

COMMONWEALTH OF MASSACHUSETTS

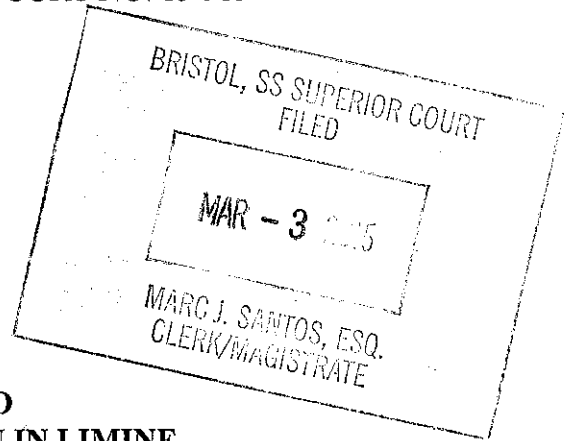
BRISTOL, ss

SUPERIOR COURT NO. 13-983

\_\_\_\_\_  
COMMONWEALTH

v.

AARON HERNANDEZ  
\_\_\_\_\_



**DEFENDANT'S OPPOSITION TO  
COMMONWEALTH'S RENEWED MOTION IN LIMINE  
TO ADMIT EVIDENCE OF A PRIOR SHOOTING INCIDENT  
INVOLVING ALEXANDER BRADLEY**

Prior to trial, the Court denied the Commonwealth's motion in limine to admit evidence respecting an uncharged bad act by defendant Aaron Hernandez ["Hernandez"]. Specifically, the Commonwealth sought to introduce testimony from Alexander Bradley claiming that Hernandez had shot him in Florida in February, 2013. The Court properly excluded this proposed testimony, which had absolutely nothing to do with the death of Odin Lloyd some four months later. It was not a close call. The proposed Bradley shooting testimony was clearly nothing but prohibited propensity evidence intended to portray Hernandez in a negative light. The parties proceeded to trial justifiably relying on this and other pretrial evidentiary rulings by the Court. The trial is now in its second month.

The Commonwealth has now renewed its request to introduce this same bad acts evidence, arguing that Hernandez somehow "opened the door" to admitting evidence that he allegedly shot Bradley in Florida by claiming over a month ago in his opening statement that he was friendly with Odin Lloyd and had no reason to murder him. In making this argument, the Commonwealth relies principally on two appellate decisions, *Commonwealth v. Oliveira*, 74

Mass. App. Ct. 49 (2009) and *Commonwealth v. Magraw*, 426 Mass. 589 (1998). The Commonwealth's argument is utterly frivolous, and neither of the cases it relies upon supports its position one whit. Accordingly, the Court should adhere to its previous ruling and deny the Commonwealth's motion.

Clearly, Hernandez has done nothing to "open the door" to this excluded evidence. Hernandez is not on trial for his lifestyle or character traits. He has been accused of a specific crime, the murder of Odin Lloyd, and he vigorously denies that allegation. It is up to the jury to consider evidence respecting Hernandez's relationship with Lloyd as it may bear upon whether or not the Commonwealth has proven beyond a reasonable doubt that Hernandez committed the specific crime charged. Evidence respecting Hernandez's relationship with Lloyd has absolutely nothing to do with Alexander Bradley, and neither Hernandez's opening statement nor his cross-examination of the Commonwealth's witnesses during the trial to date suggests otherwise.

Incredibly, the Commonwealth states in its motion (at p.5) that "[t]he present situation is nearly identical to the facts of *Commonwealth v. Oliveira*, 74 Mass. App. Ct. 49, 53-54 (2009)." Yet *Oliveira* is completely different. In that case, the defendant was charged with assaulting his ex-wife. Before trial, the trial judge excluded evidence of the defendant's prior convictions for assaulting his ex-wife (the same victim) from the Commonwealth's case-in-chief, adding that if the "issue" arose because of "other circumstances," it could be addressed at that time. *Id.* at 50. The defendant later testified in his own defense that he was a peaceful person who wished to avoid conflict. The trial judge then permitted the prosecutor to impeach the defendant with his prior convictions against his ex-wife. The Appeals Court affirmed, noting that while it was a "close" question and that "we may have answered it differently," it was not an abuse of discretion

to admit the defendant's prior convictions under those circumstances to impeach his direct testimony and to show the hostile nature of the relationship between the defendant and his ex-wife. *Id.* at 53-54. Here, in sharp contrast, the alleged victim of the prior bad act (Bradley) is not the same as the alleged victim of the crime Hernandez stands accused of (Lloyd). Here, in sharp contrast, the defendant has not taken the stand, so there is no direct testimony to impeach. Here, in sharp contrast, Hernandez has no prior convictions, and the trial judge did not explicitly raise the possibility of revisiting the issue during the trial. In short, *Oliveira* does not support the Commonwealth's argument here in any way, and it is hard to fathom how one could assert in good faith that "[t]he present situation is nearly identical" to the facts of that case.

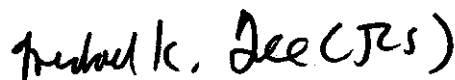
The Commonwealth fares no better with its other case, *Magraw*, a first degree murder appeal litigated by undersigned counsel. In reversing the defendant's conviction for murdering his ex-wife based upon a plethora of improperly-admitted evidence, the Court noted that evidence that the victim had found the defendant's rifle in her bed several months before she was murdered was admissible in the trial judge's discretion "to show discord between the defendant and the victim in the face of defendant's claim that he and the victim 'were so happy' [following their divorce]." 426 Mass, at 599. As in *Oliveira* and in sharp contrast to the instant case, the alleged bad act deemed admissible in *Magraw* was directed at the very same victim, not somebody else. That is precisely why it was admissible!

In sum, the Commonwealth's renewed motion to admit this bad character, propensity evidence is unsupported by argument or by legal precedent. The motion should be denied.

Respectfully submitted  
The defendant Aaron Hernandez  
By his counsel



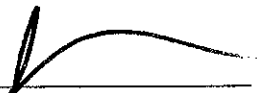
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### CERTIFICATE OF SERVICE

I certify that I have served the foregoing document upon counsel of record by hand delivering a copy to William McCauley on March 3, 2015.



James L. Sultan