

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT  
NORFOLK SUPERIOR COURT  
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COMMONWEALTH

v.

KAREN READ

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**COMMONWEALTH’S MOTION TO EXCLUDE DEFENSE WITNESS RICHARD GREEN’S DEBUNKED “OPINIONS”**

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The Commonwealth respectfully moves this Honorable Court to exclude the proposed expert testimony of Richard Green relative to two issues: 1) The claim that Jennifer McCabe’s phone googled “how long ti die in cikd” or “hos long to die in cold” at any time prior to 6:23am on January 29, 2022, and (2) that Jennifer McCabe’s phone incurred user deletions of any data related to google searches.

Exclusion is appropriate because both claims lack any evidentiary support, and the claims cannot be made in good faith. Allowing introduction of baseless claims without any scientific, forensic, or factual support would be misleading to the jury and disruptive to the interest of justice.

The Commonwealth’s expert, Ian Whiffin, is Cellebrite’s<sup>1</sup> Senior Digital Intelligence Expert and an expert in digital forensics. He has engaged in a comprehensive analysis of the two above claims lodged by Mr. Green. His analysis has included the

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<sup>1</sup> Cellebrite is the leading forensic data extraction software tool that provides forensic examiners the ability to access and analyze data stored within a digital device. The Cellebrite software allows an examiner to parse layers of data through different methods of extraction and analysis.

implementation of forensic data science, personally reviewing the device data, properly and accurately employing Cellebrite technology, and a study of materials generated from the device.<sup>2</sup>

After a comprehensive study of the forensic data and consideration of Mr. Green's claims, Mr. Whiffin's opinions disproving Mr. Green's claims are unequivocal. Mr. Whiffin provides: "*I can state with absolute certainty that there is no evidence whatsoever on this device that the google searches "how long ti die in cikd" or "Hos long to die in cold" occurred prior to 6:23am on the 29<sup>th</sup> of January 2022" (emphasis provided).*" Moreover, Mr. Whiffin concluded that there is "no evidence that the user tried to delete any search history or that tampering occurred with any of the data I examined." Consequently, Mr. Green's testimony on these two issues is wrong, factually unsupported, and should not be admitted at the jury trial in this matter.

The underpinnings of Mr. Green's testimony on these two issues fails to meet the requirements set forth in Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579 (1993) and Commonwealth v. Lanigan, 419 Mass. 15 (1994); because (1) the defendant cannot meet its burden to demonstrate that Mr. Green is qualified to testify to these two opinions; (2) Mr. Green's opinions do not meet the minimum requirements of digital forensics and lack any scientific basis; and (3) Mr. Green will be unable to provide any facts to support his previous testimony which has been completely discredited relative to these two issues.

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<sup>2</sup> Ian Whiffin report dated December 2024 attached as Exhibit 1. (40 pages).

## PROCEDURAL HISTORY

On June 21, 2024, Mr. Green testified on behalf of the defense. Mr. Green purported to be a forensic expert specializing in computer cloud, surveillance systems and other systems. Mr. Green testified that he was asked to parse through data from phones belonging to Jennifer McCabe, Karen Read, and John O’Keefe. He said the Google search was found in a write-ahead log, where data is stored temporarily before it is written into the main database. Mr. Green claimed “[j]ust by the nature of it, we’ll find a lot of the newest artifacts in that WAL file.” Mr. Green also proclaimed that the search “was in a deleted state.” He testified that he found “a lot” of other user-deleted artifacts in McCabe’s data from the morning of Jan. 29, 2022.

On April 11, 2023, Richard Green submitted an affidavit on behalf of the defendant opining that: “search history information obtained from Jennifer McCabe’s cell phone indicates that on January 29, 2022, at 2:27:40 a.m., the phone’s user entered the following search in Safari: “hos long to die in cold.”<sup>3</sup> On June 21, 2024, Mr. Green testified at the defendant’s first trial and rendered a similar opinion claiming that certain phone calls were “user-deleted”.<sup>4</sup> During cross-examination, Mr. Green was broad and vague about his training, experience, and lack of digital forensic certifications.<sup>5</sup> Mr. Green conceded during his trial testimony that Cellebrite modified their software based on his misinterpretation of

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<sup>3</sup> Affidavit of Richard Green in support of Defendant’s motion for order pursuant to Mass.R.Crim.P.17 Directed to Brian Albert, Verizon, and AT&T attached as Exhibit 2. (8 pages).

<sup>4</sup> See June 21, 2024, trial testimony of Richard Green at p. 23-32 as Exhibit 3. (62 pages)

<sup>5</sup> See Exhibit 3 at pg. 39-40.

data from Jennifer McCabe's cell phone.<sup>6</sup> Despite knowledge of his error, Mr. Green has yet to submit a revised written report or opinion.

In response to Mr. Green's misconstructions, the Commonwealth retained two experts in digital forensics, Jessica Hyde and Ian Whiffin. During the defendant's first trial, the court permitted a courtroom demonstration by Mr. Whiffin to assist the jury in understanding digital forensic and how the google searches were stored within the digital databases, specifically the Safari internet browser. See generally Commonwealth v. Sosa, 493 Mass. 104, 115 (2023) (when digital evidence is voluminous, parties should consider authenticating and admitting excerpts when jury may find it difficult to master the technology to find and view relevant portions of evidence).

