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COMMONWEALTH OF MASSACHUSETTS

CLERK OF THE COURTS
NORFOLK, SS: NORFOLK COUNTY

SUPERIOR COURT
DOCKET No. 2382CR00313

COMMONWEALTH

v.

AIDAN KEARNEY

**DEFENDANT AIDAN KEARNEY'S MOTION TO COMPEL
OVERDUE AUTOMATIC DISCOVERY**

Now comes defendant Mr. Aidan Kearney, by and through undersigned counsel, and respectfully requests that the Court order the Commonwealth to produce overdue mandatory discovery. Under Mass. R. Crim. P. 14, mandatory discovery was due "at or before" the pretrial conference. Here, discovery was due by at that time by agreement of the parties, when Commonwealth counsel asked for defense counsel for assent to a continuance of the 2/16/24 pretrial conference. Commonwealth counsel agreed in return to provide said automatic discovery (due on said pretrial conference day under Mass. R. Crim. P. 14) but did not honor their agreement.

Since the agreement, Commonwealth counsel has ignored several defense team requests for compliance. Instead, the Commonwealth has provided sporadic, piecemeal, incomplete, and insignificant discovery, and failed to provide the main items due, such as all the grand jury

minutes so the defense can prepare an O'Dell /McCarthy motion, all of the reports in the case from all departments, all of the witness interviews, a list of physical evidence, and the like.

The Commonwealth has provided digital files with nothing in them, files containing three copies of the same item and nothing additional, gigabytes of photos of defendant's own home, and the like. There are several missing MSP case reports, and several indications that a large portion of the grand jury presentation is yet to be provided. Although it is not the defense job to audit the Commonwealth discovery and guess what is yet to be provided, the defense team has spent a great deal of time communicating with the Commonwealth to identify missing items and make compliance as easy as possible, without much more than a scintilla of cooperation from the government. There is clear avoidance of responsibility here, motivated by likely reluctance to provide evidence harmful to the government's case. Email dates are as follows, where the defense team has made requests for compliance:

2/27/24 - Request for GJ Minutes and missing files within the Case Report 2023-112-212, case reports 4, 7 and 9;

2/28/24 - Request for GJ Minutes and Items referenced in discovery regarding Colin/Chris Albert:

Any and all statements referencing "repeated mentions of the Alberts and accusations of them being responsible for the murder of John O'Keefe and taken part in the cover-up"

Any evidence pertaining to the Albert's "addresses and personal phone numbers being released by Mr. Kearney"

Evidence of "Mr. Kearney's readers, followers, and supporters have also engaged in harassment by placing over 50 false orders per day at D&E Pizza and Subs and never paying for the food."

"Threats of retribution" (Case Report Pg 13 #8)

Recordings or photos of Colin Albert being "followed and recorded leaving his home"

Items referenced in discovery regarding complainant Lindsey Gaetani:

"Screenshot that Kearney allegedly sent her showing multiple calls on a certain day that showed "Karen Read – Signal audio" in the call log."

Any and all text, phone call, and voicemail records between Attorney Mello and Lindsey Gaetani, and Brian Tully and Lindsey Gaetani.

Any and all call logs and recordings of communications, 911 or business line calls, between Attorney Mello and Medfield Police Department, and Brian Tully and the Medfield Police Department.

Copies of the referenced "notes" Lindsey Gaetani misappropriated from Mr. Kearney.

2/28/24 - Response from ADA Mello saying he's ill;

2/28/24 - Request for cocounsel Novack to provide since Novack can indict and attend hearings on behalf of Mello in this time frame;

3/1/24 - Follow up request with specific discovery requested;

3/6/24 - Another Follow up request.

If the Court wishes to wade further into the particulars, emails are available on request.

During this time frame the Commonwealth has been able to further indict Mr. Kearney, seek to jail him, arraign him on new charges, speak to the media, investigate third parties exercising their first amendment rights to speak about the case looking for links to Mr. Kearney, and several other endeavors. Mandatory automatic discovery for the defense has not been on their to-do list, and takes a back seat to further oppressing Mr. Kearney and anyone who utters a word in support or in criticism of the same investigating officers. Court involvement has become necessary, as the administration of justice has been stalled by the government.

Mr. Kearney and counsel believe the Commonwealth is deliberately withholding most or all of the foregoing automatic and exculpatory discovery because it contains sworn falsehoods and would be the basis for a motion to dismiss for egregious governmental misconduct. This belief is based on the overlap between the instant case and the Karen Read Norfolk County prosecution, wherein officials are accused, by the FBI and a federal grand jury, of making false statements to the grand jury, and that similar or the same suspect statements were repeated or elaborated upon by additional investigators in the Aidan Kearney case. As a result, the government is stalling the production of these central items in favor of providing secondary or irrelevant discovery to appear in good faith.

In addition to the items requested above, the following mandatory automatic discovery has not been provided:

1. All exhibits listed in Grand Jury transcripts from December 14, 2023.
2. All exhibits listed in Grand Jury transcripts from December 20, 2023.
3. All other dates for Grand Jury Minutes (Only dates received were Dec 14, 2023 and Dec 20, 2023). Based on references in GJ provided, prior and future GJ dates were referenced. The defense believes there are many dates and witnesses withheld.
4. All exhibits listed in each of the Grand Jury Minutes to be provided.

5. All exculpatory evidence.
6. Certificate of discovery providing formal notice of items provided.

Such information is relevant and exculpatory and mandatory discovery under Rule 14 of the Massachusetts Rules of Criminal Procedure. Mr. Kearney relies on *Brady v. Maryland*, 373 U.S. 83, 87 (1963); *Kyles v. Whitley*, 514 U.S. 419, (1995), *Commonwealth v. Adjutant*, 443 Mass. 649 (2005). *Wearry v. Cain*, 577 U.S. 136 S. Ct. 1002 (2016), (exculpatory evidence in possession of charging police department must be automatically disclosed under *Brady v. Maryland* and *Kyles v. Whitley*) and all applicable Commonwealth and Federal constitutional and statutory guarantees.

Wherefore, the Defendant requests an emergency order requiring full Rule 14 compliance within seven days, or an immediate hearing date for this motion, and for his other motions on file.

Date: March 19, 2024

Respectfully Submitted,

Aidan Kearney
By Counsel,

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CERTIFICATE OF SERVICE

I, Timothy J. Bradl, do hereby certify that I have served Counsel of record by hand and/or email and/or first class mail, postage paid on the foregoing date with a true copy of this motion / memorandum.

/S/TIMOTHY J. BRADL
Timothy J. Bradl