

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

SUFFOLK, ss.

NO. SJ-2014-0005

KEVIN BRIDGEMAN,
and others

v.

DISTRICT ATTORNEY FOR THE SUFFOLK DISTRICT,
and others

Affidavit of Paola Villarreal

I, Paola Villarreal, state as follows:

1. I am a data science fellow at the American Civil Liberties Union Foundation of Massachusetts (ACLUM).

2. On June 30, 2016, I submitted an affidavit providing information about the 24,483 cases identified by the respondent District Attorneys in May 2016 as Annie Dookhan cases in which there were adverse dispositions for G.L. c. 94C offenses (the "Adverse Dookhan" cases).

3. The DAs have subsequently submitted affidavits providing information about cases that their offices handled after Dookhan's misconduct was disclosed on August 30, 2012. Their affidavits identify approximately 1,431 Dookhan-related motions for new trial since the fall of 2012, with some number of these motions reportedly being withdrawn because the samples were not handled by Dookhan. Kidd Aff. ¶ 20; Dolhun Aff. ¶¶ 9-14; DeSimone Aff. ¶¶ 17, 27-29; O'Neil Aff. ¶¶ 17-21; Linehan

Aff. ¶¶ 4-5; DeMore Aff. ¶¶ 4-5, 13. The DAs also provided some information about the dispositions of cases in which new trial motions were filed, the dates by which many of these cases were resolved, and the numbers of new trial motions in district and superior courts. See Kidd Aff. ¶¶ 15-19; Dolhun Aff. ¶¶ 9-14; Irwin Aff. ¶¶ 29-30; DeSimone Aff. ¶¶ 11, 27-29; O'Neil Aff. ¶¶ 17-21; Linehan Aff. ¶¶ 4-9, 12-13; DeMore Aff. ¶¶ 4-5, 13.

4. In light of these submissions, I took a closer look at some of the 24,483 Adverse Dookhan cases in which there was litigation after the public disclosure of Dookhan's misconduct on August 30, 2012. My analysis sought to ascertain whether that litigation has significantly reduced the estimated number of Adverse Dookhan cases requiring resolution. The data suggest that there are not significantly less than 24,483 Adverse Dookhan cases still requiring resolution.

5. I also analyzed the disposition dates of the Adverse Dookhan cases in which there was litigation on or after August 30, 2012. This analysis revealed that most Adverse Dookhan cases with disposition dates on or after August 30, 2012 were disposed of before this Court's decisions in Commonwealth v. Scott, 467 Mass. 336 (2014) and Commonwealth v. Bridgeman, 471 Mass. 465 (2015).

6. Finally, I examined the courts in which Adverse Dookhan cases were prosecuted, and found that more than 90% were prosecuted in district court.

I. Adverse Dookhan cases in which the Dookhan-involved convictions have been vacated

7. I first examined whether any of the 24,483 Adverse Dookhan cases identified by the DAs in May 2016 were cases in which defendants had actually obtained nolle prosequis or other non-adverse dispositions after Dookhan's misconduct was revealed.

8. I found that **92** of the 24,483 Adverse Dookhan cases had been resolved on or after August 30, 2012 without any remaining adverse dispositions on G.L. c. 94C charges. These 92 cases -- despite being included on the Adverse Dookhan list -- now carry nolle prosequis, dismissals, or other non-adverse dispositions on all drug charges.

9. Thus, there appear to be **24,391** (24,483 minus 92) cases identified by the DAs in which defendants still face adverse dispositions on Dookhan-involved drug charges.

10. I reached this result by examining all the Adverse Dookhan cases where available MassCourt disposition information showed that there had been a disposition since August 30, 2012.

11. Of the 24,483 Adverse Dookhan cases, 647 showed a disposition date on or after August 30, 2012 on a c. 94C charge.

These 647 cases might include some cases in which drug charges were still pending when Dookhan's misconduct was revealed, in addition to cases in which defendants successfully obtained a new disposition on drug charges after seeking post-conviction relief.

12. Of the 647 cases where the MassCourts data showed a disposition date since August 30, 2012 on a c. 94C charge, 555 cases still had at least one adverse disposition on a drug charge. These cases could involve defendants who re-pled to one or more reduced c. 94C charges in order to obtain their release from custody after Dookhan's misconduct was disclosed. See, e.g., Kidd Aff. ¶¶ 15-19; O'Neil Aff. ¶¶ 22-25.

13. The remaining 92 cases from the Adverse Dookhan list with a disposition date on or after August 30, 2012 have obtained complete relief from any drug charges.

14. These 92 cases are likely not the only cases in which Dookhan defendants obtained complete relief from all adverse dispositions in drug charges. But it appears that, beyond the 92 cases described above, other cases in which defendants have obtained complete relief from all of their Dookhan-involved convictions are not included in the DAs' lists of Adverse Dookhan cases. Many such cases might be included in the DAs' "non-adverse" lists.

15. For example, Plymouth County reports 132 nolle prosequis in Dookhan cases, see Linehan Aff. ¶¶ 12-13, whereas the data revealed only 2 cases from Plymouth County's "adverse" list in which defendants with dispositions since August 30, 2012 had obtained complete relief from all drug charges.

16. The table below provides a county-by-county breakdown of the 647 cases (out of the overall Adverse Dookhan list of 24,483 cases) with drug dispositions on or after August 30, 2012.¹ It shows the number that have been resolved without any remaining adverse c. 94C dispositions, and the number that still carry one or more adverse c. 94C dispositions.

