

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 LOSS OF
TANGIBLE EVIDENCE (VIDEO SURVEILLANCE)**

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 loss of video surveillance from the Cure Nightclub.

Contrary to the defendant's claim, there is simply no evidence that the Commonwealth (or its agents) lost or destroyed any video footage from Cure. *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).

First, there is no evidence that certain video footage from within Cure (specifically, nine cameras in the downstairs bar area) was lost or destroyed where there is conflicting information from Cure as to whether the downstairs cameras were operable and recording on July 15-16, 2012. Second, there is insufficient evidence to support a finding that the alleged lost evidence -- if it ever existed -- was material or exculpatory. Even if such video did exist, there is no evidence that it would have captured viewable or relevant evidence related to the spilled drink incident. Cure employees are unable to

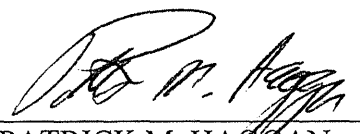
determine where cameras were placed and what areas were captured in 2012. Third, there was no such video ever in the Commonwealth's (or its agent's) care, custody or control.

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 insufficient or even 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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