

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT
SUPERIOR COURT DEPARTMENT
WORCESTER COUNTY SUPERIOR COURT

WORCESTER, SS

DOCKET 1885CR67(1), (2), (3)
1885CR157(1)

COMMONWEALTH

v.

ALYCE DAVENPORT

DEFENDANT'S MOTION FOR COURT SUBPOENA OF THIRD-PARTY
RECORDS

Now comes the Defendant in the above captioned matter hereby requesting this Honorable Court issue subpoena to the following named institutions to deliver the below noted records to the Court:

1. The Internal Affairs Investigative Materials, Reports, Conclusions and Recommendations, and Discipline Reports of WARREN POLICE DEPARTMENT OFFICER SHAWN MORIN, see Commonwealth v Wanis, 426 Mass. 639 (1998); Commonwealth v. Rodriguez, 692 N.E. 2d, 426 Mass. 647 (1998).

As reasons therefor, Defense hereby states

1. The requested documents are evidentiary and relevant to the Defense as noted in the attached Affidavit. Commonwealth v. Lampron, 441 Mass. 265, 269-270, (2004);
2. The requested documents are records of one of the primary investigating officers involved in the prosecution of the case at bar, and are presumptively privileged and Certified Copies are not procurable reasonably in advance of trial except by Court Order;
3. The Defendant in the above captioned matter is charged with having committed the following offenses on January 5, 2018: 1885CR66(1), "B&E DT Felony"; 1885CR66(2), "Larceny from Building"; 1885CR66(3), "Attempt to Break into Depository"; 1885CR157(1), "Credit Card Fraud Over \$250.00";

4. WARREN POLICE DEPARTMENT OFFICER SHAWN MORIN was terminated from his employment as a Police Officer with the town of Warren in close temporal proximity to the date of charge in the instant cases: May 2018. He was terminated because of his having posted a meme of an African American woman and her reaction to a fire¹.
5. The Defendant in the case at bar is Caucasian; her boyfriend at the time of the events in this case is her Co-Defendant in this matter. He is African American. The Defendant and the Co-Defendant were investigated, subject to police interrogation and search, and arrested together.
6. The materials within the Internal Affairs Investigative Materials, Reports, Conclusions and Recommendations, and Discipline Reports of WARREN POLICE DEPARTMENT OFFICER SHAWN MORIN will establish and confirm the Officer's bias against African Americans.
7. The Defendant cannot properly prepare for trial without production and inspection in advance of trial, and the failure to obtain such inspection may unreasonably delay the trial;
8. This application is made in good faith and the records are essential to the Defendant's right to compulsory process to secure favorable evidence, as guaranteed by the 6th and 14th Amendments to the United States Constitution and Article 12 of the Massachusetts Declaration of Rights;
9. The Defendant further states that unless the instant Motion is granted, her rights under the state and federal constitutions to the effective assistance of counsel, to confront witnesses against her, to obtain exculpatory information and to present a defense will be impaired.

For these reasons, and for those stated in the attached Affidavit the Defendant hereby respectfully moves this Honorable Court for the issuance of the requested subpoena. Mass.R.Crim.P. 17(a)(2).

¹See DEFENSE EXHIBIT 1: "Warren policeman fired over meme will file grievance," Worcester Telegram and Gazette, posted 06.06.2018.

Respectfully submitted,
Defendant by Counsel,

Nora M. Allard

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12.28.2018

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT
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COMMONWEALTH

V.

ALYCE DAVENPORT

CERTIFICATE OF SERVICE

I, Nora M. Allard, Esq, do hereby state that I have served the following on Assistant District Attorney J. Melander, Jr., District Attorney for the Middle District, 225 Main Street, Worcester, Massachusetts 01608, via email/first class mail service

1. Defendant's Motion for Court Subpoena of Third-Party Records
2. Affidavit in Support of Defendant's Motion for Court Subpoena of Third-Party Records
3. DEFENSE EXHIBIT 1

Signed under the pains and penalties of perjury,


Nora M. Allard, Esq, B.B.O. 643257

12.28.2018

NORA M. ALLARD, ESQ, J.D. B.B.O. 643257

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Worcester County Superior Court
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Assistant District Attorney J. Melander Jr.
District Attorney for the Middle District
225 Main Street
Worcester, Massachusetts 01608

Greetings,

I represent ALYCE DAVENPORT on cases numbered 1885CR67(1),(2), (3) and 1885CR157(1). Enclosed for filing please find:

1. Defendant's Motion for Court Subpoena of Third-Party Records;
2. Affidavit in Support of Defendant's Motion for Court Subpoena of Third-Party Records;
3. DEFENSE EXHIBIT 1;
4. Certificate of Service.

