

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT  
CRIMINAL ACTION  
22-00117

COMMONWEALTH

vs.

KAREN READ

MEMORANDUM OF DECISION AND ORDER ON DEFENDANT’S MOTION FOR AN ORDER PURSUANT TO MASS. R. CRIM. P. 17 DIRECTED TO CANTON ANIMAL CONTROL AND THE CANTON CLERK’S OFFICE

The defendant, Karen Read, is charged with murder in the second degree in violation of G. L. c. 265, § 1, manslaughter while operating under the influence of alcohol in violation of G. L. c. 265, § 13 ½, and leaving the scene of personal injury and death in violation of G. L. c. 90, § 24(2)(a½)(2). The charges arise from the death of her boyfriend, Boston Police Officer John O’Keefe, who was found unresponsive in the snow outside a residence in Canton on the morning of January 29, 2022. The case is before the court on the defendant’s Motion for an Order Pursuant to Mass. R. Crim. P. 17 Directed to Canton Animal Control and the Canton Clerk’s Office. After a hearing on May 3, 2022, and review of written arguments submitted, the defendant’s motion is ALLOWED.

BACKGROUND

On the evening of January 28, 2022, John O’Keefe and the defendant met with a group of people including Boston Police Officer Brian Albert (“Albert”) at a bar in Canton. As the bar was closing, the group was invited to Albert’s residence. O’Keefe and the defendant left the bar together in the defendant’s vehicle and proceeded to the residence as heavy snow was falling. The defense maintains that the defendant dropped off O’Keefe at the residence and left under the

impression that he went inside. Others present at the time, however, have reported that O'Keefe never entered the residence.

O'Keefe did not return home. Early in the morning, a distraught defendant called two of O'Keefe's friends to meet her and look for him together. Shortly after 6:00 a.m., they arrived at Albert's residence where only the defendant saw O'Keefe lying in the front yard in the snow, unresponsive. O'Keefe was transported to the hospital and pronounced dead. Following an autopsy, the medical examiner concluded that blunt impact injuries of the head and hypothermia caused his death and observed no obvious signs of a physical altercation or fight.

The defendant is charged with O'Keefe's murder. The Commonwealth's case is largely premised on the theory that she struck O'Keefe with her vehicle outside Albert's residence and left him there.

The defendant is pursuing a third-party culprit defense, arguing that Albert and others are responsible for O'Keefe's death. Part of her theory is that Albert beat O'Keefe in the home and that while he was doing so, his dog attacked O'Keefe. Defense expert Dr. Frank Sheridan, a board-certified forensic pathologist, has opined that injuries to O'Keefe's right upper arm and forearm are consistent with animal claw or scratch marks, and puncture wounds to O'Keefe's right elbow appear to be consistent with an animal bite mark. Dr. Sheridan has further opined that these injuries are inconsistent with being struck by a moving vehicle or dragged on a road.

Albert testified before the grand jury that on the night of the incident, his dog was either inside his house or in the fenced-in back yard. He also testified that his dog is "not great with strangers" and not allowed in his front yard. Defendant's Exhibit 2 at 80. The defense argues, if O'Keefe was attacked by the dog, he necessarily entered Albert's residence or the back yard, undermining the Commonwealth's theory that the defendant's vehicle struck and killed him.

The Canton town clerk informed a defense investigator that a dog license issued for a four-year-old German Shepard associated with Albert's residence in 2019, and that the dog was rehomed to Vermont in May 2022. A Canton animal control officer subsequently told the investigator that she wrote a quarantine order for the dog after a purported skin piercing incident in May 2022 and that Albert later rehomed the dog. Both the clerk's office and animal control refused to release the related records without a court order.

The defendant now seeks from the clerk's office and animal control the production of records "related to the licensure, ownership, quarantine, rehoming, and/or any 'skin piercing incidents'" of any animals registered to Albert and/or the owner of his residence between 2015 and present. Defendant's Motion at 1-2.