Additionally, Jessica Hyde, a highly qualified forensic examiner conducted an encompassing review of digital artifacts, file systems, and conducted independent, peer-reviewed experiments to determine that Jennifer McCabe's phone was in use at 2:27am when the Safari browser was open and looking at a website for Hockomock sports. At 6:23 a.m. the same Safari browser tab was engaged and a new search for "how long" was conducted when "Apple produces a suggestion for how long to digest food. The search is instead completed with 'how long ti die in ckld'" at 6:23 am. A new search is conducted at 6:24 am of 'Hos long to die in cold.'" This finding was consistent with Trooper Guarino's review of the cellphone extraction and with testimony of other witnesses.

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<sup>6</sup> See Exhibit 3 at pg. 60-6.

## ARGUMENT

Richard Green's debunked opinions are not an example of a "battle of the experts" best left to be resolved by the factfinder, but instead, an attempt to infect the jury with an inadmissible opinion that is not premised on reliable digital forensics. Cellebrite has updated its software to prevent manipulation of data. Shortly before the defendant's first trial Cellebrite created and introduced Physical Analyzer software version 10.2. Since the defendant's first trial Cellebrite has added another version of updated software 7.67. The updated version removed the timestamp value from records sourced from the Safari's BrowserState.db because "further research shows that the timestamp is not a reliable source for a timestamp relating to the URL shown." The basis for Mr. Green's contested opinions has been refuted not only by the Commonwealth's independent experts but by Cellebrite itself who has removed the type of timestamp relied on by Mr. Green from Cellebrite's Decoding Engine.

Further, when Jennifer McCabe's cellphone extraction is analyzed in the newest version of Cellebrite, the 2:27a.m. LastVisted timestamp no longer appears on the extraction report. Rather the time shown represents the status of the browser tab and digital forensic artifacts pertaining to web history and Apple mobile safari again confirm that the "hos long to die in cold" search occurred at approximately 6:24 a.m. Likewise, there was no evidence that the google searches were user deleted.<sup>7</sup>

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<sup>7</sup> See Jessica Hyde Digital Forensics Analysis Report, pg. 4, as Exhibit 4. ("Hexordia Report" provided to the defense by Discovery Notice 53 on December 20, 2024. See Bates #: 1,202-1205).

Even though Mr. Green's claims are wrong, the defendant herself has engaged in promoting this false narrative. In a June 20, 2023, interview with Gretchen Voss the defendant advanced this baseless claim:

Karen Read: "First court appearance after we revealed that Jen McCabe –"

Ms. Little: "Googled"

Mr. Yanetti: "Yeah"

Defendant: And it happened at the same time as the basketball search, which also wasn't in the report, nor was the, the how long to die at 6:23, that she admitted to. There were no – there was no Google activity in the Cellebrite report that was handed over to us as gospel. (Redaction).<sup>8</sup>

Inadmissible evidence should always be excluded. Allowing debunked claims to reach the jury would necessarily risk misleading the jury and creating prejudice to the Commonwealth. See Commonwealth v. Hinds, 487 Mass. 212 (2021). "The role of expert testimony is to assist jurors in interpreting evidence that lies outside their common experience." Mr. Green's factually wrong opinions would not assist jurors and would instead risk confusing jurors.

## LAW

An expert witness is not permitted to testify to matters beyond an area of expertise or competence. See Commonwealth v. Rintala, 488 Mass. 421, 426 (2021); Commonwealth v. Frangipane, 433 Mass. 527, 533 (2001). The Commonwealth asserts that Mr. Green is

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<sup>8</sup> See transcript of June 20, 2023, interview of Karen Read by Gretchen Voss pg. 169/12. (Not attached).

not qualified to render an opinion claiming: 1) Jennifer McCabe's phone googled "how long ti die in ckd" or "hos long to die in cold" at any time prior to 6:23am on January 29, 2022; and (2) Any claim that Jennifer McCabe's phone incurred user deletions of any data.

A Daubert-Lanigan hearing is necessary to assess whether the defendant may call Mr. Green to testify to these two debunked claims in her second trial. See Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579, 585-595, (1993); Commonwealth v. Lanigan, 419 Mass. 15, 25-26 (1994). It is the defendant's burden to establish that Mr. Green's testimony "will assist the trier of fact to understand the evidence or to determine a fact in issue," see Mass. G. Evid. § 702 (2024), and that the methodology or theory underlying the expert testimony is sufficiently reliable to be presented for the jury's consideration. Commonwealth v. Shanley, 455 Mass. 752, 761 (2010); Commonwealth v. Davis, 487 Mass. 448, 453 (2021) ("proponent must establish a sufficient foundation for a judge to determine whether the expert's opinion satisfies gatekeeper reliability").

Clearly, the methodology or theory underlying Mr. Green's testimony is not sufficiently reliable to be presented for the jury's consideration. A jury should not be permitted to consider baseless claims. The defense will not be able to meet the Daubert-Lanigan standard required to proffer Mr. Green as to the two contested opinions. Palandjian v. Foster, 446 Mass. 100, 108 (2006); Commonwealth v. Little, 453 Mass. 766, 771 (2009).

### **CONCLUSION**

For the foregoing reasons, the Commonwealth respectfully requests that the Court order a Lanigan Hearing or exclude Mr. Green's opinions relative to the two contested claims at trial.

Respectfully submitted  
for the Commonwealth,

By: /s/ Hank Brennan

Hank Brennan  
Specially Appointed Assistant District Attorney

/s/ Adam Lally

Adam C. Lally  
Assistant District Attorney

/s/ Laura A. McLaughlin

Laura A. McLaughlin  
Assistant District Attorney

Date: December 31, 2024