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COMMONWEALTH OF MASSACHUSETTS

LEAK OF THE COURTS
NORFOLK COUNTY

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT
NO. 2282-CR-0117

COMMONWEALTH OF
MASSACHUSETTS,
Plaintiff

V.

KAREN READ,
Defendant

**JOINT MOTION OF THE PARTIES TO CONTINUE
MOTION-HEARING DATE, CANCEL FINAL PRE-TRIAL
CONFERENCE DATE AND CONVERT TRIAL
DATE TO MOTION-HEARING DATE**

Now come the defendant, Karen Read ("Ms. Read," or "the Defendant") and the Commonwealth, and jointly move this Honorable Court pursuant to Mass. R. Crim. P. 13 to continue the February 15, 2024 hearing date on "Defendant Motion for Sanctions and for Disqualification of the Norfolk County District Attorney" and "Defendant's Motion to Dismiss Indictments," to cancel the February 26, 2024 final pre-trial hearing date and to convert the March 12, 2024 trial date to a hearing date on the above-referenced motions regarding this matter.

As grounds therefore, the parties state:

- (1) On January 17, 2024, the parties participated in a conference call with a representative of the United States Attorney's Office for the District of Massachusetts, wherein the U.S. Attorney indicated that it would be producing information for both parties after completing the Tuohy process;
- (2) No timeline was explicitly given for the completion of that process (and therefore for the production of the information), but the U.S. Attorney was cognizant of the trial date

scheduled for the case at bar and desired to provide enough lead time for the parties to assimilate the new information – leading counsel to believe that the information would be forthcoming in early February;

- (3) As of the date of this motion, no information has been received from the U.S. Attorney;
- (4) The parties received an e-mail from the U.S. Attorney's Office on February 7, 2024, in which the Deputy Chief of the Affirmative Civil Enforcement Division has requested a conference call with the parties of the Read matter. Although the parties were not notified of the anticipated substance of the call, we anticipate that we will receive some guidance regarding the timing of the disclosure of their information;
- (5) The parties anticipate that the information to be produced will impact the arguments to be made in favor of and/or in opposition to the defendant's motions;
- (6) Assuming this information is received prior to February 15, 2024, the parties will still need time to assess the information, to potentially conduct further investigation and to modify their arguments for the hearing on the defendant's motions. Given that the hearing date is only one week away, the parties believe there is not enough time to do the proper investigation and/or preparation for the motion hearing on that date.
- (7) On January 5, 2024, this Court ordered that records be produced pursuant to "Defendant's Motion for Order pursuant to Mass. R. Crim. P. 17 Directed to Google, LLC¹." Those records have yet to be received by the parties and/or the Court;
- (8) Those ordered records may also impact the arguments of counsel regarding the defendant's pending motions. They will also likely impact the parties' trial preparation, potentially causing the parties to conduct further investigation prior to announcing ready for trial;
- (9) On January 5, 2024, this Court ordered that records be produced pursuant to "Defendant's Motion for Order pursuant to Mass. R. Crim. P. 17 Directed to Jennifer McCabe, Trooper Michael Proctor, and Elizabeth Proctor²." Those records have yet to be received by the parties and/or the Court;

¹ Attached hereto as "Exhibit A."

² Attached hereto as "Exhibit B." Note that only Jennifer McCabe and Trooper Michael Proctor were ordered to produce records.

