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BRISTOL, SS SUPERIOR COURT  
FILED

AUG - 3 2015

MARC J. SANTOS, ESQ.  
CLERK/MAGISTRATE

Redacted

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, ss.

BRCR2013-00983

COMMONWEALTH

vs.

AARON HERNANDEZ

COMMONWEALTH'S OPPOSITION TO DEFENDANT'S MOTION TO QUESTION  
WITNESS UNDER OATH

On April 15, 2015, a superior court jury found the defendant, Aaron Hernandez, guilty of the crimes of first-degree murder and unlawful possession of both a firearm and ammunition. On May 26, 2015, the defendant made filings in which he notified the Court that counsel had been the recipient of telephone calls, from an "anonymous" female caller, purporting to attribute extraneous information to a deliberating juror. Defense counsel supported his filing with his own affidavit. He claimed that he had no way to identify the "anonymous" caller other than for the court to order production of his own phone records. He claimed the information he garnered from these records would provide him the identity of the caller. This information was

essential for him to meet his burden in future filings. On the basis of defense counsel's affidavit and request, the court authorized the issuance of the proposed summons.

[see attached]

Defense counsel's affidavit provided scant and contradictory detail of the "anonymous" calls. He claimed that the caller identified herself as "Katy." Counsel claimed that "Katy" told him that she worked with the juror and saw every day. Notwithstanding the obvious absence of the juror from employment for more than two months, Counsel also stated that "Katy" did not learn of the juror's service until she saw the juror on television after the verdict. Counsel claimed the juror was aware and did not disclose that the defendant was also charged in Boston with two additional murders. According to counsel's affidavit, "Katy" claimed

"Katy" claimed that she saw the juror near two or three individuals who were speaking about the Boston case. Despite repeated questioning by defense counsel, in four separate calls which in total lasted more than one hour, "Katy" never indicated that the juror participated in this conversation.

Although "Katy" initially told defense counsel that the juror made statements about wanting to be on the Hernandez jury, when later asked, "Katy" admitted the juror had not said that to her.

The defendant's most recent filing also relies solely on counsel's own affidavit. Defense counsel now asserts that "Katy" has been identified. Defense counsel makes this assertion without any supporting facts or information other than providing a purported name, address, date of birth and telephone number for "Katy." The name counsel provides is not Katy. Defense counsel provides no information regarding whether the purported telephone number was the number that made the original calls. In fact, defense counsel's affidavit is completely silent on the factual basis used to identify the person, address or telephone number. Counsel simply provides that the information resulted from "additional investigation." What is clear is that none of that information could have come from the court authorized summons, because as of the date of counsel's filing, the authorized records had not been received at the clerk's office; the location the authorized summons commanded they be returned.

Upon receipt of this filing, the Commonwealth requested additional information from defense counsel

related to his assertion. (see attached email). Since the requested information provides the factual basis of counsel's conclusory affidavit, this information is essential to the Commonwealth's ability to prepare its opposition. This request, like the Commonwealth's prior request for information, was refused.

There is ample reason for the Commonwealth to have requested underlying information from the sole affiant in these matters. The Commonwealth believes that defense counsel is aware of facts that the woman now alleged to be "Katy" does not in fact work with the juror as she had previously claimed in her statements to defense counsel. Further, the Commonwealth has also learned that "Katy" hasn't simply been in personal contact with the defendant. She had an ongoing sexually explicit relationship with the defendant prior to and during the trial. This relationship was in existence before and after all of the purported factual occurrences "Katy" provided to counsel. It was a relationship that "Katy," based on her uninformed belief in the defendant's innocence, hoped would continue after the defendant's release. This relationship includes letters "Katy" sent to the defendant that were subsequently destroyed by the defendant. In addition to the ongoing relationship between "Katy" and the defendant, the

defendant had a relationship with "Katy's" father while they were inmates together at the Dartmouth House of Correction. These and other facts, which must now be known to defense counsel, but which he has declined to provide would not just call "Katy's" credibility into question, as suggested by counsel's most recent affidavit, but would give rise to the conclusion that the facts attributed to "Katy" in counsel's first affidavit are not true.

Where the facts purportedly provided to defense counsel by "Katy" were the sole basis provided in support of the claim of extraneous information; where counsel declines to provide the factual basis for his current affidavit; where counsel's current affidavit fails to include the full factual circumstances known to him; and where there is no affidavit from "Katy" in this filing, the Court must refuse to further permit an unwarranted fishing expedition into the protected area of juror deliberation.

