

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

**SUPERIOR COURT
NO. 2014SUCR10417
NO. 2015SUCR10384**

COMMONWEALTH

v.

AARON HERNANDEZ

**COMMONWEALTH'S OPPOSITION TO THE DEFENDANT'S
MOTION *IN LIMINE* FOR RELIEF BASED ON THE ALLEGED
DESTRUCTION OF TANGIBLE EVIDENCE (VICTIMS' CAR)**

Now comes the Commonwealth in the above-captioned matter and respectfully requests that this Court deny the defendant's motion for relief based on the alleged "destruction" of tangible evidence, namely the BMW in which the victims' were shot on July 16, 2012. The defense claim is based upon the Boston Police Department's post-processing release of the vehicle to its owner.

Contrary to the defendant's claim, pursuant to a search warrant, evidence -- namely, photographs, ballistic and other evidence, trajectory probes, and gunshot residue collection stubs -- was collected from the BMW and retained. Thereafter, the vehicle was released to its owner, presumably cleaned and repaired, and is now outside of the country. Thus, the defendant has not met his burden to establish that the vehicle itself is or otherwise contains exculpatory evidence. Likewise, the defendant has not met his burden to show that the Commonwealth was either negligent or culpable where it lawfully returned the property. *See Commonwealth v. Williams*, 455 Mass. 706, 718-19 (2010); *accord Commonwealth v. Charles*, 397 Mass. 1, 14 (1986) (remedial action not necessary when there was no suggestion of bad faith or intent to destroy the tape).

Accordingly, even if the defendant could meet these burdens to establish that evidence was both exculpatory and “lost,” there is no indication that fault lies with the Commonwealth or its agents that would justify any remedial action or relief. Any claim that the police investigation was negligent is a matter for cross-examination. *See e.g., Commonwealth v. Ridge*, 455 Mass. 307, 316 (2009); *Commonwealth v. Silva-Santiago*, 453 Mass. 782, 802-03 (2009); *Commonwealth v. Bowden*, 379 Mass. 472, 485-86 (1980).

Respectfully Submitted
For the Commonwealth,

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