- (10) Those ordered records may also impact the arguments of counsel regarding the defendant's pending motions. They will also likely impact the parties' trial preparation, potentially causing the parties to conduct further investigation prior to announcing ready for trial;
- (11) On November 14, 2023, this Court ordered that the Massachusetts State Police crime laboratory transmit evidence to Bode Technology in Lorton, Virginia for potentially exhaustive testing, pursuant to "Commonwealth's Motion for Exhaustive DNA Testing - Item #3.6.1" and "Defendant's Request for Non-Destructive Examination of Item 3-6."³ To date, no test results or reports on testing have been received by the parties;
- (12) The results of that testing may also impact the arguments of counsel regarding the defendant's pending motions. They will also likely impact the parties' trial preparation, potentially causing the parties to conduct further investigation before announcing ready for trial;
- (13) On November 15, 2023, the Supreme Judicial Court, Kafker, J., presiding, ordered that Verizon produce certain information associated with Jennifer McCabe's cell phone for the date of January 29, 2022⁴. On November 16, 2023, this Court ordered their production. Verizon sent records that were received by this Court on November 27, 2023 but not shared with defense counsel until January 25, 2024. Once counsel reviewed them in late January, it was discovered that Verizon had apparently sent the wrong records to the Court. To this date, Verizon has not yet complied with this Court's order, so the parties have not yet seen the proper records.
- (14) Those ordered records may also impact the arguments of counsel regarding the defendant's pending motions. They will also likely impact the parties' trial preparation, potentially causing the parties to conduct further investigation prior to announcing ready for trial;
- (15) The parties assert that a continuance of the February 15, 2024 hearing date for the defendant's motions, a cancellation (subject to rescheduling) of the February 26, 2024 final pre-trial conference date and a conversion of the March 12, 2024 trial date to a motion-hearing date, in light of the above, is in the interests of justice.

³ Attached hereto as "Exhibit C."


⁴ Order is attached hereto as "Exhibit D."

Wherefore, the parties request that this matter be continued to March 12, 2024, for a hearing on motions.

Respectfully Submitted
For the Commonwealth,
Michael W. Morrissey,

Respectfully Submitted,
For the Defendant,
Karen Read,

/s/ Adam C. Lally
Adam C. Lally, Esq.
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Boston, MA 02108
(617) 338-6006
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Dated: February 9, 2024

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COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

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SUPERIOR COURT
NO. 2282-CR-0117

CLERK OF THE COURTS
NORFOLK COUNTY

COMMONWEALTH,
Plaintiff

v.

KAREN READ,
Defendant

**AFFIDAVIT OF COUNSEL IN SUPPORT OF
JOINT MOTION OF THE PARTIES TO CONTINUE
MOTION-HEARING DATE, CANCEL FINAL PRE-TRIAL
CONFERENCE DATE AND CONVERT TRIAL
DATE TO MOTION-HEARING DATE**

I, David R. Yannetti, do hereby depose and state that the following is true to the best of my knowledge and belief:

1. I am an attorney licensed to practice in Massachusetts since December 1989. My office address is 44 School Street, #1000A, Boston, MA 02108. On January 29, 2023, I was retained to represent the defendant, Karen Read, regarding the incident which gave rise to the above-referenced matter.
2. The grounds for this motion, listed (1) through (15) in the motion, are true statements;
3. In addition, today the parties participated in a conference call with the United States Attorney's Office. We were informed that the Tuohy process is ongoing and they do not yet have an update on the timing of the approval to release information or a date when information will be released, but that they are working as quickly and as diligently as they can;
4. Both parties in this case would like more time to receive and assimilate this information before proceeding with the substantive motions that have been filed — and certainly before any trial occurs;
5. The continuance requested in this motion is in the interests of justice;

6. My client, Karen Read, specifically waives her speedy trial rights, including her rights pursuant to Mass. R. Crim. P. 36, to obtain this continuance.

Signed under the pains and penalties of perjury this 9th day of February, 2023


David R. Yannetti

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT
DOCKET NO. 2282CR0117

COMMONWEALTH

VS.

KAREN READ

ORDER FOR "DEFENDANT'S MOTION FOR
ORDER PURSUANT TO MASS. R. CRIM. P. 17 DIRECTED TO GOOGLE, LLC"

GOOD CAUSE SHOWN, it is hereby ordered, pursuant to Mass. R. Crim. P. 17 (a) (2), that the Norfolk Superior Criminal Clerk's Office issue a summons to Google, LLC to deliver the described records to the Clerk of Court in advance of trial.

