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COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.
BRCR2013-00983

COMMONWEALTH

vs.

AARON HERNANDEZ

COMMONWEALTH'S RESPONSE TO DEFENDANT'S MOTION TO SUPPRESS EVIDENCE SEIZED FROM HIS RESIDENCE ON JUNE 22, 2013 THAT WAS BEYOND THE SCOPE OF THE WARRANT

Introduction. Now comes the Commonwealth which states as follows: 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. On or about September 12, 2014, the defendant filed a motion to suppress evidence seized from his residence on June 22, 2014 that was allegedly beyond the scope of the warrant that authorized the search. Specifically, the defendant claims that police seized a towel, a scale and dish, and various items found in a Toyota automobile parked in the defendant's garage. However, all of these items were

seized either under the plain view doctrine or under the express authority of the warrant.

Discussion.

1. The search of the Toyota automobile was authorized by the search warrant for the defendant's residence. The defendant does not contest that police searched his residence pursuant to a lawful warrant. In Commonwealth v. Signorine, 404 Mass. 400, 403 405 (1989), the SJC expressly adopted, as a matter of state constitutional law, the well-settled principle that "the scope of a warrant authorizing the search of a particularly described premises, includes automobiles owned *or controlled by* the owner thereof, which are found on the premises" (emphasis added). In Signorine, the court upheld a search of the automobile of the defendant's wife - despite the fact that police lacked independent probable cause to search the automobile, "because the police had obtained a warrant based on probable cause to search the defendant's residence generally, and since the automobile was parked within the curtilage of the premises at the time the warrant was executed," the warrant was deemed to extend to the automobile, as well. Commonwealth v. Santiago, 410 Mass. 737, 740-741 (1991).

In determining whether a warrant encompasses a vehicle in any particular case, "[t]he critical factor . . . is . . . [whether] the defendant controlled the area on which the automobile was located in the same sense in which the defendant controlled the residence." Commonwealth v. Valerio, 1997 Mass. Super. LEXIS 475 at 6 (1997) (Cowin, J.). Indeed, non-transitory possession of an item on property to which a person has an exclusive right of access has provided strong indicia of control in related contexts. Liddell v. Standard Acc. Ins. Co., 283 Mass. 340, 346 (1933). Here, the vehicle was parked in the enclosed garage of the defendant's house, protected by his security system. It was not accessible to anyone but him and the other occupants of the house.[1] Moreover, officers noted that the vehicle was covered in a layer of dust, indicating that the vehicle had been in the garage for some period of time. Under these circumstances, and in view of the governing law, the vehicle was properly deemed to be "controlled" by the defendant, and so subject to search. See Tolbert v. State, 224 Ga. 291, 294 (1968) (control of

[1] It is also significant to note that the vehicle did not have a proper plate attached (the attached Florida plate related to a different vehicle entirely) and so could not be lawfully driven. This further bolsters the inference that the vehicle was in the long-term custody and control of the defendant.

premises yields inference of control of vehicle found therein regardless of ownership).

2. The towel, vitamin water bottle and scale/dish were all lawfully seized under the plain view doctrine. "Under [the plain view] doctrine, if police are lawfully in a position from which they view an object, if its incriminating character is immediately apparent, and if the officers have a lawful right of access to the object, they may seize it without a warrant." Commonwealth v. Santana, 420 Mass. 205, 211 (1995), quoting Minnesota v. Dickerson, 508 U.S. 366, 375 (1993); see also Commonwealth v. Moynihan, 376 Mass. 468, 472-73 (1978) (evidence in plain view, the incriminating nature of which is immediately apparent to police, may be seized if police justifiably in place where evidence found). Where the evidence in question is not contraband - i.e. where it is "mere evidence" - it may be seized only "if the officers recognize it as plausibly related to criminal activity of which they already were aware." Commonwealth v. D'Amour, 428 Mass. 725, 730-31 (1999), quoting Commonwealth v. Santana, 420 Mass. 205, 211 (1995). See also Commonwealth v. LaPlante, 416 Mass. 433, 440 (1993). Further, the discovery of such evidence must have been inadvertent and

unexpected from the perspective of the searching officers. D'Amour, *supra*, at 731.

Here, all the foregoing criteria were met. The towel was similar in appearance to a towel observed in video images of the occupants of the defendant's vehicle culled from a service station CCTV camera close in time to the murder and also similar to a towel found at the murder scene. The vitamin water bottle appeared to match a bottle found in a dumpster on the property of the Enterprise car rental agency where the defendant had obtained the vehicle used to transport the victim to the place where he was murdered. Refuse from the defendant's vehicle had, according to an Enterprise employee, been placed in the dumpster. Finally, the scale and dish were plausibly viewed as drug paraphernalia. Material believed to be illegal drugs had been found at the scene of the murder and so any evidence of drug use by the defendant was highly relevant to the crime under investigation.

Accordingly, there was a legally sufficient basis from which police could infer that all of the objects identified in the defendant's motion were "plausibly related to criminal activity of which they already were aware." Moreover, even the defendant does not contend - nor could he - that the discovery of these items was anything other

than inadvertent. The seizure of the contested materials was, therefore, wholly consistent with all of the requirements of the plain view doctrine. Suppression is not indicated.

Conclusion. On the basis of the foregoing, the Commonwealth respectfully requests that the defendant's motion to suppress evidence seized from the defendant's home on June 22, 2013 as beyond the scope of the warrant be denied.

Respectfully submitted,

for Assistant District Attorney

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Dated: September 24, 2014

CERTIFICATE OF SERVICE

I, Patrick O. Bomberg, certify that I have served a copy of the Commonwealth's Response to Defendant's Motion to Suppress Fruits of Unlawful Police Interrogation During June 18, 2013 Search of His Home at 22 Ronald C. Meyer Drive, North Attleboro, MA Including His Cell Phone Bearing 203-606-8969 AND the Commonwealth's Response to Defendant's Motion to Suppress Evidence Seized from His Residence on June 22, 2013 That Was Beyond the Scope of the Warrant 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 24th day of September 2014.

COMMONWEALTH OF MASSACHUSETTS,

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