

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT
NO. 2282-CR-00117

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COMMONWEALTH OF MASSACHUSETTS,)
Plaintiff)
V.)
KAREN READ,)
Defendant)
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**DEFENDANT’S MOTION FOR ORDER PURSUANT TO MASS. R. CRIM. P. 17
DIRECTED TO BRIAN ALBERT, VERIZON, AND AT&T**

Now comes the defendant, Karen Read (“Ms. Read”), by and through her counsel of record, Werksman Jackson & Quinn LLP, and respectfully moves this Honorable Court pursuant to Mass. R. Crim. P. 17(a)(2) to issue a summons to Brian Albert and the following cell phone carrier companies to deliver the described records and information to the Clerk of the Court in advance of trial:

1. To: Brian Albert
34 Fairview Road
Canton, MA 02021

Information to Be Produced:

1. The production of all cell phone(s) in the possession of and/or used by Brian Albert between January 28, 2022, and present, so that defense expert Richard Green may conduct a forensic examination of the respective cell phone(s) for the purpose of recovering incoming and outgoing text messages, voice calls, voicemails, emails, location data, web searches, photographs, and/or other communications sent and/or received by Brian Albert on any other messaging platforms between January 28, 2022, and February 5, 2022.

2. A copy of all information contained on any cloud-based accounts used to store the above-referenced information from Brian Albert's cell phone(s) between January 28, 2022, and February 5, 2022.

3. Any access codes and/or passwords necessary to access and/or forensically download the cell phones and/or cloud-based information.

2. To: Verizon
Attn: Verizon Security Assistance Team (VSAT)

Information to Be Produced:

1. A complete copy of the call records, call detail records, SMS text and MMS records, and data records associated with subscriber Brian Albert's cell phone number **(617) 777-0888** between January 28, 2022, and February 5, 2022.

2. All cell tower and cell phone location information, including cellular tower identification and the GPS location for the cellular towers used for any phone calls, text messages, or data exchanges associated with subscriber Brian Albert's cell phone number **(617) 777-0888** between January 28, 2022, and February 5, 2022. This should include the identifying information for the relevant tower numbers, transmitter or receiver IDs, GPS coordinates, and relevant tower face and sectors.

3. Subscriber information associated with the Verizon phone number **(617) 777-0888**, and/or the Verizon Wireless, LLC subscriber Brian Albert at 34 Fairview Road, Canton, MA. This should include the name, address, city, state, zip, length of service, telephone numbers, features of account, beginning date of service, ending date of service, and mobile device equipment history associated with the above.

4. A complete copy of the call records, call detail records, SMS text and MMS records, and data records associated with

subscriber Jennifer McCabe's cell phone number **(781) 858-0142** between January 28, 2022, and February 2, 2022.

5. Subscriber information associated with the Verizon phone number **(781) 858-0142**, and/or the Verizon Wireless, LLC subscriber Jennifer McCabe. This should include the name, address, city, state, zip, length of service, telephone numbers, features of account, beginning date of service, ending date of service, and mobile device equipment history associated with the above.

3. To: AT&T

Information to Be Produced:

1. A complete copy of detailed call records, SMS text and MMS records, and data records associated with the phone number **(617) 717-0802** belonging to Brian Albert between January 28, 2022, and February 5, 2022.

2. All cell tower and cell phone location information, including cellular tower identification and the GPS location for the cellular towers used for any phone calls, text messages, or data exchange associated with the phone number **(617) 717-0802** between January 28, 2022, and February 5, 2022. This should include the identifying information for the relevant tower numbers, transmitter or receiver IDs, GPS coordinates, and relevant tower face and sectors.

3. Subscriber information associated the Verizon phone number **(617) 717-0802**, and/or the Verizon Wireless, LLC subscriber Brian Albert at 34 Fairview Road, Canton, MA. This should include the name, address, city, state, zip, length of service, telephone numbers, features of account, beginning date of service, ending date of service, and mobile device equipment history associated with the above.

I. INTRODUCTION

“[H]o[w] long to die in cold.” New revelations from Jennifer McCabe’s cell phone must reverse the trajectory of this case. Evidence obtained from an analysis of the *complete* forensic image of Jennifer McCabe’s cell phone—which the Massachusetts State Police and Norfolk County District Attorney’s Office withheld from the defense *for more than a year*—exculpates Ms. Read and decisively implicates Jennifer McCabe and Brian Albert in the murder of John O’Keefe (“O’Keefe”). In spite of the fact that O’Keefe was found dead on the front lawn of Boston Police Officer Brian Albert, a highly trained boxer and fighter with deep familial and personal ties to the Canton Police Department and the Massachusetts State Police, law enforcement has utterly failed to treat Mr. Albert (and his family members who were present on the night in question) as suspects.¹ Instead, law enforcement immediately arrested Ms. Read, based in no small part, on incriminating statements attributed to her by one of the actual conspirators in O’Keefe’s murder, Brian Albert’s sister-in-law, Jennifer McCabe.

As this Court is well aware, Ms. Read has always maintained that she dropped O’Keefe off at Brian Albert’s residence located at 34 Fairview Road (“the Albert Residence”) just after midnight on January 29, 2022, and frustratedly left without him when he failed to answer any of her calls, presuming that he had proceeded into the house for the party. Brian Albert, Jennifer McCabe, and Matthew McCabe, all of whom were present at the Albert Residence on the night in question, have maintained that O’Keefe never entered the residence. (*See* Affidavit of Alan J. Jackson at ¶¶5-7; Exhibit B, 1/29/22 Brian Albert Interview, at p. 2; Exhibit C, 1/29/22 Jennifer McCabe Interview, at p. 2; Exhibit D, 1/29/22 Matthew McCabe Interview at p. 2.) They all similarly claimed that they had no reason to suspect any sort of foul play until O’Keefe’s body was discovered the next morning in Brian Albert’s front lawn at 6:04 a.m. by Ms. Read and Ms. McCabe. (*See* Affidavit of Alan J. Jackson at ¶¶5-8, Exhibits B-E.) Previously withheld information and data obtained from an analysis of Jennifer McCabe’s iPhone 11 paints a much darker picture of what actually transpired on January 29, 2022.

¹ Attached hereto as Exhibit A are photographs, which clearly establish a longstanding close familial relationship between the government’s seminal witnesses in this case (i.e., the Alberts and the McCabes) and the lead detective assigned to investigate this case, Trooper Michael Proctor. (Affidavit of Alan J. Jackson at ¶4, Exhibit A.)

