

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT  
NO. 2014SUCR10417  
NO. 2015SUCR10384

COMMONWEALTH

v.

AARON HERNANDEZ

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COMMONWEALTH'S MOTION IN LIMINE TO ADMIT  
CERTAIN STATEMENTS OF THE DEFENDANT MADE DURING  
RECORDED JAIL CALLS

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Now comes the Commonwealth in the above-captioned matters and respectfully moves this Honorable Court *in limine* to be permitted, upon proper foundation testimony, to introduce at trial a portion of three phone calls that the defendant made while incarcerated. These three calls were provided to defense counsel in Discovery VII, on May 21, 2015. Transcripts of the three calls are attached.

The defendant's statements are non-hearsay as a matter of law because they constitute admissions of a party opponent. Mass. G. Evid. Sec. 801(d)(2)(A); *Commonwealth v. Romero*, 464 Mass. 648, 651-52 (2013); *see also* P.J. Liacos, Massachusetts Evidence § 8.8.1, at 496-99 (7th ed. 1999). Here, the Commonwealth seeks to admit the following three statements:

**(1) April 3, 2015 at 7:40 p.m. – Phone Call with Mike Pouncey**

During this call, the defendant talks about how he has changed and now he would not want to even go in a club if there were “black people there” because if they (referring to he and the Pounceys) go in “imagine if I go in the club with y'all niggas and niggas try you, you already know what time it is, feel me?”

This statement is relevant as an example of the defendant's use of the word "try," referring to being disrespected. Bradley will testify (and likely be subject to vigorous cross-examination) that the defendant repeatedly told him that he felt that people -- and, ultimately the homicide victims in this case -- were "trying" him.

**(2) April 11, 2015 at 1:43 p.m. – Phone Call with Terri Hernandez (the defendant's mother)**

During this call, the defendant's mother brings up his firearm charge as part of the Bristol case for Odin Lloyd's homicide. The defendant admits that he is captured on video with a firearm: "I'm the only one that knew him [Lloyd] ... It doesn't show them with a gun in their hand. It shows me with a gun. Know what I mean, the video." Additionally, the defendant explains that he cannot be closer with his mother because she cannot keep a secret. In contrast, he stated, "Why do you think me and Tanya [Cummings-Singleton] are so close... That's one of the reasons."

The latter statement is further evidence of Tanya Cummings-Singleton's role as an accessory after the fact. This evidence is highly probative of identification and constitutes consciousness of guilt evidence.

**(3) April 28, 2015 at 2:39 p.m. – Phone Call with Mike Pouncey**


During this call, the defendant stated words to the effect of, "I'm going to get another tattoo that looks like a stop sign that will say, 'Beware, no hesitation.'" The defendant said, "You feel me? Like try me and there's no hesitation."

Again, as set forth above, this statement is relevant to the defendant's use of the word "try" and ongoing perception that others were "trying him" -- and suggest how the defendant responds when tried.

Accordingly, the Commonwealth will prepare audio recordings of the defendant's statements for this Court to review prior to their admission. Transcripts of the three calls are attached.

Respectfully Submitted  
For the Commonwealth,

DANIEL F. CONLEY  
DISTRICT ATTORNEY

By:   
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PATRICK M. HAGGAN  
Assistant District Attorney

MARK T. LEE  
Assistant District Attorney

TERESA K. ANDERSON  
Assistant District Attorney

One Bulfinch Place  
Boston, MA 02114  
(617) 619-4000

Dated: February 21, 2017

1 IN RE: COMMONWEALTH V HERNANDEZ

2 JAIL CALL

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6 SPEAKER 1: Don't mention it and I know you have a  
7 big mouth. I don't even know why I said that, but she  
8 doesn't -- I don't even ----

9 SPEAKER 2: I don't, I don't talk to her like that.

10 SPEAKER 1: You still have a -- it's not about her.  
11 It's just you tell somebody and you always think it's a  
12 secret and then it gets back to me that you told them or  
13 you told D.J. Cause you think when you talk to D.J. dah,  
14 dah, dah, dah, D.J. doesn't come say, "Oh mom says this".  
15 I'm like, "I just told her don't say anything and she  
16 goes and tells you."

17 SPEAKER 2: But I tell -- I talk, I have to talk to  
18 somebody about it.

19 SPEAKER 1: No, that's, that's, that's why I never  
20 like to -- there's so many things I'd like -- I would  
21 love to talk to you so you can know me as a person, but I  
22 never could tell you and you're gonna die without even  
23 knowing your son. That's the craziest thing about it.  
24 You know what I mean? It's crazy.

25 SPEAKER 2: Well if you feel you can't talk to me,  
26 .....

1           SPEAKER 1: How could I? How could I? You are not  
2 trustworthy at all.

3           SPEAKER 2: Well, .....

4           SPEAKER 1: It's so sad. You know?

5           SPEAKER 2: What?

6           SPEAKER 1: It's sad. You know what I mean? It's -  
7 - it really is.

8           SPEAKER 2: You were a big gossiper too.

9           SPEAKER 1: Mom, no. That's why it's crazy like,  
10 no. When my friends don't tell me to say anything, I  
11 don't tell them. I mean they don't even have to tell me  
12 not to say anything. I don't say anything. It just, I  
13 just -- I don't know, it's sad, but it is what it is. I  
14 mean I just know you, but I just wish I could be closer  
15 with you but I can't and it kills me, but I can't. You  
16 know what I mean. And it's just -- it is what it is. I  
17 just have to deal with it. You know?

