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COMMONWEALTH OF MASSACHUSETTS

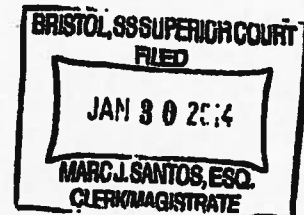
BRISTOL, ss.

SUPERIOR COURT DEPT.  
NO. BR CR2013-00983

COMMONWEALTH

vs.

AARON HERNANDEZ



**COMMONWEALTH'S MOTION FOR PRODUCTION OF BRISTOL COUNTY  
SHERIFF'S DEPARTMENT RECORDS PURSUANT TO MASS. R. CRIM. P. 17  
(a)(2) AND M.G.L. C. 233, SECTION 79J**

Now comes the Commonwealth and respectfully requests the Court to order the production of the records listed below from the following person and entity:

Keeper of Records  
Bristol County Sheriff's Office  
400 Faunce Corner Road  
North Dartmouth, MA 02747.

The Commonwealth requests that the order be made applicable to the following records created from June 26, 2013 to the present, and thereafter until the conclusion of trial:

- a). The visitor records of the defendant;
- b). The contact list of the defendant; and
- c). The outgoing and incoming telephone records of the defendant, including sound recordings and written materials.

Pursuant to Mass. R. Crim. P. 17(a)(2), a pre-trial subpoena for records in the custody of third-parties must issue where: (1) the sought-after materials are relevant; (2) they are not otherwise procurable in advance of trial by exercise of due diligence; (3) the moving party cannot properly prepare for trial without such production and inspection in advance of trial; and (4) the application is made in good faith. All of these foregoing criteria are met in the present case as set out more fully in the attached affidavit of counsel.

WHEREFORE, the Commonwealth respectfully requests the Court to order the above third-party record holders to produce the above-records pursuant to Mass. R. Crim. P. 17 (a)(2) and M.G.L. c.233, Section 79J and permit the Commonwealth to make copies of these items to provide to all of the attorneys involved in this case. The

Commonwealth further requests that the Court conduct a hearing on this matter at the next scheduled hearing date of February 5, 2014 for the purpose of determining whether any privilege is applicable to the materials sought and that the defendant be ordered to present any such claims at that time.

Respectfully submitted,  
FOR THE COMMONWEALTH



Roger L. Michel, Jr.  
Assistant District Attorney  
Bristol District  
BBO # 555160  
888 Purchase Street  
New Bedford, MA 02740  
(508) 961-1867

Dated: January 30, 2014

**COMMONWEALTH OF MASSACHUSETTS**

**BRISTOL, ss.**

**SUPERIOR COURT DEPT.  
NO. BRCR2013-00983**

**COMMONWEALTH**

**vs.**

**AARON HERNANDEZ**

**AFFIDAVIT IN SUPPORT OF COMMONWEALTH'S MOTION FOR  
PRODUCTION OF BRISTOL COUNTY SHERIFF'S DEPARTMENT RECORDS  
PURSUANT TO MASS.R.CRIM.P.17 (a)(2) AND M.G.L. C. 233, SECTION 79J**

Based on personal knowledge and/or reports prepared by other members of the prosecution team of which I am aware<sup>1</sup>, I, Roger L. Michel, Jr., state under oath as follows:

1. I am an assistant district attorney in the Bristol District.
2. I have been assigned to work on the prosecution of the above-matter.
3. Among other charges, the Defendant has been charged with the murder of Odin Lloyd.
4. Lloyd was shot multiple times in a vacant field located in the North Attleboro Industrial Park in the early morning hours of June 17, 2013.
5. Approximately one hour before he was murdered, the defendant and two other men met with Lloyd outside of his home in Boston.
6. The defendant then drove Lloyd to the location where his body was discovered later that day.
7. The defendant was charged with the victim's murder on June 26, 2013.

