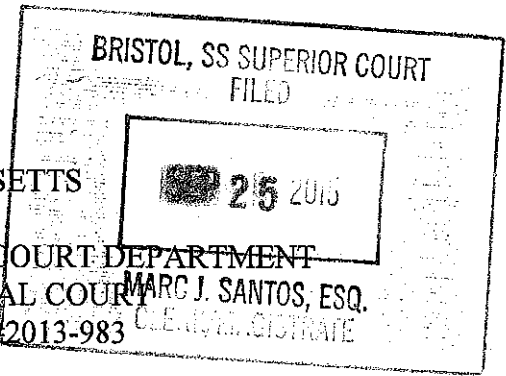


REDACTED

413.1



COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

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

COMMONWEALTH OF MASSACHUSETTS

v.

AARON HERNANDEZ

**DEFENDANT'S OPPOSITION TO COMMONWEALTH'S  
SECOND MOTION FOR DISCOVERY**

Aaron Hernandez ["Hernandez"], the defendant in the above-captioned criminal case, opposes the Commonwealth's Second Motion for Discovery.

**PRIOR PROCEEDINGS**

On August 24, 2015, the Court issued a revised schedule for litigating any discovery disputes in connection with an evidentiary hearing at which "Katy," a person claiming to have knowledge of a deliberating juror's possible misconduct, would be questioned under oath. That order provided that the parties were to confer on discovery issues by September 15, that the Commonwealth's discovery motion was to be filed by September 18, the defendant's opposition to be filed by September 23, and a hearing to be conducted on September 25. *See Exhibit 1.*

The parties conferred by telephone on September 15, and, at defense counsel's request, the Commonwealth sent an email list of the discovery the Commonwealth sought. A copy of the email containing the list is attached as *Exhibit 2.*

The defendant responded on September 17. The Commonwealth claims, "In response to the Commonwealth's requests, the defendant provided only defense counsel's notes of counsel's conversations with 'Katy'." *Commonwealth's Second Motion for Discovery*, page 3. That is untrue. In an effort to avoid needless litigation, the defendant provided responses to requests 1 - 5, attempting in good faith to provide the Commonwealth with additional information in the absence of any Court order or legal requirement to do so. Attached to the response were counsels' handwritten notes of conversations with "Katy," as well as the correspondence to and from Verizon regarding discovery of the cellular phone number that had been used to contact Mr. Sultan. A copy of that package is attached as *Exhibit 3*.<sup>1</sup>

On the afternoon of September 23, defendant received the Commonwealth's Second Motion for Discovery, without any accompanying motion for leave to late-file the document.

## ARGUMENT

### **1. The Discovery Requests Are Improper as to Form and without any Support in the Law.**

The Commonwealth wants the defendant to respond to interrogatories as if this were a civil case, detailing the investigation the defense has done and setting forth the substance of what the defense has learned. There is nothing in the Massachusetts Rules of Criminal Procedure nor in the applicable caselaw supporting such an invasion of the defense efforts. The Sixth and Fourteenth Amendments to the United States Constitution and Article XII of the Massachusetts Declaration of Right protect the right to counsel and prohibit this sort of invasion of the defense. In *Commonwealth*

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<sup>1</sup> The defendant has filed a separate motion to impound this exhibit since it identifies the informant and the juror, and its disclosure at this time would undermine the fact-finding process.

*v. Haggerty*, 400 Mass. 437, 441 (1987), the Supreme Judicial Court held that the Commonwealth is only entitled to discovery of material the defense planned to use at trial. The defense cannot be required to disclose its entire investigation, only the material it will rely on.<sup>2</sup>

Requests 6 through 12 essentially ask the defendant to respond to interrogatories; *e.g.*, 6 - "Details/documents/etc." related to "additional investigation" by defendant; 7 - "Details/documents/etc." of "extensive personal contact" defendant had with "Katy"; 8 - Names of persons "discovered/contacted/interviewed with respect to this matter"; 9 - "Names of other person or persons alleged to have attended the \_\_\_\_\_"; 10 - Statements of "any other person discovered/contacted/interviewed related to this matter"; 11 - "Any information related to where the [sic] 'Katy' works and where the juror works"; and 12 - "Any other information discovered that calls into question the veracity of 'Katy'."

The Commonwealth cites no law to support these requests. Putting aside the vagueness of the requests, interrogatories such as these have no place in a criminal case, pretrial or posttrial.

The Commonwealth claims it is entitled to this information because the defense is relying on it. To the contrary, the defendant has put forward nothing other than what "Katy" said in her telephone calls. With respect to request 7, the defense made that disclosure, even though it hurt rather than helped its motion to question "Katy," because the defense believed that it had an obligation to the Court to do so. The Commonwealth obviously knows something about that subject since it made representations in a pleading about "[Katy's] sexually explicit relationship with the defendant prior to and during trial." See *Commonwealth's Opposition to Defendant's Motion to*

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<sup>2</sup> The Commonwealth argues that none of the requested material is protected work product, citing Rule 26(b)(3) and caselaw decided under that rule. Both that rule and the caselaw relate solely to civil cases. This is not such a case.

