

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

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COMMONWEALTH OF MASSACHUSETTS

v.

AARON HERNANDEZ

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**MEMORANDUM OF LAW IN SUPPORT OF  
DEFENDANT'S MOTION TO SUPPRESS  
ALL FRUITS OF SEARCH OF 2006 TOYOTA 4RUNNER**

**I. SUMMARY OF RELEVANT FACTS.**

As set forth in the accompanying Motion to Suppress, the presence of a 2006 Toyota 4Runner at 114 Lake Avenue in Bristol, CT was discovered by law enforcement officials during the execution of a search warrant at that address on June 26, 2013. The affidavit supporting the issuance of that search warrant relied extensively upon information provided by Carlos Ortiz. Indeed, the only information connecting 114 Lake Avenue to any crime was from Ortiz. The affidavit deliberately omitted the fact that Ortiz failed a polygraph examination administered at the conclusion of his

police interview on June 25, 2013. The issuance of subsequent warrants on June 28, 2013 and July 1, 2013, respectively, to seize and search that vehicle were directly predicated upon the discovery of the vehicle at 114 Lake Avenue during the execution of the June 26<sup>th</sup> search warrant. The Commonwealth presumably intends to offer evidence obtained as a result of the execution of those search warrants at the defendant's upcoming trial.

## II. SUMMARY OF APPLICABLE LAW.

It is well-settled that where a defendant makes a "substantial preliminary showing" that a false statement was knowingly, intentionally, or with reckless disregard for the truth included in a search warrant affidavit and that the false statement was necessary for a finding of probable cause, the Fourth Amendment to the United States Constitution and Article 14 of the Massachusetts Declaration of Rights requires an evidentiary hearing at the defendant's request. *E.g. Franks v. Delaware*, 438 U.S. 154 (1978); *Commonwealth v. Long*, 454 Mass. 542 (2009). "Intentionally or recklessly omitted material may also form the basis for mounting a challenge under *Franks v. Delaware*." *Long*, 454 Mass. at 552. *See also Commonwealth v. Pratt*, 407 Mass. 647, 658-659 (1990) (considering whether omissions from an affidavit required suppression under *Franks*). The legal standard for challenging a warrant affidavit is the same under Article 1, § 7 of the Connecticut State Constitution. *E.g. State v. Glenn*, 251 Conn. 567, 577, 740 A.2d 856 (1999); *State v. Bergin*, 214 Conn. 657, 666, 574 A.2d 164 (1990). Where an omission forms the basis of a *Franks* claim, "the judge considers whether the affidavit, supplemented by the omitted information, furnishes probable cause." *Long*, 454 Mass. at 552. If probable cause is lacking, "the warrant is voided, and the evidence and fruits thereof may be suppressed." *Id.* at 553.

It is also well-settled that any evidence obtained as a result of a constitutional violation (fruit

of the poisonous tree) is subject to suppression. *E.g. Wong Sun v. United States*, 371 U.S. 471, 484-488 (1963); *Commonwealth v. Tyree*, 455 Mass. 676, 697-700 (2010). *See also Commonwealth v. Pietras*, 392 Mass. 892, 900 (1984). The Commonwealth bears the burden of proving that evidence subsequently obtained after unlawful police conduct is untainted. *Commonwealth v. Blevines*, 438 Mass. 604, 610-611 (2003); *Commonwealth v. Fredette*, 396 Mass. 455, 459 (1985).

### **III. APPLICATION OF LAW TO FACTS.**

The deliberate omission of Ortiz's failed polygraph examination from the June 26<sup>th</sup> warrant affidavit misled the court to rely on information provided by Ortiz as credible. Absent reliance upon this inherently untrustworthy source, the affidavit supporting the June 26<sup>th</sup> warrant application clearly failed to establish probable cause to search 114 Lake Avenue in Bristol. Accordingly, the defendant is entitled to an evidentiary hearing to establish that under *Franks v. Delaware* and its progeny, that warrant was invalid.

If the defendant succeeds in demonstrating the invalidity of the June 26<sup>th</sup> search warrant, the burden shifts to the Commonwealth to establish that the subsequent seizure and search of the Toyota 4Runner were not tainted fruits of that initial search. Where the sole information respecting the presence of that vehicle at 114 Lake Avenue resulted from the initial search, the Commonwealth clearly cannot satisfy that burden. As in *Tyree*, where the police unlawfully learned that the defendant was wearing a particular pair of shoes and the subsequent seizure of those shoes was deemed unlawful, the seizure and search of the Toyota 4Runner in the instant case were fruits of the poisonous tree (unlawful discovery of the vehicle) and must be suppressed at trial.

**CONCLUSION**

For the reasons set forth herein, the Court should hold an evidentiary hearing and allow the defendant's motion to suppress.

Respectfully submitted,

**AARON HERNANDEZ**

By his attorneys,

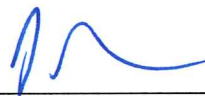


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**CERTIFICATE OF SERVICE**

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.



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James L. Sultan