

# 216.

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS

SUPERIOR COURT DEPARTMENT  
DOCKET NO. 1473CR00324

\*\*\*\*\*

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS SUPERIOR COURT  
FILED

OCT - 9 2015

V.

CARLOS ORTIZ,  
DEFENDANT

MARC J. SANTOS, ESQ.  
CLERK/MAGISTRATE

\*\*\*\*\*

MOTION TO DISMISS THE MURDER INDICTMENT PURSUANT TO  
COMMONWEALTH V. MCCARTHY AND COMMONWEALTH V O'DELL

Now comes the defendant , Carlos Ortiz, who asks this honorable court to dismiss  
the indictment for murder . As reason, the defendant states the following:

1. Carlos Ortiz was arrested and extradited from Connecticut on a charge of possession  
of a firearm. He was arraigned on that charge in Attleboro District Court on June 28,  
2013 on a charge of carrying a firearm without a license.
2. Carlos Ortiz was indicted by a Grand Jury for the crime of Accessory After the Fact to  
Murder and arraigned on that charge 10/18/2013.
3. Carlos Ortiz was arraigned on the murder charge on 5/27/2014.
4. Aaron Hernandez was indicted for murder on August 22, 2013. Nothing in Hernandez  
Grand jury provides evidence of guilt by Carlos Ortiz.

5. Although Carlos Ortiz' name was mentioned in the first round of Grand jury minutes, nothing was brought out by the Commonwealth that provided any evidence that he:

a) knowingly participated in the commission of the crime

b) aided, planned participated in or stood by ready to help in the commission of the crime of murder or

c) Intended the victim's death or participated in any act which would have brought about the victim's death.

6. There was no evidence of any plan or intent to kill Odin Lloyd or knowledge that any harm at all would come to Odin Lloyd.

7. The Commonwealth's contention that the co-defendants "gathered at the home" of the murdered in no way makes them complicit in this murder. There is not even a suggestion that this is the case.

8. Any and all evidence before the grand jury may well speak to an indictment for accessory after the fact, but none of it points to active participation.

9. Knowledge that a person has a gun does not provide any evidence that the person is planning a murder or that the person with such knowledge is in any way responsible for the armed individual. It is not a crime for a person to possess a gun. It is not unusual for a celebrity to arm himself or herself. Commonwealth seeks to use this knowledge as reason to indict for participation in the murder when no such evidence of participation has been provided. Nothing was before the Grand Jury that gave any evidence of guilt of

Carlos Ortiz in this regard.

10. Nothing in the initial round of Grand Jury Minutes indicates any guilt on the part of Carlos Ortiz regarding the murder charge.

11. The Grand Jury on April 10, 2014 was asked to consider Carlos Ortiz for the crime of murder.

12. The Grand jury was provided the information the Carlos Ortiz was on probation when he went to Massachusetts to see Aaron Hernandez.

13. The Grand jury was informed that Carlos Ortiz and Ernest Wallace had smoked Angel Dust. This along with other disparaging information provided to the jury had the result of prejudicing the jury against Carlos Ortiz.

14. Another individual, Ian Wessels, was allowed on April 11, 2014 to testify that Carlos Ortiz "annoyed him" with no other explanation.

15. The only evidence presented was that the two men, Wallace and Ortiz, accompanied Aaron Hernandez. Nothing indicates a plan or intent regarding Odin Lloyd.

16. Denials of his being at the scene are not evidence of guilt for the incident itself yet the prosecution attempted to use such denials as evidence of guilt.

17. The information regarding the towel found at the scene was wrong and improper.

Trooper Benson stated a distance and location which is incorrect. Trooper Benson placed the towel much closer to the body than it was in actuality and gave the towel improper significance.

18. Trooper Benson testified about the interview in Bristol Connecticut but did not report to the jury that he had many times told Carlos Ortiz that they "knew" that he was not the shooter and that he was not being looked at as the shooter. The trooper left out the many times they advised Carlos Ortiz that he was not being looked at for the murder. (April 7, 2014 GJ Minutes)

19. The prosecution brought up in this Grand Jury, regarding Carlos Ortiz, the incident at Rumors nightclub previous to the night of Lloyd's shooting. Police knew that Carlos Ortiz was in Bristol Connecticut that night and bring this up before the Grand jury has no purpose other than to try to tie Carlos Ortiz with the previous altercation in the minds of the jurors. There was no reason to bring this up in Carlos Ortiz Grand Jury.

