

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS:

**SUPERIOR COURT DEPARTMENT
CRIMINAL DOCKET NO. 2482CR00043**

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 a Mass. R. Crim. P. Rule 17 summons to “Cellco Partnership d/b/a Verizon Wireless”, 180 Washington Valley Road, Bedminster, NJ 07921, for:

1. Any and all phone call or text message records whatsoever beginning on Saturday, December 9, 2023 through December 28, 2023 associated with the phone number belonging to complainant in the instant case, Lindsey Gaetani, 781-441-9216.

As grounds, undersigned counsel states that Gaetani admits to communicating with state police and prosecution personnel in “real time” as the alleged incident of witness intimidation charged herein unfolded. She also admitted to attempting to destroy evidence by deleting text data and phone messages. In an interview with Attorney Mello by journalist Jessica Machado and within police reports written by Det. Lt. Brian Tully (hereinafter “Tully”), Lindsey Gaetani initiated contact with Tully and Attorney Mello after plotting said communication with two other parties adverse to Mr. Kearney, Katherine Peter and Jennifer McCabe. See interview of Atty Mello by Jessica Machado filed herewith (Exhibit A) “Q: When did his ex-girlfriend become a

witness in this case? A: She became a witness in this case recently. **We received some communication from her** and I had a summons served on her on Friday. After our superior court appearance on Friday, she was served with a summons. Q: So you're saying that your office had no connection to her until she reached out to you? A: That's correct." See MSP report by Tully filed herewith (Exhibit B) "On December 23, 2023, at approximately 10:30 PM, I received a phone call from Special Prosecutor Ken Mello. He stated he received a call from Lindsey Gaetani who told him that Aidan Kearney was at her apartment. Ken then forwarded the phone call to me. During the call, I could not understand anything being said as the voices were muffled. After several minutes, the call was ended. At 10:48 PM, Lindsey sent me the following text message, "Ken said to call you but I can't now. He's knocking on the bathroom door. I have to go back out. Please don't text or call and tell Ken not to because he wants to see my phone. **I'm deleting our calls and texts right now.** (Emphasis added) Don't respond until u hear from me please." This statement shows that Miss Gaetani was clearly reporting to Tully and Atty Mello in real time with Mr. Kearney in the other room and therefore would constitute as Rule 14 witness statements. Furthermore, while the defendant was with Miss Gaetani on December 22, 2023, Miss Gaetani was voluntarily showing her phone to the defendant. The defendant then saw in Miss Gaetani's phone text message conversations between Miss Gaetani and the following parties: Tully, Atty Mello, Katherine "Kate" Peter, and Jennifer McCabe or conversations referencing the same.

"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 witness conspiring with Tully, Atty Ken Mello, Katherine Peter, and Jennifer McCabe in an attempt to lure Mr. Kearney to Miss Gaetani’s residence with

the intention of making false accusations in order to have his bail revoked. The defense is amply justified in asking for any and all information concerning communication between Miss Gaetani and the listed parties for cross-examination. The communication is relevant to show that the witness's accusations are a fraud, and constitute 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 the undersigned after viewing the aforementioned police reports. 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).

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

Dated: April 23, 2024

Respectfully Submitted
AIDAN KEARNEY
Defendant
By his attorney,

TIMOTHY J. BRADL /S/
Timothy J. Bradl, Esq. BBO #561079
Law Office of Timothy J. Bradl, P.C.
88 Broad St. Suite 101
Boston, MA 02110
(617) 523-9100

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 OF COUNSEL

I, Timothy J. Bradl, 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. FURTHER,

1. In order to effectively cross-examine any cooperating witnesses, I need obtain all of their statements and their ability to perceive and recollect relative to the allegations at bar.
2. The present state of discovery is unclear and nonspecific as to what is alleged to have been the circumstances of the complainant's planning with the prosecution.
3. If the defendant does not receive the information requested his cross-examination will be severely limited, impaired and ineffective.

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

TIMOTHY J. BRADL /S/

Timothy J. Bradl

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS:

**SUPERIOR COURT DEPARTMENT
CRIMINAL DOCKET NO. 2482CR00043**

COMMONWEALTH

v.

AIDAN KEARNEY

COURT ORDER FOR RULE 17 SUMMONS

It is hereby ordered that “Cellco Partnership d/b/a Verizon Wireless”, 180 Washington Valley Road, Bedminster, NJ 07921, provide the following records to the Clerk-Magistrate of this Court, upon service of a Rule 17 subpoena issued by the said Clerk Magistrate, within 30 days:

Any and all phone call or text message records whatsoever beginning on Saturday, December 9, 2023 through December 28, 2023 associated with the phone number belonging to complainant and account holder in the instant case, Lindsey Gaetani, 781-441-9216.

SO ORDERED.

BY THE COURT:

_____, J
JUSTICE, SUPERIOR COURT