

**COMMONWEALTH OF MASSACHUSETTS**

**NORFOLK, SS:**

**DEDHAM DISTRICT COURT  
DOCKET NO. 2454CR000255**

**COMMONWEALTH**

**v.**

**AIDAN KEARNEY**

**DEFENDANT'S MOTION FOR ISSUANCE OF RULE 17 SUMMONS**

Now comes Mr. Aidan Kearney, defendant herein, and respectfully requests that the Court authorize the clerk-magistrate to issue two Mass. R. Crim. P. Rule 17 summonses to third party holders of critical, relevant and material evidence in the instant matter. Mr. Kearney requests that the Court issue a Rule 17 summons and a no destruction order to Ms. Megan McCabe and to Mr. Colin McCabe, to be served upon them by the Norfolk County Sheriff's Department or another qualified official for service of process, for production of the cell phones they used on February 26, 2024 to video the scene outside of the Norfolk Superior Court, the locus of the alleged restraining order violation herein. The defense requests production of the phones to be given to a telecommunications expert retained in the case for extraction of the complete videos and any text messages related to the videos.

The charges arise out of an alleged restraining order violation outside the Norfolk Superior Court after a February 26, 2024 court hearing in the murder prosecution, Commonwealth v. Karen Read. The scene was the subject of many cell phone videos. The complainant has supplied the Commonwealth with only screen shots allegedly showing Mr.

Kearney. Therein, two of her acquaintances [identified as Megan McCabe and Colin McCabe] are taking video in the alleged direction of Mr. Kearney and are the source of the many screen shots provided, according to the complainant. See selected pages of complainant's 65 page submission, attached as exhibit A.

The defense expects that the screen shots chosen by complainant to be proffered in the case are the shots that best support her position, leaving behind the actual raw footage that will undoubtedly exculpate Mr. Kearney. In short, the screen shots provided are a partial depiction of the raw evidence, cherry-picked in her favor, and simple fairness and integrity of the evidence requires the complainant and/or the persons making the videos to provide all the video footage and text messages relating to the footage. The defense expects the video to show Mr. Kearney going about his journalistic tasks speaking into his phone on a live blog, completely oblivious to the complainant exiting the court. Most important, the video will contradict the complainant's assertion that Mr. Kearney was yelling at her in violation of the order, exposing her as the rank liar that she is. The video will instead show that the complainant is as oblivious to Mr. Kearney's presence as he is to hers, eliminating the possibility of a knowing violation of the order.

Mr. Kearney files herewith several affidavits of witnesses who swear Mr. Kearney was not yelling at anyone (exhibit B), and files a Dedham Police report (exhibit C) in which the officer reviews other video footage from the time and concludes there was no communication from Mr. Kearney and that the complainant did not appear to perceive him either. Accordingly, the complete footage from the McCabe's is expected to match and corroborate the different but complementary footage already accumulated, further contradict the complainant's claims, and be potent for cross examination impacting the complainant's credibility at a minimum and likely

definitive proof she misled police in violation of the witness interference statute, G.L. 268 section 13B.

“Before ordering that a summons issue for such records, a judge hearing a rule 17(a)(2) motion must evaluate whether the *Lampron* requirements of relevance, admissibility, necessity, and specificity have been met.” *Commonwealth v. Dwyer*, 448 Mass. 122, 418 (2006). Specifically, Rule 17(a)(2) requires that “[t]he party moving to subpoena documents to be produced before trial must establish good cause, satisfied by a 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. Dwyer*, 448 Mass. 122, 140-141 (2006) (quoting *United States v. Nixon*, 418 U.S. 683, 699-700 (1974))(internal quotations omitted).

In order to satisfy the first of the four requirements set out in *Dwyer*, the defendant must “make a factual showing that the documents sought are relevant and have evidentiary value and that potential relevance and conclusory statements regarding relevance are insufficient...” *Dwyer*, 448 Mass. at 141-142. Under Rule 17 (a)(2), “the defendant must show that the documentary evidence sought has a rational tendency to prove or [disprove] an issue in the case.” *Commonwealth v. Lampron*, 441 Mass. 265, 270 (2004) quoting (*Commonwealth v. Fayerweather*, 406 Mass. 78, 83 (1989)) (internal quotations omitted). The second 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 third and fourth requirements of the rule

serve as a reminder that the limited purpose of Rule 17(a)(2) is to authorize a court “to expedite the trial by providing a time and place before trial for the inspection of the subpoenaed materials.” *Dwyer*, 448 Mass. at 142.

Here, the data sought is potentially exculpatory and is reasonably expected to provide evidence obviously supporting the defense claim that there was no knowing or actual violation of the order. The defense is amply justified in asking for the full raw video data rather than settling for the complainant to be the gatekeeper of what is provided. The video is relevant to show that the witness’s accusations are a fraud, and constitutes relevant, powerfully exculpatory evidence.

The information in the records is not obtainable in any alternative admissible manner, and prior inspection is necessary for a fair trial. The information request is based on the personal knowledge of Mr. Kearney after viewing the Commonwealth discovery and the screenshots provided, identifying the McCabes as the filming parties. Finally, the records sought are not a “general fishing expedition” into immaterial areas. See *Commonwealth v. Lampron*, 441 Mass. 265 (2004) (setting forth requirements for summons for third party records). Rather, the complainant has only provided half the fish.

For the foregoing reasons, the defendant asks the Court to authorize the clerk magistrate to issue Rule 17 summonses compelling the production of the records as listed above.

Dated: November 21, 2024

Respectfully Submitted  
AIDAN KEARNEY  
Defendant  
By his attorney,

**TIMOTHY J. BRADL /S/**  
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CERTIFICATE OF SERVICE

I, Timothy J. Bradl, do hereby certify that on the foregoing date I served this document in hand by first class mail by email on all counsel of record.

TIMOTHY J. BRADL /S/  
Timothy J. Bradl

AFFIDAVIT

I, Aidan Kearney, on oath do hereby depose and state under the pains and penalties of perjury, that the foregoing facts stated and/or documents proffered are true and accurate to the best of my knowledge, information and belief.

Signed on the foregoing date under pains and penalties of perjury:

AIDAN T. KEARNEY /S/  
Aidan T. Kearney

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**COURT ORDER FOR RULE 17 SUMMONS**

It is hereby ordered that Colin McCabe cease and desist from destroying or deleting information from her cell phone used on November 26, 2024 to record the scene outside the Dedham Superior Court, and related text messages, and that she appear in person with said device, the video files referenced in the motion accompanying this order, related text messages, charging equipment, and all passwords and access methods, on \_\_\_\_\_ at which time she may be heard.

SO ORDERED.

BY THE COURT:

\_\_\_\_\_, J  
JUSTICE, SUPERIOR COURT

**COMMONWEALTH OF MASSACHUSETTS**

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**AIDAN KEARNEY**

**COURT ORDER FOR RULE 17 SUMMONS**

It is hereby ordered that Megan McCabe cease and desist from destroying or deleting information from her cell phone used on November 26, 2024 to record the scene outside the Dedham Superior Court, and related text messages, and that she appear in person with said device, the video files referenced in the motion accompanying this order, related text messages, charging equipment, and all passwords and access methods, on \_\_\_\_\_ at which time she may be heard.

SO ORDERED.

BY THE COURT:

\_\_\_\_\_, J  
JUSTICE, SUPERIOR COURT