An analysis of the *complete* forensic image of Jennifer McCabe’s cell phone by Computer Forensics Expert Richard Green establishes that **Ms. McCabe, the government’s seminal witness, Googled, “hos [sic] long to die in cold” at 2:27 a.m. on January 29, 2022, exactly two hours after O’Keefe was last seen walking towards the Albert Residence by Ms. Read.** (See Affidavit of Richard Green at ¶6, Exhibit USF-01.) *How long to die in cold.* Jennifer McCabe explicitly told law enforcement that she “did not think much” of O’Keefe’s failure to enter the residence that night and assumed that O’Keefe and Ms. Read simply decided to go home. (Affidavit of Alan J. Jackson at ¶8; Exhibit E, 2/1/22 Interview of Jennifer McCabe, at p. 2.) Yet, *three hours* before Jennifer McCabe had any reason to suspect O’Keefe hadn’t gone home with Ms. Read, *three hours* before she inserted herself into Ms. Read’s search for O’Keefe and delayed her return to the Albert Residence, and *three hours* before her “discovery” of his lifeless body in the cold snow of her brother-in-law’s front lawn, Ms. McCabe had only one thing on her mind: *how long does it take to die in the cold.* What’s even more shocking, is that the very next day, before turning her phone over to law enforcement, Ms. McCabe took *calculated* steps to purge her phone of this inculpatory search and, at the same time, *attempted to delete* her communications with Brian Albert and remove a screenshot of his contact information from her phone, which she had obviously shared with someone that morning. (See Affidavit of Richard Green at ¶¶8, 12, 14, Exhibits USF-01, USF-04, USF-07.) In light of this new information, the Norfolk County District Attorney’s Office should immediately do what’s right and file a *nolle prosequi*. Short of that just result, Ms. Read’s constitutional right to defend herself against these false allegations demand that she be permitted to obtain the critical information that law enforcement failed to obtain and preserve from the outset, namely communications and location information associated with the *actual* perpetrators of this crime, Jennifer McCabe and Brian Albert. The requested information will undoubtedly further implicate Jennifer McCabe, Brian Albert (and others) in the murder of O’Keefe and the sinister coverup that resulted in these false charges being brought against Ms. Read.

II. SUPPORTING FACTS

1. Ms. Read stands charged with the following crimes arising out of the death of her late-boyfriend, John O’Keefe (“O’Keefe”): Murder in the Second Degree in violation of M.G.L. c. 265, s. 1 (Count One); Manslaughter while under the Influence of Alcohol in violation of M.G.L.

c. 265, s. 13 ½ (Count Two); and Leaving the Scene of Personal Injury and Death in violation of M.G.L. c. 90, s. 24(2)(a ½)(2) (Count Three). The two theories advanced by the Commonwealth in support of the filing of these charges are as follows: (1) Ms. Read became suddenly angry with O’Keefe outside the home of Boston Police Officer Brian Albert, and reversed into him with her vehicle, shattering her taillight by striking his head before fleeing the scene; and/or (2) Ms. Read became suddenly angry with O’Keefe outside Brian Albert’s residence, and struck O’Keefe in the head with a cocktail glass before reversing into him with her vehicle, shattering her taillight, and fleeing the scene. Both theories are largely borne out of statements made by Jennifer McCabe to the police. (See Exhibit C; Exhibit E.)

2. O’Keefe was found unresponsive in the early morning hours of January 29, 2022, in the front yard of the home of Boston Police Officer Brian Albert. Contrary to the Commonwealth’s theories, photographs of O’Keefe suggest that he was beaten severely and left for dead, having sustained blunt force injuries to both sides of his face as well as to the back of his head. (See Affidavit of Alan J. Jackson at ¶9, Exhibit F.) In addition to suffering numerous defensive wounds on his hands consistent with a brutal fight, **O’Keefe also suffered a cluster of deep scratches and puncture wounds to his right upper arm and forearm.** (See *id.*) These injuries to O’Keefe’s right arm are consistent with bite marks and/or claw marks from an animal, more specifically a dog. As discussed more fully in Defendant’s Motion for Order Pursuant to Mass. R. Crim. P. 17 Directed to Canton Animal Control and the Canton Clerk’s Office, which is incorporated herein by reference, circumstantial evidence *strongly* suggests Brian Albert’s German Shepherd K-9 is responsible for the injuries to O’Keefe’s arm. Four months after O’Keefe’s death, Brian Albert went to great lengths to dispose of critical evidence by making sure “Chloe,” his family dog of *seven years*, simply disappeared.

3. The events that transpired the night before O’Keefe’s death on January 29, 2022, have always been largely undisputed. The evidence incontrovertibly establishes that on the evening of January 28, 2022, the decedent O’Keefe, his girlfriend Karen Read, Brian and Nicole Albert, Jennifer and Matthew McCabe (Brian Albert’s sister-in-law and friend of Mr. O’Keefe), along with several other individuals, met and enjoyed drinks at the Waterfall Bar and Grille in Canton, Massachusetts.

4. As the bar was closing around midnight, the parties discussed going to Nicole and Brian Albert’s residence located close by at 34 Fairview Road to continue the party and celebrate their

son, Brian Albert, Jr.'s, birthday. Although O'Keefe and Ms. Read were not well-acquainted with the Alberts, the invite was extended to them by O'Keefe's longtime friend, Jennifer McCabe. Shortly after midnight, the Alberts (Brian, Nicole, and Caitlin), the McCabes (Jennifer and Matthew), and Brian Higgins (close friend of Brian Albert and Federal agent with the Massachusetts Bureau of Alcohol, Tobacco, Firearms and Explosives, with an office inside the Canton Police Department), left the bar in their respective vehicles and drove to the Albert Residence for the after-party.

5. Video surveillance footage and witness statements confirm Ms. Read and O'Keefe left the Waterfall after midnight and departed together in Ms. Read's black Lexus SUV. As set forth in the attached Affidavit of Richard Green, location data obtained from O'Keefe's cell phone establishes that O'Keefe's cell phone first pings in the neighborhood near the Albert residence at 12:19 a.m., and pings again at or near the Albert Residence at approximately 12:24 a.m. on January 29, 2022. (Affidavit of Richard Green, ¶19.)

6. Witnesses gave conflicting accounts regarding whether O'Keefe actually exited the vehicle and made his way into the Albert Residence on January 29, 2022. Ryan Nagel, one of the only percipient witnesses present on the night in question who is *not* closely related to the Alberts, arrived at the Albert Residence just after O'Keefe and Ms. Read to pick up his sister, Julie Nagel. (Affidavit of Alan J. Jackson, ¶10, Exhibit G, at p. 2.) According to Mr. Nagel's interview with police, he recalled "seeing a set of headlights of a mid-size black SUV coming from the opposite direction [as he approached Fairview Road] and yielded to the vehicle allowing it to make a right hand turn onto Fairview as their F-150 then followed." (*Ibid.*) Ryan Nagel confirmed that "he did not observe any erratic operation by the SUV *at any point while in his presence.*" (*Ibid.*) Both vehicles parked outside the Albert Residence. (*Ibid.*) He stated that he and his friends remained parked outside the driveway for approximately five minutes, at which point his sister came out of the Albert Residence and told him she was going to spend the night, and no longer needed a ride. (*Ibid.*) At some point, Mr. Nagel told police he observed the black SUV pull forward toward the edge of the Albert's property line. (*Ibid.*) When he and his friends left shortly thereafter, he observed a woman sitting alone in a black SUV outside the residence as he pulled away from the house. (Affidavit of Alan J. Jackson, ¶10, Exhibit G, at p. 3.) **He further reported that he did not observe any damage to her vehicle, hear screams, or otherwise observe any altercation between Ms. Read and O'Keefe.** (*Ibid.*) Ms. Read has

always maintained that she dropped O’Keefe off at the Albert Residence and waited for him to scope out the residence and make sure that they were at the correct house and weren’t imposing. After calling O’Keefe several times and becoming frustrated with his failure to answer or otherwise respond to her, Ms. Read eventually left, presuming O’Keefe had proceeded into the house for the party. Conversely, Brian Albert, Jennifer McCabe, and Matthew McCabe have all maintained that O’Keefe never entered the Fairview Residence. (Affidavit of Alan Jackson at ¶¶5-7, Exhibits B-D.)

