

125

RECEIVED & FILED  
2023 SEP - 7 PM 1:39  
COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS. 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 GOOGLE, LLC**

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 entity to deliver the described records to the Clerk of the Court in advance of trial:

**To:** Google LLC  
C/O Corporation Service Company  
84 State Street  
Boston, MA 02109

**Information Requested:**

Defendant is seeking the following information for any Google Nest camera(s) or associated accounts belonging to Brian Albert or Nicole Albert for their residence located at 34 Fairview Road in Canton, Massachusetts:

1. “Setup information” related to any Google Nest camera or associated account registered to Brian Albert or Nicole Albert for their residence located at 34 Fairview Road. **This request is limited to Google Nest cameras or associated accounts that were set up by either of the above users prior to January 29, 2022.**
2. Service usage data for any Google Nest camera or associated accounts for the above individuals, which were activated prior to January 29, 2022. This should

include service attributes (such as features used or enabled), and service usage data (such as the start and end date, service adjustments, and feature settings).

3. Any audio or video data associated with any nest cameras or associated accounts belonging to the above individuals recorded on January 29, 2022, between 12:00 a.m. and 6:30 a.m.
4. Any records, logs, or other information documenting manual device interactions and/or records of deletion of data, which was recorded between 12:00 a.m. and 7:00 a.m. on January 29, 2022.

## **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).

2. Mr. O’Keefe was found unresponsive just after 6 a.m. on January 29, 2022, in the front yard of the home of Brian Albert, a longtime Sergeant Detective with the Boston Police Department’s Fugitive Apprehension Team. The Commonwealth’s theory of this 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 by striking his head, and fleeing the scene. Ms. Read vehemently contests these allegations and has obtained significant reliable evidence suggesting that other individuals were involved in the murder of Mr. O’Keefe and the subsequent coverup thereof. Brian Albert, Jennifer McCabe, and Matthew McCabe, all of whom were present at the Albert Residence on the night in question, have maintained that O’Keefe never entered the residence.<sup>1</sup>

3. The notion that longtime Boston Police Officer Brian Albert has no security cameras installed at the residence where he lives with his wife and children, is hard to believe. Clearly, security camera footage capturing the interior and/or exterior of Mr. Albert’s residence located at

---

<sup>1</sup> Given the Court’s intimate knowledge of the facts of this case, the foundational facts surrounding this case are discussed herein only briefly. 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.

34 Fairview Road, would establish whether Mr. O’Keefe entered the Albert residence in the early morning of January 29, 2022, or was struck by Ms. Read’s vehicle.

4. In spite of this very obvious fact, not a single police report or other item of discovery produced in connection with this case discusses whether there was video surveillance and/or security cameras installed at the residence located at 34 Fairview Road (i.e., the crime scene) on January 29, 2022. (Affidavit of Alan Jackson, ¶4.) In fact, according to police reports, law enforcement never asked Brian Albert, Nicole Albert, or any other witness whether they ever observed video surveillance or security cameras installed at the Albert Residence, located at 34 Fairview Road (i.e., the crime scene). (*Id.* at ¶4.) Moreover, ADA Lally did not ask a single witness who appeared in connection with the grand jury proceedings whether there were security cameras installed at the Albert Residence. (*Id.* at ¶5.) In spite of the fact that law enforcement undertook no documented efforts to elicit this clearly relevant information from any of the witnesses during the course of its investigation, at the close of Brian Albert’s testimony, a juror asked Mr. Albert: “I don’t know [sic] But are there security cameras??” (*Id.*) Shockingly, before Brian Albert could respond to the question, Mr. Lally interjected, stating: “Let me follow up with that. So what, if anything, did you receive as a Christmas gift this past Christmas from your wife Nicole in reference to cameras in your house?” (*Id.*) To which, Mr. Albert responded, “I received for a present some type of camera. It’s not a - it’s not a Ring but something along those lines. It might be Nest or something like that. So Nest - I’m not positive of the name brand, but.” (*Id.*) Mr. Lally then asked, “And at the time of this day, January 29<sup>th</sup>, had you gotten around to installing that yet?” (*Id.*) Mr. Albert then responded, “No, we never installed it.” (*Id.*) ADA Lally then immediately concluded all questioning of Brian Albert, stating, “Seeing no other questions, I would thank the witness and ask that he be excused.” (*Id.*)

5. This exchange is incredibly disturbing for a number of reasons. First, ADA Lally apparently had personal knowledge of the fact that Mr. Albert was in possession of a security camera *before January 29, 2022* (including specific details such as the fact that he supposedly received this camera from his wife, Nicole, for Christmas more than a month before Mr. O’Keefe’s death), in spite of the fact that this information is not documented in any reports or other discovery that has been produced to the defense to date. Thus, at a minimum, the Commonwealth has failed to comply with its mandatory discovery obligation requiring the disclosure of **all statements of persons the party intends to call as witnesses**. Obviously, that

was not done. Second, in spite of the fact that ADA Lally had personal knowledge that Mr. Albert owned a security camera on January 29, 2022, ADA Lally failed to elicit this information when he questioned Mr. Albert during the course of the grand jury proceedings. Significantly, this information (which was apparently known to the Commonwealth) *never* would have come to light if a juror had not *independently* taken it upon themselves to ask that question. In fact, Mr. Lally took the extraordinary effort of interjecting himself between the juror’s question and Mr. Albert’s answer, in order to lead Mr. Albert into the answer that Mr. Lally had choreographed. Third, law enforcement was evidently aware that Mr. Albert owned a security camera on January 29, 2022, and yet never sought to secure that camera to determine whether it contained information of evidentiary value.

