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SEP 15 2014

FILED
BRISTOL, SS SUPERIOR COURT

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 SUPPRESS FRUITS OF
UNLAWFUL POLICE INTERROGATION OF DEFENDANT
DURING JUNE 18, 2013 SEARCH OF HIS HOME AT
22 RONALD C. MEYER DRIVE, NORTH ATTLEBORO,
INCLUDING HIS CELL PHONE NUMBER 203-606-8969**

Pursuant to Mass. R. Crim. Proc. 13, the Fourth, Fifth, Sixth, and Fourteenth Amendments to the U.S. Constitution, and articles XII and XIV of the Massachusetts Declaration of Rights, defendant Aaron Hernandez ["Hernandez"] moves that the Court suppress all fruits of an unlawful police interrogation of him during the course of a June 18, 2013 execution of a search warrant at his home. In support of this motion, defendant states:

1. On June 17, 2013, police visited the Hernandez home and questioned him. After a short conversation, Hernandez told the police they would have to speak with his attorney. Hernandez later voluntarily went to the police station. After his attorney arrived, his attorney

told police that Hernandez would not answer any questions, and that they should direct any questions to his attorney.

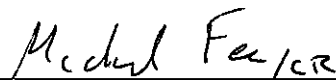
2. On June 18, 2013, police sought and obtained a warrant to search Hernandez's home at 22 Ronald C. Meyer Drive and seize a home video surveillance system and a cellular phone, said to have been used by Hernandez, identified by the phone number 203-606-8969.
3. Approximately a dozen officers descended on Hernandez's home to execute the warrant. He was not free to leave, and was effectively in custody during execution of the warrant. At all times, Hernandez was in the presence of an officer, usually more than one. Hernandez was questioned in the absence of counsel about the location of his cell phone and the password for his phone. No *Miranda* warnings were given to Hernandez prior to or during this interrogation.
4. As a result of the questioning of the defendant, police learned that the identified cell phone was at the law firm of Ropes & Gray. Police thereafter seized the phone from Ropes & Gray. But for the unwarned and un-counseled statements of the defendant during execution of the search, police would not have been able to seize the phone from Ropes & Gray.

5. The grounds for this motion are set forth in the accompanying Memorandum of Law, the Second Affidavit of Charles W. Rankin, the Affidavit of Hillary Knight, and the Affidavit of Aaron Hernandez.

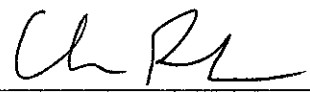
Respectfully submitted,

AARON HERNANDEZ

By his attorneys,




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CERTIFICATE OF SERVICE

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Charles W. Rankin

#120

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

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

COMMONWEALTH OF MASSACHUSETTS

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AARON HERNANDEZ

**MEMORANDUM OF LAW IN SUPPORT OF
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DURING JUNE 18, 2013 SEARCH OF HIS HOME AT
22 RONALD C. MEYER DRIVE, NORTH ATTLEBORO,
INCLUDING HIS CELL PHONE BEARING NUMBER 203-606-8969**

Defendant Aaron Hernandez ["Hernandez"] has moved to suppress all fruits of his unlawful interrogation during the course of the June 18, 2013 execution of a search warrant at his home.

I. STATEMENT OF RELEVANT FACTS.

On the evening of June 17, 2013, officers visited the Hernandez home in North Attleboro and questioned him about the death of Odin Lloyd. It was an encounter which ended with Hernandez telling the officers that they would have to deal with his lawyers. According to the officers, Hernandez slammed the door in their face. Later that night, at the North Attleboro police station, Hernandez conferred with his lawyers. The lawyers then told investigators and ADA Bomberg (who was at the station) that Hernandez was not to be questioned and that any questions should be directed to them, rather than Hernandez. Hernandez and his lawyers then left the police station.