THIS COURT HEREBY ORDERS Google, LLC to produce the following information for any Google Nest camera(s) belonging to Brian Albert or Nicole Albert for their residence located at 34 Fairview Road, Canton, Massachusetts:

1. Activation or "setup information" for any Google Nest camera registered to Brian Albert or Nicole Albert prior to January 29, 2022 for their residence located at 34 Fairview Road, Canton, Massachusetts. This request is for information from any on-site activation by the residential user and not an activation that might occur at point-of-sale.
2. Service usage data for any Google Nest camera registered to Brian Albert or Nicole Albert prior to January 29, 2022. This should include service attributes (such as features used or enable), error or trouble-shooting messages, and service usage data from the date of activation until 8:00 p.m. on January 29, 2022.

3. Any audio or video data recorded on January 29, 2022 between 12:00 a.m. and 8:00 p.m. from any Google Nest cameras (interior or exterior) registered to Brian Albert or Nicole Albert for their residence at 34 Fairview Road, Canton Massachusetts [REDACTED]
4. Any records, logs, or other information documenting manual device interactions and/or records of deletion of data pertaining to audio or video recorded between 12:00 a.m. and 8:00 p.m. on January 29, 2022.

Notably, this order is narrowly tailored to the Google Nest and the Google Home Application. Google, LLC is commanded not to provide any information related to other Google applications, including but not limited to: Gmail, Drive, Docs, Photos, Google Hangout/Chats, Google Ads, YouTube, Google Finance, Google Maps, Google Activity Tracking, or any third-party application associated with a Google Account.

Upon receipt a Justice of the Norfolk Superior Court shall conduct an in-camera review of the response to ensure that Google, LLC narrowly tailored the response to the terms of this order and provide only material related to a Google Nest camera(s) to the Commonwealth and defendant. If any non-responsive material is provided by Google, LLC it shall be destroyed by the Court.

IT IS SO ORDERED.

Dated:

1-5-24


Justice of the Superior Court

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT
CRIMINAL ACTION
22-00117

COMMONWEALTH

vs.

KAREN READ

**MEMORANDUM OF DECISION AND ORDER ON DEFENDANT'S MOTION FOR
ORDER PURSUANT TO MASS. R. CRIM. P. 17 DIRECTED TO JENNIFER MCCABE,
TROOPER MICHAEL PROCTOR, AND ELIZABETH PROCTOR**

Under Mass. R. Crim. P. 17(a)(2), the court may issue a summons ordering a third-party to produce "books, papers, documents, or other objects" prior to trial. In deciding a defendant's motion pursuant to Rule 17(a)(2), the court must "balance the defendant's right to mount a defense with the Commonwealth's right to prevent unnecessary delay of the trial and unwarranted harassment of witnesses and third parties." *Commonwealth v. Lam*, 444 Mass. 224, 229-230 (2005). To succeed on a Rule 17 motion, the defendant must establish good cause by showing:

"(1) that the documents are evidentiary and relevant; (2) that they are not otherwise procurable reasonably in advance of trial by exercise of due diligence; (3) that the party cannot properly prepare for trial without such production and inspection in advance of trial and that the failure to obtain such inspection may tend unreasonably to delay the trial; and (4) that the application is made in good faith and is not intended as a general 'fishing expedition.'"

Commonwealth v. Lampron, 441 Mass. 265, 269-270 (2004), quoting *United States v. Nixon*, 418 U.S. 683, 699-700 (1974).

The defendant, Karen Read, is charged with various crimes including murder in the second degree of her boyfriend, Boston Police Officer John O'Keefe, who was found

unresponsive in the snow outside a residence in Canton on the morning of January 29, 2022. She moves for an order pursuant to Mass. R. Crim. P. 17 seeking electronic communications from Elizabeth Proctor, Trooper Michael Proctor, and Jennifer McCabe. After consideration of the parties' written submissions, oral arguments, and the requirements of Rule 17, the court makes the following ruling:

As to Elizabeth Proctor, the defendant's Rule 17 motion is **DENIED**. The defendant seeks communications between Elizabeth Proctor and Jennifer McCabe. The defendant's motion fails to meet the *Lampron* requirements. The defendant has not shown that the communication sought from Elizabeth Proctor, who is not a proposed witness in this case, would yield relevant, admissible evidence for trial.