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<sup>1</sup> Affidavits submitted in support of motions under Mass. R. Crim. P. 17 need not be based exclusively upon the personal knowledge of the affiant, but may properly contain hearsay, as well.


8. The defendant has been held without bail at the Dartmouth House of Correction since that time.
9. During his incarceration, the defendant has had visitors come to the jail to meet with him. This has included among others, two of the codefendants in this case, Shayanna Jenkins and Tanya Cummings.
10. Both of these codefendants have been charged as accessories in the underlying offense of murder on the theory that they provided assistance to the defendant after the commission of that offense.
11. Records exist of his meetings with both codefendants.
12. The defendant has also made numerous phone calls during his incarceration at the Dartmouth House of Correction, both to his codefendants and to others.
13. Records exist of these calls.
14. The Bristol County Sheriff's Department provides unambiguous written and oral notice that all inmate telephone calls, except those between an inmate and his lawyer, are recorded and the contents of those recordings provided, upon request, to law enforcement agencies.<sup>2</sup>
15. The Bristol County Sheriff's Department has voluntarily provided the Commonwealth with information regarding the time and place of the aforementioned visits and the contents of some of the defendant's telephone conversations.
16. During those conversations, the defendant has discussed the following matters directly relevant to the circumstances surrounding the murder of Odin Lloyd; viz: the defendant's subjective belief about his criminal liability; his use of coded messages to communicate with persons outside of jail; related prior offenses; inculpatory denials of ownership of a vehicle connected with the investigation; the extent of his control over persons charged as accessories; other matters relating to his codefendants, including their whereabouts and likely criminal liability.

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<sup>2</sup> Hello, this is a prepaid collect call from \_\_\_\_\_ an inmate at the Bristol County Jail. This call is subject to monitoring and recording. You have the right to remain silent and if you choose to speak beyond this point, anything you say may be furnished to state and or federal prosecutors, and may be used against you in a court of law. If this is an attorney client conversation please hang up and dial 774-328-3290 ext 2650. Once again the phone call is being recorded. To accept charges press 1, to refuse charges press 2. Thank you for using Securus. You may start the conversation now

17. The defendant through counsel has requested all jail correspondence, including recorded jail calls of the defendant while at the Bristol House of Correction. As the Commonwealth intends to use these records in the prosecution of this case, the Bristol County Sheriff's Department requires a subpoena to produce a complete and certified copy of these records. Therefore, the Commonwealth in order to obtain a complete and certified copy of any/all related correspondence including the defendant's jail calls requests this order. These materials are unique and not procurable in this form prior to trial by any other means.
18. In the event that these materials are not produced until during the defendant's trial, the Commonwealth will be unable properly to prepare its case and, moreover, intra-trial disclosure is likely to necessitate a delay of those proceedings.
19. In light of the foregoing, the Commonwealth's request is palpably made in a good faith expectation that the materials sought will themselves provide or will lead to the discovery of evidence that is material to the question of the defendant's guilt.

Respectfully submitted,  
FOR THE COMMONWEALTH



Roger L. Michel, Jr.  
Assistant District Attorney  
Bristol District  
BBO #555160  
888 Purchase Street  
New Bedford, MA 02740  
(508) 961-1867

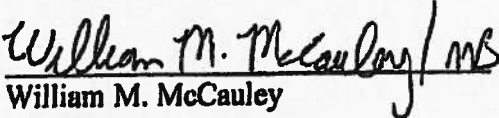
Dated: January 30, 2014

**CERTIFICATE OF SERVICE**

I, William M. McCauley, certify that I have served a copy of Commonwealth's Motion for Production of Bristol County Sheriff's Department Records Pursuant to Mass. R. Crim. P.17 (a)(2) and M.G.L. C. 233, Section 79J by fax and first class postage prepaid mail to Co-Counsel for the Defendant, Aaron Hernandez as follows: Charles W. Rankin, Rankin & Sultan, 151 Merrimac Street, 2<sup>nd</sup> Floor, Boston, MA 02114; James L. Sultan, Rankin & Sultan, 151 Merrimac Street, 2<sup>nd</sup> Floor, Boston, MA 02114; and Michael K. Fee, Ropes & Gray, LLP, 800 Boylston Street, Boston, MA 02199.

