

6/4/15 After hearing, motion is allowed, the defendant declining the opportunity to have a defense expert present at testing; but provided, the Commonwealth shall video record all portions of laboratory testing where the swab or sample is handled by a chemist or analyst to include the preparation, insertion of material into test tube or like container, handling or labeling of such container, insertion into scientific instrument and a transfer or removal of such container during and after such testing.

COMMONWEALTH OF MASSACHUSETTS
SUFFOLK, SS.

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SUPERIOR COURT
NO. 2014SUCR10471

A. Ceala, Jr.

COMMONWEALTH

v.

AARON HERNANDEZ

COMMONWEALTH'S MOTION FOR A COURT ORDER PERMITTING EXHAUSTIVE TESTING OF A SWAB TAKEN FROM A .38 CALIBER SMITH & WESSON FIREARM

Now comes the Commonwealth in the above-captioned matter and respectfully requests that this Honorable Court issue an order permitting exhaustive testing on the following item, for which the procedure is likely to consume the entire sample:

- Item 13.1 - a swab taken from Item 13, one silver colored revolver, Serial #212682, with a wooden accent handle, labeled "38 S.&W. SPECIAL CTG" on one side of the barrel.

The swab is so small, however, that processing it may leave no portion available for future testing. See Attachment A, Affidavit of Boston Police Criminalist Amy Reynolds. Accordingly, the Commonwealth requests that this Court permit such testing following notice to the defendant and an opportunity for the defendant to have an expert present during the testing. See *Commonwealth v. Gordon*, 422 Mass. 816, 836 (1996) ("However, being aware of the possibility that evidence would be destroyed, the Commonwealth notified the defendants of that fact and informed them they were welcome to have their expert witness observe the testing procedure").

5/21/15 Ehd

DNA testing of the swab taken from the .38 Smith & Wesson firearm may yield probative evidence that outweighs any prejudice resulting from exhaustive testing, particularly where the defendant is afforded an opportunity to have his expert present for such testing. *Contrast Commonwealth v. Sanford*, 460 Mass. 441, 449-50 (2011) (defendant claimed prejudice resulting from destructive testing because his expert was not present during the testing).

Therefore, the Commonwealth respectfully requests that this Honorable Court enter an order permitting exhaustive testing of the swab and requiring the defendant to inform the Commonwealth, in writing, by May 29, 2015, whether he wishes to have an expert present for the testing.

Respectfully Submitted
For the Commonwealth,

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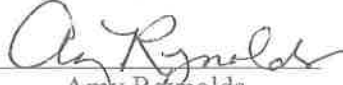
Dated: May 21, 2015

**AFFIDAVIT IN SUPPORT OF MOTION FOR TESTING DESTRUCTIVE
SAMPLES**

I, Amy Reynolds, do hereby depose and state as follows:

1. I am a Criminalist IV in the Boston Police Crime Laboratory. I have been employed in the Crime Laboratory for over fourteen years. I have a Masters of Science in Forensic Science from the University of Illinois, Chicago and a Bachelors of Arts in Biochemistry from the University of Colorado, Boulder.
2. My responsibilities include managing the overall technical operation and maintaining the Quality Assurance/Quality Control program of the Trace Evidence Section, providing criminalistics and trace evidence case examination, preparing reports, providing expert witness testimony in court, coordinating and providing training to incoming personnel, and processing crime scenes.
3. The Crime Laboratory's examination of the firearm (Item 13) in BPD Crime Laboratory case #15-0116, CC#130395526 included the collection of a swab (Item 13.1) from the textured areas of the firearm for the possible presence of biological material ("handler DNA"). Please note this case is related to BPD Crime Laboratory case #12-0524, CC#120437067.
4. Our protocol for testing "handler DNA" samples will consume the entire sample, this is called destructive testing, and there will be no sample remaining for future independent DNA testing. According to our current policy, destructive testing will not occur without authorization.
5. The swab (Item 13.1) collected in this case is a destructive sample and an authorization will be needed for testing to be performed by the Boston Police Crime Laboratory.
6. DNA stands for Deoxyribonucleic Acid. It is biochemical material that a person inherits from his/her parents that serves as a blueprint to that individual's growth and development. DNA is found in most biological substances, including blood, semen, skin cells and saliva.

Signed under the pains and penalties of perjury this nineteenth day of May, 2015.


Amy Reynolds