20. The only evidence before the Grand Jury was that Carlos Ortiz went to North Attleboro at Aaron Hernandez request, that he was going to a club, that he knew Hernandez was armed, that he may have removed a small gun (22 cal.) From the rental car at Hernandez or Wallace' direction, and that he returned to Bristol Connecticut where he was questioned days after the shooting. Nothing presented to the grand jury provided even the lower requirement of "probable cause to arrest" for the crime of murder. There

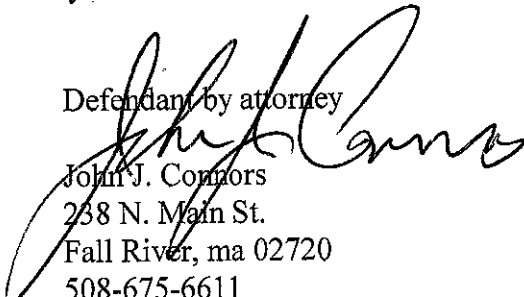
is no evidence of planning, of the proper state of mind, of intent, of being ready and able to stand by to aid in the commission of the crime or any evidence to meet even this low standard of proof.

Wherefore the indictment against Carlos Ortiz must be dismissed.

The Court is already in possession of the Grand jury Minutes and the exhibits, therefore the defense will not provide the same unless the Court requests the same.

Defendant attaches and incorporates by reference a memorandum of law in support of this motion.

Defendant by attorney

  
John J. Connors

238 N. Main St.

Fall River, ma 02720

508-675-6611

BBO# 563129

#210

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS

SUPERIOR COURT DEPARTMENT  
DOCKET NO. 1473CR00324

\*\*\*\*\*

COMMONWEALTH OF MASSACHUSETTS

V.

CARLOS ORTIZ,

DEFENDANT

\*\*\*\*\*

MEMORANDUM TO ACCOMPANY  
MOTION TO DISMISS THE MURDER INDICTMENT PURSUANT TO  
COMMONWEALTH V. MCCARTHY AND COMMONWEALTH V O'DELL

FACTUAL BACKGROUND

The facts in this case are well known to the Court and all the parties. The Hernandez case has been fully litigated as have motions to suppress and other matters. Therefore I will not delve into the factual background.

**Re: Commonwealth v.. McCarthy, 385 Mass. 160 (1982)**

The standard to support a Grand jury indictment is "probable cause to arrest." The Commonwealth must provide the jury with sufficient evidence that Carlos Ortiz knowingly participated in the murder for which he is charged. The prosecution must also present evidence regarding the murder, that Carlos Ortiz had the requisite mental state at the time. See Commonwealth v. Zanetti, 454 Mass. 449, 468 (2009).

The Commonwealth has shown proof that Carlos Ortiz was present at the time of the murder. In fact, Carlos Ortiz admits that he was present. Mere presence is not enough,

however, and mere presence is not a crime and does not equate to the crime of murder.

The fact that he did not report the crime is also not a crime and does not equate with the crime of murder. Commonwealth v. Deane, 458 Mass. 43, 50 (2010); Commonwealth v. McCarthy, 385 Mass. at 163-164.

As to Carlos Ortiz, the Commonwealth has provided no evidence that Mr. Ortiz participated in any meaningful way or had any intent to commit or participate in the murder of Odin Lloyd. There is no evidence that Carlos Ortiz shot Odin Lloyd. There is no evidence that he encouraged anyone to shoot Odin Lloyd. There is no evidence that Carlos Ortiz either helped to plan the crime or agreed to stand by to aid the shooter or provide assistance in any way to the shooter. Commonwealth v. Zanetti, 454 Mass. at 470. See also Commonwealth v. Hanright, 466 Mass. at 314; Commonwealth v. Deane, 458 Mass. at 51. While the Commonwealth need not prove who the actual shooter is in a joint venture theory, the Commonwealth must provide some evidence to back up its case.