Signed under the pains and penalties of perjury this 30th day of January 2014.

COMMONWEALTH OF MASSACHUSETTS

Handwritten signature of William M. McCauley in black ink, followed by a vertical line and the initials 'MS'.

William M. McCauley  
Assistant District Attorney  
For the Bristol District  
888 Purchase Street  
New Bedford, MA 02741-0973



*The Commonwealth of Massachusetts*

OFFICE OF THE  
DISTRICT ATTORNEY  
BRIARCLIFF DISTRICT

C. SAMUEL SUTTER  
DISTRICT ATTORNEY

Fall River Justice Center  
186 S. Main St.  
Fall River, MA 02721  
(774) 627-1600

January 23, 2014

James L. Sultan, Esq.  
151 Merrimack Street  
Second Floor  
Boston, MA 02114

Re: Discovery (Commonwealth v. Aaron Hernandez)

Dear Mr. Sultan:

Please find the following responses to your letter of December 16, 2014:

- 1). Any written or recorded statements, and substance of any oral statements, made by the defendant or a co-defendant – Agreed; See discovery provided.
- 2). Grand jury minutes – Agreed. See discovery provided.
- 3). Any facts of an exculpatory nature – Agreed.
- 4). Names and addresses of potential witnesses – Agreed. See discovery provided.
- 5). Names and business addresses of law enforcement witnesses – Agreed. See discovery provided.
- 6). Intended expert opinion evidence (Identity, CV, publications, reports) – Agreed. See discovery provided. Additional materials will be provided when received.
- 7). Material and relevant police reports, photographs, exhibits, etc. – Agreed. See discovery provided. Additional materials will be provided when received.
- 8). Summary of identification procedures/statements – Agreed. See discovery materials.
- 9). Promises, Rewards, Inducements – Agreed. See discovery provided.
- 10). Access by defense counsel and defense experts to all physical evidence – Agreed. All evidence is available for inspection and photographing by defense by appointment.
- 11). Opportunity for defense to inspect Video system controller – Agreed. Video system controller is available for inspection and photographing by appointment.
- 12). All Forensic testing performed to date – Agreed. See discovery provided; Additional items will be provided when received.
- 13). All Grand Jury Exhibits – Agreed. See discovery provided.
- 14). A copy of Ernest Wallace's letter (14 pages) to Tanya Singleton (via search warrant) – Agreed. See discovery provided.
- 15). All jail recordings for defendant or any co-defendant (Wallace, Ortiz, Cummings) – Agreed.
- 16). All jail correspondence to or from the defendant or any co-defendant – Agreed; Any documents related to jail calls/visitor lists/mail will be provided.
- 17). Any written communications between Commonwealth and BCSO – Agreed.

