

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CRIMINAL #2014-SUCR-10417
CRIMINAL #2015-SUCR-10384

COMMONWEALTH OF MASSACHUSETTS

v.

AARON HERNANDEZ

**DEFENDANT'S MOTION TO SUPPRESS
ALL FRUITS OF SEARCH OF 2006 TOYOTA 4RUNNER**

Aaron Hernandez, defendant in the above-captioned criminal cases, hereby moves this Court, pursuant to the Fourth and Fourteenth Amendments to the United States Constitution and Article XIV of the Massachusetts Declaration of Rights, to suppress any and all fruits of the search of a 2006 Toyota 4Runner (R.I. license plate 635035), including, but not limited to, any photographs and observations of said vehicle made on or after June 26, 2013. As grounds therefore, defendant avers as follows:

1. On June 26, 2013, the Bristol (CT) Superior Court issued a search warrant authorizing the search of a residence at 114 Lake Avenue, Bristol, CT. The affidavit filed in support of the application for said search warrant relied extensively upon a police interview with Carlos Ortiz on June 25, 2013. Indeed, the only information

contained in the affidavit connecting 114 Lake Avenue to any alleged crime was obtained from Ortiz during that interview. A copy of the warrant, application, and affidavit is appended to the accompanying affidavit of James L. Sultan at Exhibit 1.

2. In the affidavit submitted to obtain the warrant, the affiant deliberately omitted the fact that Ortiz failed a polygraph examination administered at the conclusion of his interview. A copy of the polygraph report, scored as “deception indicated,” is appended to the accompanying affidavit of James L. Sultan at Exhibit 2.
3. On June 28, 2013, a warrant was sought and obtained from the Bristol (CT) Superior Court for the seizure of a Toyota 4Runner at 114 Lake Avenue in Bristol. According to the supporting affidavit, that vehicle had been observed in a locked garage at 114 Lake Avenue during the execution of the June 26, 2013 warrant. A copy of the June 28th warrant, application, and affidavit is appended to the affidavit of James L. Sultan at Exhibit 3.
4. The Toyota was seized pursuant to the June 28th warrant and turned over to the Boston Police. On July 1, 2013, a warrant was sought and obtained in this Court to search the Toyota. A copy of the July 1 warrant, application, and affidavit is set forth at Exhibit 4 to the affidavit of James L. Sultan.
5. The deliberate omission of Ortiz’s failed polygraph examination from the June 26th warrant affidavit misled the court to rely on information provided by Ortiz as credible. Absent reliance upon information provided by Ortiz (an inherently unreliable source), the affidavit supporting the June 26th warrant application clearly failed to establish probable cause to search 114 Lake Avenue in Bristol.

Accordingly, under *Franks v. Delaware*, 438 U.S. 154 (1978) and its progeny, that warrant was invalid.

6. The discovery of the Toyota during the execution of the invalid June 26th warrant led directly and inextricably to the issuance of the June 28th warrant to seize that vehicle and to the July 1, 2013 warrant issued by this Court to search it. Accordingly, under *Wong Sun v. United States*, 371 U.S. 471, 484-488 (1963) and its progeny, all evidence obtained as a result of those two subsequent warrants constituted fruit of the poisonous tree and should be suppressed.
7. In further support of this motion, the defendant files herewith a memorandum of law and Affidavit of James L. Sultan (With Exhibits).

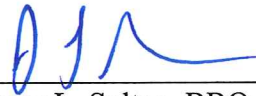
REQUEST FOR EVIDENTIARY HEARING

Pursuant to *Franks v. Delaware* and its progeny, the defendant requests an evidentiary hearing on this motion.

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 mailing a copy thereof to:
Patrick M. Haggan, First Assistant District Attorney, Suffolk County, One Bulfinch Place, Boston, MA 02114-2997
on July 22, 2015.



James L. Sultan