7. Thankfully, because the Commonwealth finally produced a forensic image of O’Keefe’s phone to the defense (albeit a full year after the phone was taken into law enforcement custody), this Court does not have to rely on the statements of witnesses.² As set forth in the attached Affidavit of Richard Green, an expert in computer forensics and electronic data analysis, data stored on O’Keefe’s cell phone establishes that O’Keefe did, in fact, get out of the car and walk *somewhere* in the early morning of January 29, 2022 at a point in time when his location was consistent with being in the vicinity of the Albert Residence. (Affidavit of Rick Green, ¶¶18-19, Exhibit USF-09.) As defense expert Richard Green sets forth in the attached Affidavit, location data obtained from O’Keefe’s phone establishes that his phone pinged in the neighborhood near the Albert residence at 12:19:33 a.m., and again at the location of the Albert Residence at approximately 12:24:28 a.m. (*Id.* at ¶18.) Immediately following his arrival at the Albert Residence, between 12:21:10 a.m. and 12:24:37 a.m., Apple Health recorded O’Keefe taking 80 steps (i.e., traveling approximately 87.74 meters) and climbing the equivalent of three floors *with his location data pinging in close proximity of the Albert Residence*. (*Id.* at ¶¶18-19.) The only reasonable interpretation of O’Keefe’s Apple Health Data is that he entered the Albert Residence, which has three floors. (*See* Affidavit Alan J. Jackson ¶12, Exhibit K, 34 Fairview Zillow Listing.) Between 12:31 a.m. and 12:32 a.m., Apple Health again recorded O’Keefe taking 36 steps with no elevation gain (i.e., traveling approximately 25 meters). (Affidavit of Rick Green at ¶18.) O’Keefe did not walk the length of three swimming pools and climb the

² Although law enforcement took possession of O’Keefe’s phone on the morning of January 29, 2022, and forensically copied the phone two days later on January 31, 2022, the defense did not receive a complete mirror image of the phone to conduct its own analysis of the data until more than a full year later, on February 8, 2023. (Affidavit of Alan J. Jackson at ¶11, Exhibits H-J.)

equivalent of three flights of stairs by circling and climbing on top of Karen Read's vehicle.

O'Keefe made it into the Albert Residence that night.

8. Before the Commonwealth turned over *the complete* forensic copy of Jennifer McCabe's cell phone, the defense was forced to rely on its own investigative resources to attempt to discern what transpired after O'Keefe entered the Albert Residence just after 12:20 a.m. By all accounts, Ms. Read left the Albert Residence in her vehicle shortly after her arrival and returned to O'Keefe's home located at One Meadows Avenue. The only statements regarding the events that transpired *inside* the Albert Residence after O'Keefe took his last steps at 12:31 a.m. are the self-serving statements of Jennifer McCabe, Matthew McCabe, Brian Albert, and his close friend (a Federal ATF agent with an office at Canton Police Department), Brian Higgins.

9. As set forth in the attached Affidavit of Computer Forensics Expert Richard Green, the complete forensic extraction of Jennifer McCabe's cell phone data from January 29, 2022 (which includes exculpatory information that was glaringly missing from Trooper Guarino's "Full File System Extraction" of the same phone) reveals their lies.

10. On February 2, 2022, mere days after O'Keefe's death, Massachusetts State Police Trooper Keefe forensically imaged Jennifer McCabe's iPhone 11. (Affidavit of Alan J. Jackson, at ¶13, subd. (a), Exhibit L, McCabe GrayKey Extraction Report.) Rather than simply turning over a copy of the forensic image of the phone to the defense for analysis, on May 31, 2022, Trooper Guarino conducted his own forensic analysis of the cell phone and prepared a Cellebrite Extraction Report, which purported to be a "Full File System Extraction" from Jennifer McCabe's iPhone 11 between January 29, 2022, and January 30, 2022. (Affidavit of Alan J. Jackson at ¶13, subds. (a), (b), Exhibit M, Excerpt of May 31, 2022 Extraction Report.) The Commonwealth withheld the forensic image of Jennifer McCabe's cell phone, and instead produced Trooper Guarino's Full File System Extraction Report to the defense on August 12, 2022. (Affidavit of Alan J. Jackson at ¶13(b).) **Notably, Trooper Guarino's Full File System Cellebrite Extraction Report of Jennifer McCabe's iPhone 11 failed to show any search history information entered by Ms. McCabe on January 29, 2022, including her incriminating 2:27 a.m. search for "hos long to die in cold".** (*Ibid.*) After numerous discovery requests and the filing of a Motion to Compel (which the Court ultimately denied), Deputy District Attorney Adam Lally finally agreed to produce the full forensic image of Jennifer

McCabe's iPhone 11 on February 8, 2023, a full year after O'Keefe's death. (Exhibit J, Notice of Discovery VIII.) Information obtained from the deleted cache of Jennifer McCabe's cell phone begins to unravel what occurred after Ms. Read left O'Keefe at the Albert Residence on January 29, 2022, and the web of lies that resulted in the arrest and prosecution of Ms. Read.

11. According to Ms. McCabe's initial interview with Trooper Proctor on January 29, 2022, at 11:30 a.m.—when the events were still fresh in her mind—Ms. McCabe claimed that she left the Albert Residence with her husband “at approximately 1:30 a.m. and went home.”³ (Affidavit of Alan J. Jackson at ¶6, Exhibit C, at p. 2.) However, as set forth in Richard Green's Affidavit, a forensic analysis of her cell phone shows that Jennifer McCabe actually left the Albert residence at 1:47 a.m. (Affidavit of Richard Green at ¶16.) Moreover, she didn't drive directly home with her husband, as she initially claimed. Instead, the McCabes made the executive decision at 2:00 a.m.—*in a snowstorm*—to drop off two of Brian Albert, Jr.'s friends who were in attendance at the party, Julie Nagel and Sarah Levinson, passing O'Keefe's residence at One Meadows Avenue on their way home. (Affidavit of Richard Green at ¶16.) The McCabes clearly wanted to know whether Ms. Read would be home to *notice* if and when O'Keefe failed to return home that morning or if that privilege would be left to his two adopted children.