18           SPEAKER 2: But babe, after nine years we're both  
19 hurt.

20           SPEAKER 1: It doesn't matter.

21           SPEAKER 2: Secondly ----

22           SPEAKER 1: It's not even about being hurt, ma.  
23 It's just like, I don't know, like there's just so much  
24 stuff I would love to just talk to my mom about but I  
25 can't, you know what I mean, cause I know you'll tell one

1 person. I don't even care like, you'll always tell one  
2 person.

3 SPEAKER 2: You would always tell me the bad things.  
4 Oh my God such bad things, why would you tell me those  
5 things?

6 SPEAKER 1: I didn't tell you no (sic) bad things.  
7 What are you talking about?

8 SPEAKER 2: Oh, you'd come home and .....

9 SPEAKER 1: Mom, I don't even -- don't even talk on  
10 this phone like that. But I never told you no (sic) bad  
11 things.

12 SPEAKER 2: Well, not bad -- I did it raw. But  
13 whatever does that mean?

14 SPEAKER 1: But I'm just saying, you just -- you're  
15 just not trustworthy at all and as my -- as your -- as me  
16 being your son I was just -- I just wish I could talk to  
17 you, but I can't and -- but it is what it is.

18 SPEAKER 2: Well, you could try.

19 SPEAKER 1: No, do you know how many times I tried?  
20 I always test you. I've been testing you for about 12-15  
21 years. I'll just tell you one thing and tell you not to  
22 tell anyone and it always gets back to me. It always  
23 gets back to me.

24 SPEAKER 2: Great.

1           SPEAKER 1: You tell one person or like I'll see  
2           ....., "Oh your mom told me this." I'm like, "There  
3 goes that." Or D.J., "Oh yeah, mom told me," this and  
4 this.

5           SPEAKER 2: .....

6           SPEAKER 1: "I just told her don't say anything and  
7 she always tells one person." You know what I mean?  
8 It's crazy.

9           SPEAKER 2: I have to talk to somebody about it  
10 after .....

11          SPEAKER 1: Alright, you don't though. That's --  
12 you don't.

13          SPEAKER 2: It bothers me.

14          SPEAKER 1: I know, I'm just saying.

15          SPEAKER 2: I can't talk to .....

16          SPEAKER 1: And you'll die not knowing your son and  
17 I think that's really sad. You know what I mean? But,  
18 but it is what it is.

19          SPEAKER 2: .....

20          SPEAKER 1: I can't hear you. You're losing  
21 service.

22          SPEAKER 2: ..... sure.

23          SPEAKER 1: Now you're better. Now you're better.

24          SPEAKER 2: But that's on you, because I'm not gonna  
25 worry about the girls .....

1           SPEAKER 1: Well, how do you think me and -- why do  
2 you think me and Tanya are so close? That's just one of  
3 the reasons.

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6                               (Whereupon phone call concluded)

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C E R T I F I C A T E

I, JACQUELYN HEALEY BOSSI, COURT REPORTER, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND ACCURATE TRANSCRIPT FROM THE TAPED RECORDING OF THE SOUZA-BARANOWSKI CORRECTIONAL CENTER IN THE ABOVE-ENTITLED MATTER.

I, JACQUELYN HEALEY BOSSI, FURTHER CERTIFY THAT I NEITHER AM COUNSEL FOR, RELATED TO, NOR EMPLOYED BY ANY OF THE PARTIES TO THE ACTION IN WHICH THIS HEARING WAS TAKEN, AND FURTHER THAT I AM NOT FINANCIALLY NOR OTHERWISE INTERESTED IN THE OUTCOME OF THE ACTION.

*Jacquelyn Healey Bossi*

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JACQUELYN HEALEY BOSSI  
COURT REPORTER

FEBRUARY 20, 2017  
PROCEEDINGS RECORDED BY SOUZA-BARANOWSKI CORRECTIONAL  
CENTER  
TRANSCRIPT PRODUCED FROM COMPUTER.

1 IN RE: COMMONWEALTH V HERNANDEZ

2 JAIL CALL

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4 SPEAKER 1: Hell yeah, I know on the right side of my  
5 neck I'm getting "Loyalty", ..... And then ----

6 SPEAKER 2: ..... you know that.

7 SPEAKER 1: Yeah, and then I'm a get, I'm a get,  
8 I'm a get the "Homies" probably on the back of my, of my  
9 neck --

10 SPEAKER 2: Uh-huh.

11 SPEAKER 1: -- and then on the left I was thinking  
12 about getting like a street sign type shit, like a stop  
13 sign type shit --

14 SPEAKER 2: Uh-huh.

15 SPEAKER 1: -- but on the inside it say, beware, no  
16 hesitations. Feel me, like no try me there's no  
17 hesitations, feel me.

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20 (Whereupon jail call concluded)

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1 IN RE: COMMONWEALTH V HERNANDEZ

2 JAIL CALL

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4 SPEAKER 1: And the thing that's crazy, yo, is it's  
5 like, I be (sic) thinking like if, if there's black  
6 people in the club, yo, I may not even go in the clubs,  
7 my nigga. Cause like, cause niggas is (sic) going --  
8 cause especially like, imagine if I go in the club with  
9 y'all niggas and niggas try you. You know already what  
10 time it is, feel me?

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13 (Whereupon phone call concluded)

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*Jacquelyn Healey Bossi*

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JACQUELYN HEALEY BOSSI

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FEBRUARY 20, 2017

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