

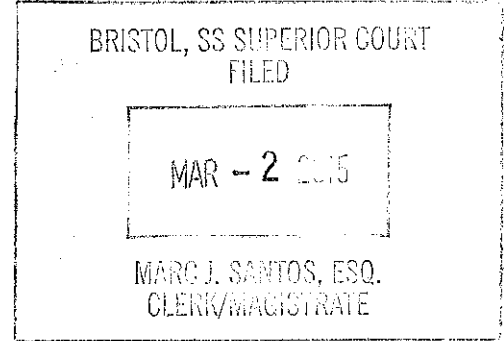
#289

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

BRCR2013-00983

COMMONWEALTH
vs.
AARON HERNANDEZ



COMMONWEALTH'S RENEWED MOTION IN LIMINE TO ADMIT EVIDENCE
OF A PRIOR SHOOTING INCIDENT INVOLVING ALEANDER BRADLEY

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 on trial. On or about December 10, 2014, the Commonwealth filed a motion in limine seeking to admit evidence regarding a shooting in Florida. The victim was the defendant's friend and confidante, Alexander Bradley. The Court denied the Commonwealth's motion and excluded all evidence of the Bradley shooting, at least for use in the Commonwealth's case-in-chief.

However, to the extent that the defendant has now sought unfairly to capitalize on the Court's ruling by

presenting alleged exculpatory evidence i.e that the defendant would not shoot his friend, Odin Lloyd, the Commonwealth should be permitted to rebut this claim by offering evidence of the incident involving Bradley, where the defendant himself has "opened the door" to this topic. On this basis, the Court should permit the government to present evidence of the Bradley shooting to the jury. Indeed, the defendant's tactics have rendered such a ruling necessary in order to prevent him from presenting what appears to be an intentionally distorted view of the facts.

Facts Relating to the Bradley Shooting. On February 13, 2013, employees of a John Deere tractor store found Alexander Bradley on the ground alongside a highway. Minutes before, Bradley had been shot in the face after traveling in a car with the defendant. Immediately after he was shot, the defendant exited the car and pulled Bradley from his rear passenger seat leaving him on the ground in an industrial area. The defendant and two others he was traveling with immediately fled the scene. Bradley was hospitalized but, as a result of the shooting, suffered permanent injuries, including the loss of his right eye.

Bradley later described the circumstances leading up to the shooting. He described how he and the defendant had been close friends up until the time of the shooting and

had frequently traveled together. In February of 2013, they had traveled to the Palm Beach area where they met with other associates of the defendant. On the night of the shooting, Bradley, the defendant and two other men, not known to Bradley, visited "Tootsie's Caberet," a Florida strip-club.

While inside Tootsie's, Bradley and Hernandez got into an argument over how the bar tab would be divided. The defendant escalated when the defendant wanted Bradley to split the bill with him while the defendant's other associates paid nothing. Bradley objected and the argument resumed in the car when Bradley realized that he had left his cellphone in the club and asked the defendant to go back and get it. When the defendant refused, Bradley made disrespectful remarks about the defendant. Shortly thereafter, the car pulled over in an isolated industrial area where Bradley was shot between the eyes. The defendant exited the car and quickly dumped Bradley's body on the ground before fleeing the scene.

Analysis. Evidence of prior bad acts may not be admitted to prove a defendant's criminal propensity, but such evidence is admissible for other purposes, so long as its prejudicial effect does not outweigh its probative value. See Commonwealth v. Bianchi, 435 Mass. 316, 322

(2001). For example, evidence of prior bad acts may be admitted to rebut "specific portions" of a defense theory. See Commonwealth v. Roderick, 429 Mass. 271, 274 (1999). This principle applies directly to the situation here.

The defendant has repeatedly emphasized to the jury that the defendant could not have been the person who murdered Lloyd because the defendant and Lloyd were "friends." In fact, the defendant in his opening continually stressed this point, referring to the victim, Odin Lloyd as the defendant's friend over a dozen times. Indeed, the defendant has made this argument one of the cornerstones of his defense and has cross examined witnesses suggesting that the two were friends.