12. After passing by the deceased's home at One Meadows Ave, location data obtained from Jennifer McCabe's cell phone shows she arrived back at her own home, 12 Country Lane, at 2:12 a.m. (*Ibid.*) Approximately ten minutes later, at 2:23 a.m., Apple Health recorded Ms. McCabe climb one flight of stairs, presumably to go upstairs to her bedroom. (Affidavit of Richard Green at ¶17, Exhibit USF-08, at p. 10.) When questioned by law enforcement as to *why* O'Keefe never made it into the party, Ms. McCabe told law enforcement “[s]he did not think anything of it and thought that [Ms. Read and O'Keefe] just decided not to come in.” (Affidavit of Alan J. Jackson at ¶8, Exhibit E, at p. 2.) However, **at 2:27 a.m. that morning, after making it safely home and climbing the stairs to the privacy of her bedroom, the first and only information Ms. McCabe desperately needed to Google was “hos[sic] long to die in the cold.”** (See Affidavit of Richard Green at ¶6.) *How long to die in the cold.* Jennifer McCabe didn't sleep that night.

³ In a later statement to Trooper Prince on November 1, 2022, Jennifer McCabe indicated that she was at the Albert Residence from around 11:45 p.m. to about 1:30 a.m., and that she and her husband drove two of her nephew's friends home and then went home. (Affidavit of Alan J. Jackson at ¶8, Exhibit E.)

Contrary to her assertions to law enforcement, she obviously had a lot on her mind. Data taken from her Apple Watch establishes that she was up much of the night pacing: at 2:32:13 a.m. Jennifer McCabe took 22 steps; at 3:50:38 a.m. she took 24 steps; at 3:51:40 a.m. she took 6 steps; at 4:55:07 a.m. she took 24 steps. (Affidavit of Richard Green at ¶17, Exhibit USF-08, at pp. 1-2.) Indeed, Apple Health Data obtained from Jennifer McCabe shows that her heart rate reached an 11-hour low at 12:49 a.m., and a high at 6:42 a.m. (Affidavit of Richard Green at ¶17, Exhibit USF-08, at pp. 7-9.)

13. Meanwhile, Ms. Read, the only person with reason to believe O’Keefe was actually missing, grew increasingly concerned with O’Keefe’s failure to return home to his children on January 29, 2022, and answer her many phone calls and text messages. After a fitful night of sleep, Ms. Read began frantically calling O’Keefe’s friends shortly before 5:00 a.m. in an effort to locate him. Jennifer McCabe, who had stayed out drinking until 2:20 a.m., was conveniently awake to answer Ms. Read’s early morning call. (See Exhibit C, at p. 2.) But Jennifer McCabe couldn’t leave it at that—after picking up a 4:53 a.m. phone call from Ms. Read (an acquaintance) and O’Keefe’s daughter, Kayley—the overly-helpful Ms. McCabe jumped out of bed and inserted herself into the “search” for O’Keefe, making every effort to delay Ms. Read in returning to the Albert Residence to look for him and ensuring that *she* was in control of the narrative provided to police when O’Keefe’s body was discovered. (See *id.*) During that call, Ms. McCabe suggested that a hysterical Ms. Read drive all the way across town at 5:00 a.m. to her own residence located at 12 Country Lane so that they could look for O’Keefe together. (See *id.*) Once Ms. Read arrived at the McCabe residence, Ms. McCabe insisted they drive Ms. Read’s car *back* to O’Keefe’s residence (where Ms. Read had just come from) so that they could meet O’Keefe’s friend Kerry Roberts and re-search O’Keefe’s apartment to make sure he was not home, buying time to make sure John wouldn’t live to tell this Court what happened to him. (See *id.*) After confirming (unsurprisingly) that O’Keefe was not at home and allowing her family members sufficient time to situate O’Keefe’s body, the three women drove together in Ms. Roberts’ car back to the Albert Residence to look for O’Keefe. (See Exhibit C, at pp. 2-3.)

14. As the women pulled up to Brian Albert’s house shortly after 6:00 a.m., Ms. Read spotted an unconscious O’Keefe lying face-up on his back in the front yard of Brian Albert’s residence. While Ms. Read and Ms. Roberts raced to him and attempted to render aid, Ms. McCabe curiously remained in the vehicle, dialed 9-1-1 and began controlling the narrative. In her initial

statement to Trooper Michael Proctor (lead investigator and close family friend of the Alberts and McCabes), Jennifer McCabe attributes a number of statements to Ms. Read that quickly make her the prime suspect: (1) When asked to describe John and Karen’s appearance at the Waterfall she describes John as “wearing a baseball hat, jeans, and sneakers,” but describes Karen as “walk[ing] into the bar holding a drinking glass” (Exhibit C, at p. 2);⁴ (2) Ms. McCabe falsely tells Trooper Proctor that Ms. Read claimed she went home alone that night and last saw John at the Waterfall bar, and that she had to correct Karen and tell her that they all went to the Albert Residence (Exhibit C, at p. 2); (3) Ms. McCabe tells Trooper Proctor that while they were searching for O’Keefe Karen repeatedly asked, “could I have hit him,” “did I hit him” (Exhibit C, at pp. 2-3); and (4) Ms. McCabe falsely tells Trooper Proctor that Karen began screaming to pull over because she saw O’Keefe’s body *before* he was actually visible from the roadway and that she and Ms. Roberts didn’t know what she was talking about because there was heavy snow, falsely implying that Ms. Read knew exactly where O’Keefe’s body would be found (Exhibit C, at p. 3).⁵ As discussed, *infra*, in Paragraph 17, these aren’t the only statements Ms. McCabe falsely attributes to Ms. Read.

15. According to Nicole Albert’s statement to Trooper Proctor and Sergeant Yuriy Bukhenik, she and her husband, Brian Albert were “still in bed [in the early morning of January 29, 2022], when her sister Jen came into the room and shared with her what had transpired outside, and that John was found deceased on the edge of her property by the street in the snow.” (Affidavit of Alan J. Jackson at ¶14, Exhibit N, at p. 2.) Nicole Albert reported to police that she “never left her home [to see what was going on outside] and by the time she came downstairs, Canton Fire Department must have [already] transported both John and Karen from the scene.” (*Ibid.*)

However, cell records establish that immediately after disconnecting with 9-1-1 dispatch, Jennifer McCabe actually made two calls to her sister, Nicole Albert’s cell phone (aka

⁴ Significantly, a broken cocktail glass was the *only* evidence recovered at the scene when law enforcement initially responded to the Albert Residence around 7:00 a.m. on January 29, 2022, and Canton PD initially informed medical personnel at the Good Samaritan Hospital that the broken cocktail glass was the suspected murder weapon. (Affidavit of Alan J. Jackson at ¶15.)

⁵ Notably, when Ms. Read first discovered O’Keefe’s body at 6:04 a.m. on January 29, 2022, precipitation was minimal and there was no significant accumulation. Indeed, photographs taken from the time in question establish that there was only about an inch (or less) of snow that had accumulated. (Decl. of Alan J. Jackson at ¶20, Exhibit S.) O’Keefe’s body was **clearly** visible and appeared *noticeably* out of place on the Alberts’ flat and bare front lawn.