There is no reasonably trustworthy information to support the Commonwealth's contention and not enough to provide a juror with reason to indict.. Commonwealth v. Hanright, 466 Mass. at 312; Commonwealth v. McCarthy, 385 Mass. at 163. Fundamental fairness requires that a court dismiss an indictment where the Grand Jury receives no evidence of criminality on the part of the accused. Commonwealth v. Moran, 453 Mass. at 884. There must be at least enough evidence to rise to the level of "probable cause to arrest" and that evidence is not present in the Grand jury Minutes.

**Re; Commonwealth v O'Dell, 392 Mass. 445 (1984)**

As stated in O'Dell @ 447,

Our affirmance of the dismissal of the indictment results from our conclusion that the integrity of the grand jury proceeding 447\*447 was impaired by an unfair and misleading presentation to the grand jury of a portion of a statement attributed to the defendant without revealing that an exculpatory portion of the purported statement had been excised.

The Grand jury was provided the information the Carlos Ortiz was on probation when he went to Massachusetts to see Aaron Hernandez. There is no ascertainable reason for such a disclosure other than to discredit the defendant in the eyes of the jury.

The Grand jury was informed that Carlos Ortiz and Ernest Wallace had smoked Angel Dust. This along with other disparaging information provided to the jury had the result of prejudicing the jury against Carlos Ortiz. There is no ascertainable reason for such disclosure except to prejudice the minds of the jurors against Mr. Ortiz.

Another individual, Ian Wessels, was allowed n April 11, 2014 to testify that Carlos Ortiz "annoyed him" with no other explanation. Attributing the character of being annoying to the defendant has no evidentiary purpose and again is prejudicial.

Trooper Benson testified about the interview in Bristol Connecticut and reported the defendant changing his story, but did not report to the jury that he had many times told Carlos Ortiz that they "knew" that he was not the shooter and that he was not being looked at as the shooter. The trooper left out the many times they advised Carlos Ortiz that he was not being looked at for the murder. (April 7, 2014 GJ Minutes) and the trooper left out the exculpatory portion of the interview when Trooper Benson testified before the Grand



Jury.

### **SUFFICIENCY OF THE EVIDENCE**

The grand jury's failure to hear any evidence of criminal activity by the defendant justifies dismissal of the indictment. The evidence before this grand jury is insufficient and does not even meet the less strict probable cause to arrest standard.

The prosecution sought to indict through purported bad acts. This is not a substitute for evidence. The prosecution left out the exculpatory portions of the interview of Carlos Ortiz where the police repeatedly stated that they knew he was not a 'Gun guy' knew he was not the shooter, and that he was a "patsy." The result was fundamental unfairness in the process before the Grand Jury.

Defendant by attorney

  
John J. Connors

238 N. Main St.

Fall River, ma 02720

508-675-6611

BBO# 563129

#27.

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS

SUPERIOR COURT DEPARTMENT  
DOCKET NO. 1473CR00324

\*\*\*\*\*

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS SUPERIOR COURT  
FILED

V.

OCT 13 2015

CARLOS ORTIZ,  
DEFENDANT

MARC J. SANTOS, ESQ.  
CLERK/MAGISTRATE

\*\*\*\*\*

MOTION TO CONTINUE HEARING ON MOTION TO DISMISS

NOW COMES THE DEFENDANT WHO ASKS THAT THE HEARING ON THE  
MOTION TO DISMISS BE CONTINUED FROM ITS SCHEDULED DATE OF  
11/5/2015 TO A DATE AGREEABLE WITH THE COURT AND THE  
COMMONWEALTH

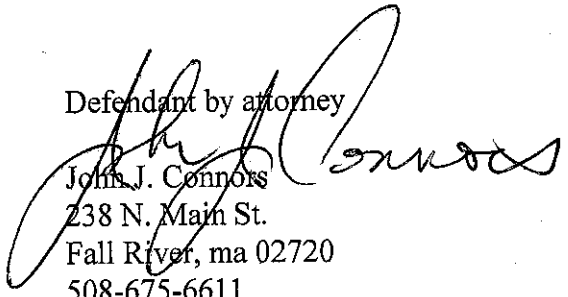
Now comes the defendant who asks that the hearing date of the motion to dismiss  
be continued to a date agreeable with the Court and the Commonwealth. As reason, the  
defendant's attorney states the following:

1. The date of 11/5/2015 was agreed to in court on 10/2/2015.
2. The motion to dismiss in the Carlos Ortiz case was filed this date, 10/9/2015.
3. The case of John Doe #379134 came before Judge Moses on 9/17/2015.
4. At that time Judge Moses stated that the case would have to go to Judge Krupp for  
determination or for clarification of his previous ruling.
5. Judge Krupp on November 6, 2013 issued a ruling vacating the SORB decision that  
John Doe # 379134 must register as a level 3 offender.
6. A subsequent hearing was held January 28, 2014 with SORB and the result was  
challenged.