On the evening of June 18, 2013, approximately a dozen officers entered Hernandez's home to execute a search warrant. A page of Trooper Benson's handwritten notes lists eleven officers (other than Trooper Benson) who were present. See Exhibit 1 to Second Affidavit of Charles W. Rankin. That is consistent with what is readily observable on the hour of video recording obtained from the home surveillance system, before it was disconnected at about 8:00 p.m. See Affidavit of Hillary Knight. According to Ms. Knight's Affidavit, it appears that one or more officers were in the same room as Hernandez or in the adjacent front foyer or kitchen during the entire hour of the surveillance footage while the tape is running. On two occasions, Hernandez goes to the upstairs of the house; on both occasions, he is accompanied by an officer. Knight Affidavit, describing video at 7:11 and 7:43 on the foyer camera (number 13). According to Ms. Knight, a number of the officers were armed, and their weapons are visible on the surveillance tape.

During the course of the execution of the search warrant, Hernandez was interrogated at several different points. According to the report of Trooper Giossi, previously filed with the Court:

On June 18, 2013 a search warrant was executed at the home of Aaron Hernandez, during the search Aaron Hernandez was present and was asked about his cell phone. Aaron Hernandez stated that his phone was with his attorney.

Giossi Report, ¶ 2.

The video footage shows a number of instances when officers appear to question Hernandez, and he appears to respond. At one point, after apparently questioning Hernandez, an officer takes a picture of a document, presumably a search warrant, and appears to text the photograph. See Affidavit of Hillary Knight, describing video in living room (camera 14) at 7:19 to 7:20 p.m. This is consistent with the previously-filed Affidavit of Robert G. Jones, in which he describes receiving

a text of a search warrant from ADA Bomberg.

Hernandez himself describes being questioned by officers about the location of his cell phone and the password for his cell phone. Hernandez explains that he was told by officers to stay in the living room. Officers were with him at all times during the search, either in the same room or in an adjacent room, with a clear view of him. He observed that many of the officers were armed. Mr. Hernandez did not feel free to leave at any time during the search. See Affidavit of Aaron Hernandez.

When the police entered the property to begin executing the search warrant, several went up the driveway and interrogated two uncles of Shayanna Jenkins. The officers appeared to conduct a search of their car. The two men were led away and taken to the North Attleboro police station, where they were interrogated by Trooper Cherven and another trooper.¹

II. SUMMARY OF APPLICABLE LAW.

In *Commonwealth v. Molina*, 467 Mass. 65, 73 (2014), the Court set forth the four factors which determine whether an interrogation is custodial:

(1) the place of the interrogation; (2) whether the officers have conveyed to the person being questioned any belief or opinion that that person is a suspect; (3) the nature of the interrogation, including whether the interview was aggressive or, instead, informal and influenced in its contours by the person being interviewed; and (4) whether, at the time the incriminating statement was made, the person was free to end the interview by leaving the locus of the interrogation or by asking the interrogator to leave, as evidenced by whether the interview terminated with an arrest.

(Quoting *Commonwealth v. Groome*, 435 Mass. 201, 211-12 (2001)).

¹ Defendant has previously submitted reports by Trooper Benson stating that he and Trooper Cherven took Donnie Smith and Azia Jenkins to the police station to interview them on June 18th.

While Massachusetts appellate courts do not appear to have addressed the question, federal courts have discussed whether questioning a suspect during the course of the execution of a search warrant is custodial. In *United States v. Mittel-Carey*, 493 F.3d 36 (1st Cir. 2007), the court affirmed the district court's determination that the defendant, who made statements to police during a search of his house, was in custody.

The federal standard articulated by the First Circuit differs in wording, but not in substance, from the Massachusetts standard:

The "ultimate inquiry" when determining whether a defendant was in custody during an interrogation "is simply whether there was a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest" . . . This inquiry is informed by considering the "totality of the circumstances," and asking whether in light of the circumstances of the interrogation, 'a reasonable person [would] have felt he or she was not at liberty to terminate the interrogation and leave.