### **DISCUSSION**

Under Mass. R. Crim. P. 17(a)(2), the court may issue a summons ordering a third-party to produce "books, papers, documents, or other objects" prior to trial. The purpose of Rule 17(a)(2) is "to expedite the trial by providing a time and place before trial for the inspection of the subpoenaed materials." *Commonwealth v. Dwyer*, 448 Mass. 122, 142 (2006), quoting *United States v. Nixon*, 418 U.S. 683, 698-699 (1974). In deciding a defendant's motion pursuant to Rule 17(a)(2), the court must "balance the defendant's right to mount a defense with the Commonwealth's right to prevent unnecessary delay of the trial and unwarranted harassment of witnesses and third parties." *Commonwealth v. Lam*, 444 Mass. 224, 229-230 (2005). To succeed, the defendant must establish good cause by showing:

"(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, 269-270 (2004), quoting *Nixon*, 418 U.S. at 699-700. See *Matter of an Impounded Case*, 491 Mass. 109, 117 (2022). Each of these requirements is met here.

First, the records sought are both evidentiary and relevant. This requirement is satisfied if the records have a “rational tendency to prove [or disprove] an issue in the case” and are “likely to be admissible at . . . trial.” *Commonwealth v. Jones*, 478 Mass. 65, 68 (2017), quoting *Lampron*, 441 Mass. at 269-270. The records at issue pertain to Albert’s ownership of his dog, a reported attack by the dog, and the dog’s subsequent rehoming. Such records would rationally tend to show that Albert’s dog was prone to attacking people, and thus offer some support for the defendant’s theory that the dog attacked O’Keefe. The defendant’s theory is supported by expert evidence that an animal caused some of the injuries to O’Keefe’s arm. The request for records is not temporally overbroad because the time period requested is specifically tailored to begin in 2015 when the dog was a puppy. Therefore, the records are relevant to the defendant’s third-party culprit defense and have evidentiary value.

Second, it is undisputed that the records are not otherwise procurable reasonably before trial.<sup>1</sup> This requirement “imposes on the moving party an affirmative obligation to show that no other source likely exists for the desired records.” *Dwyer*, 448 Mass. at 142. The defendant has shown that the records at issue are in the possession of the town clerk and animal control offices. Neither office will release the records without a court order. Therefore, the defendant has no other way to procure the records before trial.

Third, it is undisputed that if the defendant does not obtain the records before trial, she would be unable to properly prepare her defense and the trial likely would be unreasonably

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<sup>1</sup> At the hearing, the Commonwealth stated it took issue with the first and fourth *Lampron* requirements.

delayed. This requirement “is designed to limit use of rule 17(a)(2) to instances where the absence of pretrial production would tend unreasonably to delay the trial.” *Id.* It is reasonable to expect that the records contain further details regarding the reported attack by Albert’s dog and the dog’s rehoming, likely including the identity of witnesses with knowledge of these incidents and the dog’s current whereabouts. To properly prepare her defense, the defendant may choose to interview those witnesses. Furthermore, upon locating the dog, the defendant intends to pursue a comparative DNA analysis of samples from the dog and O’Keefe’s wounds. Without pretrial access to the records, the defendant’s ability to prepare her defense would be hampered. Additionally, if the records are not produced the trial will be unreasonably delayed.

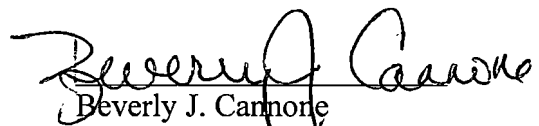
Lastly, the defendant has met the good faith requirement of Rule 17. This requirement “serve[s] as a reminder that rule 17(a)(2) is *not* a discovery tool . . . .” *Id.* The records at issue are known to exist and to be in the possession of the town clerk and animal control offices.

Therefore, the defendant’s request for a summons is allowed.

**ORDER**

For the foregoing reasons, the defendant’s Motion for an Order Pursuant to Mass. R. Crim. P. 17 Directed to Canton Animal Control and the Canton Clerk’s Office is **ALLOWED**.

Date: May 19, 2023

  
Beverly J. Cannone  
Justice of the Superior Court