

DEC 30 2014

MARC J. SANTOS, ESQ.
CLERK/MAGISTRATE
BRISTOL, SS.

COMMONWEALTH OF MASSACHUSETTS

SUPERIOR COURT DEPARTMENT
FALL RIVER SUPERIOR COURT
INDICTMENTS 2013-00983

COMMONWEALTH

v.

AARON HERNANDEZ

COMMONWEALTH'S MOTION FOR A VIEW

Now comes the Commonwealth in the above-entitled case and pursuant to M.G.L. c. 234, § 35, moves that the jury be taken for a view of the following locations that are relevant to the trial of this matter. The Commonwealth requests that the jury in this matter be taken by bus from the Fall River Justice Center to the following locations and/or to make observations of the following scenes:

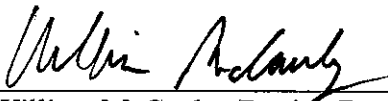
- 1). 22 Ronald C. Meyer Drive, North Attleboro, MA;
- 2). Cell Tower Location - 505 Collins Street, South Attleboro, MA
- 3). Cell Tower location – 2 Holbrook Rd., Foxboro;
- 4). Blue Hill Express – 2640 Washington St., Canton, MA;
- 5). Cell Tower Location - 99 Boston St., Dorchester (near Exit 16);
- 6). Cell Tower Location – 519 Albany St., Boston (near Exit 18);
- 7). 10 Fayston Street, Boston, MA;
- 8). Return – 10 Fayston Street to Mass Avenue Connector to Frontage Road;

- 9). Massachusetts Turnpike – Weston Tolls;
- 10). North Attleboro Industrial Park (Exit 5);
 - Triboro Gulf Gas station
 - Seekonk Supply
 - Metalor
 - Needletech
 - Bells Powder Coating
 - North Attleboro Electric
- 11). Corliss Landing - 344 John Dietsch Boulevard, North Attleboro;
- 12). Landry Avenue - Location of where gun found
- 13). Return to 22 Ronald C. Meyer Drive, North Attleboro.

In support of this motion, the Commonwealth states that taking a view will enable the jury to better understand the evidence that it anticipates will be offered during the trial. The Commonwealth further believes that this view is necessary to allow the jury to observe specific locations, perspectives, landmarks and distances between numerous locations which are relevant to the homicide and necessary for the jury to fairly understand the testimony. See Commonwealth v. Dascalakis, 246 Mass. 12 (1923) and Commonwealth v. Saylor, 27 Mass. App. Ct. 117 (1989).

The Commonwealth respectfully request that this motion be allowed.

Respectfully submitted,
For C. Samuel Sutter,
Bristol County District Attorney



William McCauley/Patrick Bomberg
Assistant District Attorneys
Bristol County

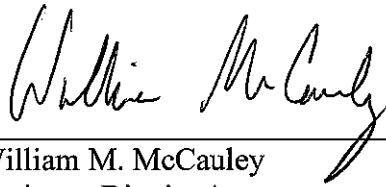
Dated: December 30, 2014

CERTIFICATE OF SERVICE

I, William M. McCauley, certify that I have served a copy of the Commonwealth's Motion for a View by first class postage prepaid mail 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, MA 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 30th day of December 2014.

COMMONWEALTH OF MASSACHUSETTS,



William M. McCauley
Assistant District Attorney
For the Bristol District
888 Purchase Street
New Bedford, MA 02741-0973

BRISTOL, SS SUPERIOR COURT
FILED

#205

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MARC J. SANTOS, ESQ.
CLERK/MAGISTRATE

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS.

SUPERIOR COURT DEPARTMENT
FALL RIVER SUPERIOR COURT
INDICTMENTS 2013-00983

COMMONWEALTH

v.

AARON HERNANDEZ

**COMMONWEALTH'S MOTION IN LIMINE TO EXCLUDE
TESTIMONY OF DR. DAVID GREENBLATT**

Now comes the Commonwealth in the above-entitled case and moves in limine to exclude the testimony of Dr. David Greenblatt or in the alternative to request further discovery and a voir dire hearing of his opinions prior to any reference to them at trial. As grounds therefore, the Commonwealth states that it is well settled that before an expert witness can be allowed to testify there must be a "preliminary assessment of whether the reasoning or methodology underlying the testimony is scientifically valid and **of whether that reasoning or methodology properly can be applied to the facts in issue.**" Commonwealth v. Lanigan, 419 Mass. 15 (1994) citing Daubert v. Merrell Dow Pharmaceuticals, Inc., 113 S. Ct. 2786, 2796 (1993) (emphasis added).