7. The case came before Judge Moses in New Bedford court on September 17, 2015.
8. Judge Moses sent the case back to Judge Krupp for either determination or clarification of his 11/6/13 ruling.
9. I understand that Judge Krupp is not sitting in Bristol County in the near future.
10. The Court issued an order scheduling this case before Judge Krupp in Suffolk County on 11/05/2015.
11. As I am scheduled to argue the motion to dismiss in the morning of 11/5/2015 and the matter before Judge Krupp in the afternoon in Boston, I believe it would be difficult or impossible to cover both courts in the same day.

Wherefore I ask this court to reschedule the motion to dismiss to a date agreeable with the court and all parties.

Defendant by attorney



John J. Connors  
238 N. Main St.  
Fall River, ma 02720  
508-675-6611  
BBO# 563129

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS

SUPERIOR COURT DEPARTMENT  
DOCKET NO. 1473CR00324

\*\*\*\*\*

COMMONWEALTH OF MASSACHUSETTS

V.

CARLOS ORTIZ,

DEFENDANT

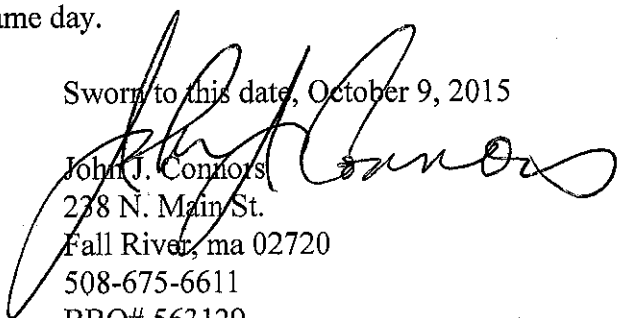
\*\*\*\*\*

AFFIDAVIT IN SUPPORT OF MOTION TO CONTINUE HEARING  
ON MOTION TO DISMISS

I swear to the following on pains and penalties of perjury:

1. The date of 11/5/2015 was agreed to in court on 10/2/2015.
2. The motion to dismiss in the Carlos Ortiz case was filed this date, 10/9/2015.
3. The case of John Doe #379134 came before Judge Moses on 9/17/2015.
4. At that time Judge Moses stated that the case would have to go to Judge Krupp for determination or for clarification of his previous ruling.
5. Judge Krupp on November 6, 2013 issued a ruling vacating the SORB decision that John Doe # 379134 must register as a level 3 offender.
6. A subsequent hearing was held January 28, 2014 with SORB and the result was challenged.
7. The case came before Judge Moses in New Bedford court on September 17, 2015.
8. Judge Moses sent the case back to Judge Krupp for either determination or clarification of his 11/6/13 ruling.
9. I understand that Judge Krupp is not sitting in Bristol County in the near future.
10. The Court issued an order scheduling this case before Judge Krupp in Suffolk County on 11/05/2015.
11. As I am scheduled to argue the motion to dismiss in the morning of 11/5/2015 and the matter before Judge Krupp in the afternoon in Boston, I believe it would be difficult or impossible to cover both courts in the same day.

