

**SUPPLEMENTAL RECORD APPENDIX TABLE OF CONTENTS**

OPPOSITION OF BRIAN ALBERT TO THE DEFENDANT'S RULE 17  
MOTION FOR CELLULAR DEVICES AND RECORDS . . . . **SRA/001**

MASSACHUSETTS STATE POLICE, DNA TESTING REPORT, DATED  
AUGUST 25, 2023 . . . . . **SRA/010**

DEFENDANT'S MOTION FOR ORDER PURSUANT TO MASS. R. CRIM.  
P. 17 DIRECTED TO THE CANTON DEPARTMENT OF PUBLIC WORKS  
AND THE CANTON TOWN CLERK . . . . . **SRA/013**

AFFIDAVIT OF PRIVATE INVESTIGATOR PAUL MACKOWSKI IN  
SUPPORT OF DEFENDANT'S MOTION FOR ORDER PURSUANT TO MASS.  
R. CRIM. P. 17 DIRECTED TO THE CANTON DEPARTMENT OF  
PUBLIC WORKS AND THE CANTON TOWN CLERK. . . . . **SRA/024**

AFFIDAVIT OF ALAN JACKSON IN SUPPORT OF DEFENDANT'S  
MOTION FOR ORDER PURSUANT TO MASS. R. CRIM. P. 17  
DIRECTED TO THE CANTON DEPARTMENT OF PUBLIC WORKS AND THE  
CANTON TOWN CLERK . . . . . **SRA/028**

COMMONWEALTH'S NOTICE OF DISCOVERY XVI. . . . . **SRA/042**

COPY OF DIGHTON POLICE DEPARTMENT CALL LOG, CALL NUMBER  
22-787, DATED JANUARY 29, 2022. . . . . **SRA/043**

DIGHTON POLICE DEPARTMENT INCIDENT REPORT, NARRATIVE OF  
NICHOLAS A BARROS, ENTERED JANUARY 29, 2022 . . **SRA/044**

COM V. KAREN READ, MOTIONS HEARING BEFORE THE HONORABLE  
BEVERLY J. CANNONE, OCTOBER 3, 2022. . . . . **SRA/046**

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NORFOLK, ss

NORFOLK SUPERIOR COURT  
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COMMONWEALTH

v.

KAREN READ

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**OPPOSITION OF BRIAN ALBERT TO THE DEFENDANT'S RULE 17 MOTION FOR  
CELLULAR DEVICES AND RECORDS**

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The defendant is seeking the cellular devices of Brian Albert. To accomplish this, the defendant has filed a document purporting to be a new motion under Rule 17, but which is really a motion for reconsideration of a prior motion that was denied by the court. One might presume that the caption of the document was simply a mistake – that the defendant meant to ask the court to reconsider the earlier decision based on new evidence – except after reading the motion and accompanying affidavits, it appears that the defendant and her attorneys have instead chosen to create reasonable doubt by creating an alternate version of reality. Their “truth” begins by ignoring the fact that this court denied the very same motion last year. Then, to add depth and texture to their fictional account, the defense has manufactured their own set of “facts,” passed them off as gospel, and are now asking the court to rely on their assertions to invade the privacy of civilians. This motion to reconsider the previous court ruling should be denied.

**PROCEDURAL HISTORY**

The defendant filed a motion under Mass. R. Crim. P. 17 on September 16, 2022, requesting “any cell phones” possessed by Brian Albert (and others) for a period in January and February of 2022. That motion was denied on October 5, 2022, with the following notation from

the court: "The Court is not satisfied that the requested phones contain information that is evidentiary and relevant nor is the Court satisfied that the application is made in good faith and is not intended as a general fishing expedition. (Cannone, RAJ)."

The instant motion was filed on April 12, 2023, with accompanying affidavits of Alan Jackson and Richard Green submitted the following day.

#### **RELEVANT CASE LAW**

A defendant seeking pretrial production pursuant to Rule 17 must make a demonstration of relevance, admissibility, necessity, and specificity in order to sustain her burden.

Commonwealth v. Mitchell, 444 Mass. 786, 795 (2005). To satisfy her burden, the defendant must show (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 (2004).

In this particular case, the defense is seeking the physical cellular devices – and cloud-based content – of Brian Albert, among others. This is not a minimal, limited intrusion that is being requested; this inquiry implicates significant privacy considerations that the Supreme Judicial Court has highlighted in their case law. "[A]n individual has a compelling privacy interest in the contents of his or her electronic devices." Commonwealth v. Feliz, 486 Mass at 510, 516 (2020); see also, Commonwealth v. Fulgiam, 477 Mass. 20, 32-33 (2017). The Court has spoken about individual electronic devices containing a "vast store of sensitive information,"

and noted that intrusions into them “would expose...far more than the most exhaustive search of a house.” Feliz at 516, quoting Riley v. California, 573 U.S. 373, 403 (2014).

Rule 17 is not a discovery tool, though that is clearly the strategy behind the defense motion: troll for any material that can be spun or misconstrued to fit the defense narrative. In reality the purpose of Rule 17 is to avoid delay at trial by permitting advance review of materials likely to be offered at trial. Lampron at 269-270; Commonwealth v. Dwyer, 448 Mass. 122, 145 (2006). A judge reviewing a Rule 17 motion has an initial gatekeeper role. Part of the court’s responsibility is to determine if the affidavit and any hearsay is reliable. But “assertions of potential relevancy and of conclusory statements will not suffice.” Commonwealth v. Mitchell, 444 Mass. 786, 791 (2005).

#### **ARGUMENT**

The defense needs to show, among other things, that the evidence sought “has a rational tendency to prove or disprove an issue in the case.” Lampron at 269-270. What the defense has done here is make up a story – unsupported by any actual evidence – and then deem that story to be an “issue in the case.” This is precisely the danger that Lampron identified in considering Rule 17 motions: the defense can use them to fish for irrelevant, inadmissible information that can be used to support a fabricated narrative. Potential relevance and conclusory statements are not sufficient to satisfy the defense burden under Rule. Mitchell, 444 Mass. at 791. See also Jones, SJC-1225, slip op. October 4, 2017. No showing has been made, and no credible evidence has been identified, that supports the claim that relevant, admissible evidence will be found on Brian Albert’s cell phone or in the cloud-based storage of his phone records.

The defense has tried to repackage the speculation of its September 2022 motion by emphasizing its theory of the case with bold, italicized, and underlined statements.<sup>1</sup> The prose is written in broad, confident terms, with literary flourishes designed to imply that something has been “newly discovered” by the defense. This is done to try to make the defense fabrication sound credible, and to gloss over the court’s ruling in October. In denying the same defense motion on relevance grounds, this court questioned if the application was even “made in good faith” or whether it was “intended as a general fishing expedition.” Court Order of October 5, 2022. The same concerns apply to the instant motion.

Here, a new affidavit of Attorney Alan Jackson complies with the affidavit requirement of Mass. R. Crim. P. 13 for approximately 3 of the 10 pages, before devolving into narrative format and re-argumentation, parroting the same exaggerated language of the motion itself.<sup>2</sup> “The defense clearly has a good faith belief that exculpatory evidence supporting her third party culpability defense will be found in Mr. Albert’s cell records.” 4/13/23 Affidavit of Alan Jackson at 9. “I have a good faith belief that the [information being sought] will unquestionably lead to relevant, admissible evidence that will support Ms. Read’s third-party culpability defense.” 4/13/23 Affidavit of Alan Jackson at 7. “This reliable, data-driven information undeniably

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<sup>1</sup> The language, format, and structure used by the defense is important to consider in light of the court’s prior ruling. The original Rule 17 motion and affidavit totaled 19 pages; that motion was denied. The instant motion adds an additional 24 pages of spin, coupled with 92 pages of “affidavit” and exhibits from counsel and 37 pages of affidavit from a purported defense expert. The volume of pages needed to make an argument does not equate to quality – or reliability. Sometimes, it’s the opposite. Once the hundreds of pages are reviewed and the inaccuracies begin to surface, it becomes clear that the defense attempt at reconsideration here is the definition of a fishing expedition. Lampron at 269.

<sup>2</sup> Mr. Jackson’s second and third paragraphs assert: “(2) I submit this affidavit on personal knowledge in support of Defendant’s Motion for Order Pursuant to Mass. R. Crim. P. 17 Directed to Brian Albert, Verizon, and AT&T (3) I have carefully reviewed the discovery produced by the Commonwealth in this case, including all police reports, grand jury minutes, crime scene photographs, and other evidence. The factual assertions and reasonable inferences set forth in the Defendant’s Motion for Order Pursuant to Mass. R. Crim. P. 17 Directed to Brian Albert, Verizon, and AT&T fairly reflect the statements summarized in the discovery produced by the Commonwealth.” 4/13/23 Affidavit of Alan Jackson at 1.

suggests that Jennifer McCabe and Brian Albert are the third parties responsible for O'Keefe's death and that additional inculpatory information will be found in the cellular data requested."

4/13/23 Affidavit of Alan Jackson at 7. "Reliable;" "data-driven;" "undeniably" – as if the flimsiness of the claims can be bolstered by emphatic verbiage. Despite the language being used, the defense narrative carries no reliability. Repeated conclusory declarations such as these do absolutely nothing to establish relevance.

Why will there "unquestionably" be evidence supporting his third-party culprit defense? Why is the defense so confident? The premise of their strategy is to absorb information – however benign – and then weaponize it to help the cause. No matter what is discovered in a phone or cloud storage device, the defense will come up with a way to use it to their advantage. Any information will be spun and reshaped to fit the narrative.

No matter how many affidavits and pages of defense theory are submitted, there is no connection between Brian Albert's cell phone and any actual issue in the case. But that doesn't stop the defense from pretending there is a connection. The instant motion spends dozens of pages analyzing (inaccurately) Jennifer McCabe's cell phone records. And still there is no record of – nor has the defense claimed – any phone conversations between Brian Albert and Jennifer McCabe on January 28 and 29, 2022. By presupposing a conspiracy between Jennifer McCabe and Brian Albert in its argument, however, the defense hopes the court will make the same mistake in order to conclude that misinterpreted cell phone records of Jennifer McCabe justify an intrusion into the private cellular devices and information of Brian Albert. This is illogical.

Why is this happening? It appears that Brian Albert has been chosen by the defense as one of the scapegoats. Therefore, everything he does can be misinterpreted to benefit the defense theory of the case – even the most benign actions. In late 2021, prior to the death of John

O'Keefe, Mr. Albert and his wife decided to sell their home. Brian Albert made minor improvements to the house – at the suggestion of his real estate agent who walked through the property – in order to maximize the value when he listed it for sale. The decision paid off, and the house was sold in early 2023 for an 80+% return on the investment.

The defense spin: he is selling a crime scene.

“On November 17, 2022, mere months after the defense first publicly accused the Alberts of being implicated in O'Keefe's murder, Brian Albert made the decision to list his childhood home and longtime residence for sale, which had been in the Albert family for multiple generations...Brian Albert's decision to transfer documented ownership of his longtime family residence is yet additional evidence of consciousness of guilt.”

4/12/23 Rule 17 Motion at 17.

The defense hopes that the court and general public miss the absurdity of its logic: the house was not sold for more than a year after January 28, 2022, not exactly a hasty attempt to cover something up. The “transfer [of] documented ownership” does nothing to make the home inaccessible to law enforcement (or the defense), and the decision to sell the home pre-dated John O'Keefe's death.

But that doesn't matter when the goal is to concoct reasonable doubt. So instead of a couple down-sizing their home as empty-nesters after their 5 children have left, the sale of a home takes on a nefarious purpose in the defense motion.

“I have a good faith belief that Mr. Albert has already taken affirmative steps to destroy evidence (namely, getting rid of his K-9 German Shepherd Chloe) and will take actions to similarly destroy any inculpatory evidence on his cell phone.” 4/13/23 Affidavit of Alan Jackson at 9. And in the motion itself:

“[A]ctions taken by Brian Albert and his family to destroy evidence and engage in witness intimidation over the course of the last year should be extremely troubling to the court, and should unquestionably further support the necessity of immediately issuing a summons for Brian Albert's cell phone and phone records.

...  
Considerable circumstantial evidence suggests that Brian Albert's dog was responsible for the scratch and/or bite marks on John O'Keefe's right arm. It is not a coincidence that that Brian Albert got rid of his family dog of seven years due to a reported violent skin-piercing incident four months after John O'Keefe's death."

4/12/23 Rule 17 Motion at 16.

Note the prose and dramatic language – “destroy evidence,” “extremely troubling,” “unquestionably further support.” And focus in particular on the characterization of the evidence: “a reported violent skin-piercing incident.” *Id.* By saying “violent skin-piercing incident four months after John O'Keefe's death,” the defense is asking the reader to conclude that the dog in question has a history of attacking human beings, and that it was sent away because it was violent toward people.

As with other defense assertions, this is not true. Mr. Albert's dog escaped from a fenced yard and went after a neighbor's pet 4 months after John O'Keefe's death. There are witnesses to the incident, and animal control paperwork documenting the ordeal. When the Alberts asked the neighbor how they could reassure her, she expressed an ongoing concern for walking her dog. After difficult family conversations, the Alberts chose to re-home the dog but remained in touch with the new owner. They remain in touch with her to this day.

In the context of a defense motion accusing an innocent person of murder, the phrasing here is entirely intentional. If this is what the defense means by “good faith belief,” the court should be cautious about relying on any defense assertion.

Defense counsel attempt to support their arguments with photographs which they also characterize for the court. In one example, Attorney Alan Jackson's affidavit claims: “Attached hereto as ‘**Exhibit A**’ are photographs which clearly establish a longstanding close familial relationship between the government's seminal witnesses in this case (i.e. the Alberts and the



McCabes) and the lead detective responsible for investigating this case, Trooper Michael Proctor.” 4/13/23 Affidavit of Alan Jackson at 1-2. And “Even more alarmingly, Brian Albert has an intimate personal relationship with Massachusetts State Police Trooper Michael Proctor...the lead investigator assigned to this case.” 9/16/22 Rule 17 Motion at 2.

These statements are wrong. The photos referenced by the defense do not depict Jennifer McCabe’s children. More importantly for this motion, they certainly do not depict Brian Albert, or his wife, or his children, or his dog, or his home. Contrary to the defense’s sworn claims, Brian Albert and Michael Proctor did not know each other prior to this incident. Brian Albert introduced himself to Trooper Proctor for the first time when he was interviewed on the 29<sup>th</sup> of January 2022. Once again, the defense assertion of a “fact” is mistaken. Or inaccurate. Or worse.

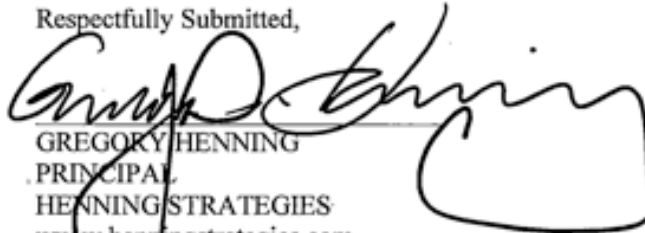
If the defense’s repeated assertions about houses, and dogs, and photographs, and personal relationships are wrong – and they are – what does that say about the defense motion and accompanying materials more broadly? The defense has used sworn affidavits to allege facts that they argue are “clearly established” and has repeated claims like this over and over again. When those “facts” turn out to be untrue, how can anything else asserted by the defense be relied upon?

### **CONCLUSION**

The concern about frivolous Rule 17 motions is one that the Supreme Judicial Court has taken very seriously. In Dwyer, the Court explained: “We emphasize that the standard for summoning third-party records for inspection before trial is intended to guard against intimidation, harassment, and fishing expeditions for possibly relevant information.” Dwyer at 145. This Rule 17 motion – an attempt to request reconsideration of a prior ruling – is exactly the

type of filing the SJC was concerned about in Dwyer. Accordingly, Mr. Albert requests that this court deny, again, the defendant's Rule 17 motion.

Respectfully Submitted,

A large, stylized handwritten signature in black ink, appearing to read 'Gregory Henning', is written over the typed name and contact information.

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Dated: May 3, 2023

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COMMONWEALTH OF MASSACHUSETTS

CLERK OF THE COURTS  
NORFOLK COUNTY

SUPERIOR COURT DEPARTMENT  
NO. 2282-CR-00117

COMMONWEALTH OF  
MASSACHUSETTS,

Plaintiff

V.

KAREN READ,

Defendant

**DEFENDANT'S MOTION FOR ORDER PURSUANT TO MASS. R. CRIM. P. 17  
DIRECTED TO THE CANTON DEPARTMENT OF PUBLIC WORKS AND THE  
CANTON TOWN CLERK**

Now comes the defendant, Karen Read ("Ms. Read", or "the Defendant"), by and through her counsel of record, Werksman Jackson & Quinn LLP, and respectfully moves this Honorable Court pursuant to Mass. R. Crim. P. 17(a)(2) to issue a summons to the following agencies to deliver the described records to the Clerk of the Court in advance of trial:

1. To: Canton Town Clerk  
801 Washington Street  
Canton, MA 02021

Seeking: 1. GPS data associated with all snowplows deployed by the Canton Department of Public Works ("DPW") between 12:30 a.m. and 6:30 a.m. on January 29, 2022, to plow the area surrounding 34 Fairview Road in Canton. This should include all GPS data associated with Canton DPW Truck #30, which was assigned to Brian Loughran, on January 29, 2022, between 12:30 a.m. and 6:30 a.m.

*Allowed - no objection*  
*9/15/23*

2. Dispatch records and route records associated with all snowplows deployed between 12:30 a.m. and 6:30 a.m. on January 29, 2022, in the town of Canton.
3. Contracts and service agreements with any and all companies that the Canton Department of Public Works contracted with for the purpose of tracking its snowplows in January 2022, which should include any GPS tracking and/or fleet management databases.
4. Any and all records, communications, and/or other information relating to records of service and/or issues with the fleet management database or GPS systems used to track Canton DPW's snowplows between January 24, 2022, and January 29, 2022. This should include records of service, communications regarding malfunctions with the GPS system and/or fleet management database, and/or communications regarding repairs or corrections of any malfunctions.

2. To: Canton Department of Public Works  
801 Washington Street  
Canton, MA 02021

Seeking:

1. GPS data associated with all snowplows deployed by the Canton Department of Public Works ("DPW") between 12:30 a.m. and 6:30 a.m. on January 29, 2022, to plow the area surrounding 34 Fairview Road in Canton. This should include all GPS data associated with Canton DPW Truck #30 on January 29, 2022, between 12:30 a.m. and 6:30 a.m.
2. Dispatch records and route records associated with all snowplows deployed between 12:30 a.m. and 6:30 a.m. on January 29, 2022, in the town of Canton.
3. Contracts and service agreements with any and all

companies that the Canton Department of Public Works worked with to track its snowplows in January 2022, which should include any GPS tracking and/or fleet management databases.

4. Any and all records, communications, and/or other information relating to records of service and/or issues with the fleet management database or GPS systems used to track Canton DPW's snowplows between January 24, 2022, and January 29, 2022. This should include records of service, communications regarding malfunctions with the GPS system and/or fleet management database, and/or communications regarding repairs or corrections of any malfunctions.

## **I. SUPPORTING FACTS**

1. Ms. Read stands charged with the following crimes arising out of the death of her late boyfriend, John O'Keefe ("O'Keefe"): Murder in the Second Degree in violation of M.G.L. c. 265, s. 1 (Count One); Manslaughter while under the Influence of Alcohol in violation of M.G.L. c. 265, s. 13 ½ (Count Two); and Leaving the Scene of Personal Injury and Death in violation of M.G.L. c. 90, s. 24(2)(a ½)(2) (Count Three). Given the Court's intimate knowledge of the facts of this case, the foundational facts surrounding this case are discussed herein only briefly.<sup>1</sup>

2. The Commonwealth's theory of the case is that Ms. Read became suddenly angry with O'Keefe outside the home of Boston Police Officer Brian Albert just after midnight on January 29, 2022, and reversed into him with her vehicle, shattering her taillight and somehow causing injury to *only* his head and arm, before fleeing the scene. In order for the Commonwealth's theory of the case to make any sense, Mr. O'Keefe would have been incapacitated and bleeding on Brian Albert's front lawn (mere feet from the roadway) from the moment the Commonwealth claims Ms. Read hit him with her car until his body was discovered just after 6:00 a.m. on January 29, 2022.

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<sup>1</sup> The facts set forth in Defendant's Rule 17 Motion for Order Pursuant to Mass. R. Crim. P. 17 Directed to Brian Albert, Verizon, and A&T are incorporated herein by reference.

3. However, no witness suggests that they observed Ms. Read strike Mr. O'Keefe with her vehicle, injure him in any way, or otherwise drive erratically on the night in question. Moreover, in spite of the fact that six individuals—Jennifer McCabe, Matthew McCabe, Brian Higgins, Sarah Levinson, Julie Nagel, and Colin Albert—all left the Albert Residence in the early morning of January 29, 2022, not one of these individuals observed Mr. O'Keefe's body sprawled in Brian Albert's front yard, mere feet from the very roadway all of them would have driven on to leave.<sup>2</sup>

4. Significantly, on February 15, 2022, defense investigator Paul Mackowski interviewed Bill Walsh, Operations Manager of the Canton Department of Public Works ("DPW") to determine whether any snowplows were dispatched to the area of Canton, which includes 34 Fairview Road (Brian Albert's residence) on January 29, 2022. (Affidavit of Paul Mackowski at ¶4.) As set forth in Mr. Mackowski's affidavit, Mr. Walsh indicated that a man named Brian "Lucky" Loughran was responsible for plowing the roadway adjacent to 34 Fairview Road, Brian Albert's residence. (*Id.*)

5. On February 15, 2022, defense investigator Paul Mackowski met and interviewed Lucky Loughran. (Affidavit of Paul Mackowski, at ¶5.) During the course of that interview, Mr. Loughran explained that he has been the person responsible for plowing the area that includes 34 Fairview Road for three years. (*Id.*) According to Mr. Loughran, he arrived at the DPW yard at

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<sup>2</sup> Notably, on September 19, 2022, Defendant Karen Read filed a Rule 17 Motion requesting cell phone records relating to all of the individuals who were present at the Albert residence on the night in question. In support of that request, counsel argued: "[A]t least six individuals claim to have left the Albert residence in the early morning of January 29, 2022, after Ms. Read had left the Fairview Residence and returned home: Jennifer McCabe and Matthew McCabe purportedly drove Julie Nagel and an unnamed female home at 1:30 a.m.; Brian Higgins supposedly went to complete "administrative work" at the Canton Police Department around 1:30 a.m.; and Colin Albert supposedly returned home to his parents' residence at approximately 12:30 a.m. Yet, none of these individuals--not one--claims to have seen Mr. O'Keefe's body sprawled in Brian Albert's front yard, mere feet from the very roadway all of them would have driven on." (*See* Docket No. 27.) This argument was reiterated vigorously in court at the hearing on the Rule 17 Motion on October 3, 2022. (Affidavit of Alan Jackson, at ¶4.) Remarkably, *two days* after the defense made these facts known the Court and Attorney Lally in a public hearing, on October 5, 2022, at 11:00 a.m., Trooper Michael Proctor met with partygoer Julie Nagel and interviewed her for the very first time. (Affidavit of Alan Jackson, at ¶5; Exhibit A, Trooper Proctor Interview with Julie Nagel.) In that unrecorded interview, Trooper Proctor claimed *for the first time* that Julie Nagel reported that she "observed a dark object in the white snow by the flagpole" as they left 34 Fairview Road on January 29, 2022, seven months prior. (*Id.*)

2:00 a.m. on January 29, 2022, and left the yard in his snowplow truck by 2:15 a.m. (*Id.*) He indicated that his route took him down Fairview Road with 34 Fairview Road (Brian Albert's residence) located on his left as he plowed toward Cedarcrest Road during his first pass. Mr. Loughran indicated that he made two or three passes down Fairview Road on the early morning of January 29, 2022, and had good visibility from the truck cab because it was not snowing very heavily when he first started his shift. (*Id.*) Mr. Loughran repeatedly stated that if there was a body in the front yard of 34 Fairview Road, then he absolutely would have seen it. (*Id.*) In a separate statement, Mr. Loughran acknowledged that he was also interviewed by investigators from the Federal Bureau of Investigation ("FBI"), who indicated to him that (1) **the plow trucks were equipped with functioning GPS**; and (2) that the **GPS data established that he actually passed 34 Fairview Road at 2:30 a.m. on January 29, 2022.** (Affidavit of Alan Jackson, at ¶8.)

As set forth in Mr. Mackowski's affidavit, Mr. Loughran was also asked if he recalled anything unusual at 34 Fairview Road during his early morning shift. (Affidavit of Paul Mackowski, at ¶6.) Mr. Loughran indicated that sometime between 3:30 a.m. and 4:00 a.m., when he was plowing Cedarcrest Road, he looked toward Fairview Road and observed a Ford Edge parked on the right side of the street in front of 34 Fairview Road. (*Id.*) He indicated that the vehicle's lights were off, and he could not see whether anyone was inside. (*Id.*) When asked why the Ford Edge stood out to him, he explained that he was surprised to see that a vehicle had parked in front of the residence because it was after 3:30 a.m., it was snowing, and he hadn't seen any other moving or parked vehicles on that road during his prior passes through the area. (*Id.*) Mr. Loughran further indicated that he did not want to "plow in" the Ford Edge, so he continued driving down Cedarcrest rather than turning onto Fairview Road as he had planned. (*Id.*) Mr. Loughran indicated that he did not pass by 34 Fairview Road again (after seeing the Ford Edge) until sometime after 6:30 a.m. on January 29, 2022, at which point emergency vehicles had already left the area. (*Id.*) Thus, Mr. Loughran is confident that O'Keefe's body was not lying in Brian Albert's front yard when Mr. Loughran passed by 34 Fairview Road at least two times between 2:15 a.m. and 3:30 a.m. on January 29, 2022. (*Id.*)

6. Shockingly, according to law enforcement records obtained pursuant to a recent Freedom of Information Act ("FOIA") Request obtained from the Bridgewater State University Police Department, Colin Albert, one of the individuals who was present at the Albert residence

on the night in question, drives a 2018 Ford Edge.<sup>3</sup> (Affidavit of Alan Jackson, ¶6; Exhibit B, Responsive Documents Obtained from Bridgewater State University Police Department, at 1.) **Thus, a vehicle matching the description of Colin Albert's car was moved and parked in front of Brian Albert's residence at 3:30 a.m. on January 29, 2022, in the exact location that would effectively hide where Mr. O'Keefe's body would be found mere hours later.** (See Exhibit B; Affidavit of Paul Mackowski, ¶6.) The Bridgewater State University Police Department Records, which were obtained pursuant to a FOIA request, further noted that on April 10, 2023, the Bridgewater State Police Department accompanied "two fbi (sic) agents" to serve Colin Albert with a subpoena at Bridgewater State dormitory, "Woodward Hall." (Affidavit of Alan Jackson, ¶6; Exhibit B, at 2.)

7. Thankfully, the defense obtained this exculpatory statement from Mr. Loughran despite receiving extraordinarily misleading and inaccurate information from Trooper Michael Proctor. Significantly, on February 3, 2022, Trooper Proctor claimed that he spoke with Town of Canton employee Michael Trotta, who told him that *no snowplows* were dispatched to the area of 34 Fairview on the night in question. (Affidavit of Alan Jackson at ¶7; Exhibit C.) Trooper Proctor's March 15, 2022, report memorializing his unrecorded conversation with Michael Trotta reads as follows:

Michael assists with coordinating plow and sanding trucks during storms. Michael stated Canton uses town equipment to treat the roads with the exception of one company. Michael stated a company called "By the Yard" is used to assist with plowing the roadways. Michael stated drivers met at 140 Bolivar Street at 2:30 a.m. on January 29<sup>th</sup> and then left from there to clear the roadways. The company "By the Yard" was not called in until 3:30 a.m. that morning. **Michael stated trucks were out sanding earlier but only concentrate on major roadways in Canton and would not travel down Fairview Road.**

(Affidavit of Alan Jackson at ¶7; Exhibit C.) This statement is patently false.<sup>4</sup> In point of fact, two separate witnesses, Bill Walsh and Lucky Loughran, reported that Mr. Loughran was

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<sup>3</sup> On August 20, 2022 (mere months after Mr. O'Keefe's death), Colin Albert was pulled over by law enforcement in a black 2018 Ford Edge, which is registered to his mother, Julie Albert. (Affidavit of Alan Jackson, at ¶6; Exhibit B.)

<sup>4</sup> Notably, when defense investigator Paul Mackowski spoke to Michael Trotta by telephone on February 14, 2022, to determine whether any snowplows were dispatched to the area, which includes 34 Fairview Road on January 29, 2022, Mr. Trotta provided Mr. Mackowski with Bill Walsh's cell phone number and suggested Mr. Mackowski reach out to him because he was the



dispatched to plow the roadway adjacent to 34 Fairview Road in the early morning of January 29, 2022. (See Affidavit of Paul Mackowski at ¶¶4-5.) Additionally, according to that same report, Michael Trotta also purportedly told Trooper Proctor that “all town trucks are equipped with GPS but the system went down on January 24, 2022.” (Exhibit C.) Given the fact that nearly every other statement attributed to Michael Trotta by Trooper Proctor is provably false, this statement lacks any credibility. Moreover, this assertion is also directly contradicted by information relayed to Mr. Loughran by the FBI, in which they indicated that GPS records from his plow establish that he passed by the Albert Residence at 2:30 a.m. (Affidavit of Alan Jackson, at ¶8.)

8. Mr. O’Keefe’s bleeding and injured body would have been on obvious display if Ms. Read struck him with her vehicle and left him to die on Brian Albert’s front lawn. Lucky Loughran drove his DPW-issued snowplow past 34 Fairview Road on January 29, 2022, multiple times between 2:00 a.m. and 3:00 a.m., before any snow had accumulated, and O’Keefe’s body was not there. (Affidavit of Paul Mackowski, at ¶5.) To be clear, it is not that Mr. Loughran said he did not see Mr. O’Keefe’s body; it is that his body was not there. Similarly, none of the six witnesses who left Brian Albert’s residence after midnight on January 29, 2022, observed Mr. O’Keefe’s injured body in the snow mere feet from the road they drove on to leave. **Indeed, none of the individuals who collectively passed by 34 Fairview Road eight times (Mr. Loughran [twice], Jennifer McCabe, Matt McCabe, Julie Nagel, Brian Higgins, Colin Albert, or Sarah Levinson) observed an injured Mr. O’Keefe lying in Brian Albert’s front lawn until *after* a Ford Edge (consistent with the make and model of Colin Albert’s vehicle) pulled up and parked in front of 34 Fairview Road at 3:30 a.m. in the exact location O’Keefe’s body was later found.**

9. As explained below, Ms. Read is entitled to the GPS information associated with Mr. Loughran’s plow (DPW truck #30) from January 29, 2022. As set forth herein, this information is clearly relevant because it will establish (1) the precise times at which Mr. Loughran passed directly by 34 Fairview Road in his DPW-issued snowplow and *did not observe Mr. O’Keefe in the yard*; and (2) the precise time at which Mr. Loughran observed a Ford Edge parked outside Brian Albert’s residence in the very location Mr. O’Keefe’s body was later

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Highway Department Supervisor and dealt with day-to-day operations and dispatch. (Affidavit of Paul Mackowski, at ¶3.)

discovered, which caused him to continuing plowing Cedarcrest Road rather than making another pass down Fairview Road. Furthermore, the dispatch and service records related to the DPW's snowplows during the period in question will further corroborate Mr. Loughran's statements and establish the falsity of the statements attributed to Michael Trotta by Trooper Proctor.

## II. ARGUMENT

1. Under *Commonwealth v. Lampron*, 441 Mass. 265 (2004), a court may issue a pretrial summons for records in the possession of third parties if the party seeking the summons shows that (1) the documents are evidentiary and relevant; (2) the documents are not otherwise procurable reasonably in advance of trial by exercise of due diligence; (3) the party cannot properly prepare for trial without inspection of the records before trial and that the late disclosure of the records might unreasonably delay trial; and (4) the application is made in good faith and is not intended as a general "fishing expedition." *Lampron*, 441 Mass. at 269. As explained below, the categories of records sought by this motion meet all four prongs of the *Lampron* test.

### A. THE REQUESTED RECORDS ARE EVIDENTIARY AND RELEVANT

2. To satisfy the first requirement of *Lampron*, the defendant must make a factual showing "that the . . . evidence sought has a 'rational tendency to prove [or disprove] an issue in the case.'" *Com. v. Jones*, 478 Mass. 65, 68 (2017), quoting *Lampron*, 441 Mass. at 269-270. To meet this standard, "the defendant need not make a showing that the records *actually* contain information that carries, for example, the potential for establishing the unreliability of either the criminal charge or a witness on whose testimony the charge depends." *Com. v. Sosnowski*, 43 Mass. App. Ct. 367, 373 (1997). Rather, the defendant must only advance, in good faith, at least some factual basis indicating how the records are likely to be relevant to an issue in the case. *See id.* Relevance is a "broad concept" and "any information which tends to establish or at least shed light on an issue is relevant." *Adoption of Carla*, 416 Mass. 510, 513 (1993); *see also Com. v. Tucker*, 189 Mass. 457, 467 (1905) (explaining evidence is relevant and admissible if, in connection with other evidence, "it helps a little").

3. The requested records are clearly relevant to the issue of whether Mr. O'Keefe was, in fact, lying incapacitated on Brian Albert's front lawn after being struck by a vehicle. Dispatch records and GPS information that corroborate Mr. Loughran's statements that (1) he drove by 34

Fairview Road in a vehicle meant to illuminate objects in and around the roadway multiple times between 12:30 a.m. and 3:00 a.m. and did not see Mr. O’Keefe’s body; and (2) he observed a Ford Edge parked in front of 34 Fairview Road in the *exact* location Mr. O’Keefe’s body was subsequently found, and thus, continued plowing on Cedarcrest rather than turning onto Fairview Road at approximately 3:30 a.m. on January 29, 2022, would tend to disprove a seminal issue in this case (namely, whether Mr. O’Keefe was actually lying incapacitated in Brian Albert’s front yard between 12:30 a.m. and 3:30 a.m. as the Commonwealth claims). The requested records may also lead to the discovery of additional relevant information, namely the names of additional plow drivers who passed by 34 Fairview Road on the morning in question, and the routes they took that morning. Furthermore, contracts and service agreements between the Town of Canton and any companies that equipped the town plows with GPS tracking and/or fleet management services in January 2022 may identify additional sources of information that can be used to corroborate Mr. Loughran’s statements and/or that will identify additional percipient witnesses who may have passed by 34 Fairview Road on January 29, 2022. Finally, records relating to service and/or issues with the fleet management database or GPS systems used to track Canton DPW’s snowplows between January 24, 2022, and January 29, 2022, will shed light on whether the GPS systems installed in the Canton snowplows were in working order on January 29, 2022, or whether Trooper Proctor simply did not want anyone to obtain that information. Accordingly, the requested records are clearly evidentiary and relevant.

**B. THE REQUESTED RECORDS ARE NOT OTHERWISE PROCURABLE REASONABLY IN ADVANCE OF TRIAL BY EXERCISE OF DUE DILIGENCE**

4. Second, *Lampron* requires that the requested records “are not otherwise procurable reasonably in advance of trial by exercise of due diligence.” *Lampron*, 441 Mass. at 269.

5. The defense sent a private investigator to obtain any GPS (or other records) from DPW regarding the trucks sent out to plow the roadway adjacent to 34 Fairview Road on January 29, 2022, but the investigator was informed that DPW could not produce any GPS data. (Affidavit of Alan Jackson, ¶10.) Thus, unless this Court grants the instant request for issuance of a summons for production of these documents, Ms. Read will be unable to obtain these critical records in advance of trial.

C. **THE DEFENSE CANNOT EFFECTIVELY PREPARE FOR TRIAL WITHOUT THESE RECORDS AND THE FAILURE TO OBTAIN THIS INFORMATION MAY UNREASONABLY DELAY TRIAL**

6. Third, *Lampron* requires that the party seeking the records show that he or she cannot properly prepare for trial without inspection of the records before trial and that the late disclosure of the records might unreasonably delay trial. *Lampron*, 441 Mass. at 269.

7. Here, Ms. Read needs access to this information well in advance of trial in this matter, so that her experts can have time to analyze and interpret any GPS data that is provided. Moreover, the dispatch and tracking records may reveal additional witnesses that need to be interviewed in connection with this case about what they saw (or did not see) on January 29, 2022. Finally, service contracts may reveal additional companies that store and maintain GPS and tracking records for the Canton town plows, which could necessitate further pretrial motion work. As a result, the defense cannot effectively prepare for trial and complete its investigation unless and until this information is in our possession.

D. **THE INSTANT REQUEST IS NOT A FISHING EXPEDITION**

8. Fourth, *Lampron* requires a party seeking a summons to show that the application is made in good faith and not merely as a “fishing expedition.” *Lampron*, 441 Mass. at 269.

9. The instant request is not a fishing expedition. Here, Ms. Read has information from multiple sources that (1) the roadway adjacent to 34 Fairview Road was plowed in the early morning of January 29, 2022; and (2) that the DPW-issued snowplows are equipped with GPS tracking devices; and (3) that a separate law enforcement agency, namely the FBI, was able to successfully obtain this information. Thus, as explained in the attached supporting affidavits, the defense has a good faith belief that these records exist.

10. Accordingly, as set forth above, the defense has satisfied its burden under *Lampron*. As such, Ms. Read respectfully requests that this Court issue the Order attached hereto and require the Canton Clerk’s Office and the Canton Department of Public Works to produce the requested information and objects to the criminal Clerk’s Office in advance of trial.

//

Respectfully Submitted,  
For the Defendant,  
Karen Read  
By her attorney,



Alan J. Jackson, Esq., *Pro Hac Vice*  
Elizabeth S. Little, Esq., *Pro Hac Vice*  
Werksman Jackson & Quinn LLP  
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T. (213) 688-0460  
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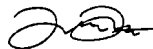
September 1, 2023

### CERTIFICATE OF SERVICE

I, Attorney Elizabeth Little, hereby certify that I served the “Defendant’s Motion for Order Pursuant to Mass. R. Crim. P. 17 Directed to the Canton Department of Public Works and the Canton Town Clerk” upon the Commonwealth by emailing a copy on September 1, 2023, to Norfolk County Assistant District Attorney Adam Lally at [adam.lally@mass.gov](mailto:adam.lally@mass.gov).

September 1, 2023

Date



Elizabeth S. Little

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.  
DEPARTMENT

SUPERIOR COURT

NO. 2282-CR-00117

_____	)
COMMONWEALTH OF	)
MASSACHUSETTS,	)
Plaintiff	)
	)
V.	)
	)
KAREN READ,	)
Defendant	)
_____	)

AFFIDAVIT OF PRIVATE INVESTIGATOR PAUL MACKOWSKI IN SUPPORT OF  
MOTION FOR ORDER PURSUANT TO MASS. R. CRIM. P. 17 DIRECTED TO THE  
CANTON DEPARTMENT OF PUBLIC WORKS AND THE CANTON TOWN CLERK

I, Paul Mackowski, under oath, do depose and state as follows:

1. I am a private investigator and the President and Founder of The M Group LLC, a privately owned and licensed detective agency operating in the State of Massachusetts. I was retained by Werksman Jackson & Quinn LLP to provide investigative services in connection with the criminal case currently pending in Norfolk Superior Court involving Karen Read.

2. I submit this affidavit on personal knowledge in support of Defendant's Motion for Order Pursuant to Mass. R. Crim. P. 17 Directed to the Canton Department of Public Works and the Canton Town Clerk.

3. On February 14, 2022, I traveled to Canton Town Hall to obtain information about any snowplows that were dispatched to the area of 34 Fairview Road on January 29, 2022. I was directed to speak with Michael Trotta, DPW Superintendent, but he was unavailable. I left my card with a member of his staff. He suggested that I speak with Bill Walsh, the Highway

Department supervisor, and told me that Mr. Walsh and his crew had just left for the day after snowplowing all night. He gave me Mr. Walsh's cell phone number and suggested I call him the following day.

4. On February 15, 2022, I spoke with Mr. Walsh. Mr. Walsh told me that Brian Loughran was responsible for plowing the area that includes 34 Fairview Road during the January 29 blizzard and gave me Mr. Loughran's contact information.

5. On February 15, 2022, I met with Brian "Lucky" Loughran. Mr. Loughran indicated that he has plowed the area that includes 34 Fairview Road for three years. On the morning of January 29, 2022, he arrived at the DPW yard at 2:00 a.m. and left the yard alone in the snowplow truck by 2:15 a.m. He was driving a six-wheel international dump truck with a nine-foot plow on it. Mr. Loughran said that his route took him down Fairview Road with #34 on his left as he plowed toward Cedarcrest Road. Mr. Loughran indicated that he made two or three passes down Fairview Road during his shift. He said he had good visibility from the truck cab because it was not snowing very heavily when he first started his shift. I asked him whether he believed he would have seen a body on the lawn of 34 Fairview Road, if one was there, from the view of his cab while snowplowing. Without equivocation, Mr. Loughran said that he definitely would have seen a body in the front yard of the house. Mr. Loughran further indicated he always looks in front of him and from side to side. He reiterated that if there was a body there, there is no doubt he would have seen it.

6. I then asked Mr. Loughran if he recalled anything about 34 Fairview Road from that early morning shift. He told me that sometime around 3:30 a.m. or 4:00 a.m., when he was plowing Cedarcrest Road, he looked toward Fairview Road and saw a small SUV parked in front of 34 Fairview Road. Mr. Loughran indicated the vehicle's lights were off and he could not see if

anyone was inside it. I asked Mr. Loughran where in front of the house the vehicle was parked and he replied, "Exactly where the body was found." Mr. Loughran described the vehicle as a Ford Edge or something similar. We walked out to the parking lot to see if there were any vehicles that looked similar to the one Mr. Loughran saw that morning. He immediately pointed to a Ford Edge in the parking lot and said, "It looked like that." I asked Mr. Loughran what stood out about the vehicle, and he told me that it was snowing, and he saw no moving or parked vehicles on the roads on his prior passes by the road on his route during the blizzard and was surprised to see one parked there at the time. Mr. Loughran further indicated that he did not plow Fairview Road again until after 6:30 a.m.

SIGNED and SWORN to under the pains and penalties of perjury this <sup>31</sup>\_\_\_\_ day of August, 2023.



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Paul Mackowski



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Title	2023.08.31 Affidavit of Paul Mackowski.pdf
File name	2023.08.31%20Affi...I%20Mackowski.pdf
Document ID	849776e37964872c5f1a2ad15e4c5e3c66caf8f6
Audit trail date format	MM / DD / YYYY
Status	 Signed

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## Document History



SENT

**08 / 31 / 2023**

23:04:15 UTC

Sent for signature to Paul Mackowski

(pmackowski@mgrouppltd.net) from gsaucedo@werksmanjackson.com

IP: 52.25.182.204



VIEWED

**09 / 01 / 2023**

00:40:36 UTC

Viewed by Paul Mackowski (pmackowski@mgrouppltd.net)

IP: 24.198.137.139



SIGNED

**09 / 01 / 2023**

00:42:50 UTC

Signed by Paul Mackowski (pmackowski@mgrouppltd.net)

IP: 24.198.137.139



COMPLETED

**09 / 01 / 2023**

00:42:50 UTC

The document has been completed.

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.  
DEPARTMENT

SUPERIOR COURT

NO. 2282-CR-00117

_____	)
COMMONWEALTH OF	)
MASSACHUSETTS,	)
Plaintiff	)
	)
V.	)
	)
KAREN READ,	)
Defendant	)
_____	)

AFFIDAVIT OF ALAN J. JACKSON IN SUPPORT OF MOTION FOR ORDER PURSUANT  
TO MASS. R. CRIM. P. 17 DIRECTED TO THE CANTON DEPARTMENT OF PUBLIC  
WORKS AND THE CANTON TOWN CLERK

I, Alan J. Jackson, Esq., under oath, do depose and state as follows:

1. I am a Partner at the firm Werksman Jackson & Quinn LLP. I represent Defendant Karen Read, *Pro Hac Vice*.
2. I submit this affidavit on personal knowledge in support of Defendant's Motion for Order Pursuant to Mass. R. Crim. P. 17 Directed to the Canton Department of Public Works and the Canton Town Clerk.
3. I have carefully reviewed the discovery produced by the Commonwealth in this case, including all police reports, grand jury minutes, crime scene photographs, and other evidence. The factual assertions and reasonable inferences set forth in Defendant's Motion for Order Pursuant to Mass. R. Crim. P. 17 Directed to the Canton Department of Public Works and the Canton Town Clerk are true and correct to the best of my knowledge.

4. This Court heard extensive argument on Defendant's Motion for Order Pursuant to Mass. R. Crim. P. 17 directed to Brian Albert, Julie Albert, Colin Albert, and Brian Higgins, on October 3, 2022. During the course of that hearing, counsel argued at length that none of the individuals who left the after-party at the Albert residence on January 29, 2022, observed John O'Keefe's body on the front lawn in spite of the fact that Mr. O'Keefe's body was supposedly mere feet from the road they took to leave.

5. Attached hereto as "**Exhibit A**" is Trooper Michael Proctor's report concerning his unrecorded October 5, 2022, interview with Julie Nagel, in which she supposedly reported that she "observed a dark object in the white snow by the flagpole" as she left the Albert Residence on January 29, 2022.

6. Attached hereto as "**Exhibit B**" is a true and correct copy of responsive records received pursuant to a Freedom of Information Act ("FOIA") Request, which was obtained from the Bridgewater State University Police Department. These records are partially redacted in order to prevent the disclosure of Colin Albert's personal identifying information.

7. Attached hereto as "**Exhibit C**" is a true and correct copy of Trooper Michael Proctor's Report Memorializing his February 3, 2022, Interview with Canton Town employee Michael Trotta, in which Trooper Proctor claimed no snowplows were dispatched to the area of 34 Fairview Road on January 29, 2022, and that the GPS tracking system for town plows were not working on January 29, 2022.

8. At some point in the last several weeks, I became aware of a recorded telephonic interview that Mr. Loughran provided to a third party not associated with the defense. On the recording, I was able to see the phone number associated with the interviewee, who purported himself to be Mr. Loughran. I thereafter undertook to verify the user associated with the

interviewee's phone number. On August 31, 2021, my investigator, Sara Ness, conducted a reverse search for the user associated with that cell phone number. She determined that the user associated with that phone number was, in fact, Brian Loughran. Additionally, the context of the interview clearly indicated that the interviewee was the plow driver, Brian Loughran, who is a percipient witness in this case. During the course of this interview, Mr. Loughran again confirmed that he was the individual responsible for plowing the roadway around 34 Fairview Road on January 29, 2022. Mr. Loughran further stated, "The FBI said they had GPS at 2:30 [a.m.] going by that house [34 Fairview Road]."

9. I am informed and believe that the requested records and information in the possession of the Canton Town Clerk and Canton Department of Public Works are relevant to the issue of whether Mr. O'Keefe was, in fact, lying incapacitated on Brian Albert's front lawn after being struck by a vehicle. The requested records will further substantiate Mr. Loughran's statements that (1) he drove by 34 Fairview Road on January 29, 2022 around 2:30 a.m. on January 29, 2022, and Mr. O'Keefe was not lying injured on Brian Albert's front lawn; and (2) that he observed a Ford Edge parked outside 34 Fairview Road at approximately 3:30 a.m. in the exact location where Mr. O'Keefe's body was later found (and thus, continued down Cedarcrest Road rather than turning to plow Fairview Road). It will further impeach the statements made by the lead Detective in this case, Trooper Proctor and town employee Michael Trotta, who according to Trooper Proctor indicated that no snowplows were dispatched to the area surrounding 34 Fairview Road on January 29, 2022, and that the GPS system used to track the town's snowplows was not working on the date in question. Furthermore, I am informed and believe that contracts and service agreements between the Town of Canton and any companies that equipped the town plows with GPS tracking and/or fleet management services in January

2022 may identify additional sources of information that can be used to corroborate Mr. Loughran's statements and/or that will identify additional percipient witnesses who may have passed by 34 Fairview Road on January 29, 2022. Finally, records relating to service and/or issues with the fleet management database or GPS systems used to track Canton DPW's snowplows between January 24, 2022, and January 29, 2022, will shed light on whether the GPS systems installed in the Canton snowplows were in working order on January 29, 2022, or whether Trooper Proctor simply did not want anyone to obtain that information. Accordingly, I have a good faith belief that the requested records are evidentiary and relevant.

10. I am informed that the requested records and information are not otherwise procurable reasonably in advance of trial. Our office sent a private investigator to speak with multiple witnesses in the Canton Department of Public Works Department, and he was informed that they were unable to produce any GPS data.

11. I am informed and believe that Ms. Read cannot properly prepare and/or effectively defend herself at trial unless she is able to inspect these records in advance of trial. The requested records will likely necessitate a follow-up interview with Mr. Loughran and potentially other snowplow drivers (or percipient witnesses), who may have passed by 34 Fairview Road on January 29, 2022. Depending on the format of the GPS data produced, it is likely that Ms. Read will need to retain an expert in order to interpret the data and put the information into a usable format such that the defense can discern when Mr. Loughran and any other plow drivers passed by 34 Fairview Road on the night in question. Finally, service contracts may reveal additional companies that store and maintain GPS and tracking records for the Canton town plows, which could necessitate further pretrial motion work. Failure to obtain this information in advance of trial will impair our ability to effectively prepare for trial.

12. The instant request is not a fishing expedition. This request is narrow and targeted to records and information that will confirm that Mr. Loughran (and potentially other snowplow drivers) would have been in a position to observe the lawn of 34 Fairview Road in the early morning of January 29, 2022, where the Commonwealth necessarily claims Mr. O'Keefe was lying injured between 12:30 a.m. and 6:30 a.m.—*and, more importantly, that between 12:30 a.m. and 3:00 a.m. Mr. O'Keefe's body was not there.* The defense has a good faith belief that the requested GPS data exists. Indeed, Michael Trotta confirmed in his interview with Trooper Proctor that the Canton Town plows were equipped with GPS on January 29, 2022. Moreover, the defense has direct evidence suggesting that a separate law enforcement agency (the FBI) was able to obtain the GPS data associated with the route Mr. Loughran took in his snowplow on January 29, 2023. Accordingly, the defense has a good faith belief that these records exist and will be relevant and exculpatory.

10. Based on the foregoing, our office respectfully requests that this Court order the requested documents, records, and information from the Canton Department of Public Works and the Canton Town Clerk, which are necessary in order for Ms. Read to effectively prepare and present evidence in her defense at trial.

SIGNED and SWORN to under the pains and penalties of perjury this 1<sup>st</sup> day of September 2023.



---

Alan J. Jackson, Esq.

# Exhibit A



CHARLES D. BAKER  
GOVERNOR

KARYN E. POLITO  
LIEUTENANT GOVERNOR

TERRENCE M. REIDY  
SECRETARY

*The Commonwealth of Massachusetts*  
*Department of State Police*

Division of Investigative Services  
Norfolk State Police Detective Unit  
45 Shawmut Road  
Canton, MA 02021



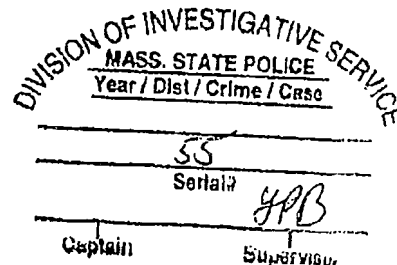
CHRISTOPHER S. MASON  
COLONEL / SUPERINTENDENT

R. SCOTT WARMINGTON  
DEPUTY SUPERINTENDENT

October 12, 2022

To: Detective Lieutenant Brian P. Tully #3520  
From: Trooper Michael Proctor #3863  
Subject: Interview of Juliana Nagle (DOB: [REDACTED]) at 45 Shawmut Road, Canton MA.  
Re: John O'Keefe Motor Vehicle Homicide.  
Case: 2022-112-033

1. On January 29, 2022 at approximately 6:04AM, the Canton Police Department received a 911 call for a male party, John O'Keefe discovered unresponsive outside of 34 Fairview Road. Canton Police, Fire and EMS responded to the scene Canton Fire and EMS were dispatched to 34 Fairview Road for an unresponsive male discovered outside in the snow and CPR was in progress. Canton EMS transported the victim to Good Samaritan Hospital where he was determine to be deceased. Inside the residence that evening was Juliana Nagle who was visiting her friend Brian Albert Jr for his birthday. On October 5, 2022 at 11:00am, Juliana arrived at the Norfolk County District Attorney's office for a scheduled interview with Trooper Christopher Moore and myself.





2. Juliana has known Brian since 2015 and went over his house on Friday, January 28 2022 for his birthday. Juliana stated, her, Brian, Mary Kent, Emily Fabiano and Sara Levinson were at the house that night. Later in the night, Brian's parents arrived home with a couple of friends, Matthew and Jennifer McCabe and Mr. Higgins. Juliana stated the group arrived at 34 Fairview Rd from the Waterfall bar and grill. Juliana stated Mary, Emily and Courtney left around 11:00pm prior to the arrival of everyone. Juliana was hanging out in the kitchen with the Albert's, McCabe's and Mr. Higgins. Juliana stated she was hanging out in the kitchen and everyone appeared to be in a good mood, did not observe any arguing. Juliana stated while she was in the kitchen she did not observe anyone leave or enter the residence other than herself.
3. At approximately 12:00am, Juliana called her brother, Ryan Nagle for a ride home. While waiting for Ryan to arrive, Juliana was looking out the kitchen window and observed an SUV stopped by the mailbox. The front of the SUV was facing towards Chapman St. Juliana stated she observed the SUV travel along the front the house and stop between the mailbox and flagpole where it came to a stop. Juliana then observed the SUV move again towards the flagpole where it came to a stop. Ryan arrived with his friends Richie D'Antuono and Heather Maxon in Richie's pickup truck. Juliana exited the residence out the front door and stated it was lightly snowing at this time. Juliana stated Richie was parked by the driveway and mailbox on Fairview Road. Juliana invited Ryan and his friends inside which they declined. Juliana returned inside as Ryan, Richie and Heather left.
4. Juliana left between 1:30 and 2:00am with Sara and the McCabe's. Prior to leaving Juliana stated she did not observe anyone leave or enter the house. Juliana was seated behind Matthew, who was driving. Jennifer was seated in the front passenger seat and Sara was next to Juliana in the rear passenger seat. Juliana stated Matt pulled out of the driveway and traveled on Fairview Rd towards Chapman St. Juliana stated it was snowing heavily at this time. As they traveled in front of 34 Fairview, Juliana stated she thought she saw something in the yard. Sara stated "What Julie". Juliana stated she observed a dark object in the white snow by the flagpole. Juliana stated she has been to the residence numerous times and this dark object stood out to her as something out of the ordinary but was not sure what it was as they drove by.

Respectfully submitted,

*TR. Michael D. Proctor*

Trooper Michael D. Proctor #3863  
Massachusetts State Police  
Norfolk SPDU

# Exhibit B

For Date: 08/20/2022 - Saturday

<u>Call Number</u>	<u>Time</u>	<u>Call Reason</u>	<u>Action</u>	<u>Priority</u>	<u>Duplicate</u>
22-1487	1255	Initiated - Motor Vehicle Stop	Verbal Warning Issued		3

Call Taker: 5678 - Sampson, Scott  
Call Source: Initiated  
Primary Id: 5678 - Sampson, Scott  
Location/Address: 103 PLYMOUTH ST @ 1 BURRILL AVE  
Jurisdiction: Bridgewater State Univ.  
Initiated By: 919 - Sampson, Scott  
Unit: 919 Sampson, Scott

Arvd-12:55:50 Clrd-13:02:31

Vehicle Entered By: 08/20/2022 1255 5678 - Sampson, Scott  
Modified By: 08/20/2022 1300 5678 - Sampson, Scott  
Vehicle: BLK 2018 FORD EDGE Reg: PC MA VIN: [REDACTED]  
Operator: ALBERT, COLIN VINCENT @ [REDACTED] CANTON, MA 02021-3216  
SSN: [REDACTED] DOB: [REDACTED] Race: W Sex: M OLN: [REDACTED]  
Owner: ALBERT, JULIE ANN @ [REDACTED] - CANTON, MA 02021-5212  
SSN: [REDACTED] DOB: [REDACTED] Race: W Sex: F OLN: [REDACTED]  
Insurance Co: THE COMMERCE INSURANCE CO  
Policy No:

Narrative: 08/20/2022 1302 Sampson, Scott  
motor vehicle stop, burrill ave. verbal to the operator for  
marked lanes and fail to obey traffic device. oerator was a  
confused football player who didnt know what direction to go  
at the intersection. advised. bwc active.

For Date: 04/10/2023 - Monday

<u>Call Number</u>	<u>Time</u>	<u>Call Reason</u>	<u>Action</u>	<u>Priority</u>	<u>Duplicate</u>
23-862	1046	Walk-In - Serve Summons	Services Rendered 3		
Call Taker:		DI24 - Barone, Ashley			
Call Source:		Walk-In			
Location/Address:		[BSC 38] WOODWARD HALL - [REDACTED]			
Jurisdiction:		Bridgewater State Univ.			
Party Entered By:		04/10/2023 1050 DI24 - Barone, Ashley			
Involved Party:		RS			
		ALBERT, COLIN VINCENT @ [REDACTED] - CANTON, MA 02021-3216			
		SSN: [REDACTED] DOB: [REDACTED] Race: W Sex: M			
		Victim: N			
Unit:		906 Turner, Matthew			
		Disp-10:47:15	Arvd-10:47:52	Clrd-10:52:10	
Narrative:		04/10/2023 1049 Barone, Ashley			
		906 out with two fbi agents at the above location to serve (RS), Albert, Colin.			

# Exhibit C



CHARLES D. BAKER  
GOVERNOR

KARYN E. POLITO  
LIEUTENANT GOVERNOR

TERRENCE M. REIDY  
SECRETARY

# *The Commonwealth of Massachusetts*

## *Department of State Police*

Division of Investigative Services  
Norfolk State Police Detective Unit  
45 Shawmut Road  
Canton, MA 02021



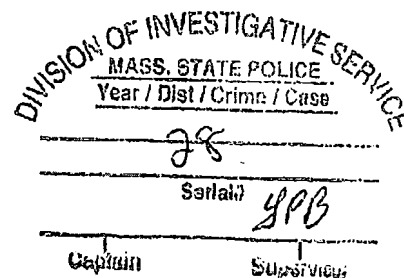
CHRISTOPHER S. MASON  
COLONEL / SUPERINTENDENT

R. SCOTT WARMINGTON  
DEPUTY SUPERINTENDENT

March 15, 2022

To: Detective Lieutenant Brian P. Tully #3520  
From: Trooper Michael Proctor #3863  
Subject: Phone Interview of Michael Trotta ([REDACTED]) Town of Canton Employee  
Case: 2022-112-033

1. On January 29, 2022, at approximately 6:04AM Canton Police Department received a 911 call from a woman reporting a male party, John O'Keefe found in the snow at 34 Fairview Road. At the time of the 911 call there was heavy snow and the temperature was in the teens. Officers Saraf and Mullaney, were dispatched to the scene along with Canton Fire and EMS. Officer Saraf arrived on scene and observed three females waving at him. Looking at 34 Fairview from the roadway the three females were in the left corner of the property. O'Keefe was transported by Canton EMS to Good Samaritan Hospital and was determined to be deceased by Dr. Justin Rice.



2. On February 3, 2022 at approximately 10:00AM, I conducted a phone interview with Michael Trotta, an employee of the Town of Canton. Michael assists with coordinating plow and sanding trucks during storms. Michael stated Canton uses town equipment to treat the roads with the exception of one company. Michael stated a company called "By The Yard" is used to assist with plowing the roadways. Michel stated drivers met at 140 Bolivar St at 2:30AM on January 29<sup>th</sup> and then left from there to clear the roadways. The company, "By The Yard" was not called in until 3:30AM that morning. Michael stated trucks were out sanding earlier but only concentrate on major roadways in Canton and would not travel down Fairview Road. Michael stated all town trucks are equipped with GPS but the system went down on January 24, 2022.

Respectfully submitted,

Handwritten signature of Trooper Michael D. Proctor, with the initials "TPR" written above the signature.

Trooper Michael D. Proctor #3863  
Massachusetts State Police  
Norfolk SPDU

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT  
NORFOLK SUPERIOR COURT  
DOCKET NO. 2282CR0117

COMMONWEALTH

v.

KAREN READ

---

**COMMONWEALTH'S NOTICE OF DISCOVERY XVI**

---

Now comes the Commonwealth in the above-captioned matter and indicates that of this date the following discovery and materials have been provided to the defendant through defense counsel:

1. Copy of curriculum vitae of Trooper Nicholas Guarino, (3 pages);
2. Copy of Massachusetts State police, Crime Laboratory, Trace Analysis Report, Case #: 22-02184, (4 pages);
3. Copy of Dighton Police Department Call Log, Call Number: 22-787, (1 page);
4. Copy of Dighton Police Department Incident Report #: 22-33-OF, (2 pages).

Respectfully Submitted  
For the Commonwealth,

MICHAEL W. MORRISSEY  
DISTRICT ATTORNEY

By: \_\_\_\_\_

Adam C. Lally  
Assistant District Attorney  
45 Shawmut Road  
Canton, MA 02021  
781-830-4800

DATED: 5-25-23



For Date: 01/29/2022 - Saturday

<u>Call Number</u>	<u>Time</u>	<u>Call Reason</u>	<u>Action</u>	<u>Priority</u>	<u>Duplicate</u>
22-787	1502	Other - ASSIST OTHER AGENCY	Services Rendered 3		
Call Taker:		2561 - Lapointe, Andrew			
Primary Id:		5820 - Barros, Nicholas			
Call Closed By:		2635 - Beaudoin, Paul 01/29/2022 1656			
Call Modified By:		2635 - Beaudoin, Paul			
Location/Address:					
Jurisdiction:					
ID:		5820 - Barros, Nicholas			
		Disp-15:03:54	Arvd-15:27:24	Clrd-16:17:24	
Cleared By:		2635 - Beaudoin, Paul			
Vehicle Entered By:		01/29/2022 1640 2635 - Beaudoin, Paul			
Vehicle:		BLK 2021 LEXS UT LX Reg: PC MA 3GC684 VIN: JTJFY7AX1M4343547			
Owner:		READ, KAREN A @			
			Race: W Sex: F OLN: MA S17103697		
Narrative:		01/29/2022 1503 Lapointe, Andrew			
Modified By:		01/29/2022 1504 Lapointe, Andrew			
		R/E: Call #22-786. Diamond notified. 578 responding to assist Norfolk County DA's office.			
Refer To Incident:		22-33-OF			



Dighton Police Department  
Incident Report

Page: 1  
05/08/2023

Incident #: 22-33-OF  
Call #: 22-787

Date/Time Reported: 01/29/2022 1502  
Report Date/Time: 01/29/2022 1839  
Status: No Crime Involved

Reporting Officer: Patrolman Nicholas Barros

Signature: \_\_\_\_\_

# EVENTS(S)

LOCATION TYPE: Residence/Home/Apt./Condo Zone: Town Wide  
NORTH DIGHTON MA 02764

1 Assist Other Agency

# PERSON(S) PERSON TYPE SEX RACE AGE SSN PHONE

1 READ, KAREN A PARTICIPANT F W 41

CONTACT INFORMATION:  
Home Phone (Primary)

# VEHICLE(S) YEAR MAKE STYLE COLOR1 COLOR2 REG VALUE

1 LX 2021 LEXS UT BLK MA 3GC684 \$60,000.00

STATUS: Impounded DATE: 01/29/2022  
OWNER: READ, KAREN A  
VIN: JTJFY7AX1M4343547  
TOWED TO: CANTON POLICE DEPT  
1492 WASHINGTON ST  
CANTON MA  
TOWED BY: Diamond Towing TOWING CHARGES:

**Dighton Police Department**

**Page: 1**

**NARRATIVE FOR PATROLMAN NICHOLAS A BARROS**

**Ref: 22-33-OF**

Entered: 01/29/2022 @ 1843      Entry ID: 5820  
Modified: 01/29/2022 @ 1903      Modified ID: 5820

On Saturday, January 29, 2022 I, Patrolman Nicholas Barros while in full uniform and in marked cruiser 578 was assigned to 0800hrs-1600hrs shift. At approximately 1431hrs, I received a phone call from Troopers assigned to the Norfolk County District Attorney's Office. The Trooper I spoke to advised me that they were on their way to a residence in Dighton to speak to a party and retrieve a vehicle that was involved in an incident that occurred in Canton yesterday/ early this morning. They advised me that the vehicle that they were looking to impound was involved in a homicide. They asked me if I could have a tow company that we use respond to the address with me to tow the vehicle. Before hanging up the phone the Trooper stated that he would call me once he got closer to Dighton so I could meet him at the residence.

At or around 1500hrs I received a phone call from Trooper Michael Proctor. Trp. Proctor stated that he was about 10 minutes away from the residence and asked me to meet him at [REDACTED] I advised him that once I hung up with him I would contact the tow company (Diamond Towing) to respond as well.

Once I arrived on [REDACTED], I met with the Troopers and advised them that the tow would also be responding with a 15-20 minute ETA. We then went to the residence and the Troopers made contact with the homeowner and his daughter Karen Read. While the Troopers were speaking with Karen and her parents about the incident I contact Highway Superintendent Tom Ferry to ask if he could plow the driveway to the residence so that the tow truck could retrieve the vehicle from the driveway. Tom agreed and responded and plowed the driveway. Let it be known that today was a blizzard and the driveway had over a foot of snow. Diamond Towing was able to load the vehicle onto its truck and transported the vehicle to Canton Police Department for processing. The vehicle was a 2021 black Lexus Lx SUV bearing MA PC 3GC684 which was registered to Karen Read. The vehicle had damage to the right rear tail light.

Respectfully Submitted,  
Patrolman Nicholas Barros

Volume I of I  
Pages: 1-63  
Exhibits: None

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS

SUPERIOR COURT DEPARTMENT

\*\*\*\*\*  
COMMONWEALTH OF MASSACHUSETTS       \*  
   \*  
v.   \*       DOCKET NO.  
   \*       2282CR00117  
   \*  
   \*  
KAREN READ                                       \*  
\*\*\*\*\*

MOTIONS HEARING

BEFORE THE HONORABLE BEVERLY J. CANNONE

APPEARANCES:

For the Commonwealth:

Norfolk County District Attorney's Office  
45 Shawmut Road,  
Canton, MA 02021  
By: Adam C. Lally, Assistant District Attorney

For the Defendant:

Yannetti Criminal Defense Law Firm  
44 School Street, Suite 1000A  
Boston, MA 02108  
By: David R. Yannetti, Esq.  
    Ian Henchy, Esq.

Werksman Jackson & Quinn, LLP  
888 West Sixth Street, 4<sup>th</sup> Floor  
Los Angeles, CA 90017  
By: Elizabeth Little, Esq.

Monday, October 3, 2022  
Courtroom 1  
Dedham, MA

SUSAN M. LOBIE, CET  
OFFICE SOLUTIONS PLUS  
15 Marion Road, Salem, MA 01970  
(617) 471-3510  
[SueLobie@osptranscriptionservices.com](mailto:SueLobie@osptranscriptionservices.com)

SRA/046

I N D E XPAGE

MOTIONS HEARING

3

P R O C E E D I N G S

(Court in session at 1:59 p.m.)

THE CLERK: Okay. First on the criminal list,  
Number 12, Karen Read.

Can I have counsel identify themselves for the  
record, starting with the Commonwealth.

MR. LALLY: Good afternoon, Your Honor.

Adam Lally for the Commonwealth.

THE COURT: Good afternoon, Mr. Lally.

MR. YANNETTI: Good afternoon, Your Honor.

David Yannetti for Karen Read. And with me is  
Attorney Ian Hinchey, Attorney Elizabeth Little, and  
Attorney Alan Jackson, all on behalf of Karen Read.

THE COURT: Good afternoon, counsel.

MR. HINCHEY: Good afternoon, Your Honor.

THE COURT: Good afternoon, Ms. Read.

MS. READ: Good afternoon.

THE COURT: Ms. Read, you can have a seat.

MOTIONS HEARING

THE COURT: All right. So there are a series  
of -- who's arguing this afternoon?

1 MR. YANNETTI: Well, Your Honor, on that issue,  
2 there are several motions. Mr. Jackson will be  
3 arguing the Rule 17 Motion regarding the cell phones.  
4 I believe that is the one that is most contested.  
5 It may make sense to deal with that motion first  
6 and then the other motions could flow from that?

7 THE COURT: All right. I received -- I read  
8 the Rule 17 Motion over the weekend and I received  
9 the Commonwealth's response to it this morning.

10 All right. I will hear from you, Mr. Jackson.

11 MR. JACKSON: Thank you, Your Honor.

12 I'm not going to repeat everything that's in  
13 our moving papers for obvious reasons, --

14 THE COURT: Oh, I'm sorry. I am going to  
15 interrupt you, though.

16 So, I did notice when the motion was filed,  
17 there was -- there were grand jury minutes attached  
18 and I'm addressing this to you, Mr. Yannetti. There  
19 were grand jury minutes attached.

20 Did you file the Motion to Impound?

21 MR. YANNETTI: I did not, Your Honor.

22 THE COURT: Okay. So, you know the grand jury  
23 minutes have to be impounded; right? So, are you  
24 asking me to impound them now?

25 MR. YANNETTI: And that is fine, Judge, yes.

1 THE COURT: All right. So, Mr. Clerk, we will  
2 impound the eExhibits to that.

3 THE CLERK: Yes, Your Honor.

4 THE COURT: All right. Thank you.

5 With that now, Mr. Jackson, I'll hear you.

6 MR. JACKSON: And I appreciate that. I'm not  
7 going to go over every single thing in the defense  
8 moving papers. Obviously, the Court has had an  
9 opportunity to read those, but I do want to highlight  
10 a couple of things, --

11 THE COURT: Mm-hmm.

12 MR. JACKSON: -- especially as it relates to  
13 the relevance, the admissibility, the necessity,  
14 and the specificity of the items that are being  
15 requested.

16 And what we're asking the Court to do basically  
17 is order key percipient witnesses and possible suspects  
18 to the events of January 29<sup>th</sup> to provide their cell  
19 phones and the data that's concomitant to those cell  
20 phones for a very limited period of time, the seven  
21 days bracketing the incident on January 28<sup>th</sup>, going  
22 into the early morning hours of the 29<sup>th</sup>.

23 Basically, the request is for January 28<sup>th</sup> through  
24 February 4<sup>th</sup>, and that includes individuals specifically  
25 named in the Motion; Brian Albert, Nicole Albert,



1 Matthew McCabe, Julie Albert, Brian Higgins, Collin  
2 Albert and Julie Nagel.

3 Obviously, the second portion of our motion  
4 deals with Jennifer McCabe, but my understanding and  
5 I spoke with Counsel this morning -- counsel for the  
6 Commonwealth, at least their understanding and now  
7 our understanding is that they have a fully imaged  
8 telephone.

9 It's forensically imaged, they've got it,  
10 we're going to provide a terabyte level hard drive  
11 and ask the Commonwealth to provide that mirror image  
12 to us, that would, I believe, accommodate our request  
13 under the Subsection 2 of this particular motion.

14 THE COURT: Okay.

15 MR. JACKSON: So, I don't think that that is  
16 going to be in controversy.

17 The justification, obviously is manifold in this  
18 particular case. I've been doing this some 30 years,  
19 everybody among us is pretty well respected and pretty  
20 learned in jurisprudence, especially in terms of  
21 criminal law, and I don't think I've ever seen sort  
22 of a more obvious and a more troubling set of  
23 circumstances that suggests a conflict of interest  
24 or a series of conflicts of interests that I believe,  
25 and I think the defense believes puts Ms. Read in

1 a very precarious position.

2 It's a conflict of interest and a conflict  
3 of interests, multiple interests, that I think are  
4 debilitating for the Commonwealth. I think they  
5 should have been taken care of at the very beginning  
6 of this case and they weren't, and that's led to  
7 a compromised investigation.

8 There is an undeniable and unequivocal conflict  
9 that is established through the facts with the lead  
10 investigator. We've talked extensively about it in  
11 our moving papers, Trooper Proctor.

12 There are obvious suspects that were overlooked  
13 during the course of the investigation that relate to  
14 and are connected directly to John O'Keefe's killing,  
15 his death. What are some of those?

16 We've highlighted several for the Court in our  
17 moving papers, but I want to bring to the Court's  
18 attention a couple of things given the Commonwealth's  
19 response, which we got this morning, a couple of  
20 hours ago.

21 They indicate that we went on this, "fanciful,"  
22 is the word the Commonwealth used, a fanciful journey  
23 in terms of the facts of the case; nothing could be  
24 further from the truth.

25 We supplied or supported our moving papers on

1 this particular motion alone with some 34 or 36  
2 exhibits that are directly out of the Commonwealth's  
3 discovery that they provided to us, as well as our  
4 own investigation.

5 One of the most compelling facts is the timing  
6 of when individuals involved in this scenario knew  
7 that John O'Keefe had met his demise, when he was  
8 dead, or when he was dying.

9 The allegations suggest that the first time  
10 anybody knew about his death was at 6:04 a.m. or so  
11 on the 29<sup>th</sup> when Karen Read, my client, along with  
12 Jennifer McCabe and one other individual, another  
13 female, showed up at the scene and found his body  
14 laying prostrate in the front yard of the Albert's  
15 house.

16 Except for the fact that Julie Albert indicates  
17 in a police report, in an unguarded moment, an  
18 unguarded interview with the police that she actually  
19 found out about Mr. O'Keefe's death at 4:55 a.m.,  
20 more than hour before his body was ever discovered.  
21 How did she find out? According to her, she received  
22 a 4:55 phone call from Jennifer McCabe.

23 That means somebody's not telling the truth.  
24 That means there's something else going on here.  
25 How is it possible that Julie Albert and Jennifer

1 McCabe could have known about known about John's  
2 death before anybody ever arrived at the scene to  
3 find the body?

4 Well, there's one way that they can find out,  
5 because they knew from other witnesses that were at  
6 the Albert house that the body was there. That's  
7 the only explanation.

8 Second and just as troubling, Matthew McCabe  
9 -- and a lot of these people, Your Honor, you'll  
10 find -- I think you'll find, I almost need an org  
11 chart to keep the individuals together, but they're  
12 all related by blood or by marriage, most of the  
13 people at the Albert house that night.

14 There's a couple of individuals which we'll  
15 talk about in just a second that were very, very  
16 close personal friends, but most of the people are  
17 related by blood or by marriage.

18 Matthew McCabe, the brother-in-law to Albert  
19 -- to Brian Albert, has indicated in police reports  
20 that amazingly, he looked out a kitchen window out of  
21 the Albert's house, and one of the more incriminating  
22 points that the Commonwealth relies on to suggest that  
23 my client had something to do with the death of John  
24 O'Keefe is a V-shaped or an inverted V-shaped set of  
25 tire tracks that indicate a three-point turn.

1           It must have been, so they claim, this three  
2   -point turn that led to the demise of Mr. O'Keefe,  
3   that's when she hit him. She's charged with murder  
4   for a three-point turn.

5           What's the problem with that? Mr. McCabe  
6   specifically says that, "I looked out the window  
7   and I could see tire tracks that were in the shape  
8   consistent with a three-point turn, out in the  
9   street." Well, he's looking across the yard.

10          Your Honor, the yard, I'll use a Massachusetts  
11   analogy, that yard is like a hockey rink. It is as  
12   flat as you possibly get. I've been there, I've seen  
13   it. There's no undulations, there's no big ditches,  
14   there's no big mountains or berms in the yard, it's  
15   just flat.

16          If he looked out the window and saw -- and was  
17   able to see something as detailed as tire tracks  
18   some 40 yards away in the road, he would be looking  
19   directly across the yard where the body would be  
20   laying, a 6-foot man in dark clothing, except he  
21   never saw a body.

22          How is that possible? How could he see the  
23   tire tracks that led to Mr. O'Keefe being killed  
24   right there in the yard, and not seeing Mr. O'Keefe?  
25   Only one of two things could be true.

1           Either number one, he saw the tire tracks and  
2 Karen Read had already left the location and John  
3 O'Keefe was not dead yet, and was not in the yard,  
4 or number two, he's lying about having seen the  
5 tire tracks in the first place because there were  
6 no tire tracks that were suggestive of what he  
7 testified -- or what he stated to the police, and  
8 therefore, there was no body.

9           Either way, it's exculpatory to my client, the  
10 communications that he was having concerning those  
11 very specific issues and those very specific facts,  
12 and that's why we need in no small part to get these  
13 communications from that night and the few nights  
14 thereafter, the few days thereafter leading into  
15 February 4<sup>th</sup> when the investigation continued.

16           Number two, there is video evidence that confirms  
17 that there's something that was tampered with, physical  
18 evidence during the course of this investigation that  
19 was tampered with and just simply doesn't add up,  
20 and it was likely placed at the crime scene.

21           And as I indicated, the suspects in this case,  
22 I think are all integrally involved with one another.  
23 That includes Trooper Proctor. Trooper Proctor is a  
24 close family friend of the Alberts, a close family  
25 friend

1 of people connected to Brian Albert, Brian Albert's  
2 direct family, his brother and sister -- or brother  
3 and sister-in-law, their children, his nephews,  
4 they are all interconnected.

5 We're not just making that up, it's not fanciful.  
6 We've provided the Commonwealth and the Court with  
7 documentary evidence, photographic evidence of them  
8 all being involved in for instance things as innocuous  
9 as, oh, I don't know, a wedding photo.

10 There's no way to separate Trooper Proctor's  
11 conflict with this investigation when he should be  
12 investigating everybody involved.

13 If a dead body shows up on the front yard of  
14 a party where everybody's drinking, everybody's drunk,  
15 and a guy ends up dead in the front yard, one would  
16 think that a reasonable investigation would include  
17 every single person that was at the party. They're  
18 all initial suspects, everyone, yet amazingly, none  
19 of them were.

20 Investigator Proctor -- Trooper Proctor even  
21 gathered everybody together and interviewed them all  
22 at once, after Brian Albert had a family and friends  
23 meeting in his house about the investigation. One  
24 wonders what was discussed during the course of that  
25 meeting before Trooper Proctor began his interviews.

1           The taillight, much has been made by the  
2 Commonwealth about shards of taillight that were  
3 found at the scene. The Commonwealth didn't spend  
4 a whole lot of time on this in their responsive  
5 paperwork because I think it's a fact that is very  
6 inconvenient or a series of facts that are very  
7 inconvenient for the Commonwealth.

8           First of all, the Commonwealth indicated --  
9 and I'm going to go through a little bit of a time  
10 line, but not super detailed, because it's detailed  
11 pretty clearly in our moving papers.

12           They indicated that Trooper Proctor took  
13 possession of that SUV by going to Karen Read's  
14 parent's house, ultimately ending up in a seizure  
15 of that vehicle.

16           The Commonwealth indicated in their papers  
17 that he didn't arrive at the parent's house until  
18 4:30 p.m. on the 29<sup>th</sup>. That's not true. His grand  
19 jury testimony was that he arrived at 2:30 p.m.

20           He was gone by 4:30 p.m. Why is that important?  
21 Because according to his report, even though we know  
22 that he testified at the grand jury he got there at  
23 2:30, we have video evidence of when the car was  
24 actually seized, it was seized at 4:12.

25           In his paperwork that was submitted to support



1 his investigation, he indicated that he didn't seize  
2 the car until closer to 5:30. It was an hour and  
3 18 minute gap between when he actually had possession  
4 of the car back at Canton Police Station and when  
5 he said he had possession of that car.

6 Why is that important? Because Trooper Proctor  
7 was the only person to have possession and access to  
8 any shards of taillight that would have existed in  
9 this case.

10 Two, not one, but two sets of officers unconnected  
11 to Trooper Proctor searched that scene when John  
12 O'Keefe's body -- where John O'Keefe's body was found  
13 immediately after he was removed from the scene to  
14 attempt heroic efforts back at Good Samaritan Hospital  
15 and then ultimately was transported to the Coroner's  
16 Office, two sets of officers.

17 One of them even used a snow blower, which is  
18 beyond conception that someone could reasonably think  
19 that it was reasonable to go out and use a snow blower  
20 to remove snow. How about sifting the snow for  
21 evidence if you're looking for small pieces of  
22 evidence.

23 But not only did they not find the shards of  
24 glass or shards of taillight, the plastic -- the  
25 plasticine that was used in taillights, they didn't

1 even find a shoe that was later discovered.

2       There is no conceivable way that two sets of  
3 officers who were out looking specifically for  
4 evidence in a white snow could have missed bright  
5 red shards of glass.

6       But amazingly, after Trooper Proctor had  
7 possession of the vehicle, he then calls what's  
8 called a CERT Team, that special investigation's  
9 team that comes back out to the crime scene, and  
10 he called them and said, I want you to go back out  
11 to the crime scene and do another search. Don't  
12 go yet, but eventually, I'm going to want to have  
13 another search done, and I'll let you know when.

14       Keep in the back of your mind this hour and  
15 18 minute gap. It was after that the CERT Team  
16 comes back out to the scene, and miraculously,  
17 shards of that tail lens which Trooper Proctor had  
18 access to and didn't put in his report show up at  
19 the crime scene, and that's the only physical evidence  
20 -- the only physical evidence that connects my client  
21 in any way, shape, form, or fashion to that scene or  
22 that incident.

23       It certainly makes one wonder what was happening  
24 with the Alberts, the McCabes, Trooper Proctor, that  
25 meeting that everybody had, and the conflict of

1 interest that Trooper Proctor very clearly has with  
2 the individuals that he should be investigating.

3 You would think that if the Commonwealth's  
4 position is correct, the first thing they would  
5 want to do is establish, okay, well she hit with  
6 a truck, she shattered the back tail lens -- by the  
7 way, a tail lens that you likely couldn't shatter  
8 if you had a hammer, but let's say -- speaking of  
9 fanciful, let's talk about a fanciful argument.

10 Let's say that she was able to put it in reverse  
11 and hit a 6-foot tall man, I'm only 5'10", but I'm  
12 good 3 feet, 2 and a half feet taller than the tail  
13 lamp of a SUV, of that SUV specifically, which is  
14 about 42 inches off the ground.

15 Now, you have to believe that he was bent over  
16 at the waist, he was hit in the back of the head.  
17 He'd have to be looking the opposite direction.

18 According to Trooper Proctor, there was glass  
19 from a cocktail glass found on the bumper, which  
20 means he'd have to have his left hand above the  
21 bumper, shatter the glass that he was holding in  
22 his left hand, get hit with the taillight in the  
23 back of the head, and shatter the taillight.

24 How about blood, how about tissue in those  
25 taillight shards? Zero, not one bit. No evidence

1 of blood or tissue or human tissue in either any  
2 of those lenses or those lens shards that were  
3 found.

4 That's because at 5:07, and the Commonwealth  
5 knows this, they're well aware of this fact, at 5:07,  
6 a full five hours after John O'Keefe was killed or  
7 closed to it, left for dead, five hours later, in  
8 a panic to go find him, because he hadn't come  
9 home, Karen Read gets in her SUV, backs out of the  
10 garage, and hits another car with what part of her  
11 car, the passenger's side taillight. That's how  
12 that taillight got shattered, and that's established  
13 unequivocally through physical evidence and video  
14 evidence.

15 There is also -- and I'll make one more point  
16 and then I'll sort of wrap up my argument. There's  
17 also an enormously troubling set of circumstances  
18 surrounding some of the wounds that Mr. O'Keefe  
19 suffered on that night.

20 In addition to the head wound, it looked like,  
21 as some have said, he had gone five rounds with Mike  
22 Tyson. He was beaten severely, and the head wound  
23 in the back of the head caused a skull fracture or  
24 a series of skull fractures.

25 His right eye was cut, the right part of his

1 nose was cut, consistent with punches being thrown,  
2 consistent with a fist fight.

3 He also had defensive wounds that the Medical  
4 Examiner for the Commonwealth recognized and noted  
5 and brought up herself in her grand jury testimony,  
6 defensive wounds to the back of the hand. How do  
7 you get defensive wounds if you were just struck  
8 one time with a taillight on the back of a car?  
9 You can't.

10 But there were also other wounds, dog bite  
11 wounds. I submit to the Court, let's put it this  
12 way, animal wounds. It looked like he had been  
13 mauled by an animal on his right arm, only his right  
14 arm. Not his left arm, not his shoulders, not his  
15 face, not his legs, not his knees, not his feet,  
16 just the right arm.

17 The Alberts owned a full-grown German Shepherd.  
18 According to the police reports that we received,  
19 even Mr. Albert was somewhat tenuous about having  
20 that dog around humans, around people. Why? Because  
21 the dog doesn't necessarily get on with people that  
22 well. In other words, he's prone to attack.

23 There's very obvious wounds that are inconsistent  
24 with this one strike from a car. He was -- the  
25 Commonwealth's theory is not that he was dragged

1     underneath a car.

2             There was no gravel, dirt or other debris found  
3     in those wounds, yet he's got these wounds that are  
4     consistent with an animal, and the Alberts own a  
5     German Shepherd which they claim -- Brian Albert  
6     claimed he let out into the back yard at least once  
7     during the course of that night, probably in another  
8     unguarded moment in an interview with the police.

9             One of the things that would be incredibly  
10    important for the defense would be to take tissue  
11    samples from those wounds and compare them to canine  
12    DNA. What do we need for that comparison? We need  
13    the dog.

14            Mr. Yannetti, before I was on the case, back  
15    in May -- as a matter of fact it was May 6<sup>th</sup>, 2020,  
16    for the first time came to court and made note --  
17    gave notice about the defense's concern about those  
18    dog bite marks, or what they look like animal bite  
19    marks, and mentioned the fact that the Albert's  
20    owned a dog.

21            We have now found out that in that same month,  
22    May of 2022, the dog is now miraculously missing.  
23    After being in the Albert family for not months but  
24    years, that dog is now gone. Our investigators have  
25    interviewed animal control experts, and those --

1     custodians, and those custodians have indicated that  
2     according to their documentation, that dog was turned  
3     into animal control, it was quarantined for the  
4     appropriate amount of time pursuant to Massachusetts  
5     law, and then ultimately it was re-homed, as they  
6     say. In other words, the dog's gone.

7             It seems like an awfully convenient fact, again  
8     suggesting that something was going on, decisions  
9     were being made, communications were being had by  
10    and among or between and among the very individuals  
11    that were asking for communications for.

12            There's no way that all of this could have been  
13    pulled off without some sort of agreement. This sort  
14    of coverup of actual facts and actual evidence, this  
15    sort of inconsistency and convenient inconsistencies  
16    with physical evidence and testimonial evidence can't  
17    be pulled off without an agreement and consent of  
18    several people.

19            And what do people need for a coverup? They  
20    need communication. And how do people communicate  
21    these days? With a cell phone. I would bet that  
22    the Court has a cell phone within arms reach. I'll  
23    bet you everybody in this room has a cell phone  
24    within arms or pocket's reach. That's how modern  
25    society -- that's how modern society communicates

1 with each other.

2 We're not asking for extraordinary information.  
3 We believe that there are certain exigencies and  
4 urgencies involved. We want these communications  
5 for a very limited, a very bracketed, and a very  
6 specific timeframe.

7 We're not looking to invade anybody's privacy,  
8 but Ms. Read has a right to investigate this case,  
9 the way that the Commonwealth should have investigated  
10 the case from the beginning.

11 I was actually a bit surprised. We spoke  
12 with Mr. Lally this morning, by the way the first  
13 time I've spoken to him off the record. He's an  
14 incredible gentleman, an incredible professional  
15 who was extraordinarily gracious to us during the  
16 course of the investigation -- during the course  
17 of the conversation.

18 But my question is, during the course of the  
19 investigation why wasn't he asking for this? This  
20 would be an obvious set of facts that any police  
21 officer who wasn't biased and wasn't compromised  
22 would have asked for. You've got a party and you've  
23 got a dead person who was at the party. Find out  
24 who's communicating about that and why.

25 But of course that never happened, and the



1 Commonwealth is resisting the very evidence they  
2 should be seeking. Why? I'm sure somewhere along  
3 the line, all of the DA's involved swore an oath  
4 to seek the truth and that's all we're asking for,  
5 is for the Court to allow us to properly defend  
6 Ms. Read by seeking the truth.

7 And the truth will be whatever it is, but  
8 I suspect, as a matter of fact, I know that based  
9 on the evidence that we have so far, that there's  
10 going to be information and communications between  
11 and among these individuals that lead to exculpate  
12 Ms. Read. She didn't do this. She's entitled to  
13 exculpatory information that proves that and  
14 establishes that.

15 And I'll submit unless the Court has any other  
16 questions?

17 THE COURT: All right. Thank you very much.

18 Mr. Lally?

19 MR. LALLY: Thank you, Your Honor.

20 Your Honor, just to clarify, because I know  
21 obviously Your Honor wasn't present on the time we  
22 were before the Court in reference to this.

23 Today is essentially just the 17(a)(2) portion  
24 or the first portion under the Rule 17, so --

25 THE COURT: Okay.

1           MR. LALLY: -- you know, obviously, given the  
2 short notice, I wasn't -- I was able to provide as  
3 counsel had requested and Judge Karp had ordered,  
4 notice to each of the third-party -- I guess we'll  
5 call them intangible object holders, the notice  
6 to reserve, but I didn't provide them with notice  
7 of today's hearing, so just with the caveat, I'll  
8 proceed.

9           Your Honor, the Commonwealth would request  
10 that the defendant's motion be denied. The defendant  
11 submits no supporting affidavit as is required.

12           And yes, I did posit a fanciful fact section  
13 contained within the memorandum, but it's a fact  
14 section that is entirely bereft of any evidentiary  
15 support for the conspiracy that purportedly exists  
16 and forms the basis for these requests for the  
17 subject cell phones at issue here.

18           As the Court is well aware, Rule 17 is not a  
19 discovery tool, it is not a possibly or potentially  
20 there could be evidence of something going on.

21           If I could just address a couple of the facts  
22 or the evidence as outlined by counsel, as far as  
23 to justification for this being manifold, the conflict  
24 of interest that the Commonwealth has fully vetted  
25 and does not believe that there is any conflict of

1 interest here between Trooper Proctor and the  
2 Albert family and this investigation.

3 Any relationship is ancillary, tangential at  
4 best. These are not people that socialize together,  
5 these are not people that know each other, these  
6 are not people that Trooper Proctor has been over  
7 to their home prior to going to their home to  
8 interview them in relation to this case.

9 The phone call that counsel references from  
10 Julie Albert, and this is a part of the issue that  
11 I take with some of the submissions that were  
12 included in the grand jury transcripts in which  
13 it's essentially parceled out, two pages here, three  
14 pages here, five pages there, completely divorced  
15 from their context.

16 This, Your Honor, was an extensive grand  
17 jury investigation spanning several months over 14  
18 different dates, there were 42 different witnesses  
19 who testified before this grand jury.

20 So, there were more than that with some repeat  
21 witnesses, some of the investigating Troopers being  
22 among them, but there were 42 separate witnesses that  
23 testified, over 1,445 pages of grand jury transcripts.  
24 So, to take two, three pages here, or two, three pages  
25 there, it's disingenuous at best, I would submit.

1 But this phone call that Julie Albert is alleged  
2 to have received from Ms. McCabe indicating at 4:53  
3 that Mr. O'Keefe was dead, it was a phone call that  
4 Ms. Albert testified she missed, she was asleep.

5 So, that was the intention of the phone call  
6 may have been to inform her of something, but it's  
7 not a phone call that she received.

8 As far as the three-point turn is concerned,  
9 the only person -- and this is a bit troubling as  
10 the case has gone on, the only person who has ever  
11 said that there was a three-point turn by Ms. Read  
12 in front of the house was Ms. Read to the Troopers  
13 later on that day.

14 None of the witnesses ever said they saw a  
15 three-point turn, none of the witnesses ever said  
16 there was any evidence of a three-point turn. That's  
17 simply one of the varying accounts that Ms. Read  
18 provided to independent witnesses and the Troopers  
19 over the course of this investigation.

20 As far as the video confirming that evidence  
21 was tampered with is essentially -- it's apparently  
22 a Ring video from the defendant's parent's house  
23 in Dighton. I've never seen the video, I've never  
24 seen anything beyond what's contained within this  
25 submission.

1           It does have a time -- a date and time stamp  
2 of 4:12 p.m., but from the photograph, as the Court  
3 can see, the subject vehicle is not on the wrecker  
4 at that point, it's not on the tow truck.

5           I have no idea whether or not that time and  
6 date stamp is accurate and whether it was an hour  
7 off because of daylight savings time. If it would  
8 be, that would make it 5:12 p.m. and then 5:30 on  
9 the wrecker would conform with that.

10          There's simply -- throughout the course of  
11 this recitation, as far as the taillight is concerned,  
12 being damaged in the driveway of Mr. O'Keefe's home,  
13 there is a Ring video application from his driveway  
14 which shows Ms. Read backing out of the driveway at  
15 5:08 a.m.

16          We obviously have her cell phone's whereabouts  
17 and movements, so it takes about 21 minutes or so  
18 before she shows up at Ms. McCabe's home, which is  
19 probably about a two-minute drive from there.

20          But from that video, the vehicle backs up with  
21 more than sufficient room to cut the wheel and make  
22 the maneuver without making any contact with Mr.  
23 O'Keefe's vehicle which is parked way in the back  
24 to the far right side of the driveway.

25          It appears that the vehicles come close to

1 each other, however, there's no evidence of any  
2 shards of glass of a taillight found in the driveway,  
3 there's none that can be seen in the video, and  
4 there were none that were recovered when the  
5 Troopers went there.

6 The Troopers also photographed both the victim's  
7 vehicle, a complete 360, probably 20, 30 photographs  
8 of the vehicle. There's absolutely no damage to  
9 Mr. O'Keefe's vehicle.

10 So, if Ms. Read's vehicle, that's where the  
11 taillight was broken and hit it with sufficient force  
12 to break her taillight, there's absolutely no damage  
13 to that.

14 There are also the glass shards which Mr.  
15 O'Keefe was observed from the surveillance video  
16 from the bar, leaving the Waterfall with a cocktail  
17 glass in his hand, and there are glass shards and  
18 pieces of a cocktail glass that are found.

19 As far as the snow blower, there's no snow  
20 blower employed here. The Canton Police Officers  
21 grabbed a leaf blower from one of their houses to  
22 see if they could sift off part of the snow because  
23 they're conducting this initial search while the  
24 blizzard is still ongoing, in a blizzard that left  
25 approximately two feet of snow in that location.

1           So, not only would these shards of glass have  
2 to have been planted, they would have had to have  
3 been planted along with Mr. O'Keefe's other shoe  
4 that is observed missing by all of the paramedics  
5 who arrive on scene. It's not with his person  
6 when he's taken to Good Samaritan Medical Center,  
7 so he would have had to have packed that under  
8 two feet of snow in order to put it exactly where  
9 the shoe and the shards of glass were found together  
10 several hours later by the CERT Team.

11           And these -- the wounds, just sort of bald  
12 assertions by counsel that it must have been from  
13 a fight, that they're defensive wounds, There is no  
14 indication that there are any defensive wounds.

15           The Medical Examiner, Dr. Irini Scordi-Bello  
16 testified before the grand jury, counsel has the  
17 entire report, counsel has her testimony. She was  
18 specifically asked if any of these injuries were  
19 consistent with a physical altercation and she  
20 said no.

21           The injuries to his face, as she details  
22 throughout her grand jury testimony, were a result  
23 of the defendant (sic) falling backwards, striking  
24 his head.

25           There is a gash in the right back of his head

1 which essentially matches up with this sort of  
2 radiating skull fractures that he has from the frontal  
3 occipital and parietal areas of his skull, which then  
4 caused internal bleeding on the brain, which then  
5 caused the eyes to swell, and caused the blood to  
6 come from his nose and his mouth. It's extensive,  
7 over 50 pages or so of grand jury testimony from  
8 that Medical Examiner in relation to that.

9         Nowhere does she characterize anything as bite  
10 wounds, let alone animal bite wounds, that he was  
11 mauled by any sort of animal on his right arm, nor  
12 was there any indication of any defensive wounds  
13 whatsoever.

14         So, essentially, Your Honor, the Commonwealth  
15 has submitted here is, yes, I would agree with counsel  
16 that if the Court were to entirely adopt the set of  
17 facts as proposed within the memorandum, again not  
18 in an affidavit, but in the memorandum attached to  
19 the defendant's motion, then certainly, there would be  
20 some grave concern for some sort of large overarching  
21 cabal or conspiracy between some ten civilians, the  
22 entirety of the Norfolk County CPAC Unit of the State  
23 Police, Canton Police Officers, two of those civilians,  
24 one of them being a Boston Police Officer, the other  
25 being a Federal Agent.



1           I suppose the Medical Examiner would have to  
2   be in on that. I'm not sure who else would probably  
3   fit within that conspiracy, but I think that there  
4   would have to be a number of other parties who were  
5   involved in this frame job when it comes to Ms. Read.

6           With respect to the Rule 17 Motion, Your Honor,  
7   there needs to be a submission by the defendant --  
8   first of all, the timeframe the Commonwealth would  
9   submit is over broad.

10          Secondly, the content sought is not limited  
11   to merely communications between the alleged members  
12   of the conspiracy, it's any and all communications  
13   contained in their phone.

14          All of that being over broad, and all of that  
15   as far as being completely bereft of any sort of  
16   evidentiary support other than mere circumspection  
17   or speculation, which the caselaw as in Bourgeois,  
18   and as in plenty of other cases in support of that,  
19   simply don't allow Rule 17 to be used as this sort  
20   of discovery type tool.

21          Lastly, it troubles -- it is a bit troubling  
22   that if counsel is to come into court and file a  
23   motion for seven individuals to turn over their phones  
24   to him or to his directed expert based on this scant  
25   factual underpinning, obviously as the Court is well

1     aware, if the Commonwealth were to seek a search  
2     warrant, obviously we would be relegated to the  
3     standard of probable cause. This doesn't even come  
4     close to that, as far as an evidentiary support for  
5     what's being requested here.

6             The last thing I'll say is in reference to  
7     Ms. McCabe's phone. We did speak about that.  
8     That was -- so, there was a full extraction done  
9     of Ms. McCabe's phone.

10            For ease of presentation to the grand jury,  
11     and frankly for myself and for them, as well, what  
12     I did was, I marked the full extraction as an  
13     Exhibit for the grand jury.

14            What I also did was, I had a separate extraction  
15     done between Ms. McCabe and the defendant, Ms. McCabe  
16     and the victim, and Ms. McCabe and Ms. Roberts,  
17     who was the other female party that discovered Mr.  
18     O'Keefe's body, from that specific time period, and  
19     then that extraction was also marked as an Exhibit  
20     for the grand jury.

21            Counsel has both of those, or should have both  
22     of those. They were provided on the arraignment date.  
23     So, we spoke a little earlier today, if they can't  
24     locate it, that's fine, I can make another copy,  
25     that's certainly not an issue, but asking for Ms.

1 McCabe's phone when they already have it is a little  
2 bit troubling to me as well.

3 But having said all that, Your Honor, what  
4 I would submit in relation to the Rule 17 is that  
5 the standard has not been met here, not even close,  
6 and for that, I would ask that the motion be denied.

7 THE COURT: Okay. All right.

8 Did you respond, Mr. Jackson? I see you writing  
9 away over there?

10 MR. JACKSON: Very, very briefly.

11 THE COURT: Okay.

12 MR. JACKSON: First of all, there is a declaration  
13 that supports the motion. I think the Court can see  
14 it, it's at the very back of the motion. It was  
15 submitted --

16 THE COURT: It's a one-page affidavit?

17 MR. JACKSON: That's correct. That's correct.  
18 And it was support in of adopting the facts that were  
19 basically laid out in the motion. So, there is a  
20 supporting declaration.

21 If it's wanting, we can certainly support --  
22 provide the Court with something more robust, but  
23 it is a supporting declaration that does meet the  
24 criteria that's necessary.

25 With regard to some of the facts that were

1 just discussed, the phone call at 4:55 may have been  
2 a message that was left, and Ms. Julie McCabe didn't  
3 answer that call, we don't dispute that. But what  
4 she said to the police was, it was that call that  
5 informed me of John's death at 4:55 a.m.

6 So, whether she picked up the call immediately  
7 and then listened to the voicemail or listened to the  
8 voicemail five minutes later, it is uncontroverted  
9 that that was her statement.

10 Number two, with regard to the video, the  
11 Commonwealth just indicated, well, there's no evidence  
12 that the timestamp on the video is right. Well, then,  
13 make it right. If that's what the Commonwealth's  
14 position is, they've got all the governmental  
15 resources, go calibrate it.

16 It is a Ring video. Ring videos, I think it's  
17 pretty common knowledge, I've got one, I bet a lot  
18 of people in this courtroom have one, they're Wi-Fi,  
19 they're connected to the Wi-Fi. Wi-Fi's are connected  
20 to the satellites. Satellite is calibrated time --  
21 all the time. So, Ring videos are calibrated time  
22 all the time.

23 It was 4:12, and by the way, one quick glance  
24 at the video watching it all the way through, it  
25 actually shows the car being driven onto the truck,

1 so it physically shows the car being removed from  
2 the scene.

3 Number three, the 5:07 video, five hours  
4 later, showing my client backing frantically out  
5 of her garage to go look for John O'Keefe actually  
6 does show the other car wobble.

7 It shows contact, you can see the other car  
8 move. That coupled with the fact that when she  
9 then drives, she puts the car back into drive and  
10 she moves forward, there's a flash of white light  
11 that comes across from the tail lamp lens.

12 That tail lamp lens, and I think the Court  
13 has pictures of it now is all red, it's completely  
14 enclosed. It's a wraparound enclosed red lens.  
15 The only way a white bulb would be seen is if there  
16 was a crack, a crevice in that taillight lens.

17 So, it's unequivocal that that lens was --  
18 it made contact with the Chevrolet, the Chevrolet  
19 moves, and the lens is thereafter cracked and you  
20 can actually see the crack on the video.

21 With regard to evidence that was quote/unquote,  
22 as the Commonwealth indicates, "planted," and he  
23 wants to make this some big conspiracy theory that's  
24 completely unbelievable, therefore, Your Honor, you  
25 can't believe this. The ME has to be involved and

1 other people have to be -- we never said that the  
2 Medical Examiner was involved, and I don't know  
3 how many people are involved.

4 I know that there were individuals at that  
5 party, the people that we listed, who know more  
6 than what they're telling us. We know that through  
7 the circumstantial evidence and direct evidence  
8 of other evidence that has been provided us to  
9 date.

10 What do we know about the evidence concerning  
11 the animal wounds? The Commonwealth says, well,  
12 there's no evidence that it's a wound from an animal.  
13 Again, why didn't you check? Why didn't you take  
14 tissue samples and then pull a hair off of that dog?

15 It's relatively easy to do. You have a crime  
16 lab, for goodness sake. Just take the tissue samples.  
17 Now, the dog's gone, isn't that convenient? That  
18 puts us in an incredibly difficult position.

19 Why does that matter? Because the only evidence  
20 we have about where that dog was that night comes from  
21 Brian Albert. Brian Albert said to the investigators,  
22 at least one investigator, "I let the dog out in the  
23 back yard." The only evidence that we know about  
24 where that full-grown German Shepherd was is in the  
25 back yard.

1           We have Matt McCabe looking out over basically  
2 a hockey rink of a yard, not seeing a body. We have  
3 wounds, if the dog was in the back yard, and we know  
4 the wounds are animal wounds, and those wounds turn  
5 out to be dog wounds, then that puts Mr. O'Keefe's  
6 arm in the back yard, which puts him in the back  
7 yard.

8           If there was no shoe found at the scene, was  
9 the house ever searched? It was not. Was the back  
10 yard ever searched? It was not.

11           How is it conceivably possible that Trooper  
12 Proctor didn't search the entire house top to bottom  
13 for evidence some sort of nefarious conduct leading  
14 to John O'Keefe's death?

15           He's facing a situation where a man looks like  
16 he's been beaten to death, and yet he doesn't search  
17 the house and he doesn't search the back yard.

18           And miraculously, the next day after two sets  
19 of officers -- and I mis-spoke, and the Commonwealth's  
20 right, it wasn't a snow blower, I was thinking of  
21 snow, it was a leaf blower, a gas-powered leaf blower,  
22 much more meticulous than a snow blower.

23           According to the Commonwealth, the shoe wasn't  
24 found until after two sets of officers had already  
25 searched the entire location, the whole location.

1 How is that possible?

2 If the back yard wasn't searched, could it have  
3 been in the back yard? Could the shoe have come off  
4 when someone was transporting the body from the back  
5 yard to the front yard to cover someone's tracks?  
6 It's perfectly reasonable.

7 And if that happened during a party with a  
8 bunch of people at it, one would suspect one would  
9 actually know that others would know about it.

10 We have evidence that at least some witnesses  
11 have been told, don't talk, this involves a bunch  
12 of cops, a bunch of cops' families, don't talk.

13 We're not asking for anything extraordinary,  
14 Your Honor. We're asking to be able to find the  
15 truth. The Commonwealth should not be afraid of  
16 that.

17 We are working within a bracketed parameter  
18 of only seven days. We're willing and able to comply  
19 with any restrictive court order concerning the  
20 non-dissemination of those data that we get outside  
21 of the defense of this case.

22 We will happily comply with those restrictive  
23 orders. But to deny us the ability to actually  
24 investigate this case is to deny Ms. Read her due  
25 process rights, and I'll submit. Thank you.



1 THE COURT: All right. Thank you very much.

2 Then Mr. Lally, you explained that this is the  
3 only motion we're going forward on today, or did the  
4 Commonwealth need time -- I know you are on trial,  
5 do you need time to respond to the other motions  
6 that are still outstanding?

7 MR. LALLY: Whatever the Court's pleasure.  
8 I've reviewed them, this is the only one I've  
9 filed a written submission on, but --

10 THE COURT: Well, it's up to you. Are you  
11 looking to -- we could forward, or if you're looking  
12 for time?

13 MR. LALLY: I'm fine, Your Honor.

14 THE COURT: Okay.

15 MR. LALLY: We can -- whatever --

16 THE COURT: Okay. So, what exactly is left?

17 MR. LALLY: I believe there is a motion for  
18 discovery regarding the circumstances of Trooper  
19 Proctor's assignment to the investigation in this  
20 matter.

21 THE COURT: Okay. Is the Commonwealth opposed  
22 to that?

23 MR. LALLY: Well, Your Honor, I'm opposed,  
24 number one, as to the form. These are really more  
25 civil interrogatories as they seem to me.

1 I've spoken to counsel, and as far as any sort  
2 of policies or protocols related to conflict of  
3 interest, related to assignment, I've explained to  
4 counsel sort of the duty schedule of our CPAC Unit  
5 and how one would be essentially on call and that's  
6 how they're assigned.

7 So, if there's a duty roster, I'm more than  
8 happy to provide that, but I would object to going  
9 through question by question each of the 16 different  
10 questions relating to a clear conflict, which I've  
11 already stated our office does not feel there is  
12 any conflict, let alone a clear conflict.

13 THE COURT: All right.

14 MR. LALLY: But as far as written documentation,  
15 in regard to the subjects that are covered within the  
16 motion, the Commonwealth has no issue with those.

17 THE COURT: All right. Mr. Yannetti, it seems  
18 to make sense that you start with that and get that  
19 and see if you need anything more?

20 MR. YANNETTI: Well, I think on the surface,  
21 it is an appealing argument, Your Honor, but you  
22 know, as somebody who worked for almost a decade  
23 with a CPAC Unit in another county, I know that I'm  
24 going to get literally nothing from that production  
25 if that is what the Court orders.

1           There will be nothing in writing regarding the  
2 assignment of Troopers within a CPAC Unit attached  
3 to a District Attorney's Office.

4           THE COURT: Okay. You know what I'm going to  
5 do actually, I'm going to put this back.

6           Jimmy, we've got a lot of people waiting.  
7 We can come back and do the rest of your motions  
8 after I get through the list.

9           MR. YANNETTI: That's fine.

10          Thank you, Your Honor.

11          THE CLERK: Second call.

12 (Court in recess at 2:46 p.m.)

13  
14 (Court in session at 3:21 p.m.)

15  
16          THE CLERK: Could I have the Karen Read matter  
17 brought back?

18          THE COURT: You can have a seat, Ms. Read.

19          All right. So, I appreciate everyone waiting.  
20 So, this is the last case, Jimmy?

21          THE CLERK: Yes, Your Honor.

22          THE COURT: Okay.

23          THE CLERK: Have I missed anyone in here?

24          THE COURT: Okay.

25          THE CLERK: No, that's the last one.

1 THE COURT: All right. So, I will hear you.

2 I think I interrupted you, Mr. Yannetti, on  
3 the discovery regarding those circumstances of the  
4 Trooper being assigned the case.

5 MR. YANNETTI: Yes. Your Honor, I appreciate  
6 the Court's suggestion about getting a preliminary  
7 response from the District Attorney's Office regarding  
8 any policies or anything in writing regarding Trooper  
9 Proctor's assignment to this case.

10 I am very pessimistic that will yield anything  
11 that is of any use to anyone, however, I will say  
12 that it seems fairly clear that we will need another  
13 date, at a minimum, with regard to the Rule 17 Motion  
14 that was heard earlier.

15 If the Court would prefer to order the  
16 Commonwealth to provide what it has indicated that  
17 it would provide, and then we can be heard on the  
18 specific 16 requests that we make on the next date,  
19 I would --

20 THE COURT: Well, it made sense to me, but I'm  
21 not going to tell you how to run your case, so --

22 MR. YANNETTI: Right.

23 THE COURT: -- if you'd prefer to go forward  
24 on the motion, we can do that. However you want to  
25 go about it.

1           MR. YANNETTI: Okay. Well, the bottom line,  
2 Judge, is we look at this as crucial evidence for  
3 the defense. Everything flows from this motion.  
4 This is an extraordinary situation.

5           Mr. Jackson has touched upon a lot of these  
6 issues, but you have three families that are  
7 intertwined in multiple different directions and  
8 in multiple ways. We have attached as exhibits to  
9 our motions some social media photos between the  
10 families, but we have --

11          THE COURT: But not attached to this motion?

12          MR. YANNETTI: Well, but I do reference the  
13 statement of facts and exhibits in the grounds for  
14 this motion. Rather than recopy everything for  
15 this motion, I referenced them sequentially.

16          THE COURT: All right. So, where would I have  
17 it? Do you want me to look at what you've filed for  
18 the Rule 17 Motion?

19          MR. YANNETTI: Yes either the Rule 17 or the  
20 geofence. Both of the exhibit packages have the  
21 social media photos.

22          THE COURT: Are they the same?

23          MR. YANNETTI: Yes.

24          THE COURT: Okay.

25          MR. YANNETTI: In those motions, they are.

1           I will tell the Court that we have additional  
2 photos of, you know, Trooper Proctor's sister, you  
3 know, commentary by Trooper Proctor's mom on the  
4 Albert family and Collin Albert and Chris Albert,  
5 and Julie Daniels who is Julie Albert's sister.

6           We have multiple, multiple photos of them  
7 socializing, and -- you know, in addition to the  
8 wedding photos that were previously submitted.

9           Quite frankly, I couldn't hear if Mr. Lally  
10 had said that they don't socialize or if socializing  
11 is not that big a deal, but in either case, we would  
12 assert that this is a big deal.

13           To the extent that -- as Mr. Jackson had said,  
14 that there is the body of a dead police officer on  
15 the property, found on the property of a home, the  
16 people within that home should have been questioned  
17 in a certain way and they weren't.

18           And our assertion is that they weren't because  
19 they were either police officers or they were related  
20 to police officers, and where the rubber meets the  
21 road, this is not a just a police officer who showed  
22 up at the home of another police officer. This is  
23 a State Trooper who showed up at the home of a friend  
24 of his.

25           And the big question is, not just how did he

1 get assigned to this case, but to whom did he reveal  
2 his extensive social contacts and friendships with  
3 the people within that home?

4 Did his superiors know that? Did the District's  
5 Attorney office know that? You know, Mr. Lally claims  
6 that his office has done this extensive investigation  
7 to determine that there's no conflict of interest.  
8 I don't know how anybody could look at these photos  
9 and see this commentary on social media and the  
10 intertwining of these three families and come to  
11 the conclusion that this was on the up and up,  
12 that there was no conflict of interest whatsoever.

13 These questions are very straightforward,  
14 they are in the custody, care, and control of the  
15 Commonwealth. They are not anything that we can  
16 determine through our investigation, because we  
17 believe there's nothing in writing and we don't  
18 have the right to depose witnesses in a criminal  
19 case.

20 So, these are very basic facts that can be  
21 ascertained with a very cursory examination or  
22 investigation by the District Attorney's Office,  
23 a few phone calls to the necessary people will  
24 accomplish that, and you know, this, I believe will  
25 form the basis or one of the bases for a potential

1 motion to dismiss for misconduct by the Commonwealth.

2 THE COURT: All right. Mr. Lally, when you  
3 were talking earlier, I didn't take notes as to  
4 exactly what you agreed that you would hand over,  
5 so why don't you tell me again, and if it helps  
6 you to go through 1 through 16, you can do it that  
7 way, but what was it that you said specifically  
8 you would hand over?

9 MR. LALLY: Well, when there's reference to  
10 written policies or procedures of the State Police  
11 pertaining to case assignments for investigations  
12 of suspicious deaths, I'm looking specifically at  
13 Number 7.

14 Again, it's the Commonwealth's position that this  
15 is not a discovery motion, these are interrogatories,  
16 I mean, that's what they are. They're all phrased in  
17 question form and asking, you know, that the questions  
18 be posed to certain people.

19 But as far as any documentation related to  
20 assignment of matters within the CPAC Unit, as far  
21 as any written documentation, whether that be by  
22 policy or written protocols or procedures of the  
23 State Police related to assignment or related to  
24 any potential conflict of interest, I'm certainly  
25 happy to inquire in regard to those and provide



1 whatever policies and procedures there are.

2 I'm also aware that there is a duty roster  
3 basically detailing who was assigned and who was on  
4 duty at a specific date and time, and I'm certainly  
5 happy to provide that for the entirety of the month  
6 of January of 2022.

7 THE COURT: Okay. All right. So, I'll take  
8 this under advisement along with that Rule 17 Motion  
9 that we heard earlier.

10 All right. What else do we have to --

11 MR. YANNETTI: Your Honor, I think there are  
12 three motions left for the Court today. One is  
13 our Amended Motion to Compel Modification of Google  
14 Preservation Requests and for Production of Geofence  
15 Data.

16 THE COURT: Yeah. Had you talked about this  
17 previously?

18 MR. YANNETTI: Yes.

19 THE COURT: All right. And do you still --  
20 I know Mr. Lally was on trial all last week and  
21 then some the week before.

22 Mr. Lally, I don't have a written response  
23 from you on this. Again, this is another one where  
24 the grand jury minutes have to be --

25 MR. LALLY: And that's fine, Judge.

1 THE COURT: -- impounded.

2 MR. LALLY: That's fine.

3 THE COURT: Mr. Lally, are you objecting to this?

4 Do you want to put something in writing? I'm happy  
5 to hear you today.

6 How do you want to go about this?

7 MR. LALLY: No, Your Honor. We've spoken and  
8 with regard to -- just with regard to -- if you'd  
9 direct the Court's attention to page 21 of counsel's  
10 motion, with where it states, "Requested relief."

11 THE COURT: Yes.

12 MR. LALLY: So, Number 1 with regard to that is  
13 that the Court order modification of the preservation  
14 request to include all Smart phones, and include  
15 applications downloaded from the Apple app store.  
16 The Commonwealth would submit that it already has  
17 been modified and that's been provided.

18 Two, that the Court order production of the  
19 automated acknowledgment of receipt of the modified  
20 preservation request from Google, and (b), confirmation  
21 of intent to comply with the request from Google.

22 I believe that those have -- and when I was  
23 speaking with counsel today, what I indicated was,  
24 I was a little hung up on trial, but I've since talked  
25 to the Troopers and essentially I think there might

1 be a little confusion on my end, as this has been  
2 an ongoing issue since like May, as far as what  
3 I've provided and what hasn't been, so --

4 THE COURT: The arraignment wasn't until June,  
5 right? So, --

6 MR. LALLY: No, so this would have -- this  
7 goes back all the way to pre-indictment when the  
8 case was pending and still in District Court.

9 THE COURT: Yeah. Okay.

10 MR. LALLY: So, essentially, what I've asked  
11 the Troopers to do is to just literally give me  
12 everything that they have as far as the Geofence  
13 is concerned, which I should have in the next couple  
14 days and I'll provide that to counsel, and if there's  
15 any further requests, I think we can deal with that  
16 on the next date.

17 The last thing as far as the anonymized list,  
18 I have no issue with that, so I've agreed to provide  
19 that should there be one, as well.

20 MR. YANNETTI: On that last point, Judge, just  
21 so the Court's clear. That anonymized list is the  
22 crucial evidence in this case.

23 Our position is that for the reasons we've stated  
24 and the showing that we've made, Trooper Proctor or  
25 the Massachusetts State Police, and for that matter

1 the Canton Police should not have custody of that  
2 anonymized list.

3 We want that anonymized list, which would be  
4 produced in response to the search warrant that was  
5 issued, we want that sent directly from Google to  
6 the Court. We do not want this in the hands of --

7 THE COURT: Do they already have it?

8 MR. LALLY: I believe that they already have  
9 the response, and that's how the order was drafted  
10 as far as the search warrant, was to -- we don't do  
11 a search warrant to return something to the Court  
12 of that nature. That's not how it's done.

13 MR. YANNETTI: Ultimately, Your Honor, it's the  
14 property of the Court, not the Commonwealth, given  
15 that it was produced in relation to a search warrant,  
16 but if it's already been sent to law enforcement,  
17 we would ask that forthwith it be transferred to  
18 the Court.

19 And then, if this Court sees fit to issue any  
20 protective orders regarding counsel viewing that,  
21 we would abide by that. Given that the list would  
22 be anonymous, I don't know that that's even necessary  
23 because it would not identify anybody in particular.

24 But our concern was that the search warrant was  
25 written in such a way that the State Police, Trooper

1 Proctor specifically, would excise from that anonymous  
2 list anybody that he deemed to be not in the area  
3 for a sufficient period of time to be relevant to  
4 the case. And by definition, there is nobody that  
5 would fit that category in our view, because their  
6 theory, again, is that Officer O'Keefe was killed  
7 somewhere around 12:30 a.m.

8 Anybody that drove by that residence or entered  
9 that neighborhood that is blocked off by the search  
10 warrant is relevant because they either saw a body in  
11 the yard or they didn't, and in either circumstance,  
12 they're relevant to this case.

13 THE COURT: Mr. Lally, do you want to respond?

14 MR. LALLY: I mean, other than --

15 THE COURT: You don't have to. Have you seen  
16 this?

17 MR. LALLY: Yes.

18 THE COURT: All right. So, you're going to  
19 provide what you have -- there's no need for a  
20 protective order or is there? I haven't seen the  
21 search warrant, I haven't seen the affidavit --

22 MR. LALLY: We're at the --

23 THE COURT: -- in support of the search warrant.

24 MR. LALLY: -- at this stage, so this would be  
25 stage one of this particular proceeding. So, whereas

1 any lists would just simply be a list of phone  
2 numbers and I don't see any issue with t hose.

3 THE COURT: Okay. So, I didn't know where  
4 you were at. That's where you're at, you're at  
5 the first stage --

6 MR. LALLY: We're just at stage one.

7 THE COURT: -- with just the list of phone  
8 numbers?

9 MR. LALLY: Correct.

10 THE COURT: All right. There's no need for  
11 me to take that, Mr. Yannetti. There's no need for  
12 me to take that list of phone numbers, to take custody  
13 of that list of phone numbers. We haven't done the  
14 second part of that yet.

15 MR. YANNETTI: Okay. So, the Court's ruling  
16 is that that list of phone numbers will be provided  
17 directly to the defense from the prosecution?

18 THE COURT: That's what Mr. Lally said.

19 MR. YANNETTI: Okay.

20 MR. LALLY: Yes, Your Honor.

21 THE COURT: I have no reason to doubt what he  
22 said.

23 MR. YANNETTI: Okay. And then the last motion  
24 that I have before my colleague Ms. Little argues the  
25 remaining one, is Defendant's Motion to Renew Motions

1 Previously Filed in Stoughton District Court Prior  
2 to Indictment.

3 THE COURT: Yeah, I think that's somewhat  
4 problematic. If you're trying to build a record  
5 here, what we've got are, you know, different docket  
6 numbers, Stoughton District Court. Can you go back  
7 through your list and see which ones you want to  
8 file here?

9 If there's a question that you want to put on  
10 the record, everything that's been preserved, I'm  
11 sure you and Mr. Lally can put that on the record  
12 in some form.

13 I thought that might be your intent, but what  
14 is your intent in simply filing motions that were  
15 filed in a different court, rather than just filing  
16 what you think is appropriate in this Court?

17 MR. YANNETTI: Well, I wanted to flag for the  
18 Court that these motions would not be brand new,  
19 that these motions were ordered by Judge O'Malley  
20 in the Stoughton District Court.

21 THE COURT: You can do that by way of affidavit;  
22 right?

23 MR. YANNETTI: All right. Fair enough, Judge.  
24 What I did do is --

25 THE COURT: I just think it's a nightmare.

1 Mr. Clerk, is it?

2 THE CLERK: Yeah.

3 MR. YANNETTI: Oh, okay. Yeah, no, what I had  
4 done is, I had attached all of those motions as part  
5 of this motion to renew so they're all in one place  
6 within the motion. They're all a part of that one  
7 motion.

8 No new docket numbers need to be created because  
9 they're a part of the motion where the face has our  
10 docket number, but however the Court wants to proceed  
11 is fine. I just --

12 THE COURT: Yeah. You have to --

13 MR. YANNETTI: I just want to make sure we're  
14 protected.

15 THE COURT: Yeah, you have to -- in order to  
16 protect, you have to file separate motions.

17 MR. YANNETTI: Okay. That's fine, Judge.

18 And the remaining motion would be a Motion  
19 to Compel Discovery and Ms. Little is prepared to  
20 address that.

21 THE COURT: Okay.

22 MS. LITTLE: Good afternoon, Your Honor.

23 THE COURT: Good afternoon.

24 MS. LITTLE: I'll be relatively brief, because  
25 I know --



1 THE COURT: That's okay, take your time.

2 MS. LITTLE: Our Motion to Compel Discovery  
3 is largely focused on three sort of major issues.

4 The recovery and handling of evidence, we're  
5 very interested in obviously finding out when and  
6 by whom that evidence was recovered. We've requested  
7 chain of custody documentation, 911 call logs and  
8 dispatch records, and all of that is going to help  
9 us sort out who responded to the scene and collected  
10 what evidence in this case.

11 The second sort of bucket, so to speak, of  
12 information that we're requesting are communications  
13 between and among the Massachusetts State Police, the  
14 Canton Police Department and the critical witnesses  
15 in this case. And that, as we've sort of discussed  
16 all day today, is Brian Albert, Nicole Albert, Matthew  
17 McCabe, Jennifer McCabe, Brian Higgins, Collin Albert  
18 and Julie Albert.

19 The third sort of category of information that  
20 we're requesting is the identification of an unnamed  
21 female witness who was at the party that night on  
22 the night and question and was actually driven home  
23 in the early morning of January 29<sup>th</sup> by Jennifer  
24 McCabe at 1:30 a.m., meaning they both would have  
25 left the residence, 34 Fairview Road, after Ms. Read

1 is alleged to have already struck Mr. O'Keefe with  
2 her vehicle.

3 We have not received any information about who  
4 that person is. Several people have mentioned that  
5 she was present --

6 THE COURT: Was she called the girlfriend --  
7 the girlfriend of somebody that was driven home,  
8 from what I've read here?

9 MR. LALLY: So, I --

10 THE COURT: Do you have the name right now,  
11 Mr. Lally?

12 MR. LALLY: I don't, but what I have -- upon  
13 receipt of this motion, and some of the others, so  
14 when Ms. Nagel was never actually interviewed either.

15 So, what I asked the Troopers to do upon serving  
16 notice of the preservation, they have now set up an  
17 interview with Ms. Nagel, they're going to inquire  
18 of Ms. Nagel who that other party is, and they're  
19 going to interview her.

20 THE COURT: Okay.

21 MR. LALLY: Whoever that be.

22 MS. LITTLE: Your Honor, --

23 MR. LALLY: But at this moment, I don't know.

24 THE COURT: Okay.

25 MS. LITTLE: I have conferred with Mr. Lally

1 and he has been gracious and offered to get us the  
2 information that we're missing, what I would propose  
3 for the Court is that we set up a time to meet with  
4 him sometime between now and the next court appearance  
5 to make sure that we get all of the information that  
6 we've requested.

7 And unless the Court has any specific question  
8 or Mr. Lally has any objections, I will leave it at  
9 that.

10 THE COURT: All right. Thank you. All right.

11 Mr. Lally, what do you say? Is there an  
12 objection to any of this?

13 MR. LALLY: Your Honor, a lot of this has  
14 already been provided, but I'll certainly -- I spoke  
15 to counsel earlier today as far as making additional  
16 disc copies of photographs and things of that nature.  
17 I'll inquire as to the 911 calls and dispatch logs,  
18 things of that nature.

19 The only thing that's -- that I would really  
20 have any issue with, or objection to would be the  
21 communications. So, number six, number seven, number  
22 eight, number nine are all essentially asking for  
23 the same things from different people, number ten,  
24 as well.

25 And I'm not sure that I fully understand number

1 14 as far as written confirmation of the digital  
2 time stamps, so if you're asking for the metadata,  
3 I think that would cover that.

4 MS. LITTLE: The metadata would cover that  
5 with respect to --

6 THE COURT: So, do you want to provide the  
7 metadata?

8 MR. LALLY: That's again, what -- so, I believe  
9 that they should already have the metadata, but I'll  
10 certainly make further copies of those photographs  
11 as far as in their digital format and provide that  
12 to counsel.

13 THE COURT: All right. So, this is one that  
14 does make sense to me. I don't care if you meet in  
15 person or if you formally meet but narrow it down  
16 for next time, anything that you think that you're  
17 entitled to that has not been provided.

18 MS. LITTLE: Thank you, Your Honor.

19 MR. YANNETTI: Absolutely, Your Honor.

20 THE COURT: All right. Is that it for today?

21 MR. YANNETTI: Just one other thing, Judge,  
22 which is, I wanted to clarify for the Court or have  
23 the Court clarify for us, I believe it's not going  
24 to be contested, but there is a stay-away order in  
25 effect and a no-contact order in effect for Ms. Read.

1 I want to make it clear on the record that a  
2 defense investigator and/or attorney is not prohibited  
3 from contacting any witness who may fall within the --

4 THE COURT: You understand that, Mr. Lally;  
5 right?

6 MR. LALLY: Yes, Your Honor.

7 THE COURT: Yeah.

8 MR. YANNETTI: Thank you.

9 THE COURT: Okay. Is that it?

10 MR. LALLY: Nothing further for the Commonwealth.

11 MR. YANNETTI: That's it.

12 THE COURT: Do we have a next date, Mr. Clerk?

13 THE CLERK: We do not.

14 MR. LALLY: We do not.

15 MR. YANNETTI: Your Honor, the parties have  
16 conferred, and we're asking if the Court would allow  
17 for 2:00 p.m. on November 21<sup>st</sup>?

18 THE CLERK: Is that Monday before Thanksgiving?

19 THE COURT: It is.

20 MR. YANNETTI: It's the Monday of Thanksgiving  
21 week.

22 THE COURT: It's probably not a good day.

23 THE CLERK: The only reason I don't like that  
24 day is because I put a jury-waived case on that day  
25 and I promised them they'd have all day.

1 MR. YANNETTI: Oh, I see.

2 MR. JACKSON: If I may, Your Honor, just for  
3 purposes of housekeeping, Ms. Little and I are going  
4 to be -- in trial -- we say in trial, on trial --

5 THE CLERK: On trial.

6 THE COURT: On trial in Massachusetts.

7 MR. JACKSON: -- on October 10<sup>th</sup> in an extremely  
8 broad case, it's probably going to last three months.

9 THE COURT: Okay.

10 MR. JACKSON: I'm going to ask the Court in  
11 the Weinstein matter to give me a Monday, because  
12 I can make it out here on a weekend, I can appear  
13 on a Monday.

14 THE COURT: You can appear via Zoom, especially  
15 if it's -- I mean, it's entirely up to you, but we  
16 can accommodate you on Zoom.

17 MR. JACKSON: I didn't realize that. That may  
18 -- that may give us some reprieve. It'll certainly  
19 save me a bunch of time.

20 THE COURT: Any objection, Mr. Lally?

21 MR. LALLY: No, Your Honor.

22 THE COURT: Not for any evidentiary motions --

23 MR. JACKSON: Understood.

24 THE COURT: -- but for arguments like today,  
25 it doesn't make any sense to me that you fly all the

1 way out here for this.

2 MR. JACKSON: Understood, understood. That's  
3 very accommodating and I appreciate it. Then that  
4 relieves me of --

5 THE COURT: So, you're behind us by three hours,  
6 right? But we do afternoons, so --

7 MR. JACKSON: That's right.

8 THE COURT: -- it would be 11:00 a.m. for me.

9 THE CLERK: I'm going to -- based on that,  
10 Your Honor, with your permission, I think I'm going  
11 to amend my answer too, that the 21<sup>st</sup> is fine.

12 MR. JACKSON: Okay.

13 THE CLERK: I don't think that jury-waived case  
14 is going to take all day. It's basically an agreed  
15 upon set of facts.

16 MR. JACKSON: Okay.

17 THE CLERK: So, I think 11/21 actually will work.

18 MR. JACKSON: Thank you.

19 MR. YANNETTI: Thank you.

20 THE COURT: Okay.

21 THE CLERK: 2:00 p.m., though.

22 MR. YANNETTI: All right. I'm sorry, just --

23 MR. JACKSON: And we are going to do that by  
24 Zoom?

25 THE CLERK: Well, you could do it.

1 THE COURT: No, counsel should be here.

2 Counsel from California certainly doesn't need  
3 to be here, but it would make sense if you're right  
4 down the street for you to be here.

5 MR. YANNETTI: Agreed. Thank you.

6 MR. LALLY: And I'm sorry, just for what event,  
7 Your Honor.

8 THE COURT: Right. What are we doing?

9 You said you all conferred. I assumed you  
10 meant for a specific event. What event?

11 MR. YANNETTI: I would be it would be a  
12 continuation of this motion hearing to the extent  
13 that there's anything left to decide.

14 THE COURT: Okay.

15 MR. LALLY: A further hearing on discovery  
16 motions is fine, --

17 THE COURT: Okay.

18 MR. LALLY: -- and then obviously, I can direct  
19 people depending on the Court's ruling of the Rule 17.

20 THE COURT: Okay. All right. See you then.

21 THE CLERK: Discovery compliance, does that  
22 sound right?

23 THE COURT: Further discovery motions, Jim.

24 THE CLERK: Thank you, Your Honor.

25 THE COURT: And Mr. Lally, you'll make every



1 effort to get everything that you expect to give  
2 counsel prior to that date, and work on narrowing  
3 what might still be outstanding.

4 MR. LALLY: Absolutely.

5 THE COURT: All right. Thank you.

6 THE CLERK: November 21<sup>st</sup> at 2:00 p.m., discovery  
7 motions. Thank you.

8 THE COURT: All right. These are all under  
9 advisement.

10 MR. JACKSON: Thank you, Your Honor.

11 THE CLERK: I'm sorry?

12 THE COURT: These are under advisement.

13 THE CLERK: Okay, great. Under advisement.

14 (Hearing Concluded at 3:44 p.m.)  
15  
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C E R T I F I C A T E

I, Susan M. Lobie, Certified Electronic Transcriptionist and Notary Public for the Commonwealth of Massachusetts, and a Court Approved Transcriptionist for Office Solutions Plus, do hereby certify that the foregoing is a true and accurate transcript prepared to the best of my ability, from audio recordings of an Motions Hearing held on Monday, October 3, 2022, in the matter of Commonwealth v. Karen Read, Docket No. 2282CR00117, before the Honorable Beverly J. Cannone.

I, Susan M. Lobie, further certify that the foregoing is in compliance with the Administrative Office of the Trial Court Directive on Transcript Format.

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**CASE NAME:** Commonwealth v. Karen Read      **DOCKET NO:** 2255CR00066

**RECORDING DATE** 10/3/22      **TRANSCRIPT INTERVIEW:** 1 OF 1

(circle one) **TYPE:**      **(CD)**      **TAPE**      **QUALITY:**      **EXCELLENT**      **(GOOD)**      **FAIR**      **POOR**

(circle all that apply) **ISSUES** (include time stamp):

**background noise**      **time stamp:** \_\_\_\_\_

**low audio**      \_\_\_\_\_

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**COMMENTS:** The audio for this transcript was fine.

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**COMMONWEALTH V. KAREN READ**  
**DOCKET NO. 2282CR00117**  
**MOTIONS HEARING - 10/3/22**

<p><b>1</b></p> <p><b>1</b> [2] 45:6 47:12  <b>1,445</b> [1] 24:23  <b>1:30</b> [1] 54:24  <b>1:59</b> [1] 3:2  <b>10th</b> [1] 59:7  <b>11/21</b> [1] 60:17  <b>11:00</b> [1] 60:8  <b>12</b> [1] 3:4  <b>12:30</b> [1] 50:7  <b>14</b> [2] 24:17 57:1  <b>16</b> [3] 39:9 41:18 45:6  <b>17</b> [12] 4:3,8 22:24 23:18,  19 46:8 61:19  <b>17(a)(2)</b> [1] 22:23  <b>18</b> [2] 14:3 15:15</p> <hr/> <p><b>2</b></p> <p><b>2</b> [2] 6:13 16:12  <b>2:00</b> [3] 58:17 60:21 62:6  <b>2:30</b> [2] 13:19,23  <b>2:46</b> [1] 40:12  <b>20</b> [1] 27:7  <b>2020</b> [1] 19:15  <b>2022</b> [2] 19:22 46:6  <b>21</b> [2] 26:17 47:9  <b>21st</b> [3] 58:17 60:11 62:6  <b>28th</b> [2] 5:21,23  <b>29th</b> [5] 5:18,22 8:11 13:18  54:23</p> <hr/> <p><b>3</b></p> <p><b>3</b> [1] 16:12  <b>3:21</b> [1] 40:13  <b>3:44</b> [1] 62:14  <b>30</b> [2] 6:18 27:7  <b>34</b> [2] 8:1 54:25  <b>36</b> [1] 8:1  <b>360</b> [1] 27:7</p> <hr/> <p><b>4</b></p> <p><b>4:12</b> [3] 13:24 26:2 33:23  <b>4:30</b> [2] 13:18,20  <b>4:53</b> [1] 25:2</p>	<p><b>4:55</b> [4] 8:19,22 33:1,5  <b>40</b> [1] 10:18  <b>42</b> [3] 16:14 24:18,22  <b>4th</b> [2] 5:24 11:15</p> <hr/> <p><b>5</b></p> <p><b>5:07</b> [3] 17:4,5 34:3  <b>5:08</b> [1] 26:15  <b>5:12</b> [1] 26:8  <b>5:30</b> [2] 14:2 26:8  <b>50</b> [1] 29:7  <b>5'10</b> [1] 16:11</p> <hr/> <p><b>6</b></p> <p><b>6:04</b> [1] 8:10  <b>6-foot</b> [2] 10:20 16:11  <b>6th</b> [1] 19:15</p> <hr/> <p><b>7</b></p> <p><b>7</b> [1] 45:13</p> <hr/> <p><b>9</b></p> <p><b>911</b> [2] 54:7 56:17</p> <hr/> <p><b>A</b></p> <p><b>a.m</b> [7] 8:10,19 26:15 33:5  50:7 54:24 60:8  <b>abide</b> [1] 49:21  <b>ability</b> [1] 37:23  <b>able</b> [5] 10:17 16:10 23:2  37:14,18  <b>above</b> [1] 16:20  <b>absolutely</b> [4] 27:8,12 57:  19 62:4  <b>access</b> [2] 14:7 15:18  <b>accommodate</b> [2] 6:12  59:16  <b>accommodating</b> [1] 60:  3  <b>accomplish</b> [1] 44:24  <b>according</b> [6] 8:21 13:21  16:18 18:18 20:2 36:23  <b>accounts</b> [1] 25:17  <b>accurate</b> [1] 26:6  <b>acknowledgment</b> [1] 47:  19  <b>across</b> [3] 10:9,19 34:11</p>	<p><b>actual</b> [2] 20:14,14  <b>actually</b> [13] 8:18 13:24  14:3 21:11 33:25 34:5,20  37:9,23 40:5 54:22 55:14  60:17  <b>adam</b> [1] 3:8  <b>add</b> [1] 11:19  <b>addition</b> [2] 17:20 43:7  <b>additional</b> [2] 43:1 56:15  <b>address</b> [2] 23:21 53:20  <b>addressing</b> [1] 4:18  <b>admissibility</b> [1] 5:13  <b>adopt</b> [1] 29:16  <b>adopting</b> [1] 32:18  <b>advisement</b> [4] 46:8 62:9,  12,13  <b>affidavit</b> [5] 23:11 29:18  32:16 50:21 52:21  <b>afraid</b> [1] 37:15  <b>afternoon</b> [10] 3:7,9,10,14,  15,16,17,21 53:22,23  <b>afternoons</b> [1] 60:6  <b>agent</b> [1] 29:25  <b>ago</b> [1] 7:20  <b>agree</b> [1] 29:15  <b>agreed</b> [4] 45:4 48:18 60:  14 61:5  <b>agreement</b> [2] 20:13,17  <b>alan</b> [1] 3:13  <b>albert</b> [28] 5:25,25 6:1,2 8:  16,25 9:6,13,18,19 12:1,22  18:19 19:5,23 24:2,10 25:1,  4 35:21,21 43:4,4,4 54:16,  16,17,18  <b>alberts</b> [4] 11:24 15:24 18:  17 19:4  <b>albert's</b> [5] 8:14 9:21 12:1  19:19 43:5  <b>allegations</b> [1] 8:9  <b>alleged</b> [3] 25:1 30:11 55:  1  <b>allow</b> [3] 22:5 30:19 58:16  <b>almost</b> [2] 9:10 39:22  <b>alone</b> [3] 8:1 29:10 39:12  <b>already</b> [11] 11:2 32:1 36:</p>	<p>24 39:11 47:16 49:7,8,16  55:1 56:14 57:9  <b>altercation</b> [1] 28:19  <b>amazingly</b> [3] 9:20 12:18  15:6  <b>amend</b> [1] 60:11  <b>amended</b> [1] 46:13  <b>among</b> [6] 6:19 20:10,10  22:11 24:22 54:13  <b>amount</b> [1] 20:4  <b>analogy</b> [1] 10:11  <b>ancillary</b> [1] 24:3  <b>and/or</b> [1] 58:2  <b>animal</b> [11] 18:12,13 19:4,  18,25 20:3 29:10,11 35:11,  12 36:4  <b>anonymized</b> [4] 48:17,21  49:2,3  <b>anonymous</b> [2] 49:22 50:  1  <b>another</b> [11] 8:12 11:22 15:  11,13 17:10 19:7 31:24 39:  23 41:12 43:22 46:23  <b>answer</b> [2] 33:3 60:11  <b>anybody</b> [6] 8:10 9:2 44:8  49:23 50:2,8  <b>anybody's</b> [1] 21:7  <b>app</b> [1] 47:15  <b>apparently</b> [1] 25:21  <b>appealing</b> [1] 39:21  <b>appear</b> [2] 59:12,14  <b>appearance</b> [1] 56:4  <b>appears</b> [1] 26:25  <b>apple</b> [1] 47:15  <b>application</b> [1] 26:13  <b>applications</b> [1] 47:15  <b>appreciate</b> [4] 5:6 40:17  41:5 60:3  <b>appropriate</b> [2] 20:4 52:  16  <b>approximately</b> [1] 27:25  <b>area</b> [1] 50:2  <b>areas</b> [1] 29:3  <b>argues</b> [1] 51:24  <b>arguing</b> [2] 3:21 4:3</p>
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**COMMONWEALTH V. KAREN READ**  
**DOCKET NO. 2282CR00117**  
**MOTIONS HEARING - 10/3/22**

<p><b>argument</b> [3] 16:9 17:16 39:21</p> <p><b>arguments</b> [1] 59:24</p> <p><b>arm</b> [6] 18:13,14,14,16 29:11 36:6</p> <p><b>arms</b> [2] 20:22,24</p> <p><b>around</b> [3] 18:20,20 50:7</p> <p><b>arraignment</b> [2] 31:22 48:4</p> <p><b>arrive</b> [2] 13:17 28:5</p> <p><b>arrived</b> [2] 9:2 13:19</p> <p><b>ascertained</b> [1] 44:21</p> <p><b>asleep</b> [1] 25:4</p> <p><b>assert</b> [1] 43:12</p> <p><b>assertion</b> [1] 43:18</p> <p><b>assertions</b> [1] 28:12</p> <p><b>assigned</b> [4] 39:6 41:4 44:1 46:3</p> <p><b>assignment</b> [6] 38:19 39:3 40:2 41:9 45:20,23</p> <p><b>assignments</b> [1] 45:11</p> <p><b>assumed</b> [1] 61:9</p> <p><b>attached</b> [7] 4:17,19 29:18 40:2 42:8,11 53:4</p> <p><b>attack</b> [1] 18:22</p> <p><b>attempt</b> [1] 14:14</p> <p><b>attention</b> [2] 7:18 47:9</p> <p><b>attorney</b> [5] 3:12,12,13 44:5 58:2</p> <p><b>attorney's</b> [3] 40:3 41:7 44:22</p> <p><b>automated</b> [1] 47:19</p> <p><b>aware</b> [4] 17:5 23:18 31:1 46:2</p> <p><b>away</b> [2] 10:18 32:9</p> <p><b>awfully</b> [1] 20:7</p> <hr/> <p style="text-align: center;"><b>B</b></p> <hr/> <p><b>back</b> [33] 14:4,14 15:9,10,14,16 16:6,16,23 17:23 18:6,8 19:6,14 26:23 28:25 32:14 34:9 35:23,25 36:3,6,6,9,17 37:2,3,4 40:5,7,15 48:7 52:6</p> <p><b>backing</b> [2] 26:14 34:4</p> <p><b>backs</b> [2] 17:9 26:20</p>	<p><b>backwards</b> [1] 28:23</p> <p><b>bald</b> [1] 28:11</p> <p><b>bar</b> [1] 27:16</p> <p><b>based</b> [3] 22:8 30:24 60:9</p> <p><b>bases</b> [1] 44:25</p> <p><b>basic</b> [1] 44:20</p> <p><b>basically</b> [6] 5:16,23 32:19 36:1 46:3 60:14</p> <p><b>basis</b> [2] 23:16 44:25</p> <p><b>beaten</b> [2] 17:22 36:16</p> <p><b>began</b> [1] 12:25</p> <p><b>beginning</b> [2] 7:5 21:10</p> <p><b>behalf</b> [1] 3:13</p> <p><b>behind</b> [1] 60:5</p> <p><b>believe</b> [14] 4:4 6:12,24 16:15 21:3 23:25 34:25 38:17 44:17,24 47:22 49:8 57:8,23</p> <p><b>believes</b> [1] 6:25</p> <p><b>bent</b> [1] 16:15</p> <p><b>bereft</b> [2] 23:14 30:15</p> <p><b>berms</b> [1] 10:14</p> <p><b>best</b> [2] 24:4,25</p> <p><b>bet</b> [3] 20:21,23 33:17</p> <p><b>between</b> [10] 14:3 20:10 22:10 24:1 29:21 30:11 31:15 42:9 54:13 56:4</p> <p><b>beyond</b> [2] 14:18 25:24</p> <p><b>biased</b> [1] 21:21</p> <p><b>big</b> [6] 10:13,14 34:23 43:11,12,25</p> <p><b>bit</b> [6] 13:9 16:25 21:11 25:9 30:21 32:2</p> <p><b>bite</b> [5] 18:10 19:18,18 29:9,10</p> <p><b>bleeding</b> [1] 29:4</p> <p><b>blizzard</b> [2] 27:24,24</p> <p><b>blocked</b> [1] 50:9</p> <p><b>blood</b> [5] 9:12,17 16:24 17:1 29:5</p> <p><b>blower</b> [9] 14:17,19 27:19,20,21 36:20,21,21,22</p> <p><b>body</b> [15] 8:13,20 9:3,6 10:19,21 11:8 12:13 14:12,12 31:18 36:2 37:4 43:14 50:10</p>	<p>10</p> <p><b>boston</b> [1] 29:24</p> <p><b>both</b> [5] 27:6 31:21,21 42:20 54:24</p> <p><b>bottom</b> [2] 36:12 42:1</p> <p><b>bourgeois</b> [1] 30:17</p> <p><b>bracketed</b> [2] 21:5 37:17</p> <p><b>bracketing</b> [1] 5:21</p> <p><b>brain</b> [1] 29:4</p> <p><b>brand</b> [1] 52:18</p> <p><b>break</b> [1] 27:12</p> <p><b>brian</b> [11] 5:25 6:1 9:19 12:1,1,22 19:5 35:21,21 54:16,17</p> <p><b>brief</b> [1] 53:24</p> <p><b>briefly</b> [1] 32:10</p> <p><b>bright</b> [1] 15:4</p> <p><b>bring</b> [1] 7:17</p> <p><b>broad</b> [3] 30:9,14 59:8</p> <p><b>broken</b> [1] 27:11</p> <p><b>brother</b> [2] 12:2,2</p> <p><b>brother-in-law</b> [1] 9:18</p> <p><b>brought</b> [2] 18:5 40:15</p> <p><b>bucket</b> [1] 54:11</p> <p><b>build</b> [1] 52:4</p> <p><b>bulb</b> [1] 34:15</p> <p><b>bumper</b> [2] 16:19,21</p> <p><b>bunch</b> [4] 37:8,11,12 59:19</p> <hr/> <p style="text-align: center;"><b>C</b></p> <hr/> <p><b>cabal</b> [1] 29:21</p> <p><b>calibrate</b> [1] 33:15</p> <p><b>calibrated</b> [2] 33:20,21</p> <p><b>california</b> [1] 61:2</p> <p><b>call</b> [14] 8:22 23:5 24:9 25:1,3,5,7 33:1,3,4,6 39:5 40:11 54:7</p> <p><b>called</b> [3] 15:8,10 55:6</p> <p><b>calls</b> [3] 15:7 44:23 56:17</p> <p><b>came</b> [1] 19:16</p> <p><b>canine</b> [1] 19:11</p> <p><b>canton</b> [5] 14:4 27:20 29:23 49:1 54:14</p> <p><b>car</b> [14] 13:23 14:2,4,5 17:10,11 18:8,24 19:1 33:25</p>	<p>34:1,6,7,9</p> <p><b>care</b> [3] 7:5 44:14 57:14</p> <p><b>case</b> [29] 6:18 7:6,23 11:21 14:9 19:14 21:8,10 24:8 25:10 37:21,24 40:18 41:4,9,21 43:11 44:1,19 45:11 48:8,22 50:4,12 54:10,15 58:24 59:8 60:13</p> <p><b>caselaw</b> [1] 30:17</p> <p><b>cases</b> [1] 30:18</p> <p><b>category</b> [2] 50:5 54:19</p> <p><b>cause</b> [1] 31:3</p> <p><b>caused</b> [4] 17:23 29:4,5,5</p> <p><b>caveat</b> [1] 23:7</p> <p><b>cell</b> [8] 4:3 5:18,19 20:21,22,23 23:17 26:16</p> <p><b>center</b> [1] 28:6</p> <p><b>cert</b> [3] 15:8,15 28:10</p> <p><b>certain</b> [3] 21:3 43:17 45:18</p> <p><b>certainly</b> [10] 15:23 29:19 31:25 32:21 45:24 46:4 56:14 57:10 59:18 61:2</p> <p><b>chain</b> [1] 54:7</p> <p><b>characterize</b> [1] 29:9</p> <p><b>charged</b> [1] 10:3</p> <p><b>chart</b> [1] 9:11</p> <p><b>check</b> [1] 35:13</p> <p><b>chevrolet</b> [2] 34:18,18</p> <p><b>children</b> [1] 12:3</p> <p><b>chris</b> [1] 43:4</p> <p><b>circumspection</b> [1] 30:16</p> <p><b>circumstance</b> [1] 50:11</p> <p><b>circumstances</b> [4] 6:23 17:17 38:18 41:3</p> <p><b>circumstantial</b> [1] 35:7</p> <p><b>civil</b> [1] 38:25</p> <p><b>civilians</b> [2] 29:21,23</p> <p><b>claim</b> [2] 10:1 19:5</p> <p><b>claimed</b> [1] 19:6</p> <p><b>claims</b> [1] 44:5</p> <p><b>clarify</b> [3] 22:20 57:22,23</p> <p><b>clear</b> [5] 39:10,12 41:12 48:21 58:1</p>
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**COMMONWEALTH V. KAREN READ**  
**DOCKET NO. 2282CR00117**  
**MOTIONS HEARING - 10/3/22**

<p><b>clearly</b> [2] 13:11 16:1  <b>clerk</b> [25] 3:3 5:1,3 40:11, 14,19,21,23 53:1,2 58:12, 13,18,23 59:5 60:9,13,17, 21,25 61:21,24 62:6,11,13  <b>client</b> [5] 8:11 9:23 11:9 15:20 34:4  <b>close</b> [6] 9:16 11:24,24 26:25 31:4 32:5  <b>closed</b> [1] 17:7  <b>closer</b> [1] 14:2  <b>clothing</b> [1] 10:20  <b>cocktail</b> [3] 16:19 27:16, 18  <b>colleague</b> [1] 51:24  <b>collected</b> [1] 54:9  <b>collin</b> [3] 6:1 43:4 54:17  <b>come</b> [8] 17:8 26:25 29:6 30:22 31:3 37:3 40:7 44:10  <b>comes</b> [5] 15:9,16 30:5 34:11 35:20  <b>commentary</b> [2] 43:3 44:9  <b>common</b> [1] 33:17  <b>commonwealth</b> [36] 3:6, 8 6:6,11 7:4,22 9:22 12:6 13:2,3,7,8,16 17:4 18:4 21:9 22:1 23:9,24 29:14 30:8 31:1 33:11 34:22 35:11 36:23 37:15 38:4,21 39:16 41:16 44:15 45:1 47:16 49:14 58:10  <b>commonwealth's</b> [8] 4:9 7:18 8:2 16:3 18:25 33:13 36:19 45:14  <b>communicate</b> [1] 20:20  <b>communicates</b> [1] 20:25  <b>communicating</b> [1] 21:24  <b>communication</b> [1] 20:20  <b>communications</b> [10] 11:10,13 20:9,11 21:4 22:10 30:11,12 54:12 56:21  <b>compare</b> [1] 19:11</p>	<p><b>comparison</b> [1] 19:12  <b>compel</b> [3] 46:13 53:19 54:2  <b>compelling</b> [1] 8:5  <b>complete</b> [1] 27:7  <b>completely</b> [4] 24:14 30:15 34:13,24  <b>compliance</b> [1] 61:21  <b>comply</b> [3] 37:18,22 47:21  <b>compromised</b> [2] 7:7 21:21  <b>conceivable</b> [1] 15:2  <b>conceivably</b> [1] 36:11  <b>conception</b> [1] 14:18  <b>concern</b> [3] 19:17 29:20 49:24  <b>concerned</b> [3] 25:8 26:11 48:13  <b>concerning</b> [3] 11:10 35:10 37:19  <b>concluded</b> [1] 62:14  <b>conclusion</b> [1] 44:11  <b>concomitant</b> [1] 5:19  <b>conduct</b> [1] 36:13  <b>conducting</b> [1] 27:23  <b>conferred</b> [3] 55:25 58:16 61:9  <b>confirmation</b> [2] 47:20 57:1  <b>confirming</b> [1] 25:20  <b>confirms</b> [1] 11:16  <b>conflict</b> [15] 6:23 7:2,2,8 12:11 15:25 23:23,25 39:2, 10,12,12 44:7,12 45:24  <b>conflicts</b> [1] 6:24  <b>conform</b> [1] 26:9  <b>confusion</b> [1] 48:1  <b>connected</b> [4] 7:14 12:1 33:19,19  <b>connects</b> [1] 15:20  <b>consent</b> [1] 20:17  <b>consistent</b> [5] 10:8 18:1,2 19:4 28:19  <b>conspiracy</b> [5] 23:15 29:21 30:3,12 34:23</p>	<p><b>contact</b> [3] 26:22 34:7,18  <b>contacting</b> [1] 58:3  <b>contacts</b> [1] 44:2  <b>contained</b> [3] 23:13 25:24 30:13  <b>content</b> [1] 30:10  <b>contested</b> [2] 4:4 57:24  <b>context</b> [1] 24:15  <b>continuation</b> [1] 61:12  <b>continued</b> [1] 11:15  <b>control</b> [3] 19:25 20:3 44:14  <b>controversy</b> [1] 6:16  <b>convenient</b> [3] 20:7,15 35:17  <b>conversation</b> [1] 21:17  <b>copies</b> [2] 56:16 57:10  <b>cops</b> [1] 37:12  <b>cops'</b> [1] 37:12  <b>copy</b> [1] 31:24  <b>coroner's</b> [1] 14:15  <b>correct</b> [4] 16:4 32:17,17 51:9  <b>couldn't</b> [2] 16:7 43:9  <b>counsel</b> [23] 3:5,14 6:5,5 23:3,22 24:9 28:12,16,17 29:15 30:22 31:21 39:1,4 47:23 48:14 49:20 56:15 57:12 61:1,2 62:2  <b>counsel's</b> [1] 47:9  <b>county</b> [2] 29:22 39:23  <b>couple</b> [6] 5:10 7:18,19 9:14 23:21 48:13  <b>coupled</b> [1] 34:8  <b>course</b> [10] 7:13 11:18 12:24 19:7 21:16,16,18,25 25:19 26:10  <b>courtroom</b> [1] 33:18  <b>court's</b> [7] 7:17 38:7 41:6 47:9 48:21 51:15 61:19  <b>cover</b> [3] 37:5 57:3,4  <b>covered</b> [1] 39:15  <b>coverup</b> [2] 20:14,19  <b>cpac</b> [5] 29:22 39:4,23 40:2 45:20</p>	<p><b>crack</b> [2] 34:16,20  <b>cracked</b> [1] 34:19  <b>created</b> [1] 53:8  <b>crevice</b> [1] 34:16  <b>crime</b> [5] 11:20 15:9,11,19 35:15  <b>criminal</b> [3] 3:3 6:21 44:18  <b>criteria</b> [1] 32:24  <b>critical</b> [1] 54:14  <b>crucial</b> [2] 42:2 48:22  <b>cursorly</b> [1] 44:21  <b>custodians</b> [2] 20:1,1  <b>custody</b> [4] 44:14 49:1 51:12 54:7  <b>cut</b> [3] 17:25 18:1 26:21</p> <hr/> <p style="text-align: center;"><b>D</b></p> <hr/> <p><b>damage</b> [2] 27:8,12  <b>damaged</b> [1] 26:12  <b>daniels</b> [1] 43:5  <b>dark</b> [1] 10:20  <b>da's</b> [1] 22:3  <b>data</b> [3] 5:19 37:20 46:15  <b>date</b> [10] 26:1,6 31:22 35:9 41:13,18 46:4 48:16 58:12 62:2  <b>dates</b> [1] 24:18  <b>david</b> [1] 3:11  <b>day</b> [8] 25:13 36:18 54:16 58:22,24,24,25 60:14  <b>daylight</b> [1] 26:7  <b>days</b> [5] 5:21 11:14 20:21 37:18 48:14  <b>dead</b> [8] 8:8 11:3 12:13,15 17:7 21:23 25:3 43:14  <b>deal</b> [4] 4:5 43:11,12 48:15  <b>deals</b> [1] 6:4  <b>death</b> [8] 7:15 8:10,19 9:2, 23 33:5 36:14,16  <b>deaths</b> [1] 45:12  <b>debilitating</b> [1] 7:4  <b>debris</b> [1] 19:2  <b>decade</b> [1] 39:22  <b>decide</b> [1] 61:13  <b>decisions</b> [1] 20:8  <b>declaration</b> [3] 32:12,20,</p>
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**Sheet 3**

**COMMONWEALTH V. KAREN READ**  
**DOCKET NO. 2282CR00117**  
**MOTIONS HEARING - 10/3/22**

<p>23  <b>deemed</b> [1] 50:2  <b>defend</b> [1] 22:5  <b>defendant</b> [4] 23:10 28:23 30:7 31:15  <b>defendant's</b> [4] 23:10 25:22 29:19 51:25  <b>defense</b> [7] 5:7 6:25 19:10 37:21 42:3 51:17 58:2  <b>defense's</b> [1] 19:17  <b>defensive</b> [6] 18:3,6,7 28:13,14 29:12  <b>definition</b> [1] 50:4  <b>demise</b> [2] 8:7 10:2  <b>denied</b> [2] 23:10 32:6  <b>deny</b> [2] 37:23,24  <b>department</b> [1] 54:14  <b>depending</b> [1] 61:19  <b>depose</b> [1] 44:18  <b>detailed</b> [3] 10:17 13:10, 10  <b>detailing</b> [1] 46:3  <b>details</b> [1] 28:21  <b>determine</b> [2] 44:7,16  <b>different</b> [7] 24:18,18 39:9 42:7 52:5,15 56:23  <b>difficult</b> [1] 35:18  <b>dighton</b> [1] 25:23  <b>digital</b> [2] 57:1,11  <b>direct</b> [4] 12:2 35:7 47:9 61:18  <b>directed</b> [1] 30:24  <b>direction</b> [1] 16:17  <b>directions</b> [1] 42:7  <b>directly</b> [5] 7:14 8:2 10:19 49:5 51:17  <b>dirt</b> [1] 19:2  <b>disc</b> [1] 56:16  <b>discovered</b> [3] 8:20 15:1 31:17  <b>discovery</b> [12] 8:3 23:19 30:20 38:18 41:3 45:15 53:19 54:2 61:15,21,23 62:6  <b>discussed</b> [3] 12:24 33:1 54:15</p>	<p><b>disingenuous</b> [1] 24:25  <b>dismiss</b> [1] 45:1  <b>dispatch</b> [2] 54:8 56:17  <b>dispute</b> [1] 33:3  <b>district</b> [7] 40:3 41:7 44:22 48:8 52:1,6,20  <b>district's</b> [1] 44:4  <b>ditches</b> [1] 10:13  <b>divorced</b> [1] 24:14  <b>dna</b> [1] 19:12  <b>docket</b> [3] 52:5 53:8,10  <b>documentary</b> [1] 12:7  <b>documentation</b> [5] 20:2 39:14 45:19,21 54:7  <b>dog</b> [14] 18:10,20,21 19:13, 18,20,22,24 20:2 35:14,20, 22 36:3,5  <b>dog's</b> [2] 20:6 35:17  <b>doing</b> [2] 6:18 61:8  <b>done</b> [7] 15:13 31:8,15 44:6 49:12 51:13 53:4  <b>doubt</b> [1] 51:21  <b>down</b> [2] 57:15 61:4  <b>downloaded</b> [1] 47:15  <b>drafted</b> [1] 49:9  <b>dragged</b> [1] 18:25  <b>drinking</b> [1] 12:14  <b>drive</b> [3] 6:10 26:19 34:9  <b>driven</b> [3] 33:25 54:22 55:7  <b>drives</b> [1] 34:9  <b>driveway</b> [5] 26:12,13,14, 24 27:2  <b>drove</b> [1] 50:8  <b>drunk</b> [1] 12:14  <b>due</b> [1] 37:24  <b>during</b> [8] 7:13 11:18 12:24 19:7 21:15,16,18 37:7  <b>duty</b> [4] 39:4,7 46:2,4  <b>dying</b> [1] 8:8</p> <hr/> <p style="text-align: center;"><b>E</b></p> <hr/> <p><b>each</b> [5] 21:1 23:4 24:5 27:1 39:9  <b>earlier</b> [5] 31:23 41:14 45:3 46:9 56:15</p>	<p><b>early</b> [2] 5:22 54:23  <b>ease</b> [1] 31:10  <b>easy</b> [1] 35:15  <b>eexhibits</b> [1] 5:2  <b>effect</b> [2] 57:25,25  <b>effort</b> [1] 62:1  <b>efforts</b> [1] 14:14  <b>eight</b> [1] 56:22  <b>either</b> [9] 11:1,9 17:1 42:19 43:11,19 50:10,11 55:14  <b>elizabeth</b> [1] 3:12  <b>employed</b> [1] 27:20  <b>enclosed</b> [2] 34:14,14  <b>end</b> [1] 48:1  <b>ending</b> [1] 13:14  <b>ends</b> [1] 12:15  <b>enforcement</b> [1] 49:16  <b>enormously</b> [1] 17:17  <b>enough</b> [1] 52:23  <b>entered</b> [1] 50:8  <b>entire</b> [3] 28:17 36:12,25  <b>entirely</b> [3] 23:14 29:16 59:15  <b>entirety</b> [2] 29:22 46:5  <b>entitled</b> [2] 22:12 57:17  <b>especially</b> [3] 5:12 6:20 59:14  <b>essentially</b> [9] 22:23 24:13 25:21 29:1,14 39:5 47:25 48:10 56:22  <b>establish</b> [1] 16:5  <b>established</b> [2] 7:9 17:12  <b>establishes</b> [1] 22:14  <b>even</b> [8] 12:20 13:21 14:17 15:1 18:19 31:3 32:5 49:22  <b>event</b> [3] 61:6,10,10  <b>events</b> [1] 5:18  <b>eventually</b> [1] 15:12  <b>everybody</b> [5] 6:19 12:12, 21 15:25 20:23  <b>everybody's</b> [2] 12:14,14  <b>everyone</b> [2] 12:18 40:17  <b>everything</b> [6] 4:12 42:3, 14 48:12 52:10 62:1</p>	<p><b>evidence</b> [39] 11:16,18 12:7,7 13:23 14:21,22 15:4,19, 20 16:25 17:13,14 20:14, 16,16 22:1,9 23:20,22 25:16,20 27:1 33:11 34:21 35:7,7,8,10,12,19,23 36:13 37:10 42:2 48:22 54:4,6,10  <b>evidentiary</b> [4] 23:14 30:16 31:4 59:22  <b>exactly</b> [3] 28:8 38:16 45:4  <b>examination</b> [1] 44:21  <b>examiner</b> [5] 18:4 28:15 29:8 30:1 35:2  <b>except</b> [2] 8:16 10:20  <b>excise</b> [1] 50:1  <b>exculpate</b> [1] 22:11  <b>exculpatory</b> [2] 11:9 22:13  <b>exhibit</b> [3] 31:13,19 42:20  <b>exhibits</b> [3] 8:2 42:8,13  <b>exigencies</b> [1] 21:3  <b>existed</b> [1] 14:8  <b>exists</b> [1] 23:15  <b>expect</b> [1] 62:1  <b>expert</b> [1] 30:24  <b>experts</b> [1] 19:25  <b>explained</b> [2] 38:2 39:3  <b>explanation</b> [1] 9:7  <b>extensive</b> [4] 24:16 29:6 44:2,6  <b>extensively</b> [1] 7:10  <b>extent</b> [2] 43:13 61:12  <b>extraction</b> [4] 31:8,12,14, 19  <b>extraordinarily</b> [1] 21:15  <b>extraordinary</b> [3] 21:2 37:13 42:4  <b>extremely</b> [1] 59:7  <b>eye</b> [1] 17:25  <b>eyes</b> [1] 29:5</p> <hr/> <p style="text-align: center;"><b>F</b></p> <hr/> <p><b>face</b> [3] 18:15 28:21 53:9  <b>facing</b> [1] 36:15  <b>fact</b> [10] 8:16 13:5 17:5 19:</p>
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**COMMONWEALTH V. KAREN READ**  
**DOCKET NO. 2282CR00117**  
**MOTIONS HEARING - 10/3/22**

15,19 20:7 22:8 23:12,13 34:8 <b>facts</b> [14] 7:9,23 8:5 11:11 13:6 20:14 21:20 23:21 29: 17 32:18,25 42:13 44:20 60:15 <b>factual</b> [1] 30:25 <b>fair</b> [1] 52:23 <b>fairly</b> [1] 41:12 <b>fairview</b> [1] 54:25 <b>fall</b> [1] 58:3 <b>falling</b> [1] 28:23 <b>families</b> [4] 37:12 42:6,10 44:10 <b>family</b> [7] 11:24,24 12:2,22 19:23 24:2 43:4 <b>fanciful</b> [6] 7:21,22 12:5 16:9,9 23:12 <b>far</b> [20] 22:9 23:22 25:8,20 26:11,24 27:19 30:15 31:4 39:1,14 45:19,20 48:2,12, 17 49:10 56:15 57:1,11 <b>fashion</b> [1] 15:21 <b>february</b> [2] 5:24 11:15 <b>federal</b> [1] 29:25 <b>feel</b> [1] 39:11 <b>feet</b> [5] 16:12,12 18:15 27: 25 28:8 <b>female</b> [3] 8:13 31:17 54: 21 <b>few</b> [3] 11:13,14 44:23 <b>fight</b> [2] 18:2 28:13 <b>file</b> [4] 4:20 30:22 52:8 53: 16 <b>filed</b> [5] 4:16 38:9 42:17 52: 1,15 <b>filing</b> [2] 52:14,15 <b>find</b> [10] 8:21 9:3,4,10,10 14:23 15:1 17:8 21:23 37: 14 <b>finding</b> [1] 54:5 <b>fine</b> [10] 4:25 31:24 38:13 40:9 46:25 47:2 53:11,17 60:11 61:16 <b>first</b> [12] 3:3 4:5 8:9 11:5	13:8 16:4 19:16 21:12 22: 24 30:8 32:12 51:5 <b>fist</b> [1] 18:2 <b>fit</b> [3] 30:3 49:19 50:5 <b>five</b> [6] 17:6,7,21 24:14 33: 8 34:3 <b>flag</b> [1] 52:17 <b>flash</b> [1] 34:10 <b>flat</b> [2] 10:12,15 <b>flow</b> [1] 4:6 <b>flows</b> [1] 42:3 <b>fly</b> [1] 59:25 <b>focused</b> [1] 54:3 <b>force</b> [1] 27:11 <b>forensically</b> [1] 6:9 <b>form</b> [5] 15:21 38:24 44:25 45:17 52:12 <b>formally</b> [1] 57:15 <b>format</b> [1] 57:11 <b>forms</b> [1] 23:16 <b>forthwith</b> [1] 49:17 <b>forward</b> [4] 34:10 38:3,11 41:23 <b>found</b> [14] 8:13,19 13:3 14: 12 16:19 17:3 19:2,21 27:2, 18 28:9 36:8,24 43:15 <b>fracture</b> [1] 17:23 <b>fractures</b> [2] 17:24 29:2 <b>frame</b> [1] 30:5 <b>frankly</b> [2] 31:11 43:9 <b>frantically</b> [1] 34:4 <b>friend</b> [3] 11:24,25 43:23 <b>friends</b> [2] 9:16 12:22 <b>friendships</b> [1] 44:2 <b>front</b> [5] 8:14 12:13,15 25: 12 37:5 <b>frontal</b> [1] 29:2 <b>full</b> [3] 17:6 31:8,12 <b>full-grown</b> [2] 18:17 35: 24 <b>fully</b> [3] 6:7 23:24 56:25 <b>further</b> [6] 7:24 48:15 57: 10 58:10 61:15,23 <hr/> <b>G</b> <hr/> <b>gap</b> [2] 14:3 15:15	<b>garage</b> [2] 17:10 34:5 <b>gash</b> [1] 28:25 <b>gas-powered</b> [1] 36:21 <b>gathered</b> [1] 12:21 <b>gave</b> [1] 19:17 <b>gentleman</b> [1] 21:14 <b>geofence</b> [3] 42:20 46:14 48:12 <b>german</b> [3] 18:17 19:5 35: 24 <b>gets</b> [1] 17:9 <b>getting</b> [1] 41:6 <b>girlfriend</b> [2] 55:6,7 <b>give</b> [4] 48:11 59:11,18 62: 1 <b>given</b> [4] 7:18 23:1 49:14, 21 <b>glance</b> [1] 33:23 <b>glass</b> [12] 14:24 15:5 16: 18,19,21 27:2,14,17,17,18 28:1,9 <b>goodness</b> [1] 35:16 <b>google</b> [4] 46:13 47:20,21 49:5 <b>got</b> [11] 6:9 7:19 13:22 17: 12 19:3 21:22,23 33:14,17 40:6 52:5 <b>governmental</b> [1] 33:14 <b>grabbed</b> [1] 27:21 <b>gracious</b> [2] 21:15 56:1 <b>grand</b> [17] 4:17,19,22 13: 18,22 18:5 24:12,16,19,23 28:16,22 29:7 31:10,13,20 46:24 <b>grave</b> [1] 29:20 <b>gravel</b> [1] 19:2 <b>great</b> [1] 62:13 <b>ground</b> [1] 16:14 <b>grounds</b> [1] 42:13 <b>guess</b> [1] 23:4 <b>guy</b> [1] 12:15 <hr/> <b>H</b> <hr/> <b>hair</b> [1] 35:14 <b>half</b> [1] 16:12 <b>hammer</b> [1] 16:8	<b>hand</b> [6] 16:20,22 18:6 27: 17 45:4,8 <b>handling</b> [1] 54:4 <b>hands</b> [1] 49:6 <b>happened</b> [2] 21:25 37:7 <b>happening</b> [1] 15:23 <b>happily</b> [1] 37:22 <b>happy</b> [4] 39:8 45:25 46:5 47:4 <b>hard</b> [1] 6:10 <b>head</b> [7] 16:16,23 17:20,22, 23 28:24,25 <b>hear</b> [5] 4:10 5:5 41:1 43:9 47:5 <b>heard</b> [3] 41:14,17 46:9 <b>hearing</b> [5] 3:19 23:7 61: 12,15 62:14 <b>help</b> [1] 54:8 <b>helps</b> [1] 45:5 <b>heroic</b> [1] 14:14 <b>herself</b> [1] 18:5 <b>higgins</b> [2] 6:1 54:17 <b>highlight</b> [1] 5:9 <b>highlighted</b> [1] 7:16 <b>hinchey</b> [2] 3:12,15 <b>hit</b> [6] 10:3 16:5,11,16,22 27:11 <b>hits</b> [1] 17:10 <b>hockey</b> [2] 10:11 36:2 <b>holders</b> [1] 23:5 <b>holding</b> [1] 16:21 <b>home</b> [12] 17:9 24:7,7 26: 12,18 43:15,16,22,23 44:3 54:22 55:7 <b>honor</b> [42] 3:7,10,15 4:1, 11,21 5:3 9:9 10:10 22:19, 20,21 23:9 24:16 29:14 30: 6 32:3 34:24 37:14 38:13, 23 39:21 40:10,19 41:5 46: 11 47:7 49:13 51:20 53:22 55:22 56:13 57:18,19 58:6, 15 59:2,21 60:10 61:7,24 62:10 <b>hose</b> [1] 51:2 <b>hospital</b> [1] 14:14
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**Sheet 5**



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**DOCKET NO. 2282CR00117**  
**MOTIONS HEARING - 10/3/22**

<p><b>hour</b> [4] 8:20 14:2 15:14 26:6</p> <p><b>hours</b> [7] 5:22 7:20 17:6,7 28:10 34:3 60:5</p> <p><b>house</b> [12] 8:15 9:6,13,21 12:23 13:14,17 25:12,22 36:9,12,17</p> <p><b>housekeeping</b> [1] 59:3</p> <p><b>houses</b> [1] 27:21</p> <p><b>however</b> [4] 27:1 41:11,24 53:10</p> <p><b>human</b> [1] 17:1</p> <p><b>humans</b> [1] 18:20</p> <p><b>hung</b> [1] 47:24</p> <hr/> <p><b>I</b></p> <hr/> <p><b>ian</b> [1] 3:12</p> <p><b>idea</b> [1] 26:5</p> <p><b>identification</b> [1] 54:20</p> <p><b>identify</b> [2] 3:5 49:23</p> <p><b>image</b> [1] 6:11</p> <p><b>imaged</b> [2] 6:7,9</p> <p><b>immediately</b> [2] 14:13 33:6</p> <p><b>important</b> [3] 13:20 14:6 19:10</p> <p><b>impound</b> [3] 4:20,24 5:2</p> <p><b>impounded</b> [2] 4:23 47:1</p> <p><b>inches</b> [1] 16:14</p> <p><b>incident</b> [2] 5:21 15:22</p> <p><b>include</b> [3] 12:16 47:14,14</p> <p><b>included</b> [1] 24:12</p> <p><b>includes</b> [2] 5:24 11:23</p> <p><b>inconsistencies</b> [1] 20:15</p> <p><b>inconsistency</b> [1] 20:15</p> <p><b>inconsistent</b> [1] 18:23</p> <p><b>inconvenient</b> [2] 13:6,7</p> <p><b>incredible</b> [2] 21:14,14</p> <p><b>incredibly</b> [2] 19:9 35:18</p> <p><b>incriminating</b> [1] 9:21</p> <p><b>independent</b> [1] 25:18</p> <p><b>indicate</b> [2] 7:21 9:25</p> <p><b>indicated</b> [10] 9:19 11:21 13:8,12,16 14:1 20:1 33:11 41:16 47:23</p>	<p><b>indicates</b> [2] 8:16 34:22</p> <p><b>indicating</b> [1] 25:2</p> <p><b>indication</b> [2] 28:14 29:12</p> <p><b>indictment</b> [1] 52:2</p> <p><b>individual</b> [1] 8:12</p> <p><b>individuals</b> [9] 5:24 8:6 9:11,14 16:2 20:10 22:11 30:23 35:4</p> <p><b>inform</b> [1] 25:6</p> <p><b>information</b> [8] 21:2 22:10,13 54:12,19 55:3 56:2,5</p> <p><b>informed</b> [1] 33:5</p> <p><b>initial</b> [2] 12:18 27:23</p> <p><b>injuries</b> [2] 28:18,21</p> <p><b>innocuous</b> [1] 12:8</p> <p><b>inquire</b> [3] 45:25 55:17 56:17</p> <p><b>instance</b> [1] 12:8</p> <p><b>intangible</b> [1] 23:5</p> <p><b>integrally</b> [1] 11:22</p> <p><b>intent</b> [3] 47:21 52:13,14</p> <p><b>intention</b> [1] 25:5</p> <p><b>interconnected</b> [1] 12:4</p> <p><b>interest</b> [9] 6:23 7:2 16:1 23:24 24:1 39:3 44:7,12 45:24</p> <p><b>interested</b> [1] 54:5</p> <p><b>interests</b> [3] 6:24 7:3,3</p> <p><b>internal</b> [1] 29:4</p> <p><b>interrogatories</b> [2] 38:25 45:15</p> <p><b>interrupt</b> [1] 4:15</p> <p><b>interrupted</b> [1] 41:2</p> <p><b>intertwined</b> [1] 42:7</p> <p><b>intertwining</b> [1] 44:10</p> <p><b>interview</b> [5] 8:18 19:8 24:8 55:17,19</p> <p><b>interviewed</b> [3] 12:21 19:25 55:14</p> <p><b>interviews</b> [1] 12:25</p> <p><b>invade</b> [1] 21:7</p> <p><b>inverted</b> [1] 9:24</p> <p><b>investigate</b> [2] 21:8 37:24</p> <p><b>investigated</b> [1] 21:9</p> <p><b>investigating</b> [3] 12:12</p>	<p>16:2 24:21</p> <p><b>investigation</b> [18] 7:7,13 8:4 11:15,18 12:11,16,23 14:1 21:16,19 24:2,17 25:19 38:19 44:6,16,22</p> <p><b>investigations</b> [1] 45:11</p> <p><b>investigation's</b> [1] 15:8</p> <p><b>investigator</b> [4] 7:10 12:20 35:22 58:2</p> <p><b>investigators</b> [2] 19:24 35:21</p> <p><b>involved</b> [10] 8:6 11:22 12:8,12 21:4 22:3 30:5 34:25 35:2,3</p> <p><b>involves</b> [1] 37:11</p> <p><b>irini</b> [1] 28:15</p> <p><b>isn't</b> [1] 35:17</p> <p><b>issue</b> [10] 4:1 23:17 24:10 31:25 39:16 48:2,18 49:19 51:2 56:20</p> <p><b>issued</b> [1] 49:5</p> <p><b>issues</b> [3] 11:11 42:6 54:3</p> <p><b>items</b> [1] 5:14</p> <p><b>it'll</b> [1] 59:18</p> <hr/> <p><b>J</b></p> <hr/> <p><b>jackson</b> [26] 3:13 4:2,10,11 5:5,6,12 6:15 32:8,10,12,17 42:5 43:13 59:2,7,10,17,23 60:2,7,12,16,18,23 62:10</p> <p><b>january</b> [5] 5:18,21,23 46:6 54:23</p> <p><b>jennifer</b> [6] 6:4 8:12,22,25 54:17,23</p> <p><b>jim</b> [1] 61:23</p> <p><b>jimmy</b> [2] 40:6,18</p> <p><b>job</b> [1] 30:5</p> <p><b>john</b> [9] 7:14 8:7 9:23 11:2 14:11,12 17:6 34:5 36:14</p> <p><b>john's</b> [2] 9:1 33:5</p> <p><b>journey</b> [1] 7:22</p> <p><b>judge</b> [9] 4:25 23:3 42:2 46:25 48:20 52:19,23 53:17 57:21</p> <p><b>julie</b> [10] 6:1,2 8:16,25 24:</p>	<p>10 25:1 33:2 43:5,5 54:18</p> <p><b>june</b> [1] 48:4</p> <p><b>jurisprudence</b> [1] 6:20</p> <p><b>jury</b> [17] 4:17,19,22 13:19,22 18:5 24:12,17,19,23 28:16,22 29:7 31:10,13,20 46:24</p> <p><b>jury-waived</b> [2] 58:24 60:13</p> <p><b>justification</b> [2] 6:17 23:23</p> <hr/> <p><b>K</b></p> <hr/> <p><b>karen</b> [8] 3:4,11,13 8:11 11:2 13:13 17:9 40:14</p> <p><b>karp</b> [1] 23:3</p> <p><b>keep</b> [2] 9:11 15:14</p> <p><b>key</b> [1] 5:17</p> <p><b>killed</b> [3] 10:23 17:6 50:6</p> <p><b>killling</b> [1] 7:14</p> <p><b>kitchen</b> [1] 9:20</p> <p><b>knees</b> [1] 18:15</p> <p><b>knowledge</b> [1] 33:17</p> <p><b>known</b> [2] 9:1,1</p> <p><b>knows</b> [1] 17:5</p> <hr/> <p><b>L</b></p> <hr/> <p><b>lab</b> [1] 35:16</p> <p><b>laid</b> [1] 32:19</p> <p><b>lally</b> [59] 3:7,8,9 21:12 22:18,19 23:1 38:2,7,13,15,17,23 39:14 43:9 44:5 45:2,9 46:20,22,25 47:2,3,7,12 48:6,10 49:8 50:13,14,17,22,24 51:6,9,18,20 52:11 55:9,11,12,21,23,25 56:8,11,13 57:8 58:4,6,10,14 59:20,21 61:6,15,18,25 62:4</p> <p><b>lamp</b> [3] 16:13 34:11,12</p> <p><b>large</b> [1] 29:20</p> <p><b>largely</b> [1] 54:3</p> <p><b>last</b> [8] 31:6 40:18,23 46:20 48:17,20 51:23 59:8</p> <p><b>lastly</b> [1] 30:21</p> <p><b>later</b> [6] 15:1 17:7 25:13 28:10 33:8 34:4</p>
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**Sheet 6**

**COMMONWEALTH V. KAREN READ**  
**DOCKET NO. 2282CR00117**  
**MOTIONS HEARING - 10/3/22**

<p><b>law</b> [3] 6:21 20:5 49:16  <b>laying</b> [2] 8:14 10:20  <b>lead</b> [2] 7:9 22:11  <b>leading</b> [2] 11:14 36:13  <b>leaf</b> [3] 27:21 36:21,21  <b>learned</b> [1] 6:20  <b>least</b> [4] 6:6 19:6 35:22 37:10  <b>leave</b> [1] 56:8  <b>leaving</b> [1] 27:16  <b>led</b> [3] 7:6 10:2,23  <b>left</b> [11] 11:2 16:20,22 17:7 18:14 27:24 33:2 38:16 46:12 54:25 61:13  <b>legs</b> [1] 18:15  <b>lens</b> [10] 15:17 16:6,7 17:2 34:11,12,14,16,17,19  <b>lenses</b> [1] 17:2  <b>level</b> [1] 6:10  <b>light</b> [1] 34:10  <b>likely</b> [2] 11:20 16:7  <b>limited</b> [3] 5:20 21:5 30:10  <b>line</b> [3] 13:10 22:3 42:1  <b>list</b> [14] 3:3 40:8 48:17,21 49:2,3,21 50:2 51:1,7,12,13,16 52:7  <b>listed</b> [1] 35:5  <b>listened</b> [2] 33:7,7  <b>lists</b> [1] 51:1  <b>literally</b> [2] 39:24 48:11  <b>little</b> [16] 3:12 13:9 31:23 32:1 47:24 48:1 51:24 53:19,22,24 54:2 55:22,25 57:4,18 59:3  <b>locate</b> [1] 31:24  <b>location</b> [4] 11:2 27:25 36:25,25  <b>logs</b> [2] 54:7 56:17  <b>look</b> [5] 19:18 34:5 42:2,17 44:8  <b>looked</b> [5] 9:20 10:6,16 17:20 18:12  <b>looking</b> [10] 10:9,18 14:21 15:3 16:17 21:7 36:1 38:11,11 45:12</p>	<p><b>looks</b> [1] 36:15  <b>lot</b> [6] 9:9 13:4 33:17 40:6 42:5 56:13  <b>lying</b> [1] 11:4</p> <hr/> <p style="text-align: center;"><b>M</b></p> <hr/> <p><b>made</b> [6] 13:1 19:16 20:9 34:18 41:20 48:24  <b>major</b> [1] 54:3  <b>man</b> [3] 10:20 16:11 36:15  <b>maneuver</b> [1] 26:22  <b>manifold</b> [2] 6:17 23:23  <b>many</b> [1] 35:3  <b>marked</b> [2] 31:12,19  <b>marks</b> [2] 19:18,19  <b>marriage</b> [2] 9:12,17  <b>massachusetts</b> [5] 10:10 20:4 48:25 54:13 59:6  <b>matches</b> [1] 29:1  <b>matt</b> [1] 36:1  <b>matter</b> [7] 19:15 22:8 35:19 38:20 40:14 48:25 59:11  <b>matters</b> [1] 45:20  <b>matthew</b> [4] 6:1 9:8,18 54:16  <b>mauled</b> [2] 18:13 29:11  <b>mccabe</b> [17] 6:1,4 8:12,22 9:1,8,18 10:5 25:2 31:15,15,16 33:2 36:1 54:17,17,24  <b>mccabes</b> [1] 15:24  <b>mccabe's</b> [4] 26:18 31:7,9 32:1  <b>mean</b> [3] 45:16 50:14 59:15  <b>meaning</b> [1] 54:24  <b>means</b> [3] 8:23,24 16:20  <b>meant</b> [1] 61:10  <b>media</b> [3] 42:9,21 44:9  <b>medical</b> [6] 18:3 28:6,15 29:8 30:1 35:2  <b>meet</b> [4] 32:23 56:3 57:14,15  <b>meeting</b> [3] 12:23,25 15:25</p>	<p><b>meets</b> [1] 43:20  <b>members</b> [1] 30:11  <b>memorandum</b> [3] 23:13 29:17,18  <b>mentioned</b> [2] 19:19 55:4  <b>mere</b> [1] 30:16  <b>merely</b> [1] 30:11  <b>message</b> [1] 33:2  <b>met</b> [2] 8:7 32:5  <b>metadata</b> [4] 57:2,4,7,9  <b>meticulous</b> [1] 36:22  <b>might</b> [3] 47:25 52:13 62:3  <b>mike</b> [1] 17:21  <b>mind</b> [1] 15:14  <b>minimum</b> [1] 41:13  <b>minute</b> [2] 14:3 15:15  <b>minutes</b> [6] 4:17,19,23 26:17 33:8 46:24  <b>miraculously</b> [3] 15:16 19:22 36:18  <b>mirror</b> [1] 6:11  <b>misconduct</b> [1] 45:1  <b>missed</b> [3] 15:4 25:4 40:21  <b>missing</b> [3] 19:22 28:4 56:2  <b>mis-spoke</b> [1] 36:19  <b>mm-hmm</b> [1] 5:11  <b>modern</b> [2] 20:24,25  <b>modification</b> [2] 46:13 47:13  <b>modified</b> [2] 47:17,19  <b>mom</b> [1] 43:3  <b>moment</b> [3] 8:17 19:8 55:23  <b>monday</b> [4] 58:18,20 59:11,13  <b>month</b> [2] 19:21 46:5  <b>months</b> [3] 19:23 24:17 59:8  <b>morning</b> [6] 4:9 5:22 6:5 7:19 21:12 54:23  <b>most</b> [4] 4:4 8:5 9:12,16  <b>motion</b> [43] 4:3,5,8,16,20 5:25 6:3,13 8:1 23:10 29:19 30:6,23 32:6,13,14,19 38:3,17 39:16 41:13,24 42:3,11,14,15,18 45:1,15 46:8,13 47:10 51:23,25 53:5,6,7,9,18,18 54:2 55:13 61:12</p>	<p><b>19 30:6,23 32:6,13,14,19 38:3,17 39:16 41:13,24 42:3,11,14,15,18 45:1,15 46:8,13 47:10 51:23,25 53:5,6,7,9,18,18 54:2 55:13 61:12</b>  <b>motions</b> [18] 3:19 4:2,6 38:5 40:7 42:9,25 46:12 51:25 52:14,18,19 53:4,16 59:22 61:16,23 62:7  <b>mountains</b> [1] 10:14  <b>mouth</b> [1] 29:6  <b>move</b> [1] 34:8  <b>movements</b> [1] 26:17  <b>moves</b> [2] 34:10,19  <b>moving</b> [6] 4:13 5:8 7:11,17,25 13:11  <b>ms</b> [41] 3:16,17,18 6:25 21:8 22:6,12 25:2,4,11,12,17 26:14,18 27:10 30:5 31:7,9,15,15,16,16,25 33:2 37:24 40:16 51:24 53:19,22,24 54:2,25 55:14,17,18,22,25 57:4,18,25 59:3  <b>much</b> [4] 13:1 22:17 36:22 38:1  <b>multiple</b> [5] 7:3 42:7,8 43:6,6  <b>murder</b> [1] 10:3  <b>must</b> [2] 10:1 28:12  <b>myself</b> [1] 31:11</p> <hr/> <p style="text-align: center;"><b>N</b></p> <hr/> <p><b>nagel</b> [4] 6:2 55:14,17,18  <b>name</b> [1] 55:10  <b>named</b> [1] 5:25  <b>narrow</b> [1] 57:15  <b>narrowing</b> [1] 62:2  <b>nature</b> [3] 49:12 56:16,18  <b>necessarily</b> [1] 18:21  <b>necessary</b> [3] 32:24 44:23 49:22  <b>necessity</b> [1] 5:13  <b>need</b> [15] 9:10 11:12 19:12,12 20:19,20 38:4,5 39:19 41:12 50:19 51:10,11 53:8 61:2</p>
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**Sheet 7**

**COMMONWEALTH V. KAREN READ**  
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**MOTIONS HEARING - 10/3/22**

<p><b>needs</b> <sup>[1]</sup> 30:7  <b>nefarious</b> <sup>[1]</sup> 36:13  <b>neighborhood</b> <sup>[1]</sup> 50:9  <b>nephews</b> <sup>[1]</sup> 12:3  <b>never</b> <sup>[6]</sup> 10:21 21:25 25:23,23 35:1 55:14  <b>new</b> <sup>[2]</sup> 52:18 53:8  <b>next</b> <sup>[7]</sup> 36:18 41:18 48:13,16 56:4 57:16 58:12  <b>nicole</b> <sup>[2]</sup> 5:25 54:16  <b>night</b> <sup>[7]</sup> 9:13 11:13 17:19 19:7 35:20 54:21,22  <b>nightmare</b> <sup>[1]</sup> 52:25  <b>nights</b> <sup>[1]</sup> 11:13  <b>nine</b> <sup>[1]</sup> 56:22  <b>nobody</b> <sup>[1]</sup> 50:4  <b>no-contact</b> <sup>[1]</sup> 57:25  <b>non-dissemination</b> <sup>[1]</sup> 37:20  <b>none</b> <sup>[5]</sup> 12:18 25:14,15 27:3,4  <b>nor</b> <sup>[1]</sup> 29:11  <b>norfolk</b> <sup>[1]</sup> 29:22  <b>nose</b> <sup>[2]</sup> 18:1 29:6  <b>note</b> <sup>[1]</sup> 19:16  <b>noted</b> <sup>[1]</sup> 18:4  <b>notes</b> <sup>[1]</sup> 45:3  <b>nothing</b> <sup>[5]</sup> 7:23 39:24 40:1 44:17 58:10  <b>notice</b> <sup>[7]</sup> 4:16 19:17 23:2,4,5,6 55:16  <b>november</b> <sup>[2]</sup> 58:17 62:6  <b>nowhere</b> <sup>[1]</sup> 29:9  <b>number</b> <sup>[17]</sup> 3:4 11:1,4,16 30:4 33:10 34:3 38:24 45:13 47:12 53:10 56:21,21,21,22,23,25  <b>numbers</b> <sup>[7]</sup> 51:2,8,12,13,16 52:6 53:8</p> <hr/> <p style="text-align: center;"><b>O</b></p> <hr/> <p><b>oath</b> <sup>[1]</sup> 22:3  <b>object</b> <sup>[2]</sup> 23:5 39:8  <b>objecting</b> <sup>[1]</sup> 47:3  <b>objection</b> <sup>[3]</sup> 56:12,20 59:20</p>	<p><b>objections</b> <sup>[1]</sup> 56:8  <b>observed</b> <sup>[2]</sup> 27:15 28:4  <b>obvious</b> <sup>[5]</sup> 4:13 6:22 7:12 18:23 21:20  <b>obviously</b> <sup>[10]</sup> 5:8 6:3,17 22:21 23:1 26:16 30:25 31:2 54:5 61:18  <b>occipital</b> <sup>[1]</sup> 29:3  <b>october</b> <sup>[1]</sup> 59:7  <b>offered</b> <sup>[1]</sup> 56:1  <b>office</b> <sup>[7]</sup> 14:16 39:11 40:3 41:7 44:5,6,22  <b>officer</b> <sup>[6]</sup> 21:21 29:24 43:14,21,22 50:6  <b>officers</b> <sup>[9]</sup> 14:10,16 15:3 27:20 29:23 36:19,24 43:19,20  <b>okay</b> <sup>[36]</sup> 3:3 4:22 6:14 16:5 22:25 32:7,11 38:14,16,21 40:4,20,22 42:1,24 46:7 48:9 51:3,15,19,23 53:3,17,21 54:1 55:20,24 58:9 59:9 60:12,16,20 61:14,17,20 62:13  <b>o'keefe</b> <sup>[13]</sup> 8:7 9:24 10:2,23,24 11:3 17:6,18 25:3 27:15 34:5 50:6 55:1  <b>o'keefe's</b> <sup>[11]</sup> 7:14 8:19 14:12,12 26:12,23 27:9 28:3 31:18 36:5,14  <b>o'malley</b> <sup>[1]</sup> 52:19  <b>once</b> <sup>[2]</sup> 12:22 19:6  <b>one</b> <sup>[42]</sup> 4:4 8:5,12 9:4,21 10:25 11:1,22 12:15,23 14:10,17 15:23 16:25 17:15 18:8,24 19:9 25:17 27:21 29:24 33:17,18,23 35:22 37:8,8 38:8,24 39:5 40:23 44:25 46:12,23 48:19 50:25 51:6,25 53:5,6 57:13,21  <b>one-page</b> <sup>[1]</sup> 32:16  <b>ones</b> <sup>[1]</sup> 52:7  <b>ongoing</b> <sup>[2]</sup> 27:24 48:2  <b>only</b> <sup>[19]</sup> 9:7 10:25 14:7,23 15:19,20 16:11 18:13 25:9,10 28:1 34:15 35:19,23 37:18 38:3,8 56:19 58:23  <b>opportunity</b> <sup>[1]</sup> 5:9  <b>opposed</b> <sup>[2]</sup> 38:21,23  <b>opposite</b> <sup>[1]</sup> 16:17  <b>order</b> <sup>[11]</sup> 5:17 28:8 37:19 41:15 47:13,18 49:9 50:20 53:15 57:24,25  <b>ordered</b> <sup>[2]</sup> 23:3 52:19  <b>orders</b> <sup>[3]</sup> 37:23 39:25 49:20  <b>org</b> <sup>[1]</sup> 9:10  <b>other</b> <sup>[25]</sup> 4:6 8:12 9:5 18:10,22 19:2 20:6 21:1 22:15 24:5 27:1 28:3 29:24 30:4,16,18 31:17 34:6,7 35:1,8 38:5 50:14 55:18 57:21  <b>others</b> <sup>[2]</sup> 37:9 55:13  <b>out</b> <sup>[29]</sup> 8:2,19,21 9:4,20,20 10:6,8,16 14:19 15:3,9,10,16 17:9 19:6,21 21:23 24:13 26:14 32:19 34:4 35:22 36:1,5 54:5,9 59:12 60:1  <b>outlined</b> <sup>[1]</sup> 23:22  <b>outside</b> <sup>[1]</sup> 37:20  <b>outstanding</b> <sup>[2]</sup> 38:6 62:3  <b>over</b> <sup>[15]</sup> 4:8 5:7 16:15 24:6,17,23 25:19 29:7 30:9,14,23 32:9 36:1 45:4,8  <b>overarching</b> <sup>[1]</sup> 29:20  <b>overlooked</b> <sup>[1]</sup> 7:12  <b>own</b> <sup>[2]</sup> 8:4 19:4  <b>owned</b> <sup>[2]</sup> 18:17 19:20</p> <hr/> <p style="text-align: center;"><b>P</b></p> <hr/> <p><b>p.m</b> <sup>[12]</sup> 3:2 13:18,19,20 26:2,8 40:12,13 58:17 60:21 62:6,14  <b>packages</b> <sup>[1]</sup> 42:20  <b>packed</b> <sup>[1]</sup> 28:7  <b>page</b> <sup>[1]</sup> 47:9  <b>pages</b> <sup>[7]</sup> 24:13,14,14,23,24,24 29:7  <b>panic</b> <sup>[1]</sup> 17:8  <b>papers</b> <sup>[7]</sup> 4:13 5:8 7:11,17,25 13:11,16</p>	<p><b>paperwork</b> <sup>[2]</sup> 13:5,25  <b>paramedics</b> <sup>[1]</sup> 28:4  <b>parameter</b> <sup>[1]</sup> 37:17  <b>parceled</b> <sup>[1]</sup> 24:13  <b>parent's</b> <sup>[3]</sup> 13:14,17 25:22  <b>parietal</b> <sup>[1]</sup> 29:3  <b>parked</b> <sup>[1]</sup> 26:23  <b>part</b> <sup>[9]</sup> 11:12 17:10,25 24:10 27:22 51:14 53:4,6,9  <b>particular</b> <sup>[5]</sup> 6:13,18 8:1 49:23 50:25  <b>parties</b> <sup>[2]</sup> 30:4 58:15  <b>party</b> <sup>[9]</sup> 12:14,17 21:22,23 31:17 35:5 37:7 54:21 55:18  <b>passenger's</b> <sup>[1]</sup> 17:11  <b>pending</b> <sup>[1]</sup> 48:8  <b>people</b> <sup>[25]</sup> 9:9,13,16 12:1 18:20,21 20:18,19,20 24:4,5,6 33:18 35:1,3,5 37:8 40:6 43:16 44:3,23 45:18 55:4 56:23 61:19  <b>percipient</b> <sup>[1]</sup> 5:17  <b>perfectly</b> <sup>[1]</sup> 37:6  <b>period</b> <sup>[3]</sup> 5:20 31:18 50:3  <b>permission</b> <sup>[1]</sup> 60:10  <b>person</b> <sup>[8]</sup> 12:17 14:7 21:23 25:9,10 28:5 55:4 57:15  <b>personal</b> <sup>[1]</sup> 9:16  <b>pertaining</b> <sup>[1]</sup> 45:11  <b>pessimistic</b> <sup>[1]</sup> 41:10  <b>phone</b> <sup>[20]</sup> 8:22 20:21,22,23 24:9 25:1,3,5,7 30:13 31:7,9 32:1 33:1 44:23 51:1,7,12,13,16  <b>phones</b> <sup>[6]</sup> 4:3 5:19,20 23:17 30:23 47:14  <b>phone's</b> <sup>[1]</sup> 26:16  <b>photo</b> <sup>[1]</sup> 12:9  <b>photograph</b> <sup>[1]</sup> 26:2  <b>photographed</b> <sup>[1]</sup> 27:6  <b>photographic</b> <sup>[1]</sup> 12:7  <b>photographs</b> <sup>[3]</sup> 27:7 56:16 57:10</p>
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**COMMONWEALTH V. KAREN READ  
DOCKET NO. 2282CR00117  
MOTIONS HEARING - 10/3/22**

<p><b>photos</b> [6] 42:9,21 43:2,6, 8 44:8  <b>phrased</b> [1] 45:16  <b>physical</b> [6] 11:17 15:19, 20 17:13 20:16 28:19  <b>physically</b> [1] 34:1  <b>picked</b> [1] 33:6  <b>pictures</b> [1] 34:13  <b>pieces</b> [2] 14:21 27:18  <b>place</b> [2] 11:5 53:5  <b>placed</b> [1] 11:20  <b>planted</b> [3] 28:2,3 34:22  <b>plastic</b> [1] 14:24  <b>plasticine</b> [1] 14:25  <b>pleasure</b> [1] 38:7  <b>plenty</b> [1] 30:18  <b>pocket's</b> [1] 20:24  <b>point</b> [4] 10:2 17:15 26:4 48:20  <b>points</b> [1] 9:22  <b>police</b> [25] 8:17,18 9:19 11:7 14:4 18:18 19:8 21:20 27:20 29:23,23,24 33:4 43:14, 19,20,21,22 45:10,23 48:25 49:1,25 54:13,14  <b>policies</b> [4] 39:2 41:8 45:10 46:1  <b>policy</b> [1] 45:22  <b>portion</b> [3] 6:3 22:23,24  <b>posed</b> [1] 45:18  <b>posit</b> [1] 23:12  <b>position</b> [6] 7:1 16:4 33:14 35:18 45:14 48:23  <b>possession</b> [5] 13:13 14:3,5,7 15:7  <b>possible</b> [5] 5:17 8:25 10:22 36:11 37:1  <b>possibly</b> [2] 10:12 23:19  <b>potential</b> [2] 44:25 45:24  <b>potentially</b> [1] 23:19  <b>precarious</b> [1] 7:1  <b>prefer</b> [2] 41:15,23  <b>pre-indictment</b> [1] 48:7  <b>preliminary</b> [1] 41:6  <b>prepared</b> [1] 53:19</p>	<p><b>present</b> [2] 22:21 55:5  <b>presentation</b> [1] 31:10  <b>preservation</b> [4] 46:14 47:13,20 55:16  <b>preserved</b> [1] 52:10  <b>pretty</b> [4] 6:19,19 13:11 33:17  <b>previously</b> [3] 43:8 46:17 52:1  <b>prior</b> [3] 24:7 52:1 62:2  <b>privacy</b> [1] 21:7  <b>probable</b> [1] 31:3  <b>probably</b> [6] 19:7 26:19 27:7 30:2 58:22 59:8  <b>problem</b> [1] 10:5  <b>problematic</b> [1] 52:4  <b>procedures</b> [3] 45:10,22 46:1  <b>proceed</b> [2] 23:8 53:10  <b>proceeding</b> [1] 50:25  <b>process</b> [1] 37:25  <b>proctor</b> [19] 7:11 11:23,23 12:20,20,25 13:12 14:6,11 15:6,17,24 16:1,18 24:1,6 36:12 48:24 50:1  <b>proctor's</b> [5] 12:10 38:19 41:9 43:2,3  <b>produced</b> [2] 49:4,15  <b>production</b> [3] 39:24 46:14 47:18  <b>professional</b> [1] 21:14  <b>prohibited</b> [1] 58:2  <b>promised</b> [1] 58:25  <b>prone</b> [1] 18:22  <b>properly</b> [1] 22:5  <b>property</b> [3] 43:15,15 49:14  <b>propose</b> [1] 56:2  <b>proposed</b> [1] 29:17  <b>prosecution</b> [1] 51:17  <b>prostrate</b> [1] 8:14  <b>protect</b> [1] 53:16  <b>protected</b> [1] 53:14  <b>protective</b> [2] 49:20 50:20  <b>protocols</b> [2] 39:2 45:22</p>	<p><b>proves</b> [1] 22:13  <b>provide</b> [16] 5:18 6:10,11 23:2,6 32:22 39:8 41:16,17 45:25 46:5 48:14,18 50:19 57:6,11  <b>provided</b> [10] 8:3 12:6 25:18 31:22 35:8 47:17 48:3 51:16 56:14 57:17  <b>pull</b> [1] 35:14  <b>pulled</b> [2] 20:13,17  <b>punches</b> [1] 18:1  <b>purportedly</b> [1] 23:15  <b>purposes</b> [1] 59:3  <b>pursuant</b> [1] 20:4  <b>put</b> [9] 15:18 16:10 18:11 28:8 40:5 47:4 52:9,11 58:24  <b>puts</b> [5] 6:25 34:9 35:18 36:5,6</p> <hr/> <p style="text-align: center;"><b>Q</b></p> <hr/> <p><b>quarantined</b> [1] 20:3  <b>question</b> [8] 21:18 39:9,9 43:25 45:17 52:9 54:22 56:7  <b>questioned</b> [1] 43:16  <b>questions</b> [4] 22:16 39:10 44:13 45:17  <b>quick</b> [1] 33:23  <b>quite</b> [1] 43:9  <b>quote/unquote</b> [1] 34:21</p> <hr/> <p style="text-align: center;"><b>R</b></p> <hr/> <p><b>radiating</b> [1] 29:2  <b>rather</b> [2] 42:14 52:15  <b>reach</b> [2] 20:22,24  <b>read</b> [26] 3:4,11,13,16,17, 18 4:7 5:9 6:25 8:11 11:2 17:9 21:8 22:6,12 25:11,12, 17 26:14 30:5 37:24 40:14, 16 54:25 55:8 57:25  <b>read's</b> [2] 13:13 27:10  <b>realize</b> [1] 59:17  <b>really</b> [2] 38:24 56:19  <b>reason</b> [2] 51:21 58:23  <b>reasonable</b> [3] 12:16 14:</p>	<p>19 37:6  <b>reasonably</b> [1] 14:18  <b>reasons</b> [2] 4:13 48:23  <b>receipt</b> [2] 47:19 55:13  <b>received</b> [7] 4:7,8 8:21 18:18 25:2,7 55:3  <b>recess</b> [1] 40:12  <b>recitation</b> [1] 26:11  <b>recognized</b> [1] 18:4  <b>recopy</b> [1] 42:14  <b>record</b> [6] 3:6 21:13 52:4, 10,11 58:1  <b>records</b> [1] 54:8  <b>recovered</b> [2] 27:4 54:6  <b>recovery</b> [1] 54:4  <b>red</b> [3] 15:5 34:13,14  <b>reference</b> [4] 22:22 31:6 42:12 45:9  <b>referenced</b> [1] 42:15  <b>references</b> [1] 24:9  <b>regard</b> [9] 32:25 33:10 34:21 39:15 41:13 45:25 47:8, 8,12  <b>regarding</b> [7] 4:3 38:18 40:1 41:3,7,8 49:20  <b>re-homed</b> [1] 20:5  <b>relate</b> [1] 7:13  <b>related</b> [8] 9:12,17 39:2,3 43:19 45:19,23,23  <b>relates</b> [1] 5:12  <b>relating</b> [1] 39:10  <b>relation</b> [4] 24:8 29:8 32:4 49:15  <b>relationship</b> [1] 24:3  <b>relatively</b> [2] 35:15 53:24  <b>relegated</b> [1] 31:2  <b>relevance</b> [1] 5:13  <b>relevant</b> [3] 50:3,10,12  <b>relief</b> [1] 47:10  <b>relies</b> [1] 9:22  <b>relieves</b> [1] 60:4  <b>remaining</b> [2] 51:25 53:18  <b>remove</b> [1] 14:20  <b>removed</b> [2] 14:13 34:1  <b>renew</b> [2] 51:25 53:5</p>
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**COMMONWEALTH V. KAREN READ**  
**DOCKET NO. 2282CR00117**  
**MOTIONS HEARING - 10/3/22**

<p><b>repeat</b> [2] 4:12 24:20  <b>report</b> [4] 8:17 13:21 15:18 28:17  <b>reports</b> [2] 9:19 18:18  <b>reprieve</b> [1] 59:18  <b>request</b> [6] 5:23 6:12 23:9 47:14,20,21  <b>requested</b> [6] 5:15 23:3 31:5 47:10 54:6 56:6  <b>requesting</b> [2] 54:12,20  <b>requests</b> [4] 23:16 41:18 46:14 48:15  <b>required</b> [1] 23:11  <b>reserve</b> [1] 23:6  <b>residence</b> [2] 50:8 54:25  <b>resisting</b> [1] 22:1  <b>resources</b> [1] 33:15  <b>respect</b> [2] 30:6 57:5  <b>respected</b> [1] 6:19  <b>respond</b> [3] 32:8 38:5 50:13  <b>responded</b> [1] 54:9  <b>response</b> [6] 4:9 7:19 41:7 46:22 49:4,9  <b>responsive</b> [1] 13:4  <b>rest</b> [1] 40:7  <b>restrictive</b> [2] 37:19,22  <b>result</b> [1] 28:22  <b>return</b> [1] 49:11  <b>reveal</b> [1] 44:1  <b>reverse</b> [1] 16:10  <b>reviewed</b> [1] 38:8  <b>rights</b> [1] 37:25  <b>ring</b> [5] 25:22 26:13 33:16, 16,21  <b>rink</b> [2] 10:11 36:2  <b>road</b> [3] 10:18 43:21 54:25  <b>roberts</b> [1] 31:16  <b>robust</b> [1] 32:22  <b>room</b> [2] 20:23 26:21  <b>roster</b> [2] 39:7 46:2  <b>rounds</b> [1] 17:21  <b>rubber</b> [1] 43:20  <b>rule</b> [12] 4:3,8 22:24 23:18 30:6,19 32:4 41:13 42:18,</p>	<p>19 46:8 61:19  <b>ruling</b> [2] 51:15 61:19  <b>run</b> [1] 41:21</p> <hr/> <p style="text-align: center;"><b>S</b></p> <hr/> <p><b>sake</b> [1] 35:16  <b>samaritan</b> [2] 14:14 28:6  <b>same</b> [3] 19:21 42:22 56:23  <b>samples</b> [3] 19:11 35:14, 16  <b>satellite</b> [1] 33:20  <b>satellites</b> [1] 33:20  <b>save</b> [1] 59:19  <b>savings</b> [1] 26:7  <b>saw</b> [5] 10:16,21 11:1 25:14 50:10  <b>says</b> [2] 10:6 35:11  <b>scant</b> [1] 30:24  <b>scenario</b> [1] 8:6  <b>scene</b> [15] 8:13 9:2 11:20 13:3 14:11,13 15:9,11,16, 19,21 28:5 34:2 36:8 54:9  <b>schedule</b> [1] 39:4  <b>scordi-bello</b> [1] 28:15  <b>search</b> [15] 15:11,13 27:23 31:1 36:12,16,17 49:4,10, 11,15,24 50:9,21,23  <b>searched</b> [5] 14:11 36:9, 10,25 37:2  <b>seat</b> [2] 3:18 40:16  <b>second</b> [6] 6:3 9:8,15 40:11 51:14 54:11  <b>secondly</b> [1] 30:10  <b>section</b> [2] 23:12,14  <b>see</b> [15] 10:7,17,22 26:3 27:22 32:8,13 34:7,20 39:19 44:9 51:2 52:7 59:1 61:20  <b>seeing</b> [2] 10:24 36:2  <b>seek</b> [2] 22:4 31:1  <b>seeking</b> [2] 22:2,6  <b>seem</b> [1] 38:25  <b>seems</b> [3] 20:7 39:17 41:12  <b>seen</b> [10] 6:21 10:12 11:4 25:23,24 27:3 34:15 50:15,</p>	<p>20,21  <b>sees</b> [1] 49:19  <b>seize</b> [1] 14:1  <b>seized</b> [2] 13:24,24  <b>seizure</b> [1] 13:14  <b>sense</b> [6] 4:5 39:18 41:20 57:14 59:25 61:3  <b>sent</b> [2] 49:5,16  <b>separate</b> [4] 12:10 24:22 31:14 53:16  <b>sequentially</b> [1] 42:15  <b>series</b> [4] 3:20 6:24 13:6 17:24  <b>serving</b> [1] 55:15  <b>session</b> [2] 3:2 40:13  <b>set</b> [8] 6:22 9:24 17:17 21:20 29:16 55:16 56:3 60:15  <b>sets</b> [5] 14:10,16 15:2 36:18,24  <b>seven</b> [4] 5:20 30:23 37:18 56:21  <b>several</b> [6] 4:2 7:16 20:18 24:17 28:10 55:4  <b>severely</b> [1] 17:22  <b>shape</b> [2] 10:7 15:21  <b>shards</b> [13] 13:2 14:8,23, 24 15:5,17 16:25 17:2 27:2, 14,17 28:1,9  <b>shatter</b> [3] 16:7,21,23  <b>shattered</b> [2] 16:6 17:12  <b>shepherd</b> [3] 18:17 19:5 35:24  <b>she's</b> [2] 10:3 22:12  <b>shoe</b> [6] 15:1 28:3,9 36:8, 23 37:3  <b>short</b> [1] 23:2  <b>shoulders</b> [1] 18:14  <b>show</b> [2] 15:18 34:6  <b>showed</b> [3] 8:13 43:21,23  <b>showing</b> [2] 34:4 48:24  <b>shows</b> [6] 12:13 26:14,18 33:25 34:1,7  <b>sic</b> [1] 28:23  <b>side</b> [2] 17:11 26:24  <b>sift</b> [1] 27:22</p>	<p><b>sifting</b> [1] 14:20  <b>simply</b> [6] 11:19 25:17 26:10 30:19 51:1 52:14  <b>since</b> [2] 47:24 48:2  <b>single</b> [2] 5:7 12:17  <b>sister</b> [3] 12:2 43:2,5  <b>sister-in-law</b> [1] 12:3  <b>situation</b> [2] 36:15 42:4  <b>six</b> [1] 56:21  <b>skull</b> [4] 17:23,24 29:2,3  <b>small</b> [2] 11:12 14:21  <b>smart</b> [1] 47:14  <b>snow</b> [13] 14:17,19,20,20 15:4 27:19,19,22,25 28:8 36:20,21,22  <b>social</b> [4] 42:9,21 44:2,9  <b>socialize</b> [2] 24:4 43:10  <b>socializing</b> [2] 43:7,10  <b>society</b> [2] 20:25,25  <b>somebody</b> [2] 39:22 55:7  <b>somebody's</b> [1] 8:23  <b>someone</b> [2] 14:18 37:4  <b>someone's</b> [1] 37:5  <b>sometime</b> [1] 56:4  <b>somewhat</b> [2] 18:19 52:3  <b>somewhere</b> [2] 22:2 50:7  <b>sorry</b> [4] 4:14 60:22 61:6 62:11  <b>sort</b> [19] 6:21 17:16 20:13, 13,15 28:11 29:1,11,20 30:15,19 36:13 39:1,4 54:3,9, 11,15,19  <b>sought</b> [1] 30:10  <b>sound</b> [1] 61:22  <b>spanning</b> [1] 24:17  <b>speaking</b> [2] 16:8 47:23  <b>special</b> [1] 15:8  <b>specific</b> [8] 11:11,11 21:6 31:18 41:18 46:4 56:7 61:10  <b>specifically</b> [8] 5:24 10:6 15:3 16:13 28:18 45:7,12 50:1  <b>specificity</b> [1] 5:14  <b>speculation</b> [1] 30:17</p>
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**COMMONWEALTH V. KAREN READ**  
**DOCKET NO. 2282CR00117**  
**MOTIONS HEARING - 10/3/22**

<p><b>spend</b> [1] 13:3  <b>spoke</b> [4] 6:5 21:11 31:23 56:14  <b>spoken</b> [3] 21:13 39:1 47:7  <b>stage</b> [4] 50:24,25 51:5,6  <b>stamp</b> [2] 26:1,6  <b>stamps</b> [1] 57:2  <b>standard</b> [2] 31:3 32:5  <b>start</b> [1] 39:18  <b>starting</b> [1] 3:6  <b>state</b> [7] 29:22 43:23 45:10, 23 48:25 49:25 54:13  <b>stated</b> [3] 11:7 39:11 48:23  <b>statement</b> [2] 33:9 42:13  <b>states</b> [1] 47:10  <b>station</b> [1] 14:4  <b>stay-away</b> [1] 57:24  <b>still</b> [5] 27:24 38:6 46:19 48:8 62:3  <b>store</b> [1] 47:15  <b>stoughton</b> [3] 52:1,6,20  <b>straightforward</b> [1] 44:13  <b>street</b> [2] 10:9 61:4  <b>strike</b> [1] 18:24  <b>striking</b> [1] 28:23  <b>struck</b> [2] 18:7 55:1  <b>subject</b> [2] 23:17 26:3  <b>subjects</b> [1] 39:15  <b>submission</b> [3] 25:25 30:7 38:9  <b>submissions</b> [1] 24:11  <b>submit</b> [7] 18:11 22:15 24:25 30:9 32:4 37:25 47:16  <b>submits</b> [1] 23:11  <b>submitted</b> [4] 13:25 29:15 32:15 43:8  <b>subsection</b> [1] 6:13  <b>suffered</b> [1] 17:19  <b>sufficient</b> [3] 26:21 27:11 50:3  <b>suggest</b> [2] 8:9 9:22  <b>suggesting</b> [1] 20:8</p>	<p><b>suggestion</b> [1] 41:6  <b>suggestive</b> [1] 11:6  <b>suggests</b> [1] 6:23  <b>super</b> [1] 13:10  <b>superiors</b> [1] 44:4  <b>supplied</b> [1] 7:25  <b>support</b> [8] 13:25 23:15 30:16,18 31:4 32:18,21 50:23  <b>supported</b> [1] 7:25  <b>supporting</b> [3] 23:11 32:20,23  <b>supports</b> [1] 32:13  <b>suppose</b> [1] 30:1  <b>surface</b> [1] 39:20  <b>surprised</b> [1] 21:11  <b>surrounding</b> [1] 17:18  <b>surveillance</b> [1] 27:15  <b>suspect</b> [2] 22:8 37:8  <b>suspects</b> [4] 5:17 7:12 11:21 12:18  <b>suspicious</b> [1] 45:12  <b>suv</b> [4] 13:13 16:13,13 17:9  <b>swell</b> [1] 29:5  <b>swore</b> [1] 22:3</p> <hr/> <p style="text-align: center;"><b>T</b></p> <hr/> <p><b>tail</b> [6] 15:17 16:6,7,12 34:11,12  <b>taillight</b> [15] 13:1,2 14:8, 24 16:22,23,25 17:11,12 18:8 26:11 27:2,11,12 34:16  <b>taillights</b> [1] 14:25  <b>talked</b> [3] 7:10 46:16 47:24  <b>tall</b> [1] 16:11  <b>taller</b> [1] 16:12  <b>tampered</b> [3] 11:17,19 25:21  <b>tangential</b> [1] 24:3  <b>team</b> [4] 15:8,9,15 28:10  <b>telephone</b> [1] 6:8  <b>ten</b> [2] 29:21 56:23  <b>tenuous</b> [1] 18:19  <b>terabyte</b> [1] 6:10  <b>terms</b> [2] 6:20 7:23</p>	<p><b>testified</b> [6] 11:7 13:22 24:19,23 25:4 28:16  <b>testimonial</b> [1] 20:16  <b>testimony</b> [5] 13:19 18:5 28:17,22 29:7  <b>thanksgiving</b> [2] 58:18, 20  <b>themselves</b> [1] 3:5  <b>theory</b> [3] 18:25 34:23 50:6  <b>thereafter</b> [3] 11:14,14 34:19  <b>therefore</b> [2] 11:8 34:24  <b>there's</b> [31] 8:24 9:4,14 10:13,13,14 11:17 12:10 17:16 18:23 20:12 22:9 26:10 27:1,3,8,12,19 33:11 34:10 35:12 39:7 44:7,17 45:9 48:14 50:19 51:10,11 52:9 61:13  <b>they've</b> [2] 6:9 33:14  <b>thinking</b> [1] 36:20  <b>third</b> [1] 54:19  <b>third-party</b> [1] 23:4  <b>though</b> [3] 4:15 13:21 60:21  <b>three</b> [11] 10:1 24:13,24,24 34:3 42:6 44:10 46:12 54:3 59:8 60:5  <b>three-point</b> [7] 9:25 10:4, 8 25:8,11,15,16  <b>throughout</b> [2] 26:10 28:22  <b>thrown</b> [1] 18:1  <b>timeframe</b> [2] 21:6 30:8  <b>timestamp</b> [1] 33:12  <b>timing</b> [1] 8:5  <b>tire</b> [7] 9:25 10:7,17,23 11:1,5,6  <b>tissue</b> [6] 16:24 17:1,1 19:10 35:14,16  <b>today</b> [10] 22:23 31:23 38:3 46:12 47:5,23 54:16 56:15 57:20 59:24  <b>today's</b> [1] 23:7</p>	<p><b>together</b> [4] 9:11 12:21 24:4 28:9  <b>took</b> [1] 13:12  <b>tool</b> [2] 23:19 30:20  <b>top</b> [1] 36:12  <b>touched</b> [1] 42:5  <b>tow</b> [1] 26:4  <b>tracks</b> [8] 9:25 10:7,17,23 11:1,5,6 37:5  <b>transcripts</b> [2] 24:12,23  <b>transferred</b> [1] 49:17  <b>transported</b> [1] 14:15  <b>transporting</b> [1] 37:4  <b>trial</b> [8] 38:4 46:20 47:24 59:4,4,4,5,6  <b>trooper</b> [25] 7:11 11:23,23 12:10,20,25 13:12 14:6,11 15:6,17,24 16:1,18 24:1,6 36:11 38:18 41:4,8 43:2,3, 23 48:24 49:25  <b>troopers</b> [9] 24:21 25:12, 18 27:5,6 40:2 47:25 48:11 55:15  <b>troubles</b> [1] 30:21  <b>troubling</b> [6] 6:22 9:8 17:17 25:9 30:21 32:2  <b>truck</b> [3] 16:6 26:4 33:25  <b>true</b> [2] 10:25 13:18  <b>truth</b> [6] 7:24 8:23 22:4,6,7 37:15  <b>trying</b> [1] 52:4  <b>turn</b> [10] 9:25 10:2,4,8 25:8, 11,15,16 30:23 36:4  <b>turned</b> [1] 20:2  <b>two</b> [17] 10:25 11:4,16 14:10,10,16 15:2 24:13,24,24 27:25 28:8 29:23 33:10 36:18,24 47:18  <b>two-minute</b> [1] 26:19  <b>type</b> [1] 30:20  <b>tyson</b> [1] 17:22</p> <hr/> <p style="text-align: center;"><b>U</b></p> <hr/> <p><b>ultimately</b> [4] 13:14 14:15 20:5 49:13  <b>unbelievable</b> [1] 34:24</p>
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**COMMONWEALTH V. KAREN READ**  
**DOCKET NO. 2282CR00117**  
**MOTIONS HEARING - 10/3/22**

<p><b>unconnected</b> <sup>[1]</sup> 14:10  <b>uncontroverted</b> <sup>[1]</sup> 33:8  <b>undeniable</b> <sup>[1]</sup> 7:8  <b>under</b> <sup>[7]</sup> 6:13 22:24 28:7  46:8 62:8,12,13  <b>underneath</b> <sup>[1]</sup> 19:1  <b>underpinning</b> <sup>[1]</sup> 30:25  <b>understand</b> <sup>[2]</sup> 56:25 58:4  <b>understanding</b> <sup>[3]</sup> 6:4,6,7  <b>understood</b> <sup>[3]</sup> 59:23 60:2,2  <b>undulations</b> <sup>[1]</sup> 10:13  <b>unequivocal</b> <sup>[2]</sup> 7:8 34:17  <b>unequivocally</b> <sup>[1]</sup> 17:13  <b>unguarded</b> <sup>[3]</sup> 8:17,18 19:8  <b>unit</b> <sup>[5]</sup> 29:22 39:4,23 40:2  45:20  <b>unless</b> <sup>[2]</sup> 22:15 56:7  <b>unnamed</b> <sup>[1]</sup> 54:20  <b>until</b> <sup>[4]</sup> 13:17 14:2 36:24  48:4  <b>up</b> <sup>[22]</sup> 8:13 11:19 12:5,13,  15 13:14 15:18 17:16 18:5  26:18,20 29:1 33:6 38:10  43:22,23 44:11,11 47:24  55:16 56:3 59:15  <b>urgencies</b> <sup>[1]</sup> 21:4</p> <hr/> <p style="text-align: center;"><b>V</b></p> <hr/> <p><b>varying</b> <sup>[1]</sup> 25:17  <b>vehicle</b> <sup>[10]</sup> 13:15 15:7 26:  3,20,23 27:7,8,9,10 55:2  <b>vehicles</b> <sup>[1]</sup> 26:25  <b>vetted</b> <sup>[1]</sup> 23:24  <b>via</b> <sup>[1]</sup> 59:14  <b>victim</b> <sup>[1]</sup> 31:16  <b>victim's</b> <sup>[1]</sup> 27:6  <b>video</b> <sup>[16]</sup> 11:16 13:23 17:  13 25:20,22,23 26:13,20  27:3,15 33:10,12,16,24 34:  3,20  <b>videos</b> <sup>[2]</sup> 33:16,21</p>	<p><b>view</b> <sup>[1]</sup> 50:5  <b>viewing</b> <sup>[1]</sup> 49:20  <b>voicemail</b> <sup>[2]</sup> 33:7,8  <b>v-shaped</b> <sup>[2]</sup> 9:24,24</p> <hr/> <p style="text-align: center;"><b>W</b></p> <hr/> <p><b>waist</b> <sup>[1]</sup> 16:16  <b>waiting</b> <sup>[2]</sup> 40:6,17  <b>wanted</b> <sup>[2]</sup> 52:17 57:22  <b>wanting</b> <sup>[1]</sup> 32:21  <b>wants</b> <sup>[2]</sup> 34:23 53:10  <b>warrant</b> <sup>[9]</sup> 31:2 49:4,10,  11,15,24 50:10,21,23  <b>watching</b> <sup>[1]</sup> 33:24  <b>waterfall</b> <sup>[1]</sup> 27:16  <b>way</b> <sup>[20]</sup> 9:4 11:9 12:10 15:  2,21 16:7 18:12 20:12 21:9,  12 26:23 33:23,24 34:15  43:17 45:7 48:7 49:25 52:  21 60:1  <b>ways</b> <sup>[1]</sup> 42:8  <b>wedding</b> <sup>[2]</sup> 12:9 43:8  <b>week</b> <sup>[3]</sup> 46:20,21 58:21  <b>weekend</b> <sup>[2]</sup> 4:8 59:12  <b>weinstein</b> <sup>[1]</sup> 59:11  <b>whatever</b> <sup>[4]</sup> 22:7 38:7,15  46:1  <b>whatsoever</b> <sup>[2]</sup> 29:13 44:  12  <b>wheel</b> <sup>[1]</sup> 26:21  <b>whereabouts</b> <sup>[1]</sup> 26:16  <b>whereas</b> <sup>[1]</sup> 50:25  <b>whether</b> <sup>[4]</sup> 26:5,6 33:6  45:21  <b>white</b> <sup>[3]</sup> 15:4 34:10,15  <b>whoever</b> <sup>[1]</sup> 55:21  <b>whole</b> <sup>[2]</sup> 13:4 36:25  <b>whom</b> <sup>[2]</sup> 44:1 54:6  <b>who's</b> <sup>[2]</sup> 3:21 21:24  <b>wi-fi</b> <sup>[2]</sup> 33:18,19  <b>wi-fi's</b> <sup>[1]</sup> 33:19  <b>will</b> <sup>[16]</sup> 4:2,10 5:1 22:7 37:  22 40:1 41:1,10,11,12 43:1  44:23,24 51:16 56:8 60:17  <b>willing</b> <sup>[1]</sup> 37:18  <b>window</b> <sup>[3]</sup> 9:20 10:6,16</p>	<p><b>within</b> <sup>[14]</sup> 20:22,24 23:13  25:24 29:17 30:3 37:17 39:  15 40:2 43:16 44:3 45:20  53:6 58:3  <b>without</b> <sup>[3]</sup> 20:13,17 26:22  <b>witness</b> <sup>[2]</sup> 54:21 58:3  <b>witnesses</b> <sup>[11]</sup> 5:17 9:5  24:18,21,22 25:14,15,18  37:10 44:18 54:14  <b>wobble</b> <sup>[1]</sup> 34:6  <b>wonder</b> <sup>[1]</sup> 15:23  <b>wonders</b> <sup>[1]</sup> 12:24  <b>word</b> <sup>[1]</sup> 7:22  <b>words</b> <sup>[2]</sup> 18:22 20:6  <b>work</b> <sup>[2]</sup> 60:17 62:2  <b>worked</b> <sup>[1]</sup> 39:22  <b>working</b> <sup>[1]</sup> 37:17  <b>wound</b> <sup>[3]</sup> 17:20,22 35:12  <b>wounds</b> <sup>[23]</sup> 17:18 18:3,6,  7,10,11,12,23 19:3,3,11 28:  11,13,14 29:10,10,12 35:  11 36:3,4,4,4,5  <b>wrap</b> <sup>[1]</sup> 17:16  <b>wraparound</b> <sup>[1]</sup> 34:14  <b>wrecker</b> <sup>[2]</sup> 26:3,9  <b>writing</b> <sup>[5]</sup> 32:8 40:1 41:8  44:17 47:4  <b>written</b> <sup>[8]</sup> 38:9 39:14 45:  10,21,22 46:22 49:25 57:1</p> <hr/> <p style="text-align: center;"><b>Y</b></p> <hr/> <p><b>yannetti</b> <sup>[42]</sup> 3:10,11 4:1,  18,21,25 19:14 39:17,20  40:9 41:2,5,22 42:1,12,19,  23,25 46:11,18 48:20 49:  13 51:11,15,19,23 52:17,  23 53:3,13,17 57:19,21 58:  8,11,15,20 59:1 60:19,22  61:5,11  <b>yard</b> <sup>[24]</sup> 8:14 10:9,10,11,  14,19,24 11:3 12:13,15 19:  6 35:23,25 36:2,3,6,7,10,  17 37:2,3,5,5 50:11  <b>yards</b> <sup>[1]</sup> 10:18  <b>years</b> <sup>[2]</sup> 6:18 19:24  <b>yield</b> <sup>[1]</sup> 41:10</p>	<hr/> <p style="text-align: center;"><b>Z</b></p> <hr/> <p><b>zero</b> <sup>[1]</sup> 16:25  <b>zoom</b> <sup>[3]</sup> 59:14,16 60:24</p>
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