

COMMONWEALTH OF MASSACHUSETTS

[COUNTY], ss

[DISTRICT/SUPERIOR] COURT  
CRIMINAL ACTION NOS.:

_____	)
COMMONWEALTH	)
	)
v.	)
	)
	)
[DEFENDANT]	)
_____	)

**PROPOSED ORDER REGARDING  
POST-CONVICTION FORENSIC TESTING [AND EXHAUSTIVE TESTING]**

After reviewing the parties’ briefing and after a hearing, pursuant to G.L. c. 278A, § 7,  
the courts finds as follows:

[ *Findings Of Fact Supporting Testing* ]

Accordingly, the Court so orders the following conditions on the analysis, transportation,  
handling and return of evidence or biological materials in this matter:

1. The testing or analysis described herein will be performed by [*Testing Laboratory*] of [*City, State*].
2. Payment for the shipping and testing of the physical evidence [*shall be made by the defendant, pursuant to G.L. c. 278A, § 10(1) / is ordered by this Court, pursuant to G.L. c. 278A, §§ 10(2) or (3), and G.L. c. 261, § 27C*].
3. The biological materials or physical evidence (“evidence”) listed below in paragraph 6 will be subject to [*type of testing – e.g., STR type DNA testing – or specific method or kit*].

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4. [Testing Laboratory] shall endeavor to retain and maintain the integrity of a sufficient portion of the evidence or biological material for replicate analysis and if, after initial examination, [Testing Laboratory] determines that there is insufficient material for replicate analysis, it shall simultaneously notify in writing the prosecuting attorney, the Defendant, and the Court prior to initiating any testing or analysis. Exhaustive testing shall not occur except by separate order of the Court. [*Or -- Because the parties have agreed in advance to exhaustive testing, exhaustive testing is hereby explicitly permitted.*]

5. The evidence below was collected in the investigation of Commonwealth v. [Defendant Name], Docket [Number]. The evidence is currently in the custody of the [Agency with custody of evidence]. In addition to the identifying item numbers listed above, the evidence may be labeled with [*police department case number, laboratory case number, trial exhibit number, etc.*].

6. The [Agency with custody of evidence, e.g., Municipal Police Department; Boston Police Department Crime Laboratory (“BPD Crime Lab”); Massachusetts State Police Crime Laboratory (“MSP Crime Lab”); District Attorney’s Office; Clerk’s Office] will forward to [Testing Laboratory] the following evidence for the testing authorized by this Order:

- a. [Evidence, including Item # and/or Trial Exhibit #]; and
- b. [Evidence, including Item # and/or Trial Exhibit #].

7. Unless otherwise agreed to by the Commonwealth and the Defendant, the [Agency with custody of evidence] will package and ship the known sample(s) of the [victim, defendant,

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*or third party*] that is in its possession, and listed above at paragraph [*insert par. #*], to [*Testing Laboratory*] separately from the other items covered by this Order.

8. Within thirty days from entry of this Order, or other date mutually agreed to by the Commonwealth and the Defendant, the [*Agency with custody of the evidence*] will package and ship the evidence listed above in paragraph 6, along with a copy of this Order, to [*Testing Laboratory*] in secure packaging by overnight courier with signature required. Packaging and shipment shall occur in compliance with [*Testing Laboratory's*] Forensic Evidence Handling Guidelines, which are attached to this Order. The [*Testing Laboratory's*] shipping address is:

[*Address*]

9. The [*Agency with custody of the evidence*] will photograph the evidence prior to packaging, unless otherwise agreed to by the Commonwealth or Defendant, and will document its retrieval of the evidence from storage, movement of the items within the [*agency*], and the packaging and shipment of the items as directed under this Order. Such documentation will identify any and all [*agency*] personnel who transported, photographed, documented, and packaged the items pursuant to this Order.

10. The [*Agency with custody of the evidence*] shall provide a copy of the above documentation to the Commonwealth and the Defendant. The [*Agency with custody of the evidence*] shall also notify the Commonwealth and the Defendant's counsel in writing when the items have been sent to [*Testing Laboratory*]. Email notification is sufficient.

11. The Defendant, pursuant to G.L. c. 278A, § 8(f), and the Order of this Court, shall provide a DNA sample [*specify buccal swab, head or pubic hair samples, etc.*] (hereafter,

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“sample”) to a representative of the [*Massachusetts State Police, Boston Police Department, or other local police department*], trained in the forensic collection of DNA samples such as buccal swabs. The person taking the sample shall follow the [*Massachusetts State Police, or Boston Police Department*] protocol for collection of defendants’ DNA samples. A defense representative will be entitled to be present at the collection of this sample from the Defendant.

12. Directly after collecting the DNA sample from the Defendant, the [*Massachusetts State Police, Boston Police Department, or other local police department*] representative who collected the sample shall document, package, and ship the sample along with a copy of this Order to [*Testing Laboratory*], by overnight courier with signature required, at the address listed above in paragraph 7, in compliance with [*Testing Laboratory’s*] Forensic Evidence Handling Guidelines, which are attached to this Order.

13. The [*Massachusetts State Police, Boston Police Department, or other local police department*] will notify the Commonwealth and the Defendant’s counsel in writing when the Defendant’s DNA sample has been sent to [*Testing Laboratory*]. Email notification is sufficient.

14. The defense and Commonwealth representatives shall have the right to photograph and catalog the evidence being packaged and shipped under this Order, including the Defendant’s DNA sample. [**Please note:** *the MSP Lab and BPD Lab do not permit defense or Commonwealth representatives – including experts – to be present in their respective laboratories during the packing or shipment of evidence. This paragraph may be included if the evidence to be tested is in the custody of another agency or third party – i.e., Clerk’s Office, non-lab police department*]

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15. Neither the [*Agency with custody of the evidence, and/or Agency that shipped evidence (if different)*] nor the Commonwealth is responsible for the loss, destruction, or damage of any physical evidence or DNA sample of the defendant, as identified in this Order, once it leaves the custody of the Commonwealth or its agents pursuant to this Order.

16. [*Testing Laboratory*] shall give equal access to its personnel, opinions, conclusions, reports and other documentation to the Commonwealth and the Defendant. Unless otherwise impounded, the Commonwealth may disclose any and all reports, notes, and/or documentation issued by [*Testing Laboratory*], or related to its testing or analysis pursuant to this Order, to police investigators and/or forensic experts. Similarly, unless otherwise impounded, the Defendant may disclose any and all reports, notes, and/or documentation issued by [*Testing Laboratory*], or related to its testing or analysis pursuant to this Order, to defense investigators and/or forensic experts.

17. [*Testing Laboratory*] will maintain a chain-of-custody log to document its receipt and control over the biological material or physical evidence it receives pursuant to this order.

18. Neither the Commonwealth nor the Defendant waives any argument or claim as a result of this Order. Issuance of this Order does not establish that test results are (a) valid, or (b) of any evidentiary value or weight in relation to any trial issues or any issues that have been or may in the future be raised by the Defendant.

19. Upon completion of the [*Testing Laboratory*] testing and analysis, [*Testing Laboratory*] shall issue a final report of its analysis to the Commonwealth, the Defendant, and the Court. [*Testing Laboratory*] shall also return all biological material or physical evidence in

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this case to the agency from which it was originally submitted, via overnight courier with signature required. [*Testing Laboratory*] shall follow its protocols and guidelines for packaging and shipping evidence.

20. Any DNA profile(s) obtained by [*Testing Laboratory*] from the evidentiary sample(s) tested (“evidentiary DNA profile”) may be entered into the local (LDIS), state (SDIS), and federal (NDIS) CODIS DNA databases, in compliance with applicable CODIS requirements and regulations. Entering the evidentiary DNA profile(s) into CODIS could result in a “hit” and link the evidentiary DNA profile(s) from this case to either a known individual profile or another evidentiary DNA profile stored in the CODIS DNA database. In the event of such a link, the Massachusetts State Police and/or Boston Police Department is permitted to reveal the information about the case at bar to the other law enforcement officials without the agreement of the Defendant or a court order, or to make any other use of the information consistent with its law enforcement duties. Should the Commonwealth or CODIS laboratory determine that the evidentiary DNA profile(s) obtained by [*Testing Laboratory*] is ineligible for entry into the CODIS DNA database, the Defendant may seek a court order to request entry, and the Commonwealth will be provided with an opportunity to respond.

21. If the evidentiary DNA profile(s) obtained by [*Testing Laboratory*], pursuant to this Order, results in any “hits” on profiles stored in the CODIS DNA databases, the CODIS laboratory shall notify the Commonwealth of those “hits” and provided it with any relevant worksheets, protocols, and other case related documentation generated during the testing and analyses of the linked evidentiary profile(s), subject to CODIS regulations. The Commonwealth

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shall then notify the Defendant of those “hits” and provide the Defendant with the worksheets, protocols, and other case related documentation provided to it by the CODIS laboratory. The CODIS laboratory that maintains this information about the linked evidentiary profile(s) shall provide it to the Commonwealth, which shall then provide it to the Defendant.

22. Any dispute arising regarding the interpretation of this Order shall be determined by the Court upon a motion by either party.

SO ORDERED.

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Associate Justice  
Superior Court

DATE: \_\_\_\_\_