493 F.3d at 39 (*citations omitted*).

The court identified four factors to consider to determine whether there had been custodial questioning: "whether the suspect was questioned in familiar or at least neutral surroundings, the number of law enforcement officers present at the scene, the degree of physical restraint placed upon the suspect, and the duration and character of the interrogation. *Id.* Consideration of those factors led the court of appeals to affirm the district court. The court cited the following facts to sustain the district court's result: (1) the early hour of the search; (2) the presence of eight officers in the home; (3) the defendant was confronted with an unholstered weapon when the search began; and (4) the physical control over the defendant maintained by the agents, (5) the length of the interrogation; and (6) the coercive statements of the agents. *Id.*

The most important factor was the physical control the agents exercised over the defendant during the search and interrogation:

Mittel-Carey was ordered to dress, go downstairs, and was told where to sit; he was physically separated from his girlfriend and not allowed to speak to her alone; and he was escorted by agents on the three occasions that he was permitted to move, including while he used the bathroom. While an interrogation in a defendant's residence, without more, certainly weighs against a finding of custody, the level of physical control the agents exercised over Mittel-Carey in this case weighs heavily in the opposite direction.

Id. at 40.

III. APPLICATION OF LAW TO FACTS.

In this case, a veritable squadron of police officers took over Hernandez's home while executing a search warrant. The officers were armed and their guns were visible. Hernandez was never left alone during the search. He was ordered about his own house and twice told to go upstairs – accompanied by officers. Hernandez did not feel free to leave; indeed, he couldn't just go home since the officers had occupied it.

Guests in his house were surrounded by officers as they prepared to leave. They were led away by officers to be interrogated at the police station.

Hernandez was asked pointed questions by the police: "Where is your phone? What is the password for your phone?" They were not chatting about the weather or his rehabilitation from surgery; they were focused on their immediate investigative objectives.

Even though the police and prosecutor had been told quite clearly the previous night, both by Hernandez and by his attorneys, to refrain from questioning him and to direct all inquiries to counsel, the police simply ignored those instructions and chose to interrogate Hernandez during the

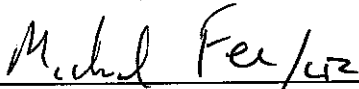
search. A reasonable person in his shoes would not have felt free to terminate the interview and leave.

Under all of the circumstances, the questioning of Hernandez during the search must be deemed custodial. That questioning occurred without appropriate *Miranda* warnings and after Hernandez had invoked his right to counsel. Accordingly all fruits of his statements must be suppressed. *See Edwards v. Arizona*, 451 U.S. 477 (1981).

Respectfully submitted,

AARON HERNANDEZ

By his attorneys,



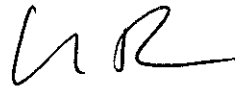
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Charles W. Rankin

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

SUPERIOR COURT DEPARTMENT
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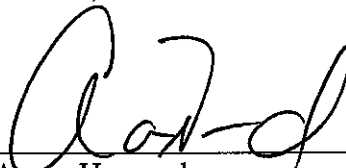
AFFIDAVIT OF AARON HERNANDEZ

Being duly sworn according to law, Aaron Hernandez states:

1. I am the defendant in this case. I make this affidavit based upon personal knowledge.
2. On June 18, 2013, about ten police officers entered my house and conducted a search for about two hours. When they arrived, officers told me and my fiancé to stay in the living room. Officers remained with us in the living room the entire time. On a couple of occasions when an officer stepped out of the living room, officers were in the front foyer and kitchen and could see me at all times. Many of the officers carried weapons which were visible to me.
3. Officers asked me a number of questions, including where my cell phone was and the password for my phone. I told them that my cell phone was with my lawyers and I told them the password. I was not given *Miranda* warnings at any point.

4. On one or two occasions, officers asked about something that was upstairs. They told me to accompany them upstairs, and I did so.
5. I had told the police the night before that they should direct their questions to my attorneys, but they questioned me anyway. I know that my attorneys told the police the night before that they should contact them, not me, with any questions, but the police ignored that, too. I felt helpless in the face of the occupation of my house by the police. I was also very concerned about what would happen to my fiancé and our baby if I refused to answer their questions. I did not feel free to leave at any time during the search.
6. The night before when the police came to my house, they had a very confrontational manner. Even when I tried to end the conversation and told them to contact my lawyers, they persisted in trying to question me. They made me feel like I was a suspect.

Signed under the penalty of perjury on September 12, 2014.