**3. The Commonwealth Has Not Shown a Need for Any of the Material Sought in Requests 6-12.**

The Commonwealth has no need of the material requested in 6 - 12. It has been given every note contemporaneously made during counsel's conversations with "Katy." The defendant has filed three affidavits of counsel summarizing those conversations. The Commonwealth certainly has the resources to interview "Katy", investigate her, or conduct other investigation if it chooses to do so. Whether it has or has not availed itself of that opportunity, the Commonwealth's request that the defense essentially open its entire file to the Commonwealth is completely unauthorized by law.

**4. The Attorney-Client Privilege Has Not Been Waived.**

The Commonwealth claims that defendant has waived the attorney-client privilege. That is a ridiculous assertion. The defense has moved to question "Katy" based solely on what "Katy" has told defense counsel. The defense is not relying on any attorney-client communication, and the Commonwealth is not entitled to any attorney-client communication.

**CONCLUSION**

Because the Commonwealth has filed an untimely motion, a mere two days before the hearing, the defendant has been prevented from fully addressing the legal issues raised by its motion. For that reason alone, the motion should be denied. Moreover, the motion should be denied on the merits for the reasons set forth herein.

Respectfully submitted,  
**AARON HERNANDEZ**

By his attorneys,



Michael K. Fee, BBO #544541  
Latham & Watkins, LLP  
John Hancock Tower  
200 Clarendon Street, 20<sup>th</sup> Floor  
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(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, Patrick Bomberg, and Roger Michel, Assistant District Attorneys, Bristol County, 888 Purchase Street, New Bedford, MA 02740 on September 24, 2015.



Charles W. Rankin

#407

COMMONWEALTH OF MASSACHUSETTS  
SUPERIOR COURT

BRISTOL, ss.

No. 2013-CR-00983

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS SUPERIOR COURT  
FILED

v.

AUG 21 2015

AARON HERNANDEZ

MARC J. SANTOS, ESQ.  
CLERK/MAGISTRATE

**DEFENDANT'S MOTION TO POSTPONE  
DEADLINES REGARDING CALLER BY TWO WEEKS**

The defendant Aaron Hernandez moves that the Court postpone the deadlines established in connection with discovery and scheduling the deposition of the Caller for two weeks because two of defendant's counsel are out-of-state on vacation, without access to the case file or notes. In support of this motion, defendant states:

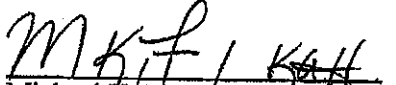
1. In an August 18, 2015 Order, which was received by counsel on August 19, the Court established a schedule by which counsel for both sides are to confer with each other regarding any necessary discovery, and scheduling a hearing to resolve any remaining discovery disputes and to schedule a hearing at which the Caller can be examined under oath.
2. Attorneys James L. Sultan and Charles W. Rankin, who have assumed primary responsibility for this issue for the defendant, are both out-of-state on family vacations, without access to the case file or notes. Mr. Sultan has limited access to email or cell phone service. He will be back in Boston by August 31. Mr. Rankin will be back in Boston on August 24, but is working a limited schedule the week of his return.
3. The sought-after postponement will not unnecessarily delay resolution of this issue. If each deadline established in the Order is postponed for two weeks, counsel will have adequate time to review the file, confer with each other, and notify the Court of any remaining disputes.

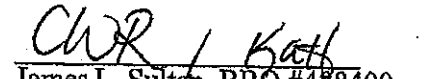
8/24/15

Allowed. Given the dates that ADA McCauley has advised he will be away, the Court orders that the deadlines be revised as follows: parties to confer on discovery issues by September 15, 2015; Commonwealth's discovery motion to be filed by September 18, 2015; defendant's opposition to be filed by September 23, 2015; hearing on the Commonwealth's discovery motion to be held on September 25, 2015.

*M. J. Santos, JSC*

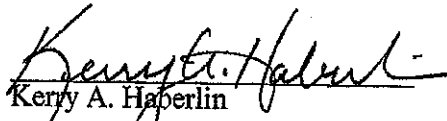
Respectfully submitted,  
**AARON HERNANDEZ**  
By his attorneys,

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

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

**CERTIFICATE OF SERVICE**

I hereby certify that I have served the foregoing document upon the Commonwealth by emailing and mailing a copy to William McCauley on August 19, 2015.