While a criminal defendant unquestionably has the right to a trial by an impartial jury, see Commonwealth v. Bresnahan, 462 Mass. 761, 770 (2012), the long-settled law of the Commonwealth necessarily places a very high value on "the finality of jury verdicts and [the] protection of jurors from unwelcome solicitation or harassment by litigants following their jury service." Id at 769.

Accordingly, "[c]ases in which post-verdict inquiry [has been deemed] proper have been narrowly limited."

Commonwealth v. Semedo, 456 Mass. 1, 22-23 (2010). Indeed, post-verdict inquiry of any kind, including the very type of discovery requested here, is strongly disfavored and must be supported by a significant threshold showing of necessity. See Commonwealth v. Fidler, 377 Mass. 192, 193 (1979).

Thus, in Commonwealth v. Lynch, 439 Mass. 532 (2003), a case that bears many similarities to the present situation, the Court began by reciting the general rule that "[p]ost-verdict interviews should be initiated only if the court finds some suggestion that there were extraneous matters in the jury's deliberation." Id at 545. The Court then went on to state that "*[b]efore post-conviction discovery may be ordered, a defendant must establish 'a prima facie case for relief' supported by affidavits.*" Commonwealth v. Tague, 434 Mass. 510, 519 (2001), quoting Mass. R. Crim. P. 30 (c) (4), 378 Mass. 900 (1979) (emphasis added). In meeting this requirement, the Court in Lynch concluded that an "affidavit from appellate counsel failed to establish a prima facie case for relief and, therefore, for post-conviction discovery."

Here, in view of the presence of totem-pole hearsay, the lack of any corroboration of the key facts by disinterested parties, the vague and inconclusive nature of the key allegations themselves and, most important, the complete dependence on a witness who purposely misled defense counsel, whose connection to the case has not been established and whose credibility the defendant acknowledges is compromised, and about whom he possesses further facts showing the falsity of her earlier statements, the same principles delineated in Lynch also seem applicable here. Moreover, and perhaps just as important, defense counsel has deliberately hampered efforts to clarify these matters by refusing to provide copies of his contemporaneous notes, the names of other parties to the calls, or any additional specific information about the contents of his lengthy calls with "Katy" and all of the facts known to him undermining the "anonymous" statements attributed to her. Likewise, he has failed to provide any information about his basis for believing the person he now identifies as "Katy" is connected with the case, as well as any detailed information regarding the various issues surrounding the witness' prior relationship with the defendant and how it bears on the central question of her credibility. Finally,

he has not provided an affidavit from "Katy" or proffered any reason for his failure to do so. The information void on these aforementioned crucial matters is, therefore, directly attributable to the defendant himself.

After a verdict is rendered, a criminal defendant's procedural rights are significantly altered. For obvious reasons, the bar is set quite high to explore the jury's deliberative process. As the court stated in Commonwealth v. Murphy, 86 Mass. App. Ct. 118, 122 (2014), in endorsing a trial judge's decision to refuse to conduct any post-verdict examination into a jury's verdict, in order to justify such an inquiry, there "'must be something more than mere speculation,' and, here, the defendant has not provided any more." Commonwealth v. Dixon, 395 Mass. 149, 153 quoting United States v. Barshov, 733 F.2d 842, 851 (11th Cir. 1984). See also Commonwealth v. Philyaw, 55 Mass. App. Ct. 730, 737 (2002). A judge is not under any duty to investigate unless there is some suggestion or showing that extraneous matters were brought into the jury's deliberations. Dixon, 395 Mass. at 151. All of this certainly may be said of the present situation in view of the fact that the defendant's request is currently based exclusively on counsel's own affidavit which relates the vague and contradictory claims of a single witness whose



credibility even defense counsel no longer trusts and who apparently completely misled defense counsel about all of the immediately confirmable facts including the true nature of and likely motivation behind her implausible claims. In short, much more is required.

WHEREFORE, the Commonwealth respectfully requests that the defendant's motion be DENIED.

RESPECTFULLY SUBMITTED,

THOMAS M. QUINN III  
DISTRICT ATTORNEY

BY: William M. McCauley / MB  
WILLIAM M. McCAULEY  
Deputy District Attorney  
Bristol District  
BBO#562635  
888 Purchase St.  
New Bedford, MA 02740

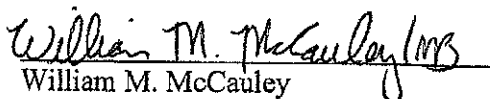
Dated: July 31, 2015

CERTIFICATE OF SERVICE

I, William M. McCauley, certify that I have served a copy of the Commonwealth's Opposition to Defendant's Motion to Question Witness Under Oath by first class postage prepaid mail to Counsel for the Defendant, as follows: Charles W. Rankin, Rankin & Sultan, 151 Merrimac Street, 2<sup>nd</sup> Floor, Boston, MA 02114; James L. Sultan, Rankin & Sultan, 151 Merrimac Street, 2<sup>nd</sup> Floor, Boston, MA 02114; and Michael K. Fee, Latham & Watkins, LLP, John Hancock Tower, 20<sup>th</sup> floor, 200 Clarendon St., Boston, MA 02116.