Aaron Hernandez

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Charles W. Rankin

#120

COMMONWEALTH OF MASSACHUSETTS

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AFFIDAVIT OF HILLARY KNIGHT

Being duly sworn, Hillary Knight states:

1. I am a third year law student at Northeastern University School of Law currently working as a law clerk at Rankin & Sultan. I make this affidavit based on personal knowledge.
2. On September 10, 2014, I viewed the home surveillance footage from 22 Ronald C. Meyer Drive, North Attleboro showing one hour of the execution of the search warrant on June 18, 2013 that was recovered by the police during that same search and produced in discovery. I spent approximately 3 hours reviewing the surveillance footage multiple times and taking detailed notes. I viewed video from five vantage points showing five locations both inside and outside the home; the living room; the foyer/entryway; the driveway; the front porch and Ronald C. Meyer Drive.

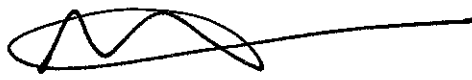
OVERVIEW

3. Taken together, the videos from the foyer and the living room show that there was never a time when Aaron Hernandez was out of sight or earshot of law enforcement officers. During periods when Mr. Hernandez or Shayanna Jenkins appears to be alone in the living room, an officer or multiple officers are standing in the foyer or by the front door. Mr. Hernandez never leaves the living room without being escorted by officers. He can be seen talking to officers and responding to questions and directions of officers. For most of the living room video, an officer is positioned at the threshold to the kitchen or the foyer or both. Most officers can be seen carrying holstered weapons.

SPECIFIC OBSERVATIONS

4. The surveillance footage shows approximately the first 1 hour and 3 minutes of the search from multiple cameras. It shows the following relevant occurrences:
 - a. The surveillance cameras monitoring the exterior and interior of the front entrance and the driveway show the arrival of approximately 10 officers.
 - b. After entering the residence, officers approach Mr. Hernandez. They appear to ask him questions, to which he responds.
 - c. At only two instances in the video of the living room does Mr. Hernandez appear to be alone; at 7:11 and from 7:24-7:29 of the living room camera. Video of the foyer reveals, however, that there was always an armed law-enforcement officer standing in the foyer, in front of the door and within sight of the living room occupants.
 - d. Between 7:08 and 7:09 of the living room video, multiple officers can be seen approaching Mr. Hernandez, questioning him and taking notes.
 - e. Between 7:11 and 7:13 of the foyer video, multiple officers summon Mr. Hernandez from the living room, speak to him and he then follows one of them halfway the stairs until the officer falls back and follows Mr. Hernandez up the rest of the stairs. The two return within two minutes.
 - f. Between 7:43 and 7:45, Mr. Hernandez enters the foyer with three officers, he leads two of them upstairs and pauses on the second or third step while one officer points up the stairs. The three then proceed upstairs.
 - g. Between 7:19 and 7:20 of the living room video, three officers enter the living room. One is carrying a device and begins moving things around the table. Mr. Hernandez and Ms. Jenkins are watching from the couch. One officer appears to be talking to them, while another uses a phone to take a photo of a paper on the table. He then begins typing on the phone.

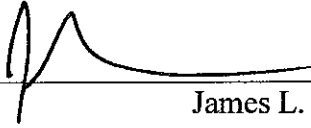
Signed under the pains and penalties of perjury on September 12, 2014.

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

Hillary Knight

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James L. Sultan

#19

SEP 15 2014

MARC J. SANTOS, ESQ.
CLERK/MAGISTRATE
BRISTOL, ss.

COMMONWEALTH OF MASSACHUSETTS

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
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COMMONWEALTH OF MASSACHUSETTS

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AARON HERNANDEZ

**DEFENDANT'S MOTION TO SUPPRESS EVIDENCE
SEIZED DURING SEARCH OF HUMMER ON JUNE 26, 2013
DUE TO LACK OF PROBABLE CAUSE**

Pursuant to Mass. R. Crim. P. 13, the Fourth and Fourteenth Amendments to the U.S. Constitution, Article XIV of the Massachusetts Declaration of Rights, and M.G.L.c. 276, § 1, defendant Aaron Hernandez moves that the Court suppress all evidence seized from a Hummer vehicle on June 26, 2013 on the ground that the application for the search warrant failed to establish probable cause.^{1/} In support of this motion, defendant states:

1. Police sought and obtained a search warrant from the Wrentham District Court on June 26, 2013 to search a Hummer vehicle that was parked in an apartment complex parking lot where the defendant rented an apartment, at 599 Old West Central Street, Franklin, Massachusetts. No. 1357-SW-52. See Exhibit 4 to the Affidavit of Charles W. Rankin.
2. The search warrant authorized police to search for:

^{1/} The defendant has separately filed a motion to suppress evidence seized from the Hummer, based on a claim that the information used to get the warrant was obtained during the course of an illegal search of an apartment at 599 Old West Central Street – a fruit-of-the-poisonous-tree argument.

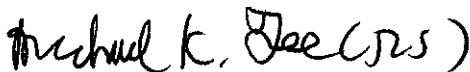
Any/all ammunition of all calibers and weapons to be associated/utilized with ammunition. Search should also include any and all records/paperwork/standing associated with person(s) who may have been staying within the dwelling/vehicle.

3. The affidavit in support of the warrant was utterly lacking in probable cause because there was no factual basis set forth therein to believe that the Hummer had been used in committing a crime, contained any such records, or contained unlawful contraband.
4. In addition, the affidavit in support of the warrant contained information from the first search of the apartment – that the Hummer responded when the remote alarm was activated – which was the fruit of an illegal action by police and must therefore be excised from the warrant. The police were only authorized by the initial Franklin warrant to search for Carlos Ortiz's cell phone. They were not authorized to activate the remote alarm on the Hummer using a key they found in the apartment. Once that is excluded from the affidavit, there is absolutely no link between the apartment and the Hummer – thus no probable cause to search.
5. The grounds for this motion are set forth in the accompanying Memorandum of Law.

Respectfully submitted,

AARON HERNANDEZ

By his attorneys,




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A handwritten signature in black ink, appearing to be 'C. Rankin', written over a horizontal line.

Charles W. Rankin

#119

COMMONWEALTH OF MASSACHUSETTS

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SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
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**MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANT'S MOTION TO SUPPRESS EVIDENCE SEIZED
DURING SEARCH OF HUMMER ON JUNE 26, 2013
DUE TO LACK OF PROBABLE CAUSE**

The defendant Aaron Hernandez has moved that the Court suppress all evidence seized from a Hummer vehicle on June 26, 2013 on the ground that the application for the search warrant failed to establish probable cause.

The Search Warrant.

On June 26, 2013, after having searched Hernandez's Franklin apartment, police sought and obtained a search warrant from the Wrentham District Court to search a Hummer vehicle that was parked in the apartment complex parking lot. No. 1357-SW-52. See Exhibit 4 to the Affidavit of Charles W. Rankin. The search warrant authorized police to search for:

Any/all ammunition of all calibers and weapons to be associated/utilized with ammunition. Search should also include any and all records/paperwork/standing associated with person(s) who may have been staying within the dwelling/vehicle.

ARGUMENT

I. THE AFFIDAVIT FAILED TO DEMONSTRATE PROBABLE CAUSE THAT AMMUNITION OR PAPERWORK IDENTIFYING PEOPLE ASSOCIATED WITH THE APARTMENT WOULD BE FOUND IN THE HUMMER OR THAT IT CONTAINED EVIDENCE OF A CRIME.

The affidavit in support of the application for search warrant was devoid of any information establishing probable cause to believe that any evidence of a crime would be found in the Hummer or that the Hummer had been used to commit a crime. The Trooper's request to search the Hummer was based on nothing more than a bald assertion – without any facts – that the vehicle “*could have been used* to facilitate the transport of any evidence that has been or *will be recovered* from the apartment.” He failed to provide any factual basis to believe that. There must be some demonstrated link or nexus between criminal activity and the target of the search to justify the issuance of a warrant.

Commonwealth v. Pina, 453 Mass. 438, 441-42 (2009), provides some helpful guidance. In *Pina*, police obtained a search warrant for the defendant's home because on one occasion during a lengthy drug investigation, the defendant traveled from his home to the place where he sold cocaine. Based on that information, police obtained a warrant to search the home. The SJC held that the nexus linking the home to the contraband was missing, and affirmed the granting of a motion to suppress.