- 18). Any evidence implicating defendant in Boston Homicide – Agreed to any documents in the possession of police/prosecutors investigating homicide of Odin Lloyd.
- 19). Any evidence that Odin Lloyd was involved in Boston double homicide – none. Any evidence that Odin Lloyd possessed information in Boston homicide – see discovery provided.
- 20). Any promise, reward or inducement made to any co-defendant – see discovery provided.
- 21). All public 'posts' made about the case on the Internet by the Commonwealth or any prospective Commonwealth witness – Not agreed.
- 22). A copy of autopsy report and all underlying documentation from Medical Examiner – Agreed; see discovery provided.
- 23). Copies of all notes made by law enforcement involved in homicide investigation of Odin Lloyd, whether in Massachusetts or elsewhere – Agreed. See discovery provided; not agreed as to notes from "elsewhere."
- 24). Copies of all proffer letters, statements and notes made during proffer – Agreed; See enclosed statements made by Ortiz during an interview that have been reduced to writing.
- 25). Cellphone records and text messages from Victim's phone records from June 2013 – Agreed. See discovery provided.
- 26). Copies of Enterprise Car Rental records – Agreed only as to records already provided.
- 27). Any videos from defendant's home, Rumor, or any other location – Agreed. See discovery provided.
- 28). Results of any forensic searches of electronic devices seized by warrant – Agreed. See discovery provided. Any additional materials will be provided.
- 29). Any relevant statement made by defendant or co-defendant – Agreed. See discovery provided. Any additional statements will be provided.
- 30). Copy of the defendant's voluntary, consent form to search the rented Suburban – Agreed. See discovery provided.
- 31). Documentation of all relevant searches pursuant to search warrants and searches conducted of locations without warrant – see discovery provided. Any additional reports, etc. to be provided.
- 32). A copy of any photograph shown to Carlos Ortiz during interview in June 2013 – Agreed. Photos to be provided.
- 33). A transcript of any witness interviews which have been transcribed by Commonwealth – Agreed. See discovery provided. Any additional transcripts generated will be provided when received.
- 34). Disclosure of the existence/location/person possessing any relevant item known to Commonwealth (including persons under its direction and control, or participating or regularly reporting to prosecutor's office) and not in custody or control of Commonwealth – Agreed.
- 35). Any inconsistent statement of witness with grand jury or anticipated trial testimony – This is covered by Commonwealth's obligation to provide potentially exculpatory evidence (Response #3) and is therefore - Agreed.
- 36). Any witness harboring bias against the defendant or co-defendant – same as Response #35.
- 37). Any evidence known to Commonwealth that witness has an interest in currying favor with Commonwealth – same as Response #35.
- 38). Any evidence that any witness suffers from cognitive or memory impairment/drugs, at the time of the relative events or at present – same as Response #35.
- 39). An accounting of any money the Commonwealth has paid to any witness or their family – Agreed.
- 40). Any evidence casting doubt on any Commonwealth prospective trial witness – See responses #3, 9, 20, 35, 36, 37, 38, and 39.
- 41). Any evidence known to Commonwealth that someone else had motive to kill victim – same as Response #35.



- 42). Identify every item of physical evidence and all biological samples collected in case of investigation and related relevant records– Agreed. See discovery provided. Any additional items will be provided.
- 43). Items subject to testing –date/location/testing/Person with CV/results – Agreed. See Discovery provided. Any additional items will be provided.
- 44). Any laboratory doing testing – Commonwealth agrees to provide accreditation/certification only.
- 45). Correspondence between Commonwealth and any lab official(s) doing testing – Agreed.
- 46). Criminal records of all potential, civilian, Commonwealth witnesses – records are available after endorsement by court through the Probation Department.
- 47). All persons at scene – up until recovery of footprints – Agreed. See discovery provided.
- 48). Towel – who found/collection/testing and results – Agreed. See discovery provided.
- 49). Factual basis for statement to Ortiz that hair and DNA found on towel – Agreed. See discovery provided.
- 50). Firearms seized by Commonwealth – all documentation re: purchase/transfer and ownership – Agreed; to be provided.
- 51). Any criminal conduct Commonwealth has knowledge of and jurisdiction over and is within the statute of limitations – Agreed.
- 52). All information that Ortiz was associated with criminal organization “Doowop” – Agreed. See discovery provided.
- 53). Each occasion known to Commonwealth when witness lied to police, prosecutor, grand jury or court – See discovery provided.
- 54). Any witness on probation/parole and if any promises or threats have been made. Agreed to promises /threats; See Board of Probation records and discovery provided regarding probation and parole.
- 55). Any subsequent bad acts of defendant or co-defendant that the Commonwealth intends to introduce at trial – Agreed. See discovery provided. Notice of any subsequent bad acts not previously provided shall be disclosed and provided sixty (60) days prior to trial.

The Commonwealth reserves the right to further amend and/or supplement its response(s) with reasonable notice to the defendant.

Sincerely,

William McCauley

Enclosure