Sworn to this date, October 9, 2015

  
John J. Connors  
238 N. Main St.  
Fall River, ma 02720  
508-675-6611  
BBO# 563129

**John J. Connors, Esq.** \_\_\_\_\_

**238 N. Main St.**

**Fall River, Ma 02720**

**(508) 675-6611**

**Fax: 815-572-0030**

---

*Offering Legal Services for District and Superior Court Criminal Cases, SDP and SORB*

---

October 9, 2015

Bristol County Superior Court

186 South Main Street

Fall River, Ma 02721

Re: Com. V. Carlos Ortiz 1473cr00324

Motion to Continue Hearing

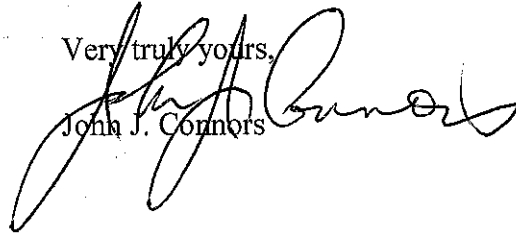
Dear Clerk Magistrate:

Please file the enclosed motion to continue the hearing. I have included the order of the court regarding the 11/5/2015 hearing in Boston in support of the same.

Thank you.

Very truly yours,

John J. Connors



#88

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS

SUPERIOR COURT DEPARTMENT  
DOCKET NO. 1473CR00324

\*\*\*\*\*

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS SUPERIOR COURT  
FILED

V.

OCT 13 2015

CARLOS ORTIZ,  
DEFENDANT

MARC J. SANTOS, ESQ.  
CLERK/MAGISTRATE

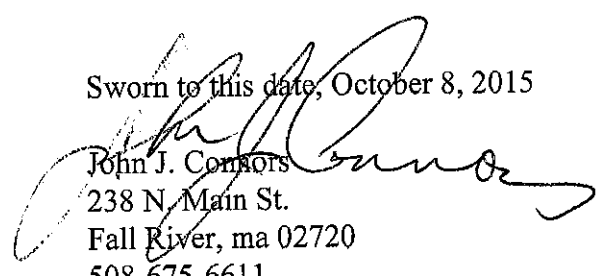
\*\*\*\*\*

AFFIDAVIT IN SUPPORT OF  
MOTION TO DISMISS THE MURDER INDICTMENT PURSUANT TO  
COMMONWEALTH V. MCCARTHY AND COMMONWEALTH V O'DELL

I, John J. Connors, do swear on pains and penalties of perjury to the following:

1. I am an attorney authorized to practice law in the Commonwealth of Massachusetts.
2. I was appointed through CPCS to represent Carlos Ortiz in this action.
3. I have read the Grand jury minutes in this case.
4. I have found, in my opinion, that there is insufficient evidence to allow the jurors to come to the conclusion that even under the standard of probable cause to arrest there is enough evidence to indict Carlos Ortiz for the crime of murder.

Sworn to this date, October 8, 2015

  
John J. Connors  
238 N. Main St.  
Fall River, ma 02720  
508-675-6611  
BBO# 563129

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS

SUPERIOR COURT DEPARTMENT  
DOCKET NO. 1473CR00324

\*\*\*\*\*

COMMONWEALTH OF MASSACHUSETTS

V.

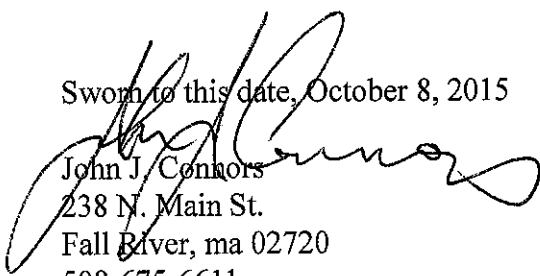
CARLOS ORTIZ,  
DEFENDANT

\*\*\*\*\*

Certificate of Service

I certify that on this date I served a copy of the motion to dismiss and supporting memorandum upon the Commonwealth electronically.

Sworn to this date, October 8, 2015



John J. Connors  
238 N. Main St.  
Fall River, ma 02720  
508-675-6611  
BBO# 563129

**John J. Connors, Esq.** \_\_\_\_\_

238 N. Main St.

Fall River, Ma 02720

(508) 675-6611

Fax 815-572-0030

---

*Offering Legal Services for District and Superior Court Criminal Cases, SDP and SORB*

---

October 8, 2015

Clerk Magistrate  
Bristol County Superior Court  
186 South main Street  
Fall River, Ma 02721

Re: Com. V. Ortiz  
14573cr00324

Dear Clerk Magistrate:

Please file the enclosed affidavit and certificate of service to accompany  
defendant's motion to dismiss.

Thank you.

Very truly yours,

John J. Connors