The Court explained:

It is established that, in drug cases such as the present one, the affidavit accompanying a search warrant application must contain facts sufficient to demonstrate that there is probable cause to believe that drugs, or related evidence, will be found at the location to be searched. “The affidavit need not convince the magistrate beyond a reasonable doubt, but **must provide a substantial basis for concluding that [drugs or instrumentalities of the drug trade] will be found on the specified premises.**” *Commonwealth v. Donahue*,

supra at 712, 723 N.E.2d 25. When that location is a residence, there must be specific information in the affidavit, and reasonable inferences a magistrate may draw, to provide “a sufficient nexus between the defendant's drug-selling activity and his residence to establish probable cause to search the residence.” *Commonwealth v. O'Day*, 440 Mass. 296, 304, 798 N.E.2d 275 (2003). See generally *Commonwealth v. Upton*, 394 Mass. 363, 370, 476 N.E.2d 548 (1985) (basic question is whether magistrate “has a substantial basis for concluding” that article is “probably in the place to be searched.... **Strong reason to suspect is not adequate**”).

453 Mass. at 441-42 (*Emphasis added*). See also *Commonwealth v. Dias*, 349 Mass. 583, 584 (1965).

In this case, there was no showing of probable cause to support a search of the Hummer. Rather, Trooper Bates merely speculated that a search of the Hummer *might* yield ammunition or records showing who may live at the apartment. For this reason, the warrant was invalid and all evidence seized pursuant to the warrant must be suppressed.

II. UNDER THE TERMS OF THE EARLIER WARRANT SEARCHING FOR CARLOS ORTIZ'S CELL PHONE, THE POLICE WERE NOT PERMITTED TO ACTIVATE THE REMOTE KEY ALARM TO ESTABLISH A LINK WITH THE HUMMER IN THE PARKING LOT. THEREFORE, ANY INFORMATION ABOUT THE HUMMER RESPONDING TO THE REMOTE ALARM MUST BE EXCISED FROM BATES' AFFIDAVIT, FURTHER DIMINISHING HIS SHOWING.

The first warrant to search the Franklin apartment, No. 1357-SW-50, authorized police to search only for Carlos Ortiz's cell phone. It did not authorize police to handle the keys to the Hummer, much less use those keys to activate a remote alarm in order to link it to the Hummer in the parking lot. That improper fruit from the earlier search should not have been included in the affidavit seeking a warrant to search the Hummer. When that information is excised from the affidavit in support of the application for the Hummer warrant, there is no basis to link the Hummer

to the apartment. In the absence of such nexus, the warrant cannot be sustained and its fruits must be suppressed.


CONCLUSION

For these reasons, the evidence seized as a result of the search of the Hummer should be suppressed.

Respectfully submitted,

AARON HERNANDEZ

By his attorneys,



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Charles W. Rankin

#118

BRISTOL, SS SUPERIOR COURT
FILE

SEP 15 2014

MARC J. SANTOS, J.S.C.
CLERK/MAGISTRATE

COMMONWEALTH OF MASSACHUSETTS

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SUPERIOR COURT DEPARTMENT
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599 OLD WEST CENTRAL STREET, APARTMENT A12 ON JUNE 26, 2013
(WITH INCORPORATED MEMORANDUM OF LAW)**

Pursuant to Mass. R. Crim. P. 13, the Fourth and Fourteenth Amendments to the U.S. Constitution, Article XIV of the Massachusetts Declaration of Rights, and M.G.L.c. 276, § 1, defendant Aaron Hernandez moves that the Court suppress all fruits of a search of 599 Old West Central Street, Apartment A12, Franklin, Massachusetts on June 26, 2013 on the grounds that the affiant relies on the statement of Carlos Ortiz to supply probable cause. Carlos Ortiz was digitally recorded as he was interviewed for hours by officers the prior day, June 25, 2013. Ortiz told many stories during his hours of interrogation. The stories were internally contradictory and were contradicted by other evidence. Finally, Officers persuaded Ortiz to submit to a lie detector test on

June 25th. When asked these three questions, Ortiz answered “No.”