  
Kerry A. Haberlin

## Charles Rankin

---

**From:** McCauley, William (BRI)  
**Sent:** Tuesday, September 15, 2015 2:38 PM  
**To:** Charles Rankin; James Sulfan  
**Cc:** Bomberg, Patrick (BRI)  
**Subject:** Discovery Requests:

- 1). Any/all notes/reports of any conversations with 'Katy';
- 2). Any other statements made by 'Katy' not included in notes;
- 3). Names of other persons present during original calls/conversations with 'Katy';
- 4). Recordings/Phone messages;
- 5). A copy of the subpoena sent for the phone records as well as any/all records received;
- 6). Details/documents/etc. related to the "additional investigation" referenced in paragraph 2 of Jamie's second affidavit;
- 7). Details/documents/etc. of the "extensive personal contact" that the defendant has had with 'Katy';
- 8). Names of any other person or persons discovered/contacted/interviewed related to this matter;
- 9). Names of any other person or persons alleged to have attended the
- 10). Any statement(s) (recorded or unrecorded) of any other person discovered/contacted/interviewed related to this matter (including mother of 'Katy')
- 11). Any information related to where the 'Katy' works and where the juror works;
- 12). Any other information discovered that calls into question the veracity of 'Katy'.

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This e-mail message is generated from the Office of the Bristol County District Attorney and contains information that is confidential and may be privileged as an attorney/client communication or as attorney work product. The information is intended to be disclosed solely to the addressee(s). If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this email information is prohibited. If you have received this email in error, please notify the sender by return email and delete it from your computer system.

**Exhibit 2**



#414

BRISTOL, SS SUPERIOR COURT FILED <div style="border: 1px solid black; padding: 5px; display: inline-block;">           25 2015         </div> SUPERIOR COURT DIVISION BRISTOL SUPERIOR COURT INDICTMENT BRCR2013-983
---

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

SUPERIOR COURT DIVISION  
BRISTOL SUPERIOR COURT  
INDICTMENT BRCR2013-983

COMMONWEALTH

vs.

AARON HERNANDEZ

COMMONWEALTH'S OPPOSITION TO DEFENDANT'S MOTION TO AUTHORIZE  
ISSUANCE OF SUBPOENA TO IDENTIFY SUBSCRIBER OF INTERNET  
PROTOCOL ADDRESS

**Introduction.** On April 15, 2015, a superior court jury found the defendant, Aaron Hernandez, guilty of the crimes of first-degree murder and unlawful possession of both a firearm and ammunition. By way of post-verdict motion, the defendant now seeks to summons the internet protocol subscriber information of a person who anonymously filled out a survey, which was publicly available on the Office of Jury Commissioner's website. The motion requests records from MSTAR.net LLC, a Salt Lake City, Utah based internet service provider which provides internet service, primarily in the Mountain region of the United States. The date on the jury survey indicates it was sent on the same day of the verdict.

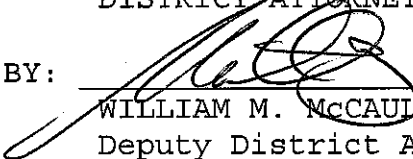
Furthermore, the defendant has made no showing how this information relates to an appropriate inquiry into extraneous influence in jury deliberation and the content of the juror survey does not establish the basis for such a claim. E.g. Commonwealth v. Fidler, 377 Mass. 192 (1979).

Simply put, the defendant's motion fails to raise any basis for the Court to conduct any inquiry into this matter. The survey was filled out using a foreign (not local) internet service provider, the information contained in the survey is inconsistent with the facts of a true juror's service and nothing in the substance is an appropriate basis to warrant the relief requested.

WHEREFORE, the Commonwealth respectfully requests that this Court DENY the defendant's motion.

RESPECTFULLY SUBMITTED,  
THOMAS M. QUINN III  
DISTRICT ATTORNEY

BY: \_\_\_\_\_

  
WILLIAM M. McCAULEY  
Deputy District Attorney  
BBO#562635  
888 Purchase St.  
New Bedford, MA 02740  
(508) 961-1800

Dated: September 24, 2015

#415

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

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

BRISTOL, SS SUPERIOR COURT  
FILED

SEP 25 2015

MARC J. SANTOS, ESQ.  
CLERK/MAGISTRATE

---

COMMONWEALTH OF MASSACHUSETTS

v.

AARON HERNANDEZ

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**DEFENDANT'S MOTION FOR LEAVE TO FILE EXHIBIT 3 UNDER SEAL**

The defendant Aaron Hernandez moves the Court for leave to file Exhibit 3 to the Defendant's Opposition to Commonwealth's Second Motion for Discovery under seal. In support of this motion, defendant states:

1. Exhibit 3 is comprised of an email from defense counsel to the District Attorney's Office, dated September 17, 2015. Attached to the email (and to Exhibit 3) is defendant's response to the Commonwealth's discovery requests. The response, including handwritten notes, contains the name of a deliberating juror and the true name of the informant who called herself "Katy."
2. Counsel is concerned that if the documents are made public at this time, the fact-finding process may become distorted by media attention.

