

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT

SUCR2014-10417;

SUCR2015-10384

COMMONWEALTH

v.

AARON HERNANDEZ

DEFENDANT'S MOTION FOR PRODUCTION BY NON-RESIDENT THIRD PARTIES PURSUANT TO MASSACHUSETTS RULES OF CRIMINAL PROCEDURE RULE 17 (a)(2) OF THE VIDEO OF THE BRADLEY SHOOTING AT CLUB VENUE IN THE POSSESSION OF CONNECTICUT STATES ATTORNEY'S OFFICE FOR THE JUDICIAL DISTRICT OF HARTFORD, IN EITHER THE MATTER OF STATE OF CONNECTICUT V. ALEXANDER BRADLEY H14HCR130666007S/H14HCR1306695075S OR STATE OF CONNECTICUT V. LESLIE RANDOLPH HHD-CR14-671621T

1. The Defendant in the above captioned proceeding moves this Court pursuant to General Law ch. 233 § 13B, and Rule 17 (a)(2) of the Massachusetts Rules of Criminal Procedure, see Commonwealth v. Martin, 451 Mass. 113, 114 (2008) (citing Commonwealth v. Dwyer, 448 Mass. 122 (2006)), pursuant to Commonwealth v. Lampron, 441 Mass. 265 (2004), to order that Attorney Gail P. Hardy Connecticut States Attorney for the Judicial District of Hartford, produce the video of the Bradley/Randolph shooting at Club Venue

Third Party

2. Gail P. Hardy is a resident of the state of Connecticut and the Connecticut States Attorney for Judicial District of Harford, which has an office located at 101 Lafayette Street, Hartford, Connecticut, 06106.

3. Vicki Melichiorre is a resident of the State of Connecticut and the States Attorney who represented the State of Connecticut in its prosecution of Alexander Bradley. Vicki Melichiorre works out of the Judicial District of Hartford Office located at 101 Lafayette Street, Hartford, Connecticut 06106.

Factual Basis

4. On January 9, 2017, the State of Connecticut sentenced Alexander Bradley to an agreed term of five years to serve and five years of special parole for criminal possession of a firearm, reckless endangerment, and criminal mischief. As evidence of the charges brought by the State of Connecticut is a video of the shooting by Bradley of Club Venue. See **Exhibit A** (State v. Randolph, Transcript of Sentencing Hearing, Connecticut Superior Court, September 5, 2014 p. 4 Lines 3-5) Bradley was also shot during the same incident by Leslie Randolph who was charged and sentenced on September 5, 2014 for the shooting of Bradley. The State of Connecticut utilized the same video in its prosecution of Randolph.

5. The video is relevant in this case given Alexander Bradley is a Material witness and the shooting that occurred in Connecticut goes to his credibility.

6. The Defendant attempted to obtain the video and was advised it would not be produced.

Argument

7. The standard of review of a defense request for a Rule 17(a)(2) summons is to balance the Defendant's right to mount a defense with the Commonwealth's right to prevent unnecessary delay of the trial and unwarranted harassment of witnesses and third parties. In *Commonwealth v. Lampron*, the Supreme Judicial Court adopted the federal standards regarding the issuance of a subpoena for production of documentary evidence because Rule 17 of the Massachusetts Rules of Criminal Procedure was modeled after Fed. R. Crim. P. 17(c) and is intended to address the same circumstances. 441 Mass. 265 (2004).

8. The party moving to subpoena documents must establish good cause by showing (1) that the documents are evidentiary and relevant; (2) that they are not otherwise procurable reasonably in advance of trial by exercise of due diligence; (3) that the party cannot properly prepare for trial without such production and inspection in advance of trial; and (4) that the application is made in good faith and not as a "general fishing expedition." *Commonwealth v. Lam*, 444 Mass. 224, 229-30 (2005) (quoting *Commonwealth v. Lampron*, 441 Mass. 265 (2004)).

9. Massachusetts has adopted the Uniform Act to Secure Witnesses from Without a State in Criminal Proceedings, General Law ch. 233 § 13B, which allows this Court to issue a summons to other jurisdiction that have adopted the uniform act upon a finding that the witnesses outside the Massachusetts jurisdiction are material and necessary to the

proceeding. See Commonwealth v. Edgerly, 6 Mass. App. Ct. 241, 255 (1978); see also Matter of Rhode Island Grand Jury Subpoena, 414 Mass. 104, 112-13 (1993); Application of Grand Jury of the State of N. Y., 8 Mass. App. Ct. 760, 767-68 (1979).

10. Connecticut, the jurisdiction in which the nonresident third parties who are the subject of this motion are located, has adopted the Uniform Act to Secure Witnesses from Without a State in Criminal Proceedings. See Connecticut General Statutes §54-82i-j.

11. Defendant further states that the nonresident third party named above has in her custody the video that is necessary to the Defendant's legal defense.

12. Under Massachusetts law, "[e]vidence tending to impeach the credibility of a key prosecution witness is clearly exculpatory." Commonwealth v. Collins, 386 Mass. 1, 8 (1982) (citing Commonwealth v. Baldwin, 385 Mass. 165, 175 (1982)). "If, on the facts, there is a possibility of bias, even a remote one, the judge has no discretion to bar *all* inquiry into the subject." Commonwealth v. Bui, 419 Mass. 392, 400 (1995).

Relief

13. For the foregoing reasons Defendant moves this court to order that the Connecticut States Attorney's Office for the Judicial District of Hartford, overseen by Attorney Gail P. Hardy, Connecticut States Attorney provide a copy of the video in its possession showing the shootings at Club Venue. A proposed Order is attached to this motion as **Exhibit B**.

