willing to accommodate the testing the defendant seeks, should he hire his own expert.

other evidence to establish the identity of a third party.” Id. (emphasis added). The Supreme Judicial Court’s decision in Moffat does not suggest that the statute created an all-access pass to whatever expert a defendant wants to utilize post-conviction. See id. The Court only suggested that there are many ways that testing can be used to identify the perpetrator. See id.

In G. L. c. 278A, the legislature created an expedited process for a defendant to obtain objective forensic analysis of evidence in order to identify the perpetrator and correct factually incorrect verdicts. See Wade I, 467 Mass. at 515. The testing the defendant seeks does not fall within what is contemplated by this statute. The defendant’s motion is procedurally deficient and should be dismissed.

#### **Section 3(b)(5)**

Under this section, the defendant must allege that “information demonstrating that the evidence or biological material has not been subjected to the requested analysis” for one of five reasons. G. L. c. 278A, § (3)(b)(5). The Commonwealth agrees that the defendant has met the procedural requirements for this section.

#### **Section 3(c)**

Under this section, the defendant must “include a description of efforts made to obtain such items and information and may move for discovery of such items or information from the prosecuting attorney or any third party.” G. L. c. 278A, § (3)(c). The Commonwealth agrees that the defendant has met this requirement.

#### **Section 3(d)**

Under this section the defendant must “file with the motion an affidavit stating that the moving party is factually innocent of the offense of conviction and that the requested forensic or scientific analysis will support the claim of innocence.” G. L. c. 278A, § (3)(d). For the reasons

stated in the discussion of the requirements under Section 2, the defendant has failed to meet this requirement.

### **III. Conclusion**

For the reasons set forth above, the defendant has met some of the procedural requirements under G. L. c. 278A, §§ 2-3, but his motion is fatally deficient in meeting the procedural requirements under G. L. c. 278A, §§ 2, 3(b)(4), and 3(d). The Commonwealth respectfully requests that this Honorable Court dismiss the defendant's motion as procedurally deficient.

Respectfully submitted,  
THE COMMONWEALTH,  
ANTHONY D. GULLUNI  
District Attorney  
Hampden District

Date: April 19, 2018



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David L. Sheppard-Brick  
Assistant District Attorney  
Hampden District  
Roderick L. Ireland Courthouse  
50 State Street  
Springfield, MA 01102-0559  
(413) 505-5903  
BBO No. 687596  
David.sheppard-brick@state.ma.us