Adverse Dookhan cases with c. 94C dispositions on or after August 30, 2012, by county and disposition			
County	No remaining adverse c. 94C dispositions	One or more remaining adverse c. 94C dispositions	Total Adverse Dookhan cases with dispositions since 8/30/12
Barnstable	1	18	19
Bristol	1	17	18
Dukes	0	0	0
Essex	38	131	169
Middlesex	8	32	40
Norfolk	13	81	94
Plymouth	2	42	44
Suffolk	29	234	263
Total	92	555	647

¹ This analysis is based on the available MassCourts data as of the time it was exported and provided to the parties in this case by the Trial Court. The MassCourts data was provided to the parties on February 3, 2016 and included G.L. c. 94C cases opened in the Commonwealth between January 1, 2003 and June 30, 2011. 6/30/16 Villarreal Aff. ¶ 11.c.

17. For purposes of this analysis, I treated as "adverse" any disposition that did not clearly state that a charge was dismissed (other than after a continuance without a finding), filed without a finding, resolved with a nolle prosequi, resolved with a not guilty or not responsible finding or verdict, or transferred to another court. I thus counted as "adverse" charges for which disposition data was blank, as these could represent pending charges or charges with adverse dispositions.

II. Disposition dates of cases litigated after Dookhan's misconduct was revealed

18. I also examined the disposition dates of the 647 cases from the Adverse Dookhan list in which a drug charge had a disposition on or after August 30, 2012. Because several DAs indicated that many new trial motions were litigated soon after Dookhan's misconduct was revealed, see, e.g., Kidd Aff. ¶ 19, I examined how many of the 647 cases were litigated before this Court's March 5, 2014 decision in Commonwealth v. Scott, 467 Mass. 336 (2014) and its May 18, 2015 decision in Commonwealth v. Bridgeman, 471 Mass. 465 (2015).

19. I found that **443** of these 647 cases had dispositions before Scott, **172** cases had dispositions between Scott and Bridgeman, and **32** had dispositions after Bridgeman. Thus, 95% of

the Adverse Dookhan cases with disposition dates on or after August 30, 2012 were disposed of before Bridgeman.

20. The table below shows the Adverse Dookhan cases that have disposition dates since August 30, 2012 on a c. 94C charge, by date range and county.

Adverse Dookhan cases with c. 94C disposition dates on or after August 30, 2012				
County	Pre-<u>Scott</u> (8/30/12 to 3/5/14)	Post-<u>Scott</u>, pre-<u>Bridgeman</u> (3/6/14 to 5/18/15)	Post-<u>Bridgeman</u> (5/19/15 to 8/13/16²)	Total cases with dispositions since 8/30/12
Barnstable	14	5	0	19
Bristol	13	4	1	18
Dukes	0	0	0	0
Essex	118	37	14	169
Middlesex	30	9	1	40
Norfolk	76	18	0	94
Plymouth	33	8	3	44
Suffolk	159	91	13	263
Total	443	172	32	647

III. Dookhan cases in superior and district courts

21. Finally, I examined the proportion of Dookhan cases that were prosecuted in district court and superior court.

22. This analysis revealed that **91%** (22,194 of 24,483) of cases identified by the DAs as Adverse Dookhan cases were

² The upper date limit (8/13/16) was inserted throughout this analysis to exclude cases with disposition dates such as 2205, which were clearly entered in error. To avoid double counting any case in which charges were resolved on different dates, this analysis relied on the most recent disposition date for the drug charges in each case.

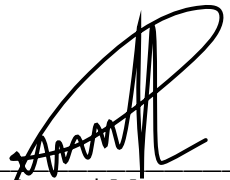
prosecuted in district court, while **7%** (1,690 of 24,483) were prosecuted in superior court.

23. To conduct this analysis, I used the court codes contained in the third and fourth digits of most Massachusetts docket numbers. For example 1081CR123456 reflects a court code of "81," which represents Middlesex Superior Court. See Trial Court Codes - Numerical Listing, available at mass.gov/courts/court-info/courthouses/tc-court-codes-by-number.html. Using the docket numbers, I classified every case in the Adverse Dookhan list as a superior court case, a district court case, or "other." "Other" represents docket numbers that were not formatted in the manner described above and thus could not be matched to a court using this process. These docket numbers largely correspond to juvenile cases but may include some misformatted or improperly entered adult docket numbers.

24. The table below shows these results by county.

Adverse Dookhan cases, by court type				
County	Superior Court	District Court	Other	Total
Barnstable	120 (10%)	1,124 (89%)	18 (1%)	1,262
Bristol	190 (8%)	1,980 (88%)	85 (4%)	2,255
Dukes	10 (16%)	51 (84%)	0 (0%)	61
Essex	305 (7%)	3,764 (89%)	139 (3%)	4,208
Middlesex	173 (5%)	3,290 (92%)	131 (4%)	3,594
Norfolk	115 (5%)	2,137 (92%)	64 (3%)	2,316
Plymouth	61 (3%)	1,943 (93%)	93 (4%)	2,097
Suffolk	716 (8%)	7,905 (91%)	69 (1%)	8,690
Total	1,690 (7%)	22,194 (91%)	599 (2%)	24,483

SIGNED UNDER PAINS AND PENALTIES OF PERJURY ON AUGUST 15,
2016.



Paola Villarreal