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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CRIMINAL #2014-10417

COMMONWEALTH OF MASSACHUSETTS

v.

AARON HERNANDEZ

**DEFENDANT’S OPPOSITION TO COMMONWEALTH’S
MOTION FOR A COURT ORDER PERMITTING EXHAUSTIVE TESTING
OF A SWAB TAKEN FROM A .38 CALIBER SMITH AND WESSON FIREARM**

On May 21, 2015, the Commonwealth filed a motion seeking Court authorization to conduct exhaustive DNA testing of a swab taken from a firearm which the Commonwealth alleges to be the murder weapon in this case. The defendant opposes the motion on the grounds that any DNA test results obtained from this swab at this juncture would not be probative. Indeed, the Commonwealth’s own forensic scientist who executed the affidavit filed in support of the Commonwealth’s motion has acknowledged in writing that “[t]he gun has been handled by other people after being used in the crime,” and opined: “[W]e don’t believe it will assist you with furthering your case.” See e-mail correspondence from Amy Reynolds to ADA Patrick Haggan dated January 15, 2015, appended hereto as Exhibit 1.

In order to understand why DNA testing of this swab will not be probative at this late date, it is necessary to review what this particular firearm has undergone from its seizure on June 21, 2013 through the collection of a swab for potential DNA testing on or about February 26, 2015, based on discovery provided to date:

1. On June 21, 2013, a .38 caliber Smith and Wesson revolver was seized by Massachusetts State troopers from a briefcase found in the trunk of a vehicle owned by Jailene Diaz-Ramos, which had been in an accident on I-91 in Longmeadow, Massachusetts;
2. On or about June 27, 2013, the firearm was subjected to fingerprint analysis (superglue and dye) by State Police Trooper Steven Lord. The firearm was also examined and test-fired by State Police Sergeant Thomas Murphy on or about July 1, 2013;
3. On or about July 24, 2013, the firearm was transferred to the Firearm Analysis Unit of the Boston Police Department. Thereafter, from approximately July 25 through August 5, 2013, the firearm was examined by Detective Tyrone Camper of the FAU;
4. On or about January 6, 2014 the firearm was test-fired by Detective Camper;
5. On or about February 25, 2015, the firearm was transferred to the BPD Crime Lab, where it was swabbed by Amy Reynolds and examined again for fingerprints by Kristen Tolan.

It is apparent from the chronology set forth above that this firearm was fumed, dyed, fired, and handled repeatedly before it was belatedly swabbed for DNA on or about February 26, 2015. Given the hypersensitivity of DNA testing, the dangers of contamination, and the tiny quantity of testing material involved, any DNA test results obtained from that swab would not be probative in this case. Accordingly, the Court should not authorize destructive testing which will produce unreliable and/or meaningless test results.

In the event that the Court should allow the Commonwealth's motion to conduct destructive testing on this swab over the defendant's objection, the defendant requests that the Court order the entire test procedure to be photographed and documented, as specifically recommended by the Supreme Judicial Court in *Commonwealth v. Gordon*, 422 Mass. 816, 836-837 (1996).

Respectfully submitted,

AARON HERNANDEZ

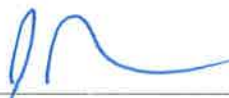
By his attorneys,



James L. Sultan, BBO #488400
Charles W. Rankin, BBO #411780
Rankin & Sultan
151 Merrimac Street, Second Floor
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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing document upon the Commonwealth by e-mail and First Class Mail , to: Patrick M. Haggan, First Assistant District Attorney, Suffolk County, One Bulfinch Place, Boston, MA 02114-2997 on May 28, 2015.



James L. Sultan

Thu, Jan 15, 2015 at 11:40 AM

Amy Reynolds <amy.reynolds@pd.boston.gov>

To: "Haggan, Patrick (DAA)" <patrick.haggan@state.ma.us>

Cc: Kristen Tolan <kristen.tolan@pd.boston.gov>, "sullivanMa.bpd@cityofboston.gov"

<sullivanMa.bpd@cityofboston.gov>, "Rodriguez, Catherine (DAA)" <catherine.rodriguez@state.ma.us>, "Anderson, Teresa (DAA)" <teresa.anderson@state.ma.us>, Julie James <julie.james@pd.boston.gov>

Pat,

I did speak with Julie today and her thoughts on this are, is it really going to answer the ultimate question of who fired the weapon? There are a few factors which weaken an already weak possible linkage: 1. There has been some a passage of time, 2. The gun has been handled by other people after being used in the crime. If you find the defendant's DNA on the gun, the defense attorney of course would say "We can't determine when or how it got on the gun?", and our answer would be "No we can not", so "It could have been placed on there (insert any number of ways)", and we would have to say "Yes". If we don't find the defendant's DNA on it, or someone else's DNA which can not be explained away, then the defense will say that is the true killer. Ultimately, it is up to you and the squad as to what you want to do, but on our side, no matter what we don't believe it will assist you with furthering your case. I hope this all makes sense, if you want we can have a conference call with Julie, and make a final decision that way if you are still on the fence. Amy

[Quoted text hidden]

—

Criminalist IV

Trace Evidence Section

Boston Police Crime Laboratory

617-343-4690 (phone)

617-343-6033 (voicemail)

617-343-4818 (fax)

017517

<https://mail.google.com/mail/u/0/?ui=2&ik=afb49f7fa8&view=pt&search=inbox&type=14b985e2ae0ea843&th=14ae8f4e0fefda8c&siml=14ae8f4e0fefda8c&siml=...> 3/5

EXHIBIT 1

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May 28, 2015

David Sheehan, Assistant Clerk
Suffolk Superior Court Criminal Session
Three Pemberton Square, Room #906
Boston, MA 02108

Re: ***Commonwealth v. Aaron Hernandez***
Suffolk Superior Court Criminal #2014-10417

Dear Assistant Clerk Sheehan:

Enclosed for filing in the above-captioned criminal case please find *Defendant's Opposition to Commonwealth's Motion for a Court Order Permitting Exhaustive Testing of a Swab Taken from a .38 Caliber Smith and Wesson Firearm*. Thank you for your anticipated assistance.

Sincerely yours,



James L. Sultan

JLS/lc

Enclosure

DELIVERED IN HAND

cc: Patrick M. Haggan, First Assistant District Attorney (by e-mail and First Class Mail)