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SJC-13040

COMMONWEALTH vs. STANLEY DONALD.

July 2, 2021.

Evidence, Scientific test. Practice, Criminal, Postconviction relief.

The defendant, Stanley Donald, appeals from a Superior Court judge's denial of his eighth motion[1] for postconviction forensic testing of various evidence from his 1999 trial, at which he was convicted of two counts of aggravated rape and single counts of unarmed robbery, kidnapping, carjacking, and assault and battery by means of a dangerous weapon (cement floor), in connection with his assault of a woman in a parking garage.[2] The Appeals Court affirmed the denial of his motion. Commonwealth v. Donald, 98 Mass. App. Ct. 1105 (2020). We then granted his application for further appellate review, limited to the issue whether the Superior Court judge erred in denying forensic testing of the bloodstains taken from the cement floor of the parking garage, including, more specifically, whether Donald has satisfied the threshold requirements of G. L. c. 278A, § 3, entitling him to an evidentiary hearing on his motion.

The only live issue with respect to the question presented on further appellate review is whether Donald properly raised and preserved his claim, based on Commonwealth v. Williams, 481

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[1] We use the term "eighth motion" to refer to the pro se motion for access to forensic and scientific analysis filed by Stanley Donald on September 17, 2018.

[2] The facts of the underlying crime are summarized in this court's opinion in connection with one of Donald's previous motions for postconviction forensic testing. See Commonwealth v. Donald, 468 Mass. 37, 39 (2014).

Mass. 799 (2019), that the requested testing has the potential to result in evidence that is material to his identification as the perpetrator of the crime of assault and battery by means of a dangerous weapon (cement floor). Donald argues that, if testing of the bloodstains shows that the blood did not belong to the victim, then it would support his assertion that that particular crime did not occur. See Williams, supra at 809 ("a defendant who asserts that the requested testing has the potential to result in evidence that is material to his or her identity as the perpetrator of the crime because no crime in fact occurred satisfies the § 3 [b] [4] requirement"). At oral argument, the Commonwealth conceded that if this court concluded that Donald had preserved this argument adequately, the case should be sent back for a hearing. We conclude that the argument was preserved adequately, and we therefore remand the matter for a hearing pursuant to G. L. c. 278A, § 7.

In his pro se eighth motion, Donald stated:

> "Here, a [deoxyribonucleic acid (DNA)] test on the crime scene blood stains would be the first time a forensic DNA test was conducted which would offer evidence that is material to whether the blood stains belong to defendant, or victim, or the man a witness seen with a limp at the time of the crime, and would be relevant to the identification of the perpetrator of the crime of assault and battery with dangerous weapon cement floor which Donald stands convicted.
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> "Evenmore, if the blood stains do not match the victim . . . then the forensic test results would be material evidence to establish Donald's innocence since the Commonwealth represents that Donald 'body slammed victim on to the floor of the garage, and face smashing on the concrete and blood was everywhere.'"

These assertions were sufficient to preserve the argument that Donald now makes on appeal.[3]

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[3] Even if Donald had not preserved the issue properly, the Commonwealth concedes that he could cure any defect in a renewed or subsequent motion pursuant to G. L. c. 278A. In such circumstances, where an issue is fully briefed before us, we have stated that "requiring the defendant to refile another motion making the same arguments . . . , and then to appeal therefrom, would be an exercise in needless expenditure of judicial resources." Commonwealth v. Wade, 467 Mass. 496, 500 n.7 (2014).

For the foregoing reasons, the order dated March 28, 2019, denying Donald's eighth motion for postconviction forensic testing of the bloodstains taken from the cement floor of the parking garage is reversed, and the matter is remanded for a hearing pursuant to G. L. c. 278A, § 7. We express no opinion as to Donald's likelihood of success on the merits of his motion after a hearing.

So ordered.

Edward B. Gaffney for the defendant.
Hallie White Speight, Assistant District Attorney, for the Commonwealth.