The defendant's notice of Dr. Greenblatt's testimony as an expert was that "[i]t is anticipated that he will testify regarding the effects of PCP and/or Marijuana on the human brain and human behavior." The defendant has supplied no reports of examination nor delineated any findings of Dr. Greenblatt that would suggest PCP is in any way relevant to this case. Nor has the defendant supplied any publications of the defendant's expert on the subject of the effects of PCP as required by Mass.R.Crim.P. 14(a)(1)(A)(vii). When Commonwealth inquired regarding further clarification of the subject matter and basis of Dr. Greenblatt's testimony and of whose mental state was supposedly influenced by PCP during the relevant times, defendant's counsel responded: "We anticipate that Dr. Greenblatt's testimony will relate generally to the effects of these substances on the body and on human behavior. Based on discovery provided by the Commonwealth to date, the jury may deem that testimony applicable to one or more of the individuals charged in this case."

This ambiguous response demonstrates the speculative nature of such evidence. The Commonwealth asserts that there will be no evidence of the use of PCP by any defendant on the date of the murder. While it is true that Wallace and Ortiz were observed smoking PCP on the Saturday night preceding the murder (more than twenty-seven hours before the murder), there is no evidence that either consumed PCP after that time and there is no witness who described any behavior that was consistent with the effects of PCP at any time near the time of the murder¹.

¹ Though the defendant's response seems to include the possibility that the defendant may implicate himself in the ingestion of illicit substances, the Commonwealth notes that the defendant has failed to provide any notice of a diminished capacity defense as required under Mass.R.Crim.P 14(b)(2) and so is precluded from arguing any defense of diminished capacity.

Furthermore, the defendant's response appears to deliberately keep the Commonwealth in the dark so that his expert can attribute certain murderous behaviors to ingestion of PCP where there is no evidence that such drug was consumed close enough in time to be relevant given that there will be no direct evidence of either Wallace or Ortiz acting in a manner consistent with the effects of PCP. In fact, the Commonwealth expects the evidence to be that the witnesses who made observations of Wallace and Ortiz did not notice them to acting in any erratic way.

Accordingly, the Commonwealth objects to the effort by the defense, in the absence of any supporting evidence, to suggest that the use of PCP explains the killing of Odin Lloyd. In point of fact, the defense seeks to mislead the jury by raising the bogey man of the illicit use of PCP without being able to show how it in any way has relevance to the events of the murder.

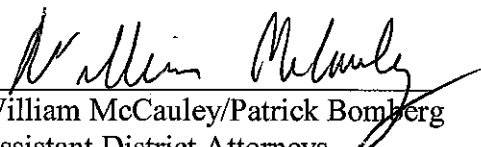
In the absence of a nexus between PCP and the actual crime (or even any meaningful notice), defendant's expert witness should not be permitted to testify. Without notifying the Commonwealth of the actual subject matter of his opinion, the Commonwealth cannot even understand what the opinion might be, on what it is based and how it is related to the murder. Because of this, the Commonwealth is unable to properly prepare its own expert.

Because of the failure to provide proper notice and the expert's opinion appears to be unsupported in fact, the Commonwealth requests that the witness be stricken from the witness list or in the alternative that the defendant supplement his response and give notice of the opinion and basis so the Commonwealth can respond with its own expert. Further, Commonwealth requests a voir dire of this witness before any testimony (or any

reference to expert testimony can be stated in openings) relating to this subject matter be permitted in this case. Commonwealth v. Crapps, 84 Mass.App.Ct. 442 (2013), Commonwealth v. Torres, 469 Mass. 398 (2014). See also Commonwealth v. DiBenedetto, 458 Mass. 657, 670 (2011) (a voir dire hearing for the Commonwealth to test the applicability of defendant's expert's scientific theory to the particular facts in the case before the court is an acceptable method of complying with the Daubert/Lannigan standard).