Needless to say, the defendant adopted this approach mindful of the fact that government had been enjoined from mentioning that the defendant, just four months before Lloyd was murdered, shot another one of his friends in response to the most trivial provocation. Since the Commonwealth had been prohibited from offering evidence related to the topic of the Bradley shooting, the defendant apparently believed that he could purvey what he knew to be a falsehood to the jury - i.e. that the defendant would never harm his friends - with complete impunity. The Court

cannot countenance this conduct consistent with ensuring a fair trial for both of the parties.

Indeed, if the Court fails to act, it will enable the defendant essentially - and completely unfairly in view of the actual facts of the case - to argue to the jury not only that there is a complete absence of apparent motive in this case, but that, in fact, the defendant had a strong motive **not** to murder Lloyd. In effect, this would unfairly compound the use of this evidence and prevent the Commonwealth from challenging the chief pillar of the defense. In effect, the Court's earlier ruling on the evidence relating to the Bradley shooting should not permit the defendant from affirmatively using this ruling to create a false view of the evidence. The law of the Commonwealth is designed to prevent just such distortion.

The present situation is nearly identical to the facts of Commonwealth v. Oliveira, 74 Mass. App. Ct. 49, 53-54 (2009). There, "[a]t the outset of the trial, the judge considered the issue of the defendant's prior convictions involving the same victim . . . {After weighing} "the possible unfairness to the defendant against the probative value of the evidence . . . the judge decided that the prior convictions were too prejudicial to be admitted . . . [However,] the judge allowed the topic to be revisited if

the defendant changed the terrain of the case by opening the door for their admission . . . The defendant testified that despite the beating he took . . . at the insistence of the victim, he neither summoned the police nor fought back because he merely wished to retreat to his house where he could avoid any conflict. He wanted to be at peace because he was retired and disabled, and he was astonished at what had occurred . . . Given this testimony, the judge was justified in concluding that the defendant had unfairly depicted himself to the jury as a peaceful, noncombative person who had been victimized by [the victim]." Ibid.

In these circumstances, the Appeals Court concluded that "the Commonwealth was entitled to offer the prior convictions to rebut this specific portion of the defendant's testimony, i.e., that he was a peaceful, nonviolent man who wished to avoid conflict . . . The judge's initial decision to exclude the evidence of the prior convictions did not provide the defendant, given his criminal history of violence, license to unfairly depict himself as a peaceful man who eschewed conflict. See Commonwealth v. Rivera, 425 Mass. 633, 638 (1997). Once he depicted himself as such, the prosecutor's hands no longer were tied, and he was free to rebut the defendant's testimony with the evidence of [prior bad acts]. See

Commonwealth v. Bembury, 406 Mass. 552, 561-562 (1990)."

Ibid.

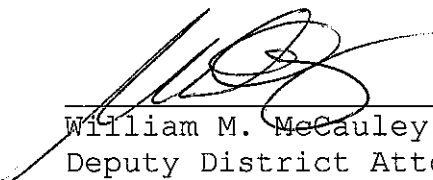
A similar situation arose in Commonwealth v. Magraw, 426 Mass. 589, 595-596 (1998). There the Commonwealth was permitted to introduce evidence that the victim had found a rifle belonging to the defendant lying on her bed, intended inferentially as a threat of future violence. The purpose of introducing this evidence was, at least in part, "to rebut the defendant's claim that [his] separation [from the victim] was amicable." Ibid. As the SJC stated in McGraw: "We conclude that evidence of the rifle incident was admissible in the judge's discretion, because it was admitted through non-hearsay testimony and it is relevant to show discord between the defendant and the victim in the face of the defendant's claim that he and the victim 'were so happy.'" Ibid. See also Commonwealth v. Haley, 363 Mass. 513, 524 (1973) (at husband's trial for the murder of his wife, otherwise inadmissible evidence that the wife feared husband was properly admitted to rebut husband's claim that the couple was "happy").

Just as in McGraw and Oliveira, the defendant here has unfairly sought to portray himself in a manner decidedly inconsistent with the picture painted by excluded evidence. The defendant is by no means someone who would necessarily

refrain from resorting to extreme violence - including homicidal violence - merely because the victim was a friend. Having opened the door to this topic, like his counterparts in the cases cited above, the defendant has now left himself open to rebuttal through the use of previously excluded evidence.

WHEREFORE, the Commonwealth respectfully requests that this Court modify its earlier ruling and permit the government to admit evidence of the Bradley shooting subject to whatever limiting instruction the Court deems appropriate.

Respectfully submitted,



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