IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	
Plaintiff,	)	
v.	)	No. 17 CR 4286
	)	
JASON VAN DYKE,	)	Honorable Vincent M. Gaughan
	)	Presiding Judge
	)	
Defendant.	)	

ORDER

Defendant, Jason Van Dyke, has subpoenaed third-party witness and journalist, Jamie Kalven. Jamie Kalven and the *Garrity* