

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT

SUFFOLK, ss.

SJ-2014-0005

KEVIN BRIDGEMAN & others vs. DISTRICT ATTORNEY FOR THE SUFFOLK  
DISTRICT & others.

RESERVATION AND REPORT

This is the latest in a series of cases that have come before the court concerning the William A. Hinton laboratory, the misconduct of Annie Dookhan, and the rights of defendants who were convicted of drug offenses in cases where Dookhan was either the primary or secondary chemist (referred to by the parties as the “Dookhan defendants”).

Claims made in petition. The three petitioners in this case pleaded guilty to various drug offenses in 2005, 2008, and 2009. One of them, Miguel Cuevas, has moved in the trial court for a new trial, i.e., to vacate his plea. The other two, Kevin Bridgeman and Yasir Creach, have not yet sought postconviction relief. Bridgeman avers in an affidavit that he is reluctant to seek relief at this time because he is concerned that, if he is successful in vacating his plea, he might “be prosecuted for the serious charges which the Commonwealth moved to dismiss [as part of his negotiated plea agreement] and be sentenced to a longer prison term” than he had received for the offenses to which he pleaded guilty.

Together the petitioners commenced this action pursuant to G. L. c. 211, § 3, asking the court for two forms of relief. First, they ask the court to declare that any defendant who has been convicted of a drug offense,<sup>1</sup> who successfully obtains a new trial based on Dookhan's misconduct, cannot thereafter be convicted of more serious offenses than those of which he or she originally stood convicted, or given longer sentences than were originally imposed. Second, they ask for an order requiring those district attorneys who prosecuted Dookhan defendants to notify all such defendants within ninety days whether they intend to re-prosecute them;<sup>2</sup> vacating the convictions in any cases where the defendants are not so notified; and requiring that any re-prosecutions be concluded within six months. The relief sought by the petitioners obviously extends beyond their individual circumstances and would apply to all of the Dookhan defendants.

Motion to intervene. The petition was filed in the county court shortly before the full court's decisions in Commonwealth v. Scott, 467 Mass. 336 (2014), and the related cases. After Scott was decided, the Committee for Public Counsel Services moved to intervene in the case, joining in the relief sought by the petitioners and seeking additional relief applicable to all Dookhan defendants. For example, CPCS seeks a ruling that would permit any attorney who represented a Dookhan defendant at the plea stage and who also represents the defendant on a motion for a new trial, to testify at a hearing on the motion regarding the circumstances of the plea without withdrawing from representation. Further, CPCS seeks a ruling that any defendant's testimony at a hearing on a motion for a new trial could not be used in a subsequent

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<sup>1</sup> The petitioners do not distinguish between defendants who were convicted after trial and those who pleaded guilty.

<sup>2</sup> The petitioners apparently would have prosecutors so notify all of the Dookhan defendants, even those who have not yet sought and obtained relief from their convictions.

re-prosecution of the defendant.<sup>3</sup> CPCS does not represent any of the individual petitioners in this case. Rather it seeks to intervene purportedly to assert and protect the interests of the numerous other Dookhan defendants for whom it will inevitably be called on to supply (or is already supplying) representation.

In short, both the individual petitioners and CPCS seek comprehensive relief that would affect not only these three individuals, but also all of the other defendants whose convictions may have been tainted by Dookhan's misconduct. In the unique circumstances of this case – where everyone agrees that there are tens of thousands of potentially tainted convictions, each one being a possible candidate for a motion for new trial – I believe that the interests of justice require the court to attempt to resolve as many of the common issues as can properly be resolved at this juncture and on this record. Toward that end, I will send to the full court both the claims raised by the individual petitioners and those additional issues raised by CPCS in its motion to intervene that it has indicated in its letter dated September 26, 2014, it wishes to press before the full court.

At the same time, I am mindful of the district attorneys' objections to CPCS's motion to intervene. I am of the view that the motion to intervene itself is something that ought to be decided by the full court. Therefore, rather than ruling on the motion as a single justice, I will reserve and report it to the full court as well. The full court will thus have before it both the motion to intervene, and, if it allows the motion, the issues raised by CPCS as intervener. If the full court determines that CPCS should not be permitted to intervene, it need not consider CPCS's separate issues and arguments.

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<sup>3</sup> CPCS raised other issues as well in its motion to intervene, but in a letter to the court dated September 26, 2014, has limited the issues that it wishes to press before the full court if the matter is reserved and reported.

Order. Accordingly, I hereby reserve and report to the full court the entire matter that is presently before me, namely:

- the petition pursuant to G. L. c. 211, § 3, and the two specific claims for relief that it raises;
- the motion to intervene filed by CPCS, and the specific issues that CPCS has identified in its letter dated September 26, 2014, that it wishes to raise before the full court; and
- the motion to supplement the record filed by CPCS on October 7, 2014.

The reservation and report is based on all of the pleadings, motions, and other materials that have been filed before me in the case to date. In this way, the record before the full court will consist of everything that is now before me, as is.

Finally, given the unique circumstances of the controversy created by Dookhan's work at the Hinton laboratory and its far-reaching impacts on Dookhan defendants, their attorneys, prosecutors, the Trial Court, and the administration of the criminal justice system in the Commonwealth, I ask the full court, when deciding the case, to consider whether it might be fruitful for the court to undertake to examine the possibility of a more systemic approach to addressing the impacts of the controversy than the individualized, case-specific remedy that the court envisioned in Scott; and if so, what the process for such an examination might be. I am not suggesting that the court will be able to produce in this case the heretofore elusive "global remedy." I am only suggesting that all concerned might benefit from the court's consideration of the feasibility of exploring that possibility, and any guidance the court can give and any process it might be able to supply at this time in furtherance of that end.

Briefing. The petitioners and CPCS shall file their briefs first. CPCS's brief shall address the motion to intervene, any arguments it wishes to make as an intervener on the claims made in the petition, and its arguments on the additional issues identified in its September 26 letter. The district attorneys shall then file their briefs, and the petitioners and CPCS will have

an opportunity to file reply briefs. The parties are to work out the precise dates for the briefing schedule with the clerk of the full court. The case will be tentatively scheduled for the full court's January, 2015 sitting.

Margot Botsford

Margot Botsford  
Associate Justice

Dated: 21 October 2014