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Filed

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT
DOCKET NO. 2382CR00091

COMMONWEALTH

v.

BRIAN WALSH

(SPECIALLY ASSIGNED TO JUDGE DIANE FRENIERE)

**Commonwealth's Notice of Discoverable Information from
Former MSP Trooper's Personal Phone**

Pursuant to orders in Commonwealth v. Myles King, 2182CR00320 and other cases,¹ the Commonwealth began examining an extraction from a personal cell phone of former Tpr. Proctor for information reasonably believed to be discoverable under Mass. R. Crim. P. 14(b)(2). Due to the unexpected volume of files discovered on the cell phone, review of the extraction is not yet complete. The Commonwealth is attempting to produce information it currently believes to be discoverable by October 24, 2025, but requires additional time to complete its review of the data extracted from the cell phone.

On June 17, 2025, Norfolk Superior Court Judge Michael Doolin allowed in part defendant King's motion to preserve and produce former MSP Tpr. Proctor's personal cell phone ruling: "as to the communications (including the content, call durations, times, and numbers involved) on former State trooper Michael Proctor's personal cell phone, from the date of the charged murder [in the King matter], . . . to the date of the indictments. . . The Commonwealth shall promptly

¹ Commonwealth v. Myles King, 2182CR00320 (Papers 103, 139); Commonwealth v. Shawn Johnson, 2282CR00268 (Papers 88, 105); Commonwealth v. Bianca N. Chionchio, 2282CR00265 (Papers 29, 38); Commonwealth v. Jovani Delossantos, 2282CR00267 (Papers 40, 61).

produce any other data from Proctor's personal cell phone that constitutes investigative materials or is favorable to the defense within the meaning of Mass. R. Crim. P. 14." (June 17, 2025 Order at 6). Judge Doolin further ordered that the Commonwealth may move for appropriate protective orders for the court's review prior to producing information, and that "Defense counsel shall not show or provide the communications produced pursuant to this order to anyone else, except that defense counsel may show (but not give) them to the defendants in this case." (June 17, 2025 Order at 7).

Upon filing of a motion and amended motion for clarification by Proctor's counsel, on August 13, 2025, Norfolk Superior Court Judge Peter B. Krupp clarified that: "[t]he obligation to produce 'any other data that constitutes investigative materials or is favorable to the defense' is not limited to a particular date range;" and that Proctor had a legitimate interest in protecting attorney-client or spousal communications. (August 13, 2025 Order at 1-2). Judge Krupp ordered that, by certain dates: (1) Proctor provide his cell phone to the Commonwealth; (2) the Commonwealth extract a full digital copy of the cell phone and then provide a copy to the Proctor's counsel for a privilege determination and return the cell phone; (3) counsel provide a privilege log to the Commonwealth; and (4) "[T]he Commonwealth shall search the Cell Phone extraction, with the exception of the communications identified on Proctor's Privilege Log, to locate the information authorized by the Initial Order, as clarified herein. By October 24, 2025, the Commonwealth shall produce to defendant [King and others]: (i) a copy of Proctor's Privilege Log, if any, and (ii) all documents required to be produced under the Initial Order, as clarified herein, except those documents identified on Proctor's Privilege Log." (August 13, 2025 Order at 3).

The Commonwealth proffers that it has received Proctor's cell phone; that an extraction has occurred; that the phone was returned to Proctor; and that Proctor's counsel provided a

document entitled "Privilege Log" on the court-ordered due date of September 26, 2025. The extraction has yielded hundreds of thousands of items, some of which are dated as far back as 2013. The volume of items was unexpectedly larger than the representations of Proctor's counsel regarding the cell phone.² Review of the extraction is underway, and the Commonwealth has identified materials that it reasonably believes to be discoverable under Mass. R. Crim. P. 14(b)(2) in the King matter, and in other cases where Proctor was a witness. Cf. In the Matter of a Grand Jury Investigation, 485 Mass. 641, 657-658 (2020) (disclosure of exculpatory information arising from unrelated grand jury proceeding part of prosecutor's official duties and may be disclosed without order of court, unless prosecutor seeks protective order limiting disclosure). In addition, where appropriate and consistent with the Commonwealth's obligations, the Commonwealth will produce pertinent information to individual law enforcement agencies.³

The Commonwealth further proffers that it reasonably believes it will be able to, and is making efforts to that end, to produce information deemed to be discoverable from the text/chats and video/audio files from the extraction of Proctor's personal cell phone on October 24, 2025.⁴ However, the Commonwealth is requesting additional time to comply with order in King and other cases to review other files on the extraction from Proctor's cell phone, including emails and

² Proctor's counsel, on July 25, 2025 and August 12, 2025, filed a motion and amended motion for clarification which noted that Proctor changed phones in February 2024, did not preserve his old phone, and after activating his new phone in February 2024, used an auto delete feature deleting the contents of his phone every 30 days. Counsel proffered: "Therefore, regardless of the time frames for the Court's Order to be clarified, it is unlikely that Mr. Proctor has any relevant information in his possession concerning this case." Commonwealth v. King, 2182CR00320 (Papers 129 at 2, 140 at 2).

³ In accordance with the Court's June 17, 2025 Order in King, the Commonwealth will move for a protective order prior to release of the materials to counsel in this case. (King, June 17, 2025 Order at 7).

⁴ The Commonwealth will produce the privilege log to counsel in this case upon authorization by this Court.

photographs. The Commonwealth anticipates continuing the review and providing those materials to the defense in this case as soon as practicable but after October 24, 2025.

Respectfully submitted
For the Commonwealth,

/s/ Tracey Cusick

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Certificate of Service

On October 16, 2025, I served this document on Attorneys Larry Tipton and Kelli Porges, counsel for the defendant, by email.

/s/ Tracey Cusick

Assistant District Attorney