

COMMONWEALTH OF MASSACHUSETTS

NORFOLK,SS

DEDHAM SUPERIOR COURT
NO. 2282CR00111

COMMONWEALTH

VS.

KAREN READ

**MEMORANDUM IN SUPPORT OF
MOTION TO QUASH SUBPOENA SERVED ON JENNIFER MCCABE,
GOVERNMENT WITNESS**

Rule 17(a)(2) of the Massachusetts Rules of Criminal Procedure allows for the production of documentary evidence and objects such as “books, papers, documents and other objects designated therein.” A summons so issued may command the person to produce the above. The Court has the inherent jurisdiction under Rule 17(a)(2) to quash or modify the summons if compliance would be unreasonable or oppressive or used to subvert the provisions of Rule 17.

The Rule allows the Court to direct that papers, books, documents or objects so designated be produced, inspected or copied. The Court is well aware of the standard to balance the defendant’s right to a fair trial with that of the Commonwealth’s right to prevent unnecessary and unwarranted harassment of government witnesses. Commonwealth vs. Lampron, 441 Mass. 265 (2004), Commonwealth vs. Lam, 444 Mass. 224 (2005). The burden is on the defense to show that the subpoena is issued in good faith with specificity as to what is sought based upon specific articulable facts and does not constitute a “fishing expedition.”¹

¹ Because Rule 17 is reserved for evidentiary materials that are likely to be admissible at trial or hearing... Wright 2 C.A. Federal Practice and Procedure, §271 (3rd Ed. 2000), Bowman Dairy Co. vs. United States, 341 U.S. 214 (1951). “Under our rule (17(a)(2) as under Rule 17 of the Federal Rules, the defendant must show that the documentary evidence sought has a ‘rational tendency to prove or disprove an issue in the case. Commonwealth vs.

In this case the Rule 17(a)(2) practice has been extensively litigated by both sides. The factual predicate of the offense as rebutted by the government has been scrutinized, re-hashed and argued repeatedly. The defense obtained the appropriate items as directed by the Court Order and the cell records were produced for analysis by both sides. The defense has attempted to broaden its Rule 17 net but to no avail. By serving Jennifer McCabe with a general subpoena to testify further as to the Rule 17 materials already produced it is readily apparent that the subpoena is intended to harass, intimidate and embarrass the government witness, all while seeking to expand the record on a generic Rule 17 motion to a full blown evidentiary hearing which would be apparently free wheeling and subject only to the Court's ability to monitor the scope and range of questioning.

Rule 17 does not contemplate oral testimony let alone subpoenaing witnesses subject to unfettered cross examination by a hostile party.² A stunning analogy to the defendant's effort to subpoena government witness, Jennifer McCabe, is tantamount to the defense filing a Rule 17 for a sexual assault victim's electronic media once produced and analyzed by both sides yet the defense seeks to call the complaining witness to give live testimony. Clearly not permitted. Th

Fayerweather, 406 Mass. 78 (1989), Commonwealth vs. Lampron, 441 Mass. at 268. The motion must be accompanied by an affidavit clearly and succinctly and hearsay must be reliable all within the Lampron construct.² In The Matter of an Impounded Case, SJC 13127 decided December, 2022 by the Supreme Judicial Court, the Court held that the Court did not err in ordering a limited deposition to all recreation and reconstruction of a social worker's notes that were inadvertently destroyed. Recognizing the "novel question" the Court agreed that the deposition order was not based on Rule 17 or the "Lampron Protocol." The Court held that;

"Rule 17 and Lampron-Dwyer Protocol represent a careful balancing. They establish not only that a statutory privilege sometimes must yield to a defendant's need for information to mount a defense and thus obtain a fair trial but also that in such circumstances the intrusion must be made with great care and pursuant to exacting procedures. Rule 17 contemplates only the examination of existing objects, not the creation of new evidence." (emphasis supplied).

Ultimately, the Court held that a deposition was not a tangible object and accordingly Rule 17 does not support the order that the social worker be deposed.

subpoena should be quashed as being vexatious and harassing and calculated to embarrass and intimidate government witnesses.

The judge is vested with wide discretion to quash or modify subpoenas to insure witnesses are not harassed or intimidated. United States vs. Hardy, 224 F3 752 (8th Cir, 2000), United States vs. Hughes, 895 F8 1135, United States vs. Romeri, 670 F2 702, cert. den. 459 U.S. 1035.

“A complainant or witness should not be forced to retain counsel or appear before a court in order to challenge on the basis of a partial view of the case potentially impermissible examination of her personal effects and the records of her personal interactions. See State vs. DeCaro, 725 A2 800 (CT. 2000). See also Commonwealth vs. Bougas, 2003 Lexis Mass. App. 1000, (September 22, 2003), Commonwealth vs. Caceres, 63 Mass. App. Ct. 747.

Jennifer McCabe,
By her attorney



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**AFFIDAVIT IN SUPPORT OF
MOTION TO QUASH SUBPOENA**


I, Kevin J. Reddington, Esq., being first duly sworn, depose and say that;

- 1.) I am an attorney duly licensed to practice law in the Commonwealth of Massachusetts.
- 2.) I represent Jennifer McCabe.
- 3.) Mrs. McCabe is a witness for the government in the homicide indictment of Commonwealth vs. Karen Read as above captioned.
- 4.) Jennifer McCabe cooperated as a civilian witness with the investigators, District Attorney and Grand Jury at all stages as requested.
- 5.) Mrs. McCabe is a mother and housewife who lives in Canton, Massachusetts.
- 6.) Mrs. McCabe has, at all times, acted consistent with her obligations as a citizen to provide information deemed relevant to the charges against Karen Read.
- 7.) Defense counsel has litigated and lost Rule 17 motions. The witness, McCabe, has provided her cell phone which has been examined and re-examined by the prosecution and defense.
- 8.) Inexplicably, the defense has not served her with a general subpoena to testify in a continuation of the Rule 17(a)(2) motion filed by the defense.

9.) There is no legal basis for this subpoena. The defense has no right to try and subvert a Rule 17 motion into a full blown hearing, subjecting this witness to cross examination.

10.) The subpoena is vexatious and harassing and does not stand on any valid legal framework. It is clearly calculated to intimidate and harass the witness and the subpoena should be QUASHED.

Signed under the pains and penalties of perjury this 22nd day of May, 2023.



Kevin J. Reddington, Esq.