

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

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.

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.¹

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.

¹ 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.²

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

² 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.³ (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 29th 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.⁴ In point of fact, two separate witnesses, Bill Walsh and Lucky Loughran, reported that Mr. Loughran was

³ 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.)

⁴ 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

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.

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



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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.

September 1, 2023

Date



Elizabeth S. Little