Respectfully submitted,  
**AARON HERNANDEZ**

By his attorneys,



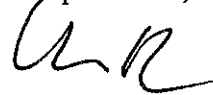
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**CERTIFICATE OF SERVICE**


I hereby certify that I served the foregoing document upon the Commonwealth by e-mail and by mailing a copy thereof, US mail, postage prepaid, to: William McCauley, Patrick Bomberg, and Roger Michel, Assistant District Attorneys, Bristol County, 888 Purchase Street, New Bedford, MA 02740 on September 24, 2015.




Charles W. Rankin

#417

<b>CLERK'S NOTICE</b>		DOCKET NUMBER <b>1373CR00983</b>	<b>Trial Court of Massachusetts 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 Bristol County Fall River, MA 02721		
<p>You are hereby notified that on 09/25/2015 the following entry was made on the above referenced docket:</p> <p><b>ORDER: on Defendant's Motion for Leave to File Exhibit 3 Under Seal --</b> Treating this motion as a motion to impound, the motion is <b>ALLOWED</b>. The impoundment is narrowly tailored to prevent potential prejudice, and there are no reasonable alternatives to impoundment. See <i>Globe Newspaper Co. v. Commonwealth</i>, 407 Mass. 879, 887-889 (1990) and this Court's Memorandum of Decision and Order on Defendant's Motion to File Accompanying Pleadings Respecting Post-Verdict Inquiry Under Seal (Motion to Impound) dated July 15, 2015. This impoundment order, like the others relating to the issue of a juror having been exposed to extraneous information, will be lifted should the court ultimately deny the defendant's motion to proceed to a formal hearing at which the juror at issue is interrogated or, if there is to be such a hearing, at the conclusion of the evidentiary portion of the hearing.</p>			
DATE ISSUED <b>09/25/2015</b>	ASSOCIATE JUSTICE/ ASSISTANT CLERK <b>Hon. E. Susan Garsh</b>		SESSION PHONE#

<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: <b>File Copy</b>	COURT NAME & ADDRESS Bristol County Superior Court - Fall River 186 South Main Street, Suite 202 Bristol County Fall River, MA 02721	
<p style="text-align: center;">You are hereby notified that on 09/25/2015 the following entry was made on the above referenced docket:</p> <p><b>Endorsement on Motion to Motion to Authorize Issuance of Subpoena to Identify Subscriber of Internet Protocol Address; Affidavit of C.W. Rankin in Support, (#410.0): DENIED</b>  <b>After review and hearing, Defendant's Motion to Authorize Issuance of Subpoena to Identify Subscriber of Internet Protocol Address is DENIED. Apart from the fact that the survey, which can be completed by anybody regardless of whether he or she actually served on a jury, was completed by someone using a Utah-based internet service provider, the defendant not shown that an allegation that jurors may have talked amongst themselves during the trial merits inquiry. See Commonwealth v. Mahoney, 406 Mass. 843, 856 (1990) ("any disregard by jurors of instructions from the judge not to discuss the case prior to deliberations would not provide a basis to conclude that the verdicts were tainted, in the absence of any concrete facts that the discussions involved matters not in evidence"); Commonwealth v. Scanlan, 9 Mass. App. Ct. 173, 184 (1980) (claim that jurors discussed case with each other in violation of judge's daily instructions does not raise an issue of extraneous influence but, rather, is a matter involving the internal decision making process of the jury, on which the court should not hear testimony). Cf. Commonwealth v. Avalos, 2014 WL 1302046 at * (Mass. App. Ct. Rule 1:28) (discussion of case by two jurors during cigarette break after deliberations commenced does not raise issue of extraneous influence; while undesirable, such discussion does not impeach a verdict unless there is actually extraneous evidence involved.</b></p>		
DATE ISSUED  <b>09/25/2015</b>	ASSOCIATE JUSTICE/ ASSISTANT CLERK  <b>Hon. E. Susan Garsh</b>	SESSION PHONE#

<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: <b>File Copy</b>		COURT NAME & ADDRESS Bristol County Superior Court - Fall River 186 South Main Street, Suite 202 Bristol County Fall River, MA 02721
<p>You are hereby notified that on 09/25/2015 the following entry was made on the above referenced docket:</p> <p><b>Endorsement on Motion for Discovery (Second), (#411.1): DENIED</b>  <b>DENIED after hearing. See Ruling on the record.</b></p>		
DATE ISSUED  <b>09/25/2015</b>	ASSOCIATE JUSTICE/ ASSISTANT CLERK  <b>Hon. E. Susan Garsh</b>	SESSION PHONE#