“Coco”) at 6:07 a.m. and 6:08 a.m., both of which were answered by someone and were subsequently deleted. (Affidavit of Richard Green at ¶12, Exhibit USF-04.) Thus, Brian and Nicole Albert were among the first individuals to be notified that O’Keefe was lying unresponsive mere feet away on their front lawn, and in spite of being in such close proximity, made no effort to go outside and assist or otherwise investigate the *emergency* that was unfolding on their doorstep. Either Nicole is lying, or Jennifer McCabe was on the phone with her husband, Brian Albert. Either way, Brian and Nicole Albert chose to sequester themselves in their home—distancing themselves from the investigation—rather than check on O’Keefe, assist in life-saving efforts, speak with responding officers, or otherwise investigate the circumstances surrounding the fact that their family member had just discovered the body of a *Boston Police Officer* on their front lawn. (See Affidavit of Alan J. Jackson, ¶16.)

16. **At 6:23:00 a.m., Jennifer McCabe makes an outgoing call to her brother-in-law, Brian Albert (which he doesn’t answer), and then subsequently deletes the record of that call.**⁶ (Affidavit of Richard Green at ¶12, Exhibit USF-04.) Less than a minute after failing to reach Brian Albert, at 6:23:49 a.m., Jennifer McCabe begins panicking and opens an article in her Safari application by *Healthline* entitled, “*How Long Does It Take to Digest Food.*” (See Affidavit of Richard Green at ¶11, Exhibit USF-03.) What an unbelievably odd (and incriminating) thing to search immediately upon finding a dead body. Significantly, the presence of food particles in a decedent’s stomach and upper small intestine serve as a source of information for pathologists in calculating time of death.⁷ Almost immediately thereafter, Jennifer McCabe tried to overwrite her incriminating search from earlier that morning *regarding how long it takes to die in the cold* by re-entering it at a more appropriate time (i.e., *after* she supposedly finds O’Keefe’s body in the cold). (See Affidavit of Richard Green at ¶10, Exhibit USF-02.) However, in all the commotion and in her haste to cover up her incriminating 2:27 a.m.

⁶ As set forth in the attached declaration of counsel, the Cellebrite analysis of her phone establishes that Jennifer McCabe subsequently deleted that communication. (Affidavit of Richard Green at ¶ , Exhibit USF-04.)

⁷ If the stomach, at autopsy, is found to be filled with food, and digestion of the contents is not extensive, then pathologists can determine that death followed shortly after the meal. (Vernon J. Geberth, M.S., M.P.S., *Estimating the Time of Death in Practical Homicide*, Reprint: Law and Order Magazine, Vol. 55, No. 3 (Mar. 2007), retrieved on Apr. 4, 2023 from <https://www.practicalhomicide.com/Research/LOmar2007.htm#:~:text=If%20the%20stomach%2C%20at%20autopsy,hours%20after%20the%20last%20meal.>>).

search about how long it would take O’Keefe to die in the cold, she accidentally searches: “how long ti die in cikd” at 6:23:51 a.m. (*Ibid.*) Then again, at 6:24 a.m. she enters a **second** search, this time repeating her search for “hos long to die in cold.” (*Ibid.*)

17. In case her sloppy attempt to cover up her incriminating Google search wasn’t enough, on February 1, 2022, in a transparent (and unsuccessful) effort to conceal *her own criminality* and blame it on Ms. Read, Ms. McCabe inexplicably tells police, for the first time, that while she was seated alone with Ms. Read together in a car after law enforcement arrived on scene, “[We] prayed the ‘Our Father’ together. **Karen then immediately yelled at [me] two times to Google, ‘How long do you have to be left outside to die from hypothermia.’**” (Exhibit E, at p. 3.) Jennifer McCabe *knew* how devastating it would be if the wrong person in law enforcement discovered that she Googled “hos long to die in cold” hours before she claims to have found O’Keefe’s body in the snow. Thus, in an attempt to deflect suspicion and justify this incredibly incriminating Google search, she reverted to blaming everything on Ms. Read. Unfortunately for Ms. McCabe, her decision to Google “hos long to die in cold” at 2:27 a.m., two hours after O’Keefe made his way into the Albert residence, was hers and hers alone. **Shockingly, in what can only be described as a clear attempt by Ms. McCabe to frame Ms. Read, Richard Green’s forensic analysis of Jennifer McCabe’s phone reveals that Ms. McCabe took affirmative steps to delete the 2:27:40 a.m. search for “hos long to die in cold,” but did not attempt to remove the two other subsequent searches she attributed to Ms. Read.** (*See* Affidavit of Richard Green at ¶8, Exhibits USF-01, USF-02.)

18. The defense is not suggesting that Jennifer McCabe killed O’Keefe and covered up his murder alone. The communications and contacts that Jennifer McCabe **intentionally deleted** from her phone in the four days between O’Keefe’s death and her decision to turn her phone over to law enforcement for analysis on February 2, 2022, are key to uncovering what transpired on January 29, 2022. (*See* Affidavit of Richard Green at ¶12, Exhibit USF-04.) As set forth more fully below, Jennifer McCabe intentionally sanitized her phone of her contacts with Brian and Nicole Albert on January 29, 2022, before turning her phone over to law enforcement. (*See id.*) The only reasonable inference as to why Jennifer McCabe would intentionally tamper with evidence she *knew* she was providing to law enforcement is because, like her 2:27 a.m. Google search, she and Brian Albert have taken calculated steps to hide incriminating information.

19. As explained in the attached Affidavit of Richard Green, the Cellebrite analysis of Jennifer McCabe’s cell phone recovered various contacts and communications, which were deleted by Ms. McCabe on January 29, 2022. (*Ibid.*) For example, on January 29, 2022, at 12:53 p.m., just hours after O’Keefe was found dead in Brian Albert’s front lawn, Jennifer McCabe deleted a screenshot of Brian Albert’s contact information, which was saved in her phone as “uncle brian a.” (Affidavit of Richard Green at ¶14, Exhibit USF-07.) Jennifer McCabe also deleted the phone call she made to Brian Albert at that same number on January 29, 2022, at 6:23 a.m. (See Affidavit of Richard Green at ¶12, Exhibit USF-04.)