Did you shoot “O”?

Did you shoot “O” that day?

Did you get out of the car when “O” was shot?

The lie detector examiner analyzed and scored those answers as “Deception Indicated.”

Trooper Bates chose not to include this information the following day in his affidavit when he sought a warrant to search Aaron Hernandez’s apartment at 599 Old West Central Street. Had he included this information, the judicial officer would presumably have not have issued the warrant because Ortiz was wholly unreliable and could not possibly meet the *Aguilar-Spinelli* test. In Massachusetts, the *Aguilar-Spinelli* test is still applied. *Commonwealth v. Upton (II)*, 394 Mass. 363 (1985).

Ortiz fails miserably on the veracity prong of the *Aguilar-Spinelli* test. He has absolutely no track record as a truthful informant. In fact, the contrary is the case – he is an untruthful informant, as demonstrated by the multiple, bold-faced lies he told police over the course of a lengthy interrogation and his failed polygraph test. Moreover the police apparently did nothing to corroborate his claim that his phone had been left at the apartment and that it was still there.

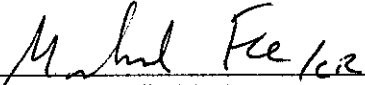
The failure to include this information amounts to a *Franks v. Delaware*, 438 U.S. 154 (1978), violation. Under these circumstances, the Court must hold an evidentiary hearing where defendant can prove that the Commonwealth deliberately withheld the damaging information from the Magistrate and that the withheld information was material. Under Article XIV, the defendant contends that he is entitled to a hearing and suppression, even if the omission was made recklessly, rather than deliberately.

The Second Affidavit of Charles W. Rankin is filed herewith in further support of this motion.


Respectfully submitted,

AARON HERNANDEZ

By his attorneys,




Michael K. Fee, BBO #544541
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(617) 720-0011

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: William McCauley, First Assistant District Attorney, Bristol County, 888 Purchase Street, New Bedford, MA 02740 on September 12, 2014.



Charles W. Rankin

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

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

COMMONWEALTH OF MASSACHUSETTS

v.

AARON HERNANDEZ

SECOND AFFIDAVIT OF CHARLES W. RANKIN

Being duly sworn according to law, Charles W. Rankin states:

1. I am a member of the Bar of the Supreme Judicial Court and co-counsel to the defendant Aaron Hernandez.
2. I reviewed transcripts of the interrogation of Carlos Ortiz, which were digitally recorded on June 25, 2013 and the digital recordings. During the hours of questioning, Ortiz told many different stories. His stories evolved as he continued to talk to officers. The stories were internally contradictory and were contradicted by objective evidence.
3. Ortiz agreed to submit to a lie detector examination. The examination was administered by Bristol, Connecticut Police Officer Scott Werner. The examination was audio and video recorded and has been transcribed. According to Officer Werner's report of the examination, Ortiz was asked the following three questions:

"Did you shoot 'O'?"

"Did you shoot 'O' that day?"

6/18/13 7:01 p.m.

Search Warrant Execution

22

Lt. King

Tpr. Grotti

Tpr. Charvin

Tpr. Perez

Sgt. Parker

Det. Elliot

Sgt. Bennett

Tpr. Silvia

DEMS < Tpr. Oley #2247

Tpr. Maloney #2299

Sgt. Moran

EXHIBIT 1

#117

SEP 15 2014

COMMONWEALTH OF MASSACHUSETTS

MARC J. SANTOS, ESQ.
BRISTOL, MASS. JUDGE

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

COMMONWEALTH OF MASSACHUSETTS

v.