As to Trooper Proctor, the motion is **ALLOWED**. The defendant seeks communications between Trooper Proctor and Jennifer McCabe and Trooper Proctor and Brian and/or Nicole Albert. While the Commonwealth does not concede that Trooper Proctor and these individuals had any close personal relationships, it does not oppose the motion as to Trooper Proctor.

As to Jennifer McCabe, who is also a proposed government witness in this case, the motion is **ALLOWED IN PART** and **DENIED IN PART**. The defendant seeks communications between Jennifer McCabe and Trooper Proctor and Jennifer McCabe and Elizabeth Proctor. As to communication with Elizabeth Proctor, the motion does not meet the *Lampron* requirements. However, where Jennifer McCabe and Trooper Proctor are both proposed government witnesses in this case, the records sought by the defendant as to them satisfy Rule 17.

Accordingly, summonses will issue directing the following:

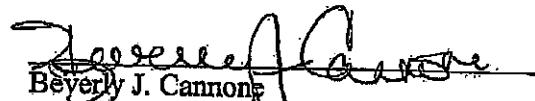
1. Jennifer McCabe to produce all communications, including but not limited to records of calls, text messages, Facebook messages, Instagram messages, and any other third

party messaging applications, and/or email correspondence between Jennifer McCabe and Trooper Michael Proctor between January 29, 2022 and the present.

2. Trooper Michael Proctor to produce (a) all communications, including but not limited to records of calls, text messages, Facebook messages, Instagram messages, and any other third party messaging applications, and/or email correspondence between Trooper Proctor and Jennifer McCabe between January 29, 2022 and the present; and (b) all communications, including but not limited to records of calls, text messages, Facebook messages, Instagram messages, and any other third party messaging applications, and/or email correspondence between Trooper Proctor and Brian Albert and Trooper Proctor and Nicole Albert between January 29, 2022 and February 18, 2022.

SO ORDERED

Date: January 5, 2024


Beverly J. Cannon
Justice of the Superior Court

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT
CRIMINAL ACTION
2282CR00117

COMMONWEALTH

vs.

KAREN READ

**DECISION AND ORDER ON COMMONWEALTH'S MOTION FOR EXHAUSTIVE
DNA TESTING -ITEM #: 3-6.1 and DEFENDANT'S REQUEST FOR NON-
DESTRUCTIVE EXAMINATION OF ITEM 3-6**

After hearing and review of the pleadings, including affidavits in support of the Commonwealth's motion for exhaustive DNA testing to be done at Bode Technology in Lorton, Virginia and in support of the Defendant's request that testing first be completed by Microtrace, LLC in Chicago to determine whether the item is in fact a hair, the court allows the Commonwealth's motion and denies the defendant's motion in so far as the location of the testing of the item to first determine whether it is a hair.

Bode Technology is a private ANAB accredited forensic DNA laboratory which regularly performs DNA testing and serological screening of evidence from law enforcement agencies, prosecuting offices, crime laboratories, Innocence Projects, and public defender's offices from across the country. Counsel for the defense acknowledged that he had a great deal of respect for the lab and had in fact, used Bode Technologies in the past.

Since the defendant requests an independent examination of 3-6.1 to determine whether it is indeed a hair, Bode must test the item to determine whether it is a human hair before moving forward with the DNA testing.

ORDER


It is hereby ordered that the Massachusetts State Police crime laboratory shall transmit item number 3-6.1 to Bode Technology in Lorton, Virginia. Bode Technology is to determine first whether the item is a human hair and then is permitted to conduct STR and mtDNA testing on the sample which may consume and exhaust the evidence.

Further, the court understands that pursuant to the practices and protocols of BODE Technology, neither the Commonwealth nor the defendant is permitted to observe the testing and analysis pursuant to G.L. c. 278 sec. 8

However, pursuant to Bode Policy, this court **ORDERS** that Bode permit observation of laboratory procedures by the defense expert and that defense counsel and/or their expert may review protocols and/or case results on site. This case involves exhaustive testing of an item previously processed by the Massachusetts State Police crime lab.