20. Ms. McCabe’s attempts to sanitize her phone of any contacts with Brian Albert on the morning in question are not the only instances of witnesses associated with this case attempting to prevent Brian Albert’s number from being turned over to the defense and/or from appearing in official law enforcement records. For example, on October 25, 2022, the Commonwealth produced to the defense a copy of the initial Canton Police Department Incident Report with a purported creation date of January 29, 2022, at 0824 hours. (Affidavit of Alan J. Jackson at ¶17, Exhibit P.) Apparently unbeknownst to the individual that altered that report, a hard copy of that very same report dated “January 29, 2022, at 0824 hours” had already been provided to counsel for Ms. Read at her Arraignment seven months prior on February 2, 2022. (See Affidavit of Alan J. Jackson ¶17, Exhibit O.) The two Canton Police Department Incident Reports are (almost) identical and purport to have been created and generated on the exact same date at the exact same time. However, the report produced on October 25, 2022 (“the Altered Report”), is different from the report produced months earlier on February 2, 2022 (“the Original Report”), in two very significant respects: (1) the Altered Report swaps the single crime scene photograph included within the report from a photograph that was taken on the morning of January 29, 2022 by Canton PD (where there were clearly **no** pieces of Ms. Read’s taillight at the crime scene), to a crime scene photograph taken on February 3, 2022 by Massachusetts State Police (when Trooper Proctor purportedly recovered pieces of her taillight at the scene days later after he had already taken possession of her vehicle);⁸ and (2) **the Altered Report, replaces Brian Albert’s “primary” cell phone number (the very same number Jennifer McCabe deleted from her**

⁸ A detailed analysis of the chain of custody issues relating to the after-the-fact discovery of pieces of Ms. Read’s taillight at the crime scene was discussed more fully in Defendant’s Rule 17 Motion for Complaining Witness’ Phones at p. 11, and is incorporated herein by reference.

cell phone belonging to “uncle brian a”) with a completely different number. (See Affidavit of Alan J. Jackson at ¶17; Compare Exhibit O, Original Report, with Exhibit P, Altered Report.) Thus, the witnesses in this case have made repeated attempts to conceal, hide, and erase any reference to Brian Albert’s cell phone number in connection with this case.

21. The revelations obtained from Jennifer McCabe’s cell phone, taken alone, make Jennifer McCabe and Brian Albert prime suspects in this case. However, actions taken by Brian Albert and his family to destroy evidence and engage in witness intimidation over the course of the last year should be extremely troubling to this Court, and unquestionably further support the necessity of immediately issuing a summons for Brian Albert’s cell phone and cell records:

- a. First, as set forth more fully in Defendant’s Motion for Order Pursuant to Mass. R. Crim. P. 17 Directed to Canton Animal Control and the Canton Clerk’s Office, the defense has obtained evidence that Brian Albert rehomed his K-9 German Shepherd dog “Chloe” to some unknown location in the months following O’Keefe’s death. Considerable circumstantial evidence suggests that Brian Albert’s dog was responsible for the scratch and/or bite marks on O’Keefe’s right arm. It is not a coincidence that Brian Albert got rid of his family dog of seven years due to a reported violent skin-piercing incident four months after O’Keefe’s death.
- b. Second, on September 22, 2022, defense counsel, for the first time, publicly accused the Alberts in open court of being implicated in the murder of O’Keefe. On September 23, 2022, Judge Krupp ordered Deputy District Attorney Adam Lally to notify, among others, Brian Albert, Jennifer McCabe, Nicole Albert, Matthew McCabe, and Colin Albert, not to alter, delete, destroy, or in any way manipulate any of the electronic data associated with any cell phones used by the Alberts/McCabs in and around the time of O’Keefe’s death. (Affidavit of Alan J. Jackson at ¶18, Exhibit Q, September 23, 2022 Order to Preserve Electronic Evidence.) Less than two weeks later, on October 16, 2022, Brian Albert’s brother, Tim Albert, publicly threatened to ruin anyone who crossed his family: “I stand by my family 100%. **You don’t fuck with them. You do, and I won’t hesitate to make you the most miserable person. It’s a promise.**” (Affidavit of Alan J. Jackson at ¶19; Exhibit R, Tim Albert Facebook Post.) Tim Albert is a

grown man with two brothers in law enforcement—Brian Albert (Head of the Fugitive Unit for the Boston Police Department), and Kevin Albert (a lead detective with the Canton Police Department). The Alberts are not above the law. If Tim Albert has no problem *publicly* threatening and intimidating witnesses on Facebook because his brother, Brian Albert, was accused of being implicated in O’Keefe’s murder, it’s terrifying to imagine what the Alberts are capable of behind closed doors. As of the filing date of this Motion, six months after the original post, Tim Albert’s threat remains displayed on his public profile. (Affidavit of Alan J. Jackson at ¶19.)

- c. Third, law enforcement never conducted a search of the Albert Residence and/or their fenced-in back yard to determine whether there was any evidence that an altercation had occurred between O’Keefe and/or any of the partygoers on the night in question. (Affidavit of Alan J. Jackson at ¶16.) On November 17, 2022, mere months after the defense first publicly accused the Alberts of being implicated in O’Keefe’s murder, Brian Albert made the decision to list his childhood home and longtime residence for sale, which has been in the Albert family for multiple generations.⁹ (Affidavit of Alan Jackson, ¶12.) According to public records, the Alberts accepted an offer on the house exactly three months after it was listed, on February 17, 2023. (*Ibid.*) That sale is currently pending. (*Id.*, Exhibit K.) **Brian Albert’s decision to transfer documented ownership of his longtime family residence is yet additional evidence of consciousness of guilt.**

22. Jennifer McCabe and Brian Albert have engaged in a demonstrable pattern of attempting to manipulate, conceal, and destroy evidence that might expose their involvement in O’Keefe’s murder. As discussed below, Ms. Read’s constitutional right to obtain exculpatory evidence and defend herself at trial require that this Court issue a pretrial summons for Mr. Albert’s cell phone and corresponding cell carrier records for the critical 9-day period commencing on January 28, 2022 (the day O’Keefe met the McCabes and Alberts for drinks) and ending on February 5, 2022

⁹ The Albert Residence, which is located at 34 Fairview Road in Canton, was built in 1974 and purchased by Bernard and Mary Albert in 1975. (Affidavit of Alan Jackson, ¶12.) In 2010, Brian and Nicole Albert purchased the residence from Brian Albert’s parents. (*Ibid.*)

(the day the bulk of Commonwealth’s investigation was completed), so that the defense can uncover *why* the witnesses in this case have been so intent on preventing Brian Albert’s cell phone number from making it into the hands of the defense and official law enforcement documents. Similarly, Ms. Read is requesting call detail records from Jennifer McCabe’s cell carrier for a six-day period spanning January 28, 2022 until she turned her phone over to law enforcement for imaging on February 2, 2022, which will undoubtedly reveal text messages and calls that Ms. McCabe deleted from her phone in an effort to interfere with the investigation.

III. ARGUMENT

1. Under *Commonwealth v. Lampron*, 441 Mass. 265 (2004), a court may issue a pretrial summons for records in the possession of third parties if the party seeking the summons shows that (1) the documents or information is evidentiary and relevant; (2) the documents or information is not otherwise procurable reasonably in advance of trial by exercise of due diligence; (3) the party cannot properly prepare for trial without inspection of the records or information before trial and that the late disclosure of the information might unreasonably delay trial; and (4) the application is made in good faith and is not intended as a general “fishing expedition.” *Lampron*, 441 Mass. at 269. As explained below, the categories of records sought by this motion meet all four prongs of the *Lampron* test.

