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COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CRIMINAL #2013-983

BRISTOL, SS SUPERIOR COURT
FILED

AUG 17 2015

MARC J. SANTOS, ESQ.
CLERK/MAGISTRATE

COMMONWEALTH OF MASSACHUSETTS

v.

AARON HERNANDEZ

**DEFENDANT'S REPLY TO COMMONWEALTH'S OPPOSITION TO DEFENDANT'S
RENEWED MOTION TO QUESTION WITNESS UNDER OATH**

It has been three weeks since the defendant identified the previously-identified informant/witness in a Court filing. Since that time, the Commonwealth has filed two memoranda totaling 22 pages opposing the defendant's motions to question this witness under oath. What is most striking from the Commonwealth's filings is the omission of any assertion that the substance of the witness' allegation respecting the exposure of a juror to extraneous, prejudicial information is false. Nevertheless, the Commonwealth adamantly opposes ascertaining the truth by questioning the witness under oath. One wonders what the Commonwealth is afraid of discovering.

This is not a "fishing expedition." *Comm. Opp.* at 10. The defendant is not engaged in "mere speculation." *Id.* at 11. It is not an effort to "explore the jury's deliberative process." *Id.* at 12. Rather, all the defendant seeks at this juncture is to question a percipient witness under oath regarding a specific alleged exposure of a juror to extraneous, prejudicial information. The Commonwealth complains that defense counsel is the "sole supporting witness," *id.* at 8, yet opposes questioning the percipient witness directly. There is surely nothing "implausible," *id.* at 12, about

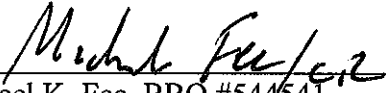
the allegation of a juror's exposure to extraneous information in light of the extensive media coverage and public interest in this case, particularly in Bristol County.

The Commonwealth complains repeatedly about defense counsel's failure to share every jot and tittle of their investigation into this matter. Yet, significantly, the Commonwealth says absolutely nothing about its own investigation. Surely the Commonwealth, which dispatched state troopers to interview multiple witnesses when an allegation arose during trial that a juror had spoken about the case, has ample ability and motivation to investigate the individual at issue here. Indeed, it is hard to believe that the Commonwealth has not interviewed her in depth. Yet, conspicuously absent from the Commonwealth's protracted filings is any information at all respecting the fruits of that investigation. That is simply one more reason why the Court should take the limited, measured step of ordering this witness to be questioned under oath in order to determine whether further investigation is warranted. Indeed, there is absolutely no downside to doing so. Not surprisingly, the Commonwealth, seeking to insulate the verdict, wants to block any inquiry into this matter. But if a real possibility exists that a miscarriage of justice has occurred here, it is the Court's duty to get to the bottom of it. That is all the defendant seeks.

Respectfully submitted,

AARON HERNANDEZ

By his attorneys,



Michael K. Fee, BBO #544541
Latham & Watkins, LLP
John Hancock Tower
200 Clarendon Street, 20th Floor
Boston, MA 02116
(617) 948-6000



James L. Sultan, BBO #488400
Charles W. Rankin, BBO #411780
Rankin & Sultan
151 Merrimac Street, Second Floor
Boston, MA 02114
(617) 720-0011

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing document upon the Commonwealth by e-mail and by mailing a copy thereof, US mail, postage prepaid, to: William McCauley, Deputy District Attorney, Bristol County, 888 Purchase Street, New Bedford, MA 02740 on August 13, 2015.



Charles W. Rankin

RANKIN & SULTAN

ATTORNEYS AT LAW

CHARLES W. RANKIN
JAMES L. SULTAN
CATHERINE J. HINTON
MICHELLE MENKEN

KERRY A. HABERLIN
AUDREY M. GRACE
EMMANUELLE DEBOUVERIE

151 MERRIMAC STREET
SECOND FLOOR
BOSTON, MA 02114

(617) 720-0011
FAX (617) 742-0701
EMAIL OFFICE@RANKIN-SULTAN.COM

August 13, 2015

John F. Losowski, Assistant Clerk
Bristol Superior Court
186 South Main Street
Fall River, MA 02720

Re: ***Commonwealth v. Aaron Hernandez***
Bristol Superior Court Criminal #2013-000983

Dear Clerk Losowski:

Enclosed for filing in the above-captioned criminal case please find:

1. *Defendant's Reply to Commonwealth's Opposition to Defendant's Renewed Motion to Question Witness Under Oath.*

Thank you for your anticipated assistance.

Sincerely yours,



Charles W. Rankin

CWR/lc

**BY E-MAIL TO john.losowski@jud.state.ma.us and garrett.fregault@jud.state.ma.us and
US MAIL, POSTAGE PREPAID**

cc: ADA William McCauley (By e-mail to william.mccauley@state.ma.us and US Mail,
Postage Prepaid)