

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
NO. 2013-CR-00983

COMMONWEALTH OF MASSACHUSETTS

v.

AARON HERNANDEZ

DEFENDANT'S MOTION TO DISMISS INDICTMENTS 983-01 AND 983-02

Aaron Hernandez ["Hernandez"], defendant in the above-captioned criminal case, hereby moves this Court, pursuant to the Fifth and Fourteenth Amendments to the United States Constitution, Article XII of the Massachusetts Declaration of Rights, and Mass. R. Crim. P. 13(c), to dismiss the indictments charging him with first degree murder (983-01) and unlawful possession of firearm (983-02). As grounds therefore, defendant avers as follows:

1. Hernandez was indicted for six offenses on August 22, 2013, including the first degree murder of Odin Lloyd on or about June 17, 2013 and unlawful possession of the .45 caliber handgun allegedly used to kill Lloyd.

2. The Commonwealth called more than eighty witnesses to testify before the grand jury and introduced a mountain of documentary and video evidence.
3. Despite the enormous quantity of evidence presented, the Commonwealth utterly failed to establish probable cause that Hernandez either murdered Lloyd himself or participated in a joint venture with others to do so. Specifically, there was no forensic evidence presented linking Hernandez to the shooting, no eyewitness testimony, no inculpatory statements by Hernandez, and no evidence that Hernandez had any motive to kill Lloyd. Basically, all that the Commonwealth showed the grand jury is that Hernandez was in a car with Lloyd and several other individuals shortly before Lloyd was shot to death.
4. As a matter of law, the Commonwealth's presentation to the grand jury was utterly insufficient to support indictments against Hernandez for first degree murder and unlawful possession of the .45 caliber handgun used to kill Lloyd. Accordingly, those two indictments must be dismissed. *See, e.g., Commonwealth v. Moran*, 453 Mass. 880 (2009).
5. Faced with a paucity of inculpatory evidence, the Commonwealth inundated the grand jury with a torrent of irrelevant, unfairly prejudicial, and improper evidence designed to inflame the grand jury against Hernandez and procure a murder indictment. To compensate for the gaping holes in its proof, the Commonwealth sought to portray Hernandez, a well-known, popular professional athlete, as an immoral drug-user with violent, criminal propensities. This deliberate strategy worked. By impairing the integrity of the grand jury in this manner, the

Commonwealth did obtain a first degree murder indictment against Hernandez. Yet, an indictment obtained through such deliberate abuse of the grand jury process cannot stand. *See, e.g., Commonwealth v. Mayfield*, 398 Mass. 615 (1986) and its progeny.

6. The grounds for this motion are set forth more fully in the accompanying memorandum of law and affidavit of counsel. Since the memorandum of law contains specific references to the grand jury proceedings, it is being filed under seal, as required by M.G.L.c. 268, §13D(e).
7. The defendant is submitting herewith in support of his motion to dismiss a computer hard drive containing all of the testimony and exhibits presented to the grand jury prior to the date Hernandez was indicted. This hard drive is being filed with the Court in lieu of paper copies of tens of thousands of pages of grand jury transcript and documentary evidence.¹ Since the hard drive memorializes grand jury proceedings, it is also being filed under seal. A separate CD, containing an excerpt of video footage submitted to the grand jury showing Hernandez and police officers interacting on the evening of June 17, 2013 also is being submitted under seal.

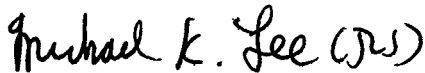
¹ Paper copies of any or all of the grand jury evidence will be provided to the Court upon request.

WHEREFORE, the defendant moves that the Court dismiss indictments 983-01 and 983-02.

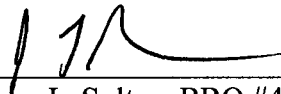
Respectfully submitted,

AARON HERNANDEZ

By his attorneys,



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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing document upon the Commonwealth by e-mailing and mailing a copy thereof, US mail, postage prepaid, to: Roger Michel, Assistant District Attorney, Bristol County, 888 Purchase Street, New Bedford, MA 02740 on May 14, 2014.



James L. Sultan