A. THE REQUESTED RECORDS ARE EVIDENTIARY AND RELEVANT

2. To satisfy the first requirement of *Lampron*, the defendant must make a factual showing “that the . . . evidence sought has a ‘rational tendency to prove [or disprove] an issue in the case.’” *Com. v. Jones*, 478 Mass. 65, 68 (2017), quoting *Lampron*, 441 Mass. at 269-270. To meet this standard, “the defendant need not make a showing that the records *actually* contain information that carries, for example, the potential for establishing the unreliability of either the criminal charge or a witness on whose testimony the charge depends.” *Com. v. Sosnowski*, 43 Mass. App. Ct. 367, 373 (1997). Rather, the defendant must only advance, in good faith, at least some factual basis indicating how the records are likely to be relevant to an issue in the case. *See id.* Relevance is a “broad concept” and “any information which tends to establish or at least shed light on an issue is relevant.” *Adoption of Carla*, 416 Mass. 510, 513 (1993); *see also Com. v. Tucker*, 189 Mass. 457, 467 (1905) (explaining evidence is relevant and admissible if, in connection with other evidence, “it helps a little”).

3. Here, Ms. Read's defense is predicated, in no small part, on a third-party culpability defense. (Affidavit of Alan J. Jackson at ¶21.) As discussed above and in Section D, *infra*, the defense has uncovered *significant, reliable* evidence that not only exculpates Ms. Read, but also inculpatates Jennifer McCabe and Brian Albert. Previously withheld evidence supports Ms. Read's third-party culpability defense and establishes that the government's seminal witness, Jennifer McCabe, Googled, "hos long to die in cold" at 2:27 a.m. on January 29, 2022, just two hours after Ms. Read last saw O'Keefe exit her vehicle and walk toward the Albert Residence. (See Affidavit of Richard Green at ¶6, Exhibit USF-01.) Moreover, the only reasonable interpretation of the 80 steps and 3 flights of elevation gain recorded by Apple Health on O'Keefe's cell phone immediately upon his arrival at the Albert Residence suggests that he did, in fact, make it into Albert Residence that night, directly contravening Jennifer McCabe and Brian Albert's claims to police that he never made it inside. (See Affidavit of Alan J. Jackson at ¶21; Affidavit of Richard Green at ¶¶18-19.) The above reliable and data-driven evidence undeniably suggests that Jennifer McCabe and Brian Albert are the third parties responsible for O'Keefe's death and that more inculpatory information will be found in the cellular data and records requested. As discussed above, there is undeniable proof that Jennifer McCabe took efforts to sanitize her phone in an attempt to prevent the defense from obtaining information that would have exculpated Ms. Read and *inculpatated the McCabe/Albert family* before she turned it over to police. As if the 2:27 a.m. Google search for "Hos long to die in cold" weren't inculpatory enough in its own right, the forensic analysis of Ms. McCabe's cell phone establishes that she took affirmative steps to destroy evidence by deleting her 2:27 a.m. search, deleting her communications with Brian Albert on January 29, 2022, and deleting evidence that she shared Brian Albert's contact information with *someone* before turning her phone over to the Massachusetts State Police. (See Affidavit of Richard Green at ¶¶8, 12-14; Exhibits USF-01, USF-04, USF-07.) Brian Albert's cell phone communications and location data spanning from January 28, 2022 (the night O'Keefe met the Alberts and McCabes for drinks at the Waterfall) to February 5, 2022 (the day the Massachusetts State Police completed its initial investigation into the case) will unquestionably lead to relevant, admissible evidence that will shed light on Brian Albert (and others') involvement in O'Keefe's murder and the efforts that were made in the aftermath by the McCabes/Alberts to cover up their crimes. Moreover, Ms. McCabe's cell phone carrier records from January 28, 2022 (the night Ms. McCabe invited John to the Albert

Residence for drinks) to February 2, 2022 (the day she turned her phone over to law enforcement) will allow the defense to obtain a record of any calls and/or text messages that were *successfully* deleted from Ms. McCabe’s cell phone during the relevant time period, and thus, could not be recovered in the forensic analysis of her phone. (See Affidavit of Richard Green at ¶12 [opining that “the confirmed deletion of recent historical call information suggests that [Ms. McCabe] has engaged in efforts to tamper with, alter, destroy, and/or hide information or evidence”].) Accordingly, the records requested by Ms. Read are undeniably evidentiary and relevant and will unquestionably support her third party culpability defense.

B. THE REQUESTED RECORDS ARE NOT OTHERWISE PROCURABLE REASONABLY IN ADVANCE OF TRIAL BY EXERCISE OF DUE DILIGENCE

4. Second, *Lampron* requires that the requested records “are not otherwise procurable reasonably in advance of trial by exercise of due diligence.” *Lampron*, 441 Mass. at 269.

5. Here, the cell phone records sought from Brian Albert were never turned over to law enforcement. Thus, as set forth in the attached Affidavit of Richard Green, the only source from which the defense can obtain the requested information, namely Brian Albert’s communications, *Google* searches, web browsing history, and any data that may have been deleted by the user during the relevant time period, is by conducting a forensic analysis of Brian Albert’s *actual* cell phone. (Affidavit of Richard Green at ¶20.) Moreover, call detail records from Verizon Wireless, LLC and/or AT&T, will show the *fact of communication*, and thus, will establish whether there are additional, substantive communications that are missing and/or were deleted from Brian Albert’s and/or Jennifer McCabe’s cell phones from the period in question. (*Id.* at ¶21.) Further, the two primary sources of location data used by experts to track the location of individuals include data obtained (1) from a forensic analysis of any cellular devices in that person’s possession; or (2) from GPS location data stored by cellular providers. **Unless this Court grants the instant request, the defense will not be able to obtain Mr. Albert’s communications and location data from the morning of O’Keefe’s death, which will “shed light” on Mr. Albert’s involvement in the murder of O’Keefe and support Ms. Read’s third-party culpability defense.** (Affidavit of Alan J. Jackson, at ¶24.) Moreover, unless this Court grants Ms. Read’s request for Ms. McCabe’s cell phone carrier records Ms. Read will not have access to any communications (or the fact thereof), which were successfully deleted from Ms. McCabe’s cell

phone. Thus, the requested records are not otherwise procurable from *any other sources* in advance of trial by exercise of due diligence.

C. THE DEFENSE CANNOT EFFECTIVELY PREPARE FOR TRIAL WITHOUT THESE RECORDS AND THE FAILURE TO OBTAIN THIS INFORMATION MAY UNREASONABLY DELAY TRIAL

6. Third, *Lampron* requires that the party seeking the records show that he or she cannot properly prepare for trial without inspection of the records before trial and that the late disclosure of the records might unreasonably delay trial. *Lampron*, 441 Mass. at 269.

