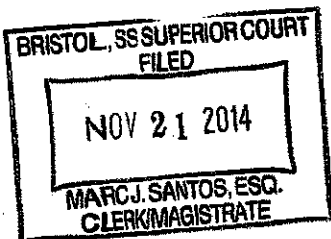


#164

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 FOR RETURN  
OF UNLAWFULLY -SEIZED PROPERTY**

Pursuant to Mass. R. Crim. Proc. 13, Superior Court Rule 61, and Mass. Gen. Laws ch. 276, § 3, the Fourth Amendment to the United States Constitution, and article 14 of the Massachusetts Declaration of Rights, the defendant Aaron Hernandez moves that the Court order the Commonwealth to return the following property to his counsel (as his agent) forthwith:

- a. The two cell phones and three iPads seized on June 18, 2013 and ordered suppressed on August 26, 2014 (Document 112);
- b. All evidence seized from 599 Old West Central Street, Apt. A12, Franklin, Massachusetts, and the Hummer automobile, and fruits of those searches, as delineated at pages 6-8 of the Court's October 2, 2014 Memorandum of Decision and Order (Document 140).<sup>1/</sup>
- c. The white towel seized from 22 Ronald C. Meyer Drive, North Attleboro on June 22, 2103 and ordered suppressed on October 10, 2014 (Document 147); and,

<sup>1/</sup> The defendant is not asking that the magazine clip or the ammunition be returned; the Court should order that those items be destroyed. Similarly, the defendant is not asking that item number 1 (the cell phone said to belong to Ortiz) be returned to him.

d. The Hummer automobile seized by the Commonwealth on June 26, 2013. The Hummer was not listed on pages 6-8 of the Court's October 2, 2014 Memorandum of Decision and Order. However, the defendant moved to suppress all evidence seized as a result of the search of the Franklin apartment, and all fruits of that search. The seizure of the Hummer was clearly a fruit of that search.

The Hummer was seized by the State Police on June 26, 2013, following the apartment searches and an initial search of the Hummer. According to Trooper Bates' Affidavit in support of issuance of a warrant to conduct a forensic examination of the Hummer, "Due to this evidence seized, the HUMMER was removed from the scene and towed to the North Attleboro Police Department where it was secured in their garage facility pending further investigation." Attleboro District Court Search Warrant No. 1334-SW-29, Bates Affidavit, ¶ 8. It was subject of a forensic search on July 1, *Id.*, and a search for hidden compartments on July 10. Attleboro District Court No. (Unknown), dated July 10, 2013.

Superior Court Rule 61 provides for the filing of motions for return of property. Mass. Gen. Laws ch. 276, § 3 provides that property seized pursuant to a search warrant shall be disposed of as the court orders. In *Commonwealth v. Sacco*, 401 Mass. 204, 208 (1987), the Court observed, "If a defendant moves for the return of property which a judge has already determined was unlawfully seized, and no third person has any reasonable claim to the property, the judge has the authority to enter any appropriate order concerning the return of the property . . ." *Commonwealth v. One 2004 Audi Sedan Automobile*, 456 Mass. 34, 45 (2010).

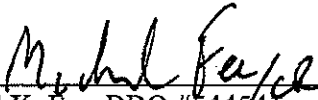
Here, the items whose return is sought were all unlawfully seized by the police and the Court should thus order the Commonwealth to return the items to the defendant's counsel (as his agent)

forthwith.

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: William McCauley, First Assistant District Attorney, and Patrick O. Bomberg and Roger Michel, Assistant District Attorneys, Bristol County, 888 Purchase Street, New Bedford, MA 02740 on November 19, 2014.



Charles W. Rankin

<b>CLERK'S NOTICE</b>	DOCKET NUMBER <b>1373CR00983</b>	<b>Trial Court of Massachusetts</b> <b>The Superior Court</b> 
CASE NAME: <b>Commonwealth vs. Aaron J Hernandez</b>		Marc J. Santos, Clerk of Court Bristol County
TO: File Copy		COURT NAME & ADDRESS Bristol County Superior Court - Fall River 186 South Main Street, Suite 202 Fall River, MA 02721
<p>You are hereby notified that on 11/24/2014 the following entry was made on the above referenced docket:</p> <p><b>Endorsement on Motion to Require the Commonwealth to Pare Down its Witness List to Those Individuals it Actually Intends to Call to Testify in its Case-in-Chief as Trial and for Other Necessary Relief, (#160.0): DENIED</b>  <b>Parties, however, are urged to pare down list to the extent practical to avoid an unnecessarily protracted trial.</b></p>		
DATE ISSUED <b>11/24/2014</b>	ASSOCIATE JUSTICE/ ASSISTANT CLERK <b>Hon. Robert J Kane</b>	SESSION PHONE#