Pursuant to Bode policy, the laboratory procedure may be viewed via on premise video feed by no more than three outside visitors who will remain at all times in the presence and under the supervision of Bode personnel.

All other policy restrictions set by Bode, including cost must be followed.


Beverly J. Cannone
Justice of the Superior Court

Date: November 14, 2023

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO. SJ-2023-0343

Norfolk Superior Court
No. 2282CR00117

SUFFOLK, SS.

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CLERK OF SUPERIOR COURT
NORFOLK COUNTY

KAREN READ

vs.

COMMONWEALTH

MEMORANDUM OF DECISION AND JUDGMENT

The petitioner, Karen Read, has been indicted for murder, in violation of G. L. c. 265, § 1; manslaughter while operating under the influence of alcohol, in violation of G. L. c. 265, § 13 1/2; and leaving the scene of personal injury and death, in violation of G. L. c. 90, § 24 (2) (a 1/2) (2). In the course of pretrial proceedings, she filed a "Motion for Order Pursuant to Mass. R. Crim. P. 17 Directed to Brian Albert, Verizon and AT&T" in which she sought, essentially, 1) the production of Albert's cell phone or cell phones; 2) certain records, call details, and data from Verizon associated with one of Albert's cell phones; 3) certain records, call details, and data from Verizon associated with Jennifer McCabe's cell phone; and 4) certain records, call details, and data from AT&T associated with another of Albert's cell phones. Albert and McCabe are two

of the Commonwealth's witnesses. After a hearing, a judge in the trial court denied the motion. The defendant has now filed a petition pursuant to G. L. c. 211, § 3, seeking relief from that ruling. For the reasons set forth below, I allow in part and deny in part the petition.

On the evening of January 28, 2022, the victim, John O'Keefe, and the defendant were at a bar with several other people including Albert and McCabe, who is Albert's sister-in-law. As the bar was closing around midnight the group was invited to Albert's house. O'Keefe and the defendant left the bar together in the defendant's car and drove to Albert's house. The defendant maintains that she dropped O'Keefe off at Albert's house and then left, believing that he went inside. Early the next morning, January 29, the defendant called McCabe, at approximately 5:00 a.m., to say that O'Keefe had not come home. The defendant then drove to McCabe's house and together they went to Albert's house where they found O'Keefe lying in the snow, unresponsive.¹ He was transported to a hospital and pronounced dead.

The Commonwealth's general theory of the case is that after O'Keefe exited the defendant's car, outside of Albert's house, the defendant struck O'Keefe with her car and left him there, in

¹ Another friend of the defendant's followed them from McCabe's house to Albert's house in a separate vehicle.

the cold and snow. The defendant, for her part, is pursuing a third-party culprit defense involving Albert and McCabe.

In her rule 17 motion, the defendant argues that a forensic analysis of McCabe's cell phone exculpates the defendant and implicates McCabe and Albert. According to the defendant's computer forensics expert, the search history of McCabe's cell phone indicates that on January 29, at 2:27 a.m., a user conducted a google search for "hos [sic] long to die in cold." The defendant's expert also averred that this search was subsequently deleted by the user. Two subsequent searches were then conducted on McCabe's phone, several hours later and shortly after O'Keefe was found, for "how long ti die in cikd," at 6:23 a.m., and for "hos long to die in cold," at 6:24 a.m.

The Commonwealth's expert, on the other hand, presented different findings. According to his assessment, the search history of McCabe's cell phone indicated the latter two searches, at 6:23 a.m. and at 6:24 a.m., but no search at 2:27 a.m. for "hos long to die in cold."² In short, neither party

² The Commonwealth's expert noted the defense expert's reliance on data timestamped 2:27:40 a.m. in a "WAL file or Write Ahead Log File," a kind of file that a "database creates to temporarily store data prior to be[ing] written into the database." Based on his analysis of the WAL file and a database on the iPhone, the Commonwealth's expert concluded that "this timestamp is the last interaction of the Safari Tab in the iPhone to search the ozonebasketball website at 2:27:40AM and not a search of 'hos long to die in cold.'" He further opined

disputes the 6:23 a.m. and 6:24 a.m. searches, but they disagree about the existence of that particular 2:27 a.m. search (and, accordingly, about any attempt to delete that search). The technical reasons for their experts' disagreement are not self-explanatory, nor can this disagreement be reconciled on the record before me.