7. Here, Ms. Read needs access to this information well in advance of trial in order to effectively prepare for her defense. As set forth in the accompanying Affidavit of Richard Green, in order to obtain the communications and location data the defense is requesting, Mr. Green will need time to make a forensic copy of Mr. Albert's device(s) and subsequently analyze the data such that the relevant data can be produced to defense counsel for review. (Affidavit of Richard Green at ¶20.) Furthermore, the defense expert's forensic analysis of Mr. Albert's cell phone will then need to be compared with records on file with Verizon, LLC and/or AT&T to determine whether Mr. Albert has taken steps to sanitize his own device. (*Id.* at ¶21.) Similarly, Mr. Green will need time to compare any cell carrier records produced by Verizon, LLC during the relevant time period with the data obtained from the forensic image of Ms. McCabe's iPhone 11. (*See id.*) Even after that process is complete, it is likely that the production of this information will identify additional witnesses that the defense will need to interview. Failure to obtain this information in advance of trial, which is critical to Ms. Read's ability to present her third-party culpability defense, will unquestionably result in delays at trial.

D. THE INSTANT REQUEST IS NOT A FISHING EXPEDITION

8. Fourth, *Lampron* requires a party seeking a summons to show that the application is made in good faith and not merely as a "fishing expedition." *Lampron*, 441 Mass. at 269.

9. The instant request is made in good faith and is not a fishing expedition. As outlined below, the defense has uncovered *significant reliable* evidence that implicates Jennifer McCabe and Brian Albert in the murder of O'Keefe, namely:

- a. As explained in the attached Affidavit of Richard Green, an expert in computer forensics and electronic data analysis, immediately following

O’Keefe’s arrival at the Albert Residence at 12:20 a.m., between 12:21 a.m. and 12:24 a.m., Apple Health recorded O’Keefe taking 80 steps (i.e., traveling approximately 200 feet or 60 meters) and climbing the equivalent of three floors *with his location data pinging at or near the Albert residence.*

(Affidavit of Richard Green at ¶¶18-19, Exhibit USF-09.) **The only reasonable interpretation of O’Keefe’s Apple Health Data, which shows an elevation gain of three floors at or near the Albert Residence, is that he made it inside the Albert’s three-floor residence.** (See Affidavit of Alan J. Jackson at ¶12, 34 Fairview Zillow Listing.) Thus, location data from O’Keefe’s cell phone directly contradicts Brian Albert’s assertion to police that O’Keefe never entered his home or arrived at the party on January 29, 2022.

- b. Hours before Ms. McCabe has any reason to suspect O’Keefe is missing or in distress, at 2:27 a.m. on January 29, 2022, she Googles **“Hos long to die in cold.”** (Affidavit of Richard Green at ¶6, Exhibits USF-06.) This search was recovered from the deleted cache of Ms. McCabe’s iPhone 11, meaning Ms. McCabe took affirmative steps to delete that Google search from her phone before turning it over to police, clearly evidencing consciousness of guilt. (Affidavit of Richard Green at ¶8.)
- c. At 6:23 a.m. on January 29, 2022, shortly after disconnecting with 9-1-1 dispatch, Jennifer McCabe tries to override the inculpatory Google search by googling “how long ti die in cikd” and attributing that search to Ms. Read. (Affidavit of Richard Green at ¶10; (Exhibit E, at p. 3.)
- d. Simultaneously, at 6:23 a.m., Jennifer McCabe makes an outgoing call to her brother-in-law, Brian Albert (which he doesn’t answer), then deletes the record of that call. (Affidavit of Richard Green at ¶12; Exhibit USF-04.)
- e. At 6:24 a.m. Jennifer McCabe realizes she misspelled her prior search and Googles “hos long to die in cold” in another attempt to override her inculpatory search. (Affidavit of Richard Green at ¶10; Exhibit USF-02.)
- g. On January 29, 2022, at 12:53 p.m., Jennifer McCabe deletes a screenshot of Brian Albert’s contact information, which was saved in her phone as “uncle

brian a” with an identifying description of “home #3.” (Affidavit of Richard Green at ¶14; Exhibit USF-07.)

- h. Four months after O’Keefe’s death in May 2022, Brian Albert rehomes his K-9 German Shepherd and family dog of seven years, “Chloe”, to an unknown location for a purported skin-piercing incident.
- i. Two weeks after the defense publicly accuses Brian Albert of being involved in O’Keefe’s murder, on October 16, 2022, Brian Albert’s brother, Tim Albert, publicly threatened to ruin anyone who crosses his family: “I stand by my family 100%. **You don’t fuck with them. You do, and I won’t hesitate to make you the most miserable person. It’s a promise.**” (Exhibit R.)
- j. On November 17, 2022, mere months after being accused of wrongdoing in open court, Brian Albert put his family home on the market for sale. (Affidavit of Alan J. Jackson at ¶12, Exhibit K.)
- k. Exactly three months later, on February 17, 2023, Brian Albert liquidates his largest asset by selling his childhood home, which has been in his family for generations. (*Ibid.*)

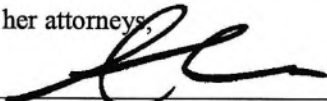
10. The significant and reliable direct and circumstantial evidence outlined above clearly supports Ms. Read’s longstanding assertions that she is innocent, and that the McCabes and Alberts are responsible for O’Keefe’s death. The government utterly failed to investigate any suspects other than Ms. Read in connection with this case. Because the McCabes and Alberts were never questioned as suspects, the government failed to recover (and uncover) significant evidence suggesting that they are at fault. The defense, quite clearly, has a good faith belief that Brian Albert and Jennifer McCabe are implicated in O’Keefe’s murder. **Furthermore, the cell phone evidence that was withheld by the government for more than a year clearly establishes that Jennifer McCabe and her family members have taken affirmative steps to delete and tamper with evidence that was provided to law enforcement in this case and improperly influence the investigation into O’Keefe’s death.** Ms. Read’s constitutional rights *require* that she be able to obtain evidence that supports her well-founded third-party culpability defense and obtain the critical communications between and among Brian Albert, the witnesses in this case, and the law enforcement officers responsible for investigating this crime. The instant request for information is narrow and targeted to Brian Albert’s communications, web results and search

histories, and location information limited to a 9-day period between January 28, 2022, and February 5, 2022 (i.e. the days in which the substantive investigation and recovery of evidence took place). The defense has a good faith belief that Brian Albert's cell phone records, including his call detail records, search history, and location information from January 28, 2022, and the eight days thereafter will reveal significant information about O'Keefe's death and the subsequent coverup of his murder. Similarly, call detail records maintained by Jennifer McCabe's cell phone provider will reveal the existence of communications that were successfully deleted from Ms. McCabe's cell phone (and thus, could not be recovered in a forensic analysis).

10. Accordingly, as set forth above, the defense has satisfied its burden under *Lampron*. As such, Ms. Read respectfully requests that this Court issue the Order attached hereto and require Brian Albert, Verizon Wireless, LLC, and AT&T to produce the requested information and objects to the criminal Clerk's Office in advance of trial.

Respectfully Submitted,
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By her attorneys,



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