Thank you,

Nora M. Allard

Nora M. Allard, Esq, B.B.O. 643257

12.23.2018

other Police Department pursuits.

"I am requesting on behalf of the town to rehire the police officer and just do the right thing," Ms. Lafko said. "Put an end to it and do what is right."

She was among about 60 people who attended the meeting. None spoke against Mr. Morin.

Selectmen said Mr. Morin was still in a probationary period for new hires so they were allowed to end his employment.

But Mr. Morin said the probation period is 12 months. Mr. Morin said he marked his two-year job anniversary on Memorial Day.

At Tuesday's meeting, the board decided that Mr. Morin and the Warren Police Union will go before an executive session of the Board of Selectmen with a grievance at 6 p.m. next Tuesday.

According to police union president Jeffrey Von Dauber, a Warren police officer who was at Tuesday's meeting to seek Mr. Morin's reinstatement, the three selectmen voted in executive session May 16 to terminate Mr. Morin's employment, and he was fired May 18. Officer Von Dauber said he wanted Mr. Morin reinstated with back pay, including compensation for missed details and lost overtime.

Marc Richard, chairman of the Board of Selectmen, said in response to Ms. Lafko's remarks that this is the way they do business when a complaint arises.

"We had concerns," Mr. Richard said. "We don't target the Police Department. Everything to do with town business is public record. That's why I personally don't do email or Facebook. I don't own a cellphone. The social media policy has turned into a nightmare."

After Tuesday's meeting, Mr. Morin said an unnamed resident had told the selectmen about the meme by email. He wasn't sure who it was. He went on to say that he intended the meme as a joke, and that it was in reference to a charity police-fire competition that Mr. Morin was hosting at Dean Park. He said the fundraiser had to be canceled as a result of his firing. No one at the meeting mentioned the racial aspect of the meme.

"I have a good rapport with the Fire Department," Mr. Morin said. "However, it was assumed by the resident that I meant it to harm.

Fire Chief Adam Lavoie said in a separate interview Tuesday morning that he can't give a personal opinion on an ongoing investigation with the selectmen and police union. Chief Lavoie added that the intent of the Fire Department's Facebook page is to keep the public aware of their activities and involvement in the community and serves as a way to provide safety information.

"Our Facebook page is a public page not directly managed by the town; however, our administrators monitor the content regularly and remove comments occasionally with the intent of always maintaining a professional and appropriate public forum," Chief Lavoie said. "We do not allow the general public to post anything to our page and monitor the comment section continuously."

Chief Lavoie said the meme posted by Mr. Morin was deleted from the page, as was another comment.

In a separate interview Tuesday, Police Chief Bruce Spiewakowski, after seeing the meme, said he believed that better judgment could have been used, and he said he can see how it could be construed as insensitive to the people affected by the Warren fire May 2. According to Firefighter Gagner, the fire victims weren't black.

"We strive to be empathetic and responsive to the needs and expectations of our community," Chief Spiewakowski said. "In looking at this issue from a standpoint of how it was posted and interpreted, I think that it lacked empathy, and it could affect the public respect of the department, which would be detrimental towards our mission and goals."

Chief Spiewakowski said he didn't receive any formal complaints about the posting, but that in looking back at the Fire Department page he saw that meme postings are a rarity.

When asked whether he has a say in Mr. Morin's case, Chief Spiewakowski answered that he hasn't seen all the information or received input from the people affected and concerned, and therefore, he could not comment on how he would have dealt with it.

Officer Von Dauber said Wednesday the police chief's role in the case is up to the selectmen.

Besides organizing the police-fire competition, Mr. Morin was co-organizer of the Civilian Police Academy with Officer Joseph A. LaFlower.