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COMMONWEALTH OF MASSACHUSETTS

SUPERIOR COURT DEPARTMENT
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 GOOGLE, LLC

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

1. I am a Partner at the firm Werksman Jackson & Quinn. 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 Google, LLC.
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 facts set forth in Defendant's Motion for Order Pursuant to Mass. R. Crim. P. 17 Directed to Google, LLC are true and correct to the best of my knowledge.
4. I have carefully reviewed every item of discovery produced by the Commonwealth in this case, including all police reports, evidence reports, grand jury minutes, crime scene photographs. Aside from the single colloquy that occurred during the course of the grand jury proceedings (discussed in more detail below), not a single police report or other item

of discovery produced by the Commonwealth in connection with this case discusses the presence or absence of a video surveillance and/or security cameras installed at the residence located at 34 Fairview Road on January 29, 2022. In fact, according to police reports, law enforcement never asked a single witness whether they observed video surveillance or security cameras installed at the Albert Residence located at 34 Fairview Road (i.e. the crime scene) on January 29, 2022.

5. During the course of the grand jury proceedings, including his questioning of Brian Albert, ADA Lally did not ask a single witness who appeared in connection with those proceedings whether there were security cameras installed at the Albert Residence (i.e. the crime scene). The only question regarding whether the Alberts owned a security camera that may have captured the crime scene was posed by a juror *after* ADA Lally completed his questioning of third party culprit, Brian Albert. The following colloquy is a true and correct recitation of the question-and-answer that occurred at the close of Brian Albert's testimony before the grand jury:

Juror: I don't know [sic] But are there security cameras??

ADA Lally: 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?

B. Albert: 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.

ADA Lally: And at the time of this day, January 29th, had you gotten around to installing that yet?

B. Albert: No we never installed it.

ADA Lally: Okay. Seeing no other questions, I would thank the witness and ask that he be excused. Thank you very much.¹

6. I am informed and believe that the requested records and information in the possession of Google, LLC, are evidentiary and relevant because they 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), evidencing consciousness of guilt; and (2) will provide additional evidence regarding what happened to Mr. O’Keefe at the Albert Residence on January 29, 2022. Indeed, the mere existence of the requested records will 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 that was purportedly gifted to him by his wife for Christmas a month before Mr. O’Keefe’s death. Moreover, I am informed and believe that any data associated with nest cameras belonging to the Alberts capturing the crime scene, 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 34 Fairview Road on the morning in question. Thus, I have a good faith belief that *any* records responsive to this request would not only be relevant, but would also be exculpatory.

7. I am informed that the records and information requested by Ms. Read are not procurable reasonably in advance of trial absent an order from this Court. I am informed and believe that Google, LLC will not share the requested information absent a court order. I have a good faith belief that the only mechanism by which Ms. Read can obtain the requested information in advance of trial is by order of this Court.

¹ A complete copy of the grand jury minutes memorializing Brian Albert’s testimony before the grand jury can be filed under order of impoundment at the Court’s request.

8. 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. I have reviewed Google LLC's retention policies regarding data obtained from Google Nest devices. Based on my review of those policies, it is unclear how long Google stores various types of data obtained from Nest devices, however, most data is only stored for a finite period of time. Thus, I am informed and believe that by forcing Ms. Read to wait until trial to obtain this information, there is an increased risk in spoliation of evidence. Moreover, upon receiving the requested data, Ms. Read will need additional time to consult with and hire experts in order to interpret the data that is produced by Google. Moreover, the existence of this data will likely necessitate additional pretrial motions for additional evidence. Thus, Ms. Read cannot prepare for trial without inspecting these records well in advance of trial and the late disclosure of these records will unquestionably delay trial or result in the loss of critical and likely exculpatory evidence.

9. The instant request is plainly not a fishing expedition and is narrowly targeted such that *any* records produced in response to this request would be extraordinarily exculpatory (and would establish that Brian Albert lied to law enforcement when he indicated his Nest Camera had not been set up prior to January 29, 2022). Furthermore, there is absolutely 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, LLC from responding accordingly. Of note, Ms. Read has not requested

information associated with *any* Google Nest devices that may have been set up *after* Mr. O'Keefe's death. Thus, the instant request is made in good faith.

10. Based on the foregoing, our office respectfully requests that this Court order the requested documents, records, and information from Google LLC, which are necessary in order for our office to be able to effectively defend Ms. Read at trial.

SIGNED and SWORN to under the pains and penalties of perjury this 7th day of September 2023.



Alan J. Jackson, Esq.