Respectfully Submitted
on behalf of Aaron Hernandez,
by his attorneys,



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Dated: February 1, 2017

EXHIBIT A

DOCKET NO: HHD-CR14-0671621-T : SUPERIOR COURT

STATE OF CONNECTICUT : JUDICIAL DISTRICT
OF HARTFORD

v. : AT HARTFORD, CONNECTICUT

LESLIE RANDOLPH : SEPTEMBER 5, 2014

BEFORE THE HONORABLE JOAN K. ALEXANDER, JUDGE

A P P E A R A N C E S :

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Taken and Transcribed By:
Stephanie K. Botticello
Court Recording Monitor
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1 THE COURT: Mr. Chambers, can we conclude Mr.
2 Randolph's sentencing?

3 ATTY. CHAMBERS: Yes.

4 THE COURT: Disposition docket, Leslie Randolph,
5 line 3.

6 With respect to this, previously Mr. Randolph
7 has been before the Court. The beginning of the
8 sentencing hearing occurred on Wednesday, and the
9 state spoke through Attorney Mahoney because this is,
10 I believe, Pelosi -- was he the --

11 ATTY. MAMBRINO: Yes.

12 ATTY. CHAMBERS: Yes.

13 THE COURT: And he did not handle it. Attorney
14 Mahoney did not feel comfortable that there was
15 sufficient notice to Mr. Bradley.

16 The Court had Mr. Bradley on the docket
17 yesterday. He rejected a plea agreement, and he made
18 the following statement as it related to the Court's
19 record:

20 I don't -- honestly, I don't know the individual
21 who Mr. Randolph or Leslie Randolph. And prior to
22 the altercation, I've never seen him. I don't ever
23 recall seeing him before. It definitely wasn't self-
24 defense. It wasn't, you know, him being in self-
25 defense. I was engaging in a dispute with another
26 gentleman over a matter that I had pending in another
27 state. But as far as sentencing I trust that you

1 guys will make your best decision so I'll leave it in
2 the hands of the Court.

3 And I thank him. And he says, All right.

4 And, Mr. Randolph, you were able to see that
5 transcript?

6 THE DEFENDANT: Yes.

7 THE COURT: That will be part of the Court file
8 for purposes of sentencing. It will also include
9 obviously, the PSI and the letters that I received on
10 your behalf.

11 Is there anything further? The maximum penalty
12 was ten after five, three years. Right to argue for
13 less. Ten, five, three; maximum. Right to argue on
14 an eight, five, and a pistol without a permit.

15 Anything else?

16 ATTY. CHAMBERS: Nothing else, Your Honor.

17 THE COURT: Anything else you want to say, Mr.
18 Randolph?

19 THE DEFENDANT: No, Your Honor.

20 THE COURT: All right. I did review everything
21 very carefully, and it's really an unfortunate
22 situation because you have so many positive
23 attributes and I just wish that we stopped cycling
24 you in here. I can't ignore the weapon part of this.
25 Do I think that this was a premeditated or planned
26 incident? No. I think it's a situation that got out
27 of control, and I think everyone, yourself and Mr.

1 Bradley, should be thankful that no one was seriously
2 injured or killed because this would have made the
3 situation go much differently.

4 The thing that -- that really mitigates it go --
5 against going very low is that you have previously
6 served a twenty-seven month sentence. So I have to
7 give a little more, but I am not going to go
8 excessive because in the time that you served that
9 sentence, which was a 2007 conviction, you have made
10 very good strides and I expect that you will do the
11 same.

12 I am going to deviate from the recommended ten
13 after five. And on the charge of assault in the
14 first degree, it is the sentence of the Court that
15 you receive ten years which will be suspended after
16 three years to serve. You'll have a three year
17 period of probation. The pistol without a permit
18 will be a three year sentence concurrent.

19 You are subject to random urine and breath
20 samples, and substance evaluation and treatment. I
21 want you to obtain full-time employment and submit
22 the proof to probation. If you're not employed, get
23 an educational or training program, otherwise twenty
24 hours of community service a week.

25 You will have no contact in the community with
26 the victim, his family, residence, or employment.
27 You'll have no weapons, and random searches are

1 permitted.

2 With respect to it, court costs and fees are
3 waived. There is an open file for Mr. Bradley, which
4 is on the trial list. However, that was, again,
5 captured on video tape. So with respect to it, all
6 the other documentation will be there. And I believe
7 that you will be transitioning shortly and I hope
8 that you take up where you left off. Okay?

9 THE DEFENDANT: Yes.

10 THE COURT: Thank you.

11 ATTY. CHAMBERS: Brief housekeeping matter.
12 Just to be sure that the record would reflect that
13 all of the -- the properties that were seized at the
14 time of the search, and his wallet, and everything
15 else, should be given to --

16 THE COURT: Returned.

17 ATTY. CHAMBERS: -- his mother.

18 THE COURT: Yes. Ordered to his mother. It's a
19 return to owner designated as mother. Okay?

20 ATTY. CHAMBERS: Thank you, Your Honor.

21 THE COURT: You're all set. Thank you.

22 THE DEFENDANT: Thank you, Your Honor.

23 THE COURT: With respect to it, the firearm is
24 ordered turned over to state police.

25 **(Whereupon, the matter concluded)**

DOCKET NO: HHD-CR14-0671621-T : SUPERIOR COURT

STATE OF CONNECTICUT : JUDICIAL DISTRICT
OF HARTFORD

v. : AT HARTFORD, CONNECTICUT

LESLIE RANDOLPH : SEPTEMBER 5, 2014

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Hartford, Hartford, Connecticut, before the Honorable Joan K. Alexander, Judge, on the 5th day of September, 2014.

Dated September 9, 2014, in Hartford, Connecticut.

Stephanie K. Botticello (SRP)

Stephanie K. Botticello
Court Recording Monitor

EXHIBIT B