In her decision denying the defendant's rule 17 motion, the judge notes the two google searches conducted at 6:23 a.m. and 6:24 a.m. As to the defendant's additional assertion that McCabe searched at 2:27 a.m. for "hos long to die in cold," and then attempted to delete the search, the judge noted that the Commonwealth "disputes that McCabe did so. The court assumes that she did only for purposes of this motion." The judge, in other words, assumed that McCabe conducted the search at 2:27 a.m. for "hos long to die in cold," and then McCabe attempted to delete it.

A party seeking records pursuant to rule 17 (a) (2) must satisfy the protocol set forth in Commonwealth v. Dwyer, 448 Mass. 122 (2006). Specifically, a party moving to subpoena documents to be produced prior to trial

"must establish good cause, satisfied by a showing (1) that the documents are evidentiary and relevant; (2) that they are not otherwise procurable reasonably in advance of trial by exercise of due diligence; (3) that the party

that "[a]n iPhone user would not be able to access this WAL file through the phone to purposely delete entries placed there."

cannot properly prepare for trial without such production and inspection in advance of trial and that the failure to obtain such inspection may tend unreasonably to delay the trial; and (4) that the application is made in good faith and is not intended as a general "fishing expedition."

Id. at 140-141, quoting Commonwealth v. Lampron, 441 Mass. 265,

269 (2004). Here, the judge concluded that the defendant had

not met this standard -- that the defendant had not shown that

relevant, admissible evidence would be found on Albert's cell

phone or in Albert's cell phone records, and that, as to

McCabe's cell phone records, the defendant was attempting to use

rule 17 as a discovery tool, which is not the purpose of the

rule.

I discern no basis to overturn her conclusions regarding Albert's cell phone and cell phone records, and most of her conclusions regarding McCabe's cell phone records -- that, in essence, the defendant's requests for that information amount to a "fishing expedition."

There is, however, one limited category of information to which the defendant is entitled, related to McCabe's google search, or searches, for "hos long to die in cold." The judge specifically presumed, for purposes of the defendant's rule 17 motion, that McCabe had initially conducted this search at 2:27 a.m. and then attempted to delete it thereafter. It does not follow from that presumption that the defendant's request for McCabe's cell phone records related to this search are not

relevant or that the request amounts to a "fishing expedition." Indeed, what does follow is that the information related specifically to that request is relevant and sought in good faith.

That said, this does not necessitate the production of records to the extent sought by the defendant, from January 28, 2022, through February 2, 2022. Rather, on the basis that the search, or searches, for "hos long to die in cold" took place on January 29, 2022, the request for McCabe's cell phone records may properly be limited to the twenty-four-hour period beginning with the departure of the defendant, the victim, and McCabe from the bar approximately at midnight. The defendant has not provided any information that suggests that records before or after that twenty-four hour period are relevant to the contested google search.

Therefore, to the extent the defendant seeks relief, in her G. L. c. 211, § 3, petition, from the judge's order denying the defendant's request for a summons to Verizon for certain information associated with McCabe's cell phone for the date of January 29, 2022, the petition is allowed for this twenty-four-hour period.³ In all other respects, the petition is denied.

³ Specifically, as requested in the defendant's rule 17 motion, "call records, call detail records, SMS text and MMS

By the Court,

/s/ Scott L. Kafker
Scott L. Kafker
Associate Justice

Entered: November 15, 2023

RECORDS

records to the

records and data records associated with subscriber Jennifer McCabe's cell phone number (781) 858-0142" for January 29, 2022 only, as well as the subscriber information associated with that specific number, (781) 858-0142, on that specific day, January 29, 2022.