Signed under the pains and penalties of perjury this 31st day of July 2015.

COMMONWEALTH OF MASSACHUSETTS,



William M. McCauley  
Assistant District Attorney  
For the Bristol District  
888 Purchase Street  
New Bedford, MA 02741-0973

**McCauley, William (BRI)**

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**From:** James Sultan  
**Sent:** Tuesday, July 28, 2015 9:20 AM  
**To:** McCauley, William (BRI)  
**Cc:** Charles Rankin; Michael.Fee  
**Subject:** RE: Comm. v. Aaron Hernandez - Additional Discovery Request

Bill, Respectfully, we are not prepared to litigate by email or to respond to what amount to civil discovery requests in the absence of a Court order. Further, we believe that our recent filings provide you with all of the information necessary to respond to our motion. Jamie

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**From:** McCauley, William (DAA)  
**Sent:** Monday, July 27, 2015 4:23 PM  
**To:** James Sultan; John F Losowski  
**Cc:** Bomberg, Patrick O (DAA); 'Fregault, Garrett (BRI)'  
**Subject:** RE: Comm. v. Aaron Hernandez - Additional Discovery Request

Jaime-

I have received your latest filing and am requesting that you provide us with the following:

- 1) The discovery previously requested by e-mail and motion;
- 2) A copy of the subpoena sent for the phone records as well as any/all records received;
- 3) Complete details of the "additional investigation" referenced in paragraph 2 of your most recent affidavit;
- 4) Complete details and any documents/records/etc. of the "extensive personal contact" that the defendant has had with . ; and
- 5) Complete details and documents/records/etc. of any additional contact that you or anyone else in the defense team has had with the caller and/or.

We are requesting that you provide these materials as soon as possible so that we can timely respond to your motion to question a person that you believe is the caller.

Thanks - Bill

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**From:** James Sultan  
**Sent:** Friday, July 24, 2015 1:35 PM  
**To:** John F Losowski  
**Cc:** McCauley, William (BRI); Charles Rankin; Michael.Fee  
**Subject:** Comm. v. Aaron Hernandez

John, Attached please find three filings in the above-captioned case. Originals are being mailed to you today. Please note that the affidavit of counsel is being filed under seal, subject to the Court's ruling on the motion to impound filed herewith. Thank you for your assistance. Best, Jamie

James L. Sultan  
Rankin & Sultan  
151 Merrimac St.  
Boston, MA 02114  
(617) 720-0011

Commonwealth of Massachusetts

BRISTOL, ss.

To: Verizon Wireless  
Attn: Custodian of Records  
180 Washington Valley Road  
Bedminster, NJ 07921  
FAX (888) 667-0028

Greetings. You are hereby commanded, in the name of the Commonwealth of Massachusetts and at the request of the defendant, to submit the following records to the Office of the Clerk, Attn: Mark A. Ferriera, Assistant Clerk, Bristol County Superior Court, 186 South Main Street, Fall River, Massachusetts 02720 relating to the case of Commonwealth of Massachusetts, Plaintiff, and Aaron Hernandez, Defendant, Bristol County Superior Court Criminal #2013-0983.

On or before June 5, 2015 with respect to Verizon Wireless Account provide the following:

- a. The originating telephone numbers of the following incoming calls made to Cell Phone between April 16, 2015 and April 24, 2015, inclusive, including, but not limited to, incoming calls where the Caller ID was restricted or blocked by the originator of the telephone call.

<u>Date</u>	<u>Time</u>	<u>Number</u>
4/16/15	7:51 p.m.	Unavailable
4/17/15	7:15 p.m.	999-999-9999
4/24/15	5:19 p.m.	999-999-9999
4/24/15	7:58 p.m.	999-999-9999

- b. Subscriber information regarding each of the originating telephone numbers for the above-described calls.

**Hereof fail not**, as you will answer your default under the pains and penalties the law in  
that behalf made and provided.

**Dated at Boston** the \_\_\_\_\_ day of \_\_\_\_\_ 2015.

\_\_\_\_\_  
Notary Public or Justice of the Peace

My commission expires: \_\_\_\_\_

Upon receipt, please contact Attorney James L. Sultan, Rankin & Sultan, 151 Merrimac Street,  
Second Floor, Boston, MA 02114, telephone (617) 720-0011.