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2023 APR 26 11 3: 31 COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS. OF THE COURTS
NORFOLK COUNTY

SUPERIOR COURT DEPARTMENT
NO. 2282-CR-00117

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COMMONWEALTH OF MASSACHUSETTS,)
Plaintiff)
V.)
KAREN READ,)
Defendant)
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DEFENDANT'S RENEWED MOTION TO COMPEL DISCOVERY

Now comes the defendant, Karen Read ("Ms. Read", or "the Defendant"), and respectfully moves this Honorable Court pursuant to Mass. R. Crim. P. 14 to compel the Commonwealth to produce the following for inspection and/or independent testing by the defense, forthwith:

1. Clothing worn by Officer John O'Keefe ("Officer O'Keefe") at the time of his death and/or seized by the police in connection with this matter;
2. Evidence seized from Ms. Read's Lexus SUV, including all pieces of tail light that were allegedly discovered and/or seized outside of, near, or on the property of 34 Fairview Road, Canton, and complete access to both the Event Data Recorder and the Lexus "infotainment" system contained within Ms. Read's vehicle;
3. All samples of trace evidence and any other autopsy samples seized in connection with this matter, including (but not limited to) any samples collected from the wounds on Officer O'Keefe's arms, head and/or body, any DNA evidence, and any other collected and/or existing samples of any kind; and
4. Copies of Canton Public Library surveillance videos in their original format, as shared with law enforcement via Share File;

FACTUAL AND PROCEDURAL BACKGROUND

Items 1-3: (1) *Clothing worn by Officer O’Keefe at the time of his death and/or seized by the police in connection with this matter;* (2) *evidence seized from Ms. Read’s Lexus SUV, including the pieces of tail light allegedly discovered and/or seized outside, near or on the property of 34 Fairview Road, Event Data Recorder, and the Lexus “infotainment” system contained within Ms. Read’s vehicle;* (3) *all samples of trace evidence and any other autopsy samples seized in connection with this matter, including (but not limited to) any samples collected from the wounds on Officer O’Keefe’s arms, head and/or body, any DNA evidence, and any other collected and/or existing samples of any kind*

Items 1-3 are — and have been — in the custody and control of the Massachusetts State Police Crime Laboratory for well over a year. Regarding Item 1, clothing worn by Officer O’Keefe at the time of his death and/or seized by the police in connection with this matter, the defense has been seeking access to this basic evidence and mandatory discovery since shortly after Ms. Read’s arraignment in the Stoughton District Court on February 2, 2022. On May 27, 2022, the undersigned counsel e-mailed ADA Lally to notify him of the defense’s demand to inspect Officer O’Keefe’s clothing and requested a date and time to accomplish that. On August 12, 2022, this Court, Krupp, J., presiding, ordered the Commonwealth to allow the Defendant’s “attorney, investigator, and/or retained forensic expert to inspect and photograph all clothing of John O’Keefe, seized by the police in connection with this matter.” See “Defendant’s Motion to Inspect John O’Keefe’s Clothing”, dated August 11, 2022.¹ In a margin ruling, Judge Krupp noted “ALLOWED after items are back from the lab”. *Id.*

On December 16, 2022, the defense again e-mailed ADA Lally to request an inspection of Officer O’Keefe’s clothing. On January 5, 2023, during a Zoom videoconference which the defense team had with ADA Lally, defense counsel again stressed the need to inspect Officer O’Keefe’s clothing, which had been in the custody of the State Police Crime Lab (and apparently had not been forensically tested) for nearly a year at that point. ADA Lally informed Ms. Read’s attorneys — David R. Yannetti, Alan Jackson, Elizabeth Little, and Ian Henchy — that he

¹ “Defendant’s Motion to Inspect John O’Keefe’s Clothing”, dated August 11, 2022, is attached hereto as Exhibit 1, and is incorporated herein by reference.

would, by January 16, 2023, let the defense team know when the clothing could be inspected. On January 5, 2023, Attorney Little e-mailed ADA Lally to confirm that ADA Lally would be contacting the crime lab, so that he could inform the defense team by January 16, 2023 of the date by which the clothing would be available for defense inspection and/or testing:

On Thu, Jan 5, 2023 at 8:12 PM Elizabeth Little <elittle@werksmanjackson.com> wrote:

Dear Mr. Lally:

We very much appreciate you taking the time to meet with us today via Zoom. As discussed, we would like to have an answer with regard to the below items by **January 16, 2022**, so that, to the extent necessary, we can ensure any outstanding issues can be resolved by the Court at our next appearance.

1. **Crime Scene Photos – 1/29/22 a.m.:** You indicated that you have been in contact with Canton Police Prosecutor Scott Lanhart, and that the only crime scene photographs from the morning of 1/29/22 that are in your possession and/or that are in the Canton police database as of today's date consists of a single pdf document containing the crime scene photographs. You have indicated that you do not have any digital copies of the photographs but will follow up with Canton PD to determine whether you can locate the original digital copies of the photographs, which are missing from Canton PD's system or confirm that they are gone.
2. **SERT Team Crime Scene Photos** – You confirmed that you spoke with Lt. O'Hara on two separate occasions, and that he represented to you that the SERT team does not take photographs as part of their typical procedures; you also confirmed that Lt. O'Hara independently checked his file to ensure no such photographs exist. You also indicated that you spoke with Lt. Tully yesterday January 4, 2023, and that he verified that he took crime scene photos from the SERT team search, and that he will be placing those on a flash drive for production to us, which you should receive as early as tomorrow. We eagerly await this production.
3. **911 Calls** – You indicated that you would produce additional 911 calls from (1) Norwood Police Department; and (2) Norfolk County RECC.
4. **Ring Videos** – You indicated that you obtained the Ring videos in this case pursuant to a search warrant and that the search warrant limited the Ring videos to videos obtained between January 24, 2022 at 12 a.m. and January 30, 2022 at 12 a.m. Please immediately produce: (1) the Ring Search Warrant, affidavit, and returns; (2) the complete production from Ring, which presumably would have included a cover letter along with other proprietary information about when the cameras were motion-activated.
5. **O'Keefe's Clothing and Pieces of Plastic from Taillight:** You indicated that the lab and the case management team have not finished processing the clothing or pieces of taillight in connection with this case; you stated that you would follow up with them to obtain a time estimate as to when the testing will be completed. Please let us know how long the lab anticipates it will need to complete its testing and/or if you have any success expediting this process.

By February 1, 2023, the defense team had still received no response from ADA Lally. Accordingly, on February 1, 2023, undersigned counsel filed a standalone “Motion for Inspection, Access, and Independent Forensic Testing of John O’Keefe’s Clothing” — essentially functioning as another motion to compel discovery. This Court heard this motion during our last hearing in court, on February 8, 2023.²

Regarding Item 2, on February 1, 2023, defense counsel filed a standalone “Motion for Inspection, Access, and Independent Testing of Pieces of Tail Light Seized by the Commonwealth.”³ On behalf of the defense team, Attorney Little had raised the need for access to the pieces of tail light in the same paragraph of the same January 5, 2023 email to ADA Lally included above (to which the defense, similarly, had received no response as of February 1, 2023, despite ADA Lally’s promise that by January 16, 2023, he would contact the defense team with a date on which the pieces of tail light could be inspected).

In its “Motion for Inspection, Access, and Independent Testing of Pieces of Tail Light Seized by the Commonwealth”, the defense noted that this Court, Krupp, J., presiding, allowed the Defendant’s “Motion to Inspect Tail Light and Housing” on August 12, 2022. In a margin ruling, Judge Krupp wrote “ALLOWED after items are back from the lab.”⁴ Previously, on May 27, 2022, Ms. Read’s accident reconstructionist, Ms. Kerry Alvino (“Ms. Alvino”) had unwittingly made a pointless trip – at Ms. Read’s expense – to attempt to examine Ms. Read’s Lexus in police custody. She only learned after making the trip that all pieces of the tail light — and the entire tail light housing — had been removed from the vehicle. Ms. Alvino was therefore prevented from inspecting the tail light pieces and housing, as undersigned counsel explained in a May 27, 2022 email to ADA Lally.

Regarding Item 3, forensic evidence seized in connection with this matter, defense counsel filed an “Emergency Motion for Preservation of Evidence” upon Ms. Read’s arraignment in Stoughton District Court on February 2, 2022.⁵ That motion was allowed by that Court,

² “Motion for Inspection, Access, and Independent Forensic Testing of John O’Keefe’s Clothing”, dated February 1, 2023, is attached hereto as **Exhibit 2**, and is incorporated herein by reference.

³ “Motion for Inspection, Access, and Independent Testing of Pieces of Tail Light Seized by the Commonwealth” dated February 1, 2023, is attached hereto as **Exhibit 3**, and is incorporated herein by reference.

⁴ “Defendant’s Motion to Inspect Tail Light and Housing”, allowed on August 12, 2022, attached hereto as **Exhibit 4**.

⁵ “Defendant’s Emergency Motion for Preservation of Evidence”, dated February 2, 2022, is attached hereto as **Exhibit 5**, and is incorporated herein by reference.

O'Malley, J., presiding. In that motion, the defense requested preservation of (among other items) “[a]ll trace evidence, including but not limited to fingerprints, DNA evidence, blood, saliva, and any other bodily fluids. The defendant is specifically moving this Court to order that no exhaustive testing should be performed on any evidence in connection with this case without the Commonwealth giving prior notice to the defendant and allowing the defendant to object ...” *Id.* at p. 2, ¶ 5. Out of an abundance of caution, though the samples had already been ordered preserved, the defense filed “Defendant’s Motion for Preservation of Samples for Independent Forensic Testing” in Superior Court on September 15, 2022,⁶ to ensure that none of the forensic samples would be destroyed in accordance with the Massachusetts State Police Crime Laboratory’s retention policies. This motion was allowed by this Court, Krupp, J., presiding, on September 22, 2022.

During the February 8, 2023 hearing on the Defendant’s “Motion for Inspection, Access, and Independent Forensic Testing of John O’Keefe’s Clothing” and “Motion for Inspection, Access, and Independent Testing of Pieces of Tail Light Seized by the Commonwealth”, defense counsel expressed frustration with the inability of the defense team to access relevant, material and important evidence in the custody of the Massachusetts State Police Crime Laboratory. As defense counsel noted, in another case currently being prosecuted by the Norfolk County District Attorney’s office, prosecutors presented forensic evidence (including multiple pieces of DNA evidence) at the defendant’s *arraignment in District Court*.⁷ By contrast, in Ms. Read’s case, critical evidence which has been in police custody **well over a year** – evidence that the defense believes will help to exculpate Ms. Read – has apparently still not been tested. Undersigned counsel noted at the time that, while normally the defense would be seeking a sanction this far into a case when the Commonwealth has either neglected or refused to provide basic discovery material, that is not an option here. The defense has been desperately seeking this evidence since

⁶ “Defendant’ Motion for Preservation of Samples for Independent Forensic Testing”, dated September 15, 2022, is attached hereto as **Exhibit 6**, and is incorporated herein by reference.

⁷ *See e.g.* ABC 7 News, “After Brian Walshe charged with murder, prosecutors reveal series of incriminating Google searches”, published January 18, 2023: <https://abc7news.com/brian-walshe-arraignment-walsh-charged-with-murder-arrest-cohasset/12715849/>.

the outset of this matter in District Court, because the defense believes it will help to exonerate Ms. Read and confirm her innocence.⁸

This evidence has been in the custody of the Massachusetts State Police Crime Laboratory for well over a year, and — as of the date of the hearing on this current motion — this case will have been pending for roughly eleven months in Superior Court alone.

On February 8, 2023, at the hearing on the Defendant’s last motion to compel, ADA Lally represented to the Court that the items sought by the defense were still not back from the lab, but that the analysis and reports on the items sought by the defense should be completed within the next “thirty to sixty days” after February 8, 2023. As of the date of filing this motion, April 26, 2023 – 78 days later – the Commonwealth has apparently made no progress processing or producing any of this crucial discovery material. Defense counsel continues to be denied access to the most critical evidence in this case for independent testing and analysis.

Accordingly, at this point, the defense is respectfully requesting that the Court order such a deadline be imposed. If the testing is not completed by the deadline ordered by the Court, defense counsel would request the opportunity to summons the analyst or analysts responsible for the testing into court for a show-cause hearing pursuant to the civil contempt proceedings outlined in Mass. R. Civ. P. 65.3.

Item 4: Copies of Canton Public Library surveillance videos in their original format, as shared with law enforcement via Share File

Raw footage of the video surveillance from the Canton Public Library is another item of discovery the defense has similarly sought for an extended period of time, as the defense believes this video will help to confirm when and how Ms. Read’s taillight was broken. As has been discussed by the defense in its filings and in Court, contrary to Trooper Michael Proctor’s assertion that Ms. Read “[came] close” to hitting Officer O’Keefe’s Chevy Traverse at approximately 5:08 a.m. on January 29, 2022, video evidence definitively proves that Ms. Read *did* hit Officer O’Keefe’s Chevy Traverse while backing out of the garage. As can be seen on the video — which has been publicly released — the driver’s-side rear tire of Officer O’Keefe’s

⁸ Of note, defense counsel did not receive a complete 911 call in this case — something that would be provided in any district court case by the date of the first pretrial hearing — until a year after the alleged January 29, 2022 incident.

vehicle can be seen lurching forward when Ms. Read's Lexus SUV makes contact with it. It is a misrepresentation to characterize that actual contact as only [coming] close to contact.

On March 16, 2023, Attorney Little e-mailed ADA Lally requesting access to the Canton Library Surveillance Videos that had been sent via a "Share File" account to Massachusetts State Police Trooper Matthew Dunne ("Trooper Dunne") by IT director Louis Jutrus. On behalf of the defense team, Attorney Little stressed that the defense was requesting access to the same account:

Sent: Thursday, March 16, 2023 11:14 AM
To: Lally, Adam (DAA) <adam.lally@state.ma.us>
Cc: Alan Jackson <ajackson@werksmanjackson.com>; David Yannetti <law@davidyannetti.com>
Subject: Karen Read - Conference re Outstanding Discovery & Defense Access to Evidence

Dear Mr. Lally:

Thank you for taking the time to speak with us today. This email should memorialize our conversation regarding the outstanding discovery in this case, and the evidence that we need access to in order to defend Ms. Read.

1. Karen's iPhone – As discussed, we need a copy of Ms. Read's cell phone ASAP. You expressed hesitation regarding handing over evidence that you have not reviewed. However, the phone is in your possession, it belongs to Ms. Read, and we are entitled to a copy of any evidence that is in the possession of law enforcement. Please provide ASAP.
2. Library Video – Please provide access to the share file account containing the library photos, which was previously provided to Trooper Matthew Dunne by IT director Louis Jutrus.
3. 2/3 Crime Scene Photos – Please provide all writings, reports, notes, and other information associated with the February 3, 2022 crime scene photographs. This should include but is not limited to the facts giving rise to MSP's decision to photograph the crime scene days after the crime, the state of the crime scene at the time the photographs were taken, and the names of the witness and/or witnesses who purportedly discovered any evidence retrieved on that date. In your response, you stated that you produced everything from Canton PD. However, these photos were supposedly taken by MSP.
4. Defense Access to Taillight & Taillight Housing – As discussed, we need access to the taillight and taillight housing that is in law enforcement custody. You indicated that this evidence is still in the possession of the crime lab, that you spoke with the crime lab last week, and that their analysis should be completed well in advance of the May court date. The defense team would like access to the taillight when we are in town for court on May 3, 2022.
5. Defense Access to Tissue Samples and Access to All of His Clothing – Please let us know when we are able to have our expert analyze the tissue samples taken from O'Keefe, and his clothing from the night in question. You said these samples are also still in the crime lab. Please let us know as soon as we are able to access this critical evidence.

Nearly a month later, the Commonwealth provided what purported to be a “Copy of Canton Public Library Surveillance Video, Share File Account provided to Law Enforcement” in its Notice of Discovery XIII, docketed on April 12, 2023:

- 📁 Notice of Discovery XIII
 - ▼ 📁 1 Copy of Canton Public Library...d to Law Enforcement - Flash Drive
 - 📄 Wash St_20220129_050000.exe
 - 📄 Wash St_20220129_000000.exe

Nowhere in that production, however, is the link to the Share File drive that had been shared with law enforcement by the Canton Public Library. Thus, the defense has no way to verify (1) whether the files provided reflect the totality of the contents of that folder, and (2) whether these are in fact the original, raw videos. Notably, videos from a crucial time period (i.e., when Ms. Read would have driven by the Canton Public Library on her way home from 34 Fairview Road in the early morning hours of January 29, 2022) appear to be missing. Accordingly, defense counsel respectfully requests that the Court order the Commonwealth to provide access to the same Share File account containing the Canton Library Surveillance videos in the format originally received by Trooper Dunne, as is common practice in both District and Superior Court cases.

ARGUMENT

“American Bar Association (“ABA”) Standard 3-5.4 fleshes out the prosecutor’s obligation to coordinate with its own agents and other agencies, addresses exculpatory evidence explicitly, and imposes an ethical duty to follow up on evidentiary leads even when the prosecutor believes the resulting information may damage his or her case. . . .” Non-Brady Legal and Ethical Obligations on Prosecutors to Disclose Exculpatory Evidence, Marc Allen, National Registry of Exonerations, published July 2018. The Commonwealth violates its duty to disclose exculpatory evidence even if that information was known only to law enforcement officials investigating the case and was not shared with the prosecutor. *See Commonwealth v. Francis*, 474 Mass. 816, 826 (2016); *see also Youngblood v. West Virginia*, 547 U.S. 867, 869–870 (2006) (*per curiam*) (“Brady suppression occurs when the government fails to turn over even evidence that is known only to police investigators and not to the prosecutor.” (internal quotation marks omitted)); Kyles

v. Whitley, 514 U.S. 419, 438 (1995) (rejecting rule that would not hold the State responsible for failing to disclose exculpatory evidence in the possession of police investigators but not known to prosecutors at the time of trial).

Simply put, “[t]he prosecutor in a criminal case shall . . . make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense.” Mass. R. Prof. C. 3.8(d).

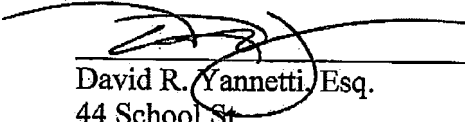
The Commonwealth also has a duty to provide automatic mandatory discovery at the Pretrial Conference. Mass. R. Crim. P. 14(a)(1)(A). To the extent that relevant information exceeds the automatic discovery requirements of Mass. R. Crim. P. 14 (a) (1) (A), as amended, 444 Mass. 1501 (2005), a defendant may seek such discovery by means of a motion filed pursuant to Mass. R. Crim. P. 14 (a) (2), as appearing in 442 Mass. 1518 (2004). See *Com v. Durham*, 446 Mass. 212, 234, cert. denied, 549 U.S. 855 (2006) (Cordy, J., dissenting) (“Rule 14 (a) (2) gives a judge discretion to authorize a defendant to discover from the Commonwealth ‘relevant evidence’”). “At the discovery stage, the question is whether the defendant has made a threshold showing of relevance.” *Com v. Bernardo B.*, 453 Mass. 158, 169 (2008) (discussing Mass. R. Crim. P. 14 (a) (2)). If items in this category are not produced, the proper response is to file a motion to compel discovery, or, in an appropriate case, a motion for sanctions under Mass. R. Crim. P. 14(a)(1)(C). Reporter’s Notes, Mass. R. Crim. P. 14(a)(2). The very integrity of the judicial system and public confidence in the system depend on full disclosure of all the facts, within the framework of the rules of evidence. *Id.* To ensure that justice is done, it is imperative to the function of the courts that compulsory process be available for the production of evidence needed either *by the prosecution or by the defense*. *Id.* See also *U.S. v. Nixon*, 418 U.S. 683, 709 (1973) (emphasis supplied).

If the Commonwealth fails to provide such discovery, the Court has broad discretion to apply sanctions, including dismissal, for noncompliance. See Mass. R. Crim. P. 14(c); see also *Com v. Douzanis*, 384 Mass. 434, 436 (1981) (“[O]n failure of the Commonwealth to comply with a lawful discovery order, the judge may impose appropriate sanctions, which may include dismissal of the criminal charge.”)


All of the above-requested documents and information constitute “material and relevant evidence . . . within the possession, custody, or control of the prosecutor and persons under his direction and control”. Mass. R. Crim. P. 14(a)(2). For the foregoing reasons, the Defendant

respectfully requests that this Honorable Court allow this motion to compel discovery, order deadlines for the inspection and/or independent testing of evidence, and order that all evidence requested herein be produced forthwith.

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



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Dated: April 26, 2023