AARON HERNANDEZ

**DEFENDANT'S MOTION TO SUPPRESS EVIDENCE
SEIZED FROM HIS RESIDENCE ON JUNE 22, 2013 THAT WAS
BEYOND THE SCOPE OF THE WARRANT**

Pursuant to Mass. R. Crim. P. 13, the Fourth and Fourteenth Amendments to the U.S. Constitution, Article XIV of the Massachusetts Declaration of Rights, and M.G.L.c. 276, § 1, defendant Aaron Hernandez moves that the Court suppress all evidence seized from his residence on June 22, 2013 that was beyond the scope authorized by the warrant. In support of this motion, defendant states:

1. On June 22, 2013, police sought and obtained a warrant to search his house and seize a number of items. Attleboro District Court No. 1334-SW-24. See Affidavit of Charles W. Rankin, ¶ 7. The warrant authorized the seizure of the following items:

Trace/biological evidence, including blood, serums, skin, clothing, gunshot residue, fingerprints, firearms, ammunition, DNA, clothing as identified in Addendum "A," "B," and "C", shoes, footwear impressions, and any other evidence as described in the affidavit to assist in the identification of a suspect or suspects, and that if any of the above evidence is found that it be seized as evidence and further analyzed or searched as necessary.

According to the handwritten Return on the warrant and the typed inventory from the State Police Forensic Services Group, several items were seized which were outside the scope of the warrant. Those items include item 5 (a white bath towel), item 8 (a scale located in safe), item 9 (dish located in safe), and item 12 (Vitamin-water XXX).

2. In addition, a number of items were seized from inside a Toyota automobile that was parked in the garage of the house. The warrant did not authorize a search of the automobile. Those items include item 11 (FEG rifle), item 16 (black duffle bag), item 17 (bandages from duffle bag), item 18 (wrist watch from duffle bag), item 19 (white plastic bag containing clothing), item 20 (Puma jacket from duffle bag and track pants and black t-shirt), item 21 (ammunition), item 22 (title for the Toyota), and item 23 (a boarding receipt for Ernest Wallace).
3. Because those items were seized even though the warrant did not authorize their seizure, they must be suppressed.
4. The grounds for this motion are set forth in the accompanying Memorandum of Law.


Respectfully submitted,

AARON HERNANDEZ

By his attorneys,




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Charles W. Rankin

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

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

COMMONWEALTH OF MASSACHUSETTS

v.

AARON HERNANDEZ

**MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANT'S MOTION TO SUPPRESS EVIDENCE
SEIZED FROM HIS RESIDENCE ON JUNE 22, 2013 THAT WAS
BEYOND THE SCOPE OF THE WARRANT**

Defendant Aaron Hernandez has moved to suppress two categories of items that were seized during the June 22, 2013 search of his home. The first category includes items that were not within the scope of the search warrant. The second category includes items seized from a Toyota parked in the garage of the house, also outside the scope of the warrant.

The First Category.

As to the first category, those items include the following as identified in the return: item 5 (a white bath towel), item 8 (a scale located in safe), item 9 (dish located in safe), and item 12 (Vitamin-water XXX). "Of course, an item not described in the warrant but seized pursuant to the plain view exception is outside the scope of the warrant, and the Commonwealth bears the burden of proving that the seizure was permissible." Grasso and McEvoy, Suppression Matters under Massachusetts Law, § 8-3(d). Hernandez contends that the Commonwealth cannot meet that burden

here.

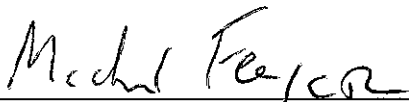
The Second Category.

Ordinarily, a search warrant authorizing the search of a dwelling permits officers to search a vehicle within the curtilage of the dwelling, as long as the vehicle is owned or controlled by the owner of the dwelling. *Commonwealth v. Santiago*, 410 Mass. 737, 740 (1991); *Commonwealth v. Signorine*, 404 Mass. 400, 403 (1989). In this case, however, the police had no information that the vehicle was owned by Hernandez or controlled by him. For all they knew, the vehicle belonged to a visitor to the Hernandez home. Significantly, the vehicle was not registered to Hernandez (or even in the Commonwealth of Massachusetts). In these circumstances, where the officers had no reason to believe the vehicle was owned or controlled by the owner of the house, it was incumbent on them to seek a separate warrant to search the vehicle. Having failed to do so, the items seized from the Toyota must be suppressed.

Respectfully submitted,

AARON HERNANDEZ

By his attorneys,



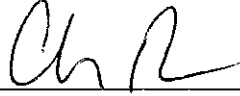
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A handwritten signature in black ink, appearing to read 'Ch R', is written above a horizontal line.

Charles W. Rankin