The Commonwealth respectfully request that this motion be allowed.

Respectfully submitted,
For C. Samuel Sutter,
Bristol County District Attorney


William McCauley/Patrick Bomberg
Assistant District Attorneys
Bristol County

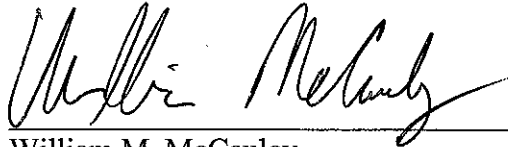
Dated: December 30, 2014

CERTIFICATE OF SERVICE

I, William M. McCauley, certify that I have served a copy of the Commonwealth's Motion in Limine to Exclude Testimony of Dr. David Greenblatt by first class postage prepaid mail 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, MA 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 30th day of December 2014.

COMMONWEALTH OF MASSACHUSETTS,

A handwritten signature in black ink, appearing to read "William M. McCauley", written over a horizontal line.

William M. McCauley
Assistant District Attorney
For the Bristol District
888 Purchase Street
New Bedford, MA 02741-0973

BRISTOL, SS SUPERIOR COURT
FILED

#304

DEC 30 2014

COMMONWEALTH OF MASSACHUSETTS

MARC J. SANTOS, ESQ.
CLERK/MAGISTRATE

BRISTOL, ss

FALL RIVER SUP. COURT
IND.#BRCR2013-00983

COMMONWEALTH

vs.

AARON HERNANDEZ

COMMONWEALTH'S SECOND MOTION IN LIMINE

Introduction. The defendant, Aaron Hernandez, was arraigned in Attleboro District Court on June 26, 2013 on charges of first-degree murder and various firearms offenses. He was subsequently indicted by a Bristol County grand jury for the same crimes and is currently awaiting trial. The Commonwealth, pursuant to Mass. R. Crim. P. 13, respectfully requests that the Court admit the testimony of Robert Paradis concerning the defendant's possession of a .45 caliber handgun - the same type of gun used to kill the victim here - approximately six weeks before the murder. While evidentiary rulings on a motion in limine are "left to the sound discretion of the trial judge," Commonwealth v. Arrington, 455 Mass. 437, 441 n.6, 917 N.E.2d 734 (2009), as a general rule, evidence should be deemed

admissible where its probative value outweighs its potential for improper prejudice.

Relevant Facts. On Friday night, June 14, Hernandez and Lloyd went to a club in Boston. Towards the end of the night, Hernandez retrieved a firearm from his vehicle, a rental Suburban. They left the club after 2:00 a.m and drove to Hernandez's apartment in Franklin, where they spent the night. The next morning, June 15, Hernandez and Lloyd returned to Hernandez's house, and Hernandez allowed Lloyd to keep the rented vehicle. On Sunday night, June 16, Wallace and Ortiz arrived at Hernandez's house. Hernandez had earlier that evening contacted Lloyd about "step[ping]" out for a while, as they had on Friday night. Around 2:30 a.m. on June 17, Hernandez, Wallace and Ortiz picked up Lloyd at his house in Dorchester, and the four of them drove in Hernandez's rented silver Altima to North Attleboro, ultimately stopping in an empty industrial area. At around 3:30 a.m., Lloyd was shot to death, and the other three men left the scene within minutes and went to Hernandez's house. On the day following this shooting, Hernandez asked his fiance, Shayanna, to dispose of unknown materials.

In addition to these facts, the evidence presented to the grand jury provided a substantial basis for the

existence of the following additional facts: Something happened at the club that caused Hernandez to arm himself. On Saturday morning, June 16, Hernandez texted Shayanna that he "somehow told [Lloyd] about my other spot, and I just woke up bugging" Hernandez arranged for Wallace and Ortiz to come to North Attleboro, and he arranged to get together again with Lloyd. Hernandez, Wallace, and Ortiz left at about 1:00 a.m. to retrieve Lloyd. Shortly before their departure, Hernandez was holding an item that appears consistent with a firearm. The side view mirror on the driver's side of the vehicle was still intact when the vehicle left Hernandez's home. The grand jury could reasonably infer that, given the time of day that Lloyd was picked up, Hernandez did not intend to go clubbing with Lloyd. Only one car entered the industrial park in the direction of where the body was located at about the time of the killing, and that vehicle was consistent with the Altima. The driving distance from the site of the killing to Hernandez's home is two to three minutes. Hernandez was driving the Altima when he returned to his home at approximately 3:30 a.m. on June 17. Shortly after the killing, while in his home, at the entrance to his basement, Hernandez was what appears to be a firearm. Hernandez returned the silver Altima on June 17 at

approximately 5:15 p.m. with Wallace and Ortiz; the driver's side mirror was broken and the driver's side of the vehicle was scratched. Hernandez said he had no information about how the car was damaged, telling the rental company that "he just came out to it and it was like that." The tires appeared consistent with tire tread marks left at the scene. Hernandez rented a Chrysler on June 17, which Wallace then used to leave the area; Wallace later abandoned the vehicle in Connecticut. The spent casings and projectiles at the scene were .45 caliber. A .45 caliber spent shell casing located by police away from the crime scene can reasonably be inferred to be linked to Hernandez and that shell casing, in turn, was linked forensically to the shell casings at the scene. The grand jury heard about several statements made by Hernandez that reasonably appear designed to deflect suspicion from himself or that otherwise qualify as consciousness of guilt. For example, Hernandez told the police on June 17 that he last saw O in Boston on Sunday June 16. Hernandez sent Shayanna a text message that the grand jury could have concluded was a coded request for her to destroy the hard drive for the surveillance system. Hernandez phoned Shayanna on June 18 and asked her to get rid of a box in the basement. As requested, she disposed of the item. The

box was large and heavy; it weighed about twenty-five pounds. A witness told the grand jury that he had once seen a gun in the basement of Hernandez's home in a lock box. The defendant argues that whether the box contained "drugs, firearms, or something else entirely was not shown," but, given the totality of the evidence presented to the grand jury, it would have been reasonable for the grand jury to infer that Hernandez arranged for the disposal of firearms, including the murder weapon.

In sum, there is evidence from which the grand jury could reasonably conclude that Hernandez organized the pickup of Lloyd, arranged for others to accompany him, rented the vehicle that picked up Lloyd in Boston and transported him to the scene of the shooting in North Attleboro, supplied the firearm used in the shooting, was present when Lloyd was shot, drove the car away from the scene with Wallace and Ortiz as his passengers to facilitate their escape, directed and aided in the concealment of evidence of the crime, assisted in Wallace's and Ortiz' flight from the Commonwealth, and made false statements about when and where he last saw Lloyd and about his whereabouts at the time of the killing.

Discussion. The witness, Robert Paradis, is one of the defendant's longtime friends. Both grew up in Bristol,

Connecticut where they attended the same high school and played football together. They stayed in contact and remained friends long after both went away to college.

In April of 2013, the defendant invited Paradis to join him for a few days in Los Angeles. Paradis agreed and the defendant purchased him a roundtrip airplane ticket. On April 26, 2013, Paradis flew first-class to Los Angeles, where he was met by the defendant and Wallace, who the defendant referred to by the nicknames 'Fish' and 'Bo'. Paradis spent the next several days with the defendant and Wallace. During this time, a mere six weeks prior to the murder, the defendant told Paradis that he had a ".45." Hernandez also commented to Wallace and Paradis when the three were out in their rental car that he had "fire" or "heat" under the seat. The defendant's brag that he had a ".45" is clearly evidence from which the jury could find, close in time to the murder, that Hernandez possessed a weapon matching the identical large caliber handgun used in the murder of Odin Lloyd.¹

¹ The Commonwealth expects that the forensic ballistic evidence at trial will delineate that the particular brand of .45 used in the killing will be one manufactured by Glock Ges.m.b.H. In colloquial terms a ".45" is often referred to by its caliber regardless of the manufacturer because referring to that size caliber is short hand for referring to a powerful weapon. The use of the ".45"

While in Los Angeles, the defendant used Paradis' cellphone to call Oscar Hernandez in Florida. On April 30th, the defendant and Wallace left Los Angeles to fly back to Boston. Shortly after leaving for the airport, the defendant called Paradis and asked him to check and see if a black t-shirt was in the top drawer in his bedroom. Paradis checked the drawer as requested and found a large gun wrapped in the black t-shirt. Paradis knew it was a large handgun by feel but did not unwrap it to determine the make or model. He told the defendant that the gun was there. The defendant stated "okay" and then hung up.

The defendant and Wallace arrived back in Boston on the evening of April 30th. They returned to the defendant's home in North Attleboro where the following day, May 1st, a Toyota was shipped from Florida to the defendant's home from Oscar Hernandez. The Toyota was then parked in the defendant's garage where a later search revealed clothing belonging to the defendant and Wallace as well as Wallace's boarding pass from the April 30th flight.

The Commonwealth seeks to admit at trial evidence of the defendant's statements and possession of a .45 caliber firearm six weeks prior to the murder of Odin Lloyd which

moniker would include a weapon that was a .45 caliber Glock such as the murder weapon.

is consistent with the type of firearm used in the killing. As the SJC concluded in Commonwealth v. Barbosa, 463 Mass. 116, 123 (2012): evidence of “[a] weapon that could have been used in the course of a crime is admissible, in the judge's discretion, even without direct proof that the particular weapon was in fact used in the commission of the crime.”² See Commonwealth v. Williams, 456 Mass. 857, 871, 926 N.E.2d 1162 & n.11 (2010); Commonwealth v. Ashman, 430 Mass. 736, 744, 723 N.E.2d 510 (2000); Commonwealth v. James, 424 Mass. 770, 779-780, 678 N.E.2d 1170 (1997); Commonwealth v. Toro, 395 Mass. 354, 356-357, 480 N.E.2d 19 (1985), and cases cited. Such evidence is relevant for demonstrating that the defendant had the ‘means of committing the crime.’ Commonwealth v. Ashman, supra.”

Applying these same principles in relation to the admission of a pistol potentially used by the defendant to murder the victim in Commonwealth v. O'Toole, 326 Mass. 35,

² In Barbosa there was minimal evidence that the defendant had ever had possession of the pertinent firearms. The court was critical of admission of evidence of other firearms there was a paucity of evidence that the defendant possessed the firearm to be referred to. This criticism is in stark contrast to the facts of this case where the evidence the Commonwealth seeks to admit is defendant's own admission to possessing a firearm capable of committing the murder of Odin Lloyd. Commonwealth v. Barbosa, Mass. at 123. Similarly, in Commonwealth v. McGee, 467 Mass. 141 (2014), the court found no issue with the admission of a precrime photograph of the defendant with a handgun that could have inflicted the mortal wound.

39 (1950), the SJC stated that: "[t]he second assignment [of error] of each defendant is to the admission in evidence of a pistol of foreign make found in O'Toole's room behind a radio, the butt of which was capable of being the blunt instrument with which Irwin's skull was fractured. There was no direct evidence that the pistol was in fact the instrument used. *But it is commonly competent to show the possession by a defendant of an instrument capable of being used in the commission of the crime, without direct proof that that particular instrument was in fact the one used.* Commonwealth v. Williams, 2 Cush. 582, 586. Commonwealth v. Choate, 105 Mass. 451, 458, 459. Commonwealth v. Brown, 121 Mass. 69, 81. Commonwealth v. Howard, 205 Mass. 128, 152. Commonwealth v. Bartolini, 299 Mass. 503, 511, 512. Commonwealth v. Giacomazza, 311 Mass. 456, 470. Commonwealth v. Noxon, 319 Mass. 495, 539, 540. Starchman v. State, 62 Ark. 538. People v. Hale, 81 Cal.App. 734. People v. McCall, 10 Cal.App.(2d) 503, 505, 506. People v. Rodriguez, 31 Cal.App.(2d) 524. People v. Hightower, 40 Cal.App.(2d) 102. People v. Dale, 355 Ill. 330, 334. Smith v. State, 182 Md. 176. Commonwealth v. Pasco, 332 Pa. 439. State v. Taylor, 159 Wash. 614. State v. Montgomery, 16 Wash.(2d) 130. We think there was no error in the admission of the pistol" (emphasis added).

A similar result - again, in relation to the admission of a handgun potentially used by the defendant to murder the victim - was obtained in Commonwealth v. Otsuki, 411 Mass. 218, 235-236 (1991). There, the SJC observed, "the testimony properly was admitted for the purpose of demonstrating that the defendant possessed the means to accomplish the crime, regardless of whether the defendant actually employed that means to commit the crime 'Evidence of prior bad acts is not admissible to show that the defendant has a criminal propensity or is of bad character.' Commonwealth v. Robertson, 408 Mass. 747, 750 (1990). Such evidence, if relevant, may be admitted, however, if it is offered for a purpose other than impugning the defendant's character, and if its probative value is not substantially outweighed by any prejudice. *Id.* [Here] . . . the testimony speaks to the defendant's ability to possess the means to commit the crimes alleged. *Id.* The judge properly determined . . . that the probative value of this evidence outweighed any possible prejudice to the defendant by its admission" (emphasis added). Commonwealth v. Otsuki is particularly instructive because the evidence was that the defendant possessed a firearm five weeks prior to the murder in Otsuki - a nearly identical separation in time as is present in this case.

Otsuki at 224-26.³ See also Commonwealth v. Ridge, 455 Mass. 307, 309, 322-323 (2009) (no error in admitting evidence showing defendant's access to and familiarity with firearms allegedly dissimilar to murder weapon, when appropriate limiting instruction given).

Finally, as the SJC observed in Commonwealth v. LeBlanc, 373 Mass. 478 (1977): "[t]here was no error in permitting the testimony of a witness who said she had seen the defendant in possession of two guns -- a smaller gun like the murder weapon and a larger gun -- prior to the day of the murder. While the defendant argues that the only purpose of this evidence was 'to portray the defendant as a dangerous and violent man,' the testimony had the value of establishing the defendant's familiarity with guns, his prior possession of a gun like the murder weapon . . . and his [general] practice of carrying guns See Commonwealth v. Caine, 366 Mass. 366, 370-371 (1974), and cases cited; Commonwealth v. McLaughlin, 352 Mass. 218, 229-230, cert. denied, 389 U.S. 916 (1967)."

³ Indeed the only identifying characteristic of the prior gun in Otsuki was that the defendant had possessed a firearm with a blue steel handle. There was no reference to any ballistics that tied the prior gun to the murder weapon. Here the precise caliber firearm Hernandez described having is used to murder Odin Lloyd.

The jury should be allowed to assess Paradis' testimony regarding the defendant's possession of a .45 caliber handgun in the weeks before the murder. Indeed, to withhold such evidence from the jury at trial would improperly deprive them of competent and material evidence of the defendant's guilt. Paradis' testimony should, therefore, be deemed admissible.⁴ It is not a simple matter to obtain an illegal handgun. That the defendant admitted to having done so is strong evidence of his ability to have obtained the means to commit the murder of Odin Lloyd. This is particularly so where a mere six weeks before the murder, defendant stated he had the same large caliber weapon as was the murder weapon in this case.

WHEREFORE, the Commonwealth respectfully requests that the aforementioned testimony be deemed admissible at the defendant's forthcoming trial. To the extent that a hearing is required to establish any requisite factual

⁴ Apart from demonstrating that the defendant by his own statement possessed a weapon of the identical large caliber as the one actually used in the murder, Paradis' testimony is also admissible for the more general purpose of establishing the defendant's ready access to and familiarity with firearms. In Commonwealth v. Tassinari, 466 Mass. 340, 353 (2013), where the main issue at trial is premeditation, evidence of defendant's access to firearms was deemed highly relevant to the question of whether or not the defendant planned to kill the victim. See also Commonwealth v. Hodge (No. 2), 380 Mass. 858, 863 (1980) (defendant's proficiency with firearms relevant to deliberate shooting of victim).

predicates for the admission of these items, the Commonwealth respectfully requests that such hearing be scheduled at the earliest possible date.

Respectfully submitted,



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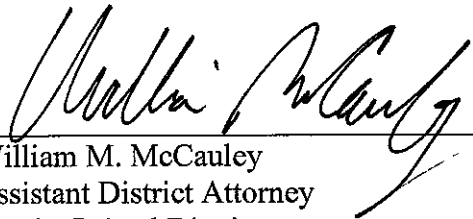
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