6. As set forth herein, Ms. Read requests that this Court issue a summons to Google LLC for the requested information, which will establish (1) whether Mr. Albert installed a Google Nest camera at his residence located at 34 Fairview Road prior to January 29, 2022 (contrary to his representations to law enforcement); and/or (2) will provide additional evidence regarding what happened to Mr. O’Keefe at the Albert Residence on January 29, 2022.

## 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. Here, the existence of the requested records would establish that Brian Albert lied to law enforcement (and to the grand jury under oath), when he claimed that he never set up the Google Nest camera, which he claimed was gifted to him by his wife for Christmas more than a month before Mr. O’Keefe’s death. (Affidavit of Alan Jackson, ¶6.) Evidence from Google that establishes that Brian Albert had already installed a Nest camera on January 29, 2022 (and lied to law enforcement by falsely claiming he hadn’t set the camera up) would not just be exculpatory, it would be case-ending and necessitate the dismissal of charges against Ms. Read. Moreover, any data associated with any Nest cameras belonging to the Alberts between 12:00 a.m. and 7:00 a.m. on January 29, 2022, would shed light on what happened to Mr. O’Keefe at the Albert residence on the morning in question. (*Id.*) Accordingly, the requested records are undeniably 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. As set forth in the attached affidavit of counsel, Google LLC will not share the requested information with Ms. Read absent a court order. (Affidavit of Alan Jackson, at ¶7.) The only mechanism by which Ms. Read can obtain the requested information in advance of trial is by order of this Court. (*Id.*)

//

**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 the trial in order to effectively defend Ms. Read. It is unclear, based on a review of Google's retention policies, how long Google LLC maintains the requested information (particularly where there are attempts by the user to delete data). (Affidavit of Alan Jackson, ¶8.) However, a user's data is not stored forever. (*Id.*) Thus, by forcing Ms. Read to wait until trial to obtain this information, there is an increased risk in the spoliation of evidence retained by Google LLC. (*Id.*) Moreover, this information will likely necessitate further pretrial motions, and Ms. Read may need additional time to hire and consult with experts in order to interpret any data that is obtained from Google, LLC. (*Id.*) Finally, this evidence is absolutely necessary in order for Ms. Read to prepare for trial and effectively cross-examine the Commonwealth's witnesses. (*Id.*) As such, Ms. Read cannot prepare for trial without inspecting the records in advance of trial and the late disclosure of the records will delay trial.

**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's request is narrow and targeted such that any records that would be produced in response to this request would be extraordinarily exculpatory (and establish that Brian Albert lied to law enforcement when he indicated that his Google Nest camera had not been set up prior to January 29, 2022). (Affidavit of Alan Jackson, ¶9.) Moreover, there is no question that security footage from Brian Albert's residence between 12:00 a.m. and 7:00 a.m. on January 29, 2022, is obviously relevant because it would shed light on what happened to Mr. O'Keefe on the night in question. There is no risk that this request would result in the intimidation or harassment of witnesses because Mr. and Mrs. Albert have no privacy (or

other interest) in preventing Ms. Read from obtaining the *absence of evidence*. In other words, if these records exist, they are clearly relevant and exculpatory. If they don't exist, then Mr. and Mrs. Albert have no privacy (or other interest) in preventing Google from responding accordingly. As set forth in the supporting affidavit of counsel, this request is extremely specific and only seeks information related to Google Nest cameras that were set up by Brian or Nicole Albert for their residence located at 34 Fairview Road **before January 29, 2022**. Thus, because this request is limited to setup information and/or service usage data for Google Nest cameras set up by Brian or Nicole Albert for their residence located at 34 Fairview Road (the crime scene) *before January 29, 2022*, any responsive records will necessarily be exculpatory. Further, any audio or video data associated with any Nest cameras, which captured the Albert residence on January 29, 2022, between 12:00 a.m. and 6:30 a.m. is obviously evidentiary and relevant and will shed light on what happened to Mr. O'Keefe in the early morning of January 29, 2022. Finally, evidence that Brian or Nicole Albert deleted data recorded by the Nest camera (and associated accounts) on January 29, 2022, is obviously further circumstantial evidence of guilt and supports Ms. Read's third party culprit defense.

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 Google, LLC to produce the requested information 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  
888 West Sixth Street, Fourth Floor  
Los Angeles, CA 90017  
T. (213) 688-0460  
F. (213) 624-1942



David R. Yannetti, Esq.  
44 School St.  
Suite 1000A  
Boston, MA 02108  
(617) 338-6006  
BBO #555713  
law@davidyannetti.com

September 7, 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 Google, LLC” upon the Commonwealth by emailing a copy on September 7, 2023, to Norfolk County Assistant District Attorney Adam Lally at [adam.lally@mass.gov](mailto:adam.lally@mass.gov).

9/7/2023

Date



Elizabeth S. Little