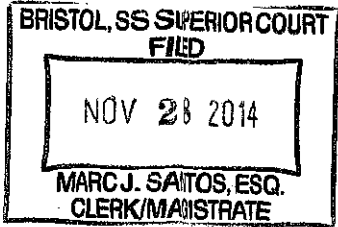


#169

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss

SUPERIOR COURT DEPARTMENT
FALL RIVER SUPERIOR COURT
INDICTMENT NO.: BRCR 2013-983



COMMONWEALTH

V.

AARON HERNANDEZ

COMMONWEALTH'S RESPONSE TO DEFENDANT'S
MOTION FOR RETURN OF PROPERTY

NOW COMES THE COMMONWEALTH in the above-captioned matter and respectfully OPPOSES the defendant's motion for return of property. In support of this opposition the Commonwealth relies on the following.

1). The defendant's filing fails to comply with the requirements of the law as outlined in the case that he cites. The defendant has failed to comply with the provisions of Rule 61 of the Superior Court Rules and Rule 13 of the Massachusetts Rules of Criminal Procedure. Commonwealth v. Sacco, 401 Mass. 204, 206 (1987). The defendant has not only failed to provide an affidavit, he states no facts other than reciting the Court's prior rulings on motions as a basis for his motion. The defendant has neither asserted nor established his ownership interest in the property he seeks returned. The affidavit procedures outlined in the Rules and Sacco requires a defendant to credibly aver ownership lest the Commonwealth give property to the defendant that belongs in actuality to another.

2.) The property that the defendant seeks may properly be used in the trial of other defendants. Mass. Gen L. Ch. 276, sec. 3. Items seized during the execution of these warrants

may be used as evidence in any trial. Id. Here, the Commonwealth may properly seek to admit the seized evidence in the trial of the other defendants in this matter.

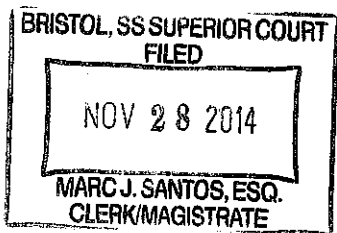
3.) Some of the property that appears to be the subject of the defendant's motion has been removed from the possession of the North Attleboro Police pursuant to lawful process or orders of other courts.

In conclusion, however, to the extent that the Defendant can comply with the requirements of Mass.R.Crim.P. 13 and Superior Court Rule 61(as delineated in Commonwealth v. Sacco, 401 Mass. at 206), and the property is not being held related to other prosecutions and/or other lawful orders or process, the Commonwealth agrees to return those items.

RESPECTFULLY SUBMITTED,
For the District Attorney,
C. SAMUEL SUTTER

BY: William M McCauley
WILLIAM M. McCAULEY
Assistant District Attorney
888 Purchase Street
New Bedford, MA 02740
508 961-1800

DATED: 11/28/14



CERTIFICATE OF SERVICE

I, Brian Griffin, certify that I have served a copy of the Commonwealth's Response to Defendants Motions for Return of Property by first class postage prepaid mail and email to Counsel for the Defendant, as follows; Charles W. Rankin, Rankin & Sultan, 151 Merrimac Street, 2nd Floor, Boston Ma 02114; James L. Sultan, Rankin & Sultan, 151 Merrimac Street, 2nd floor, Boston 02114; and Michael K. Fee, Latham & Watkins, LLP, John Hancock Tower, 20th Floor, 200 Clarendon St., Boston, Ma 02116

Signed under the pains and penalties of perjury this 28th day November 2014

COMMONWEALTH OF MASSACHUSETTES,

A handwritten signature in black ink, appearing to read "Brian Griffin", written over a horizontal line.

Brian Griffin
Assistant District Attorney
For The Bristol District
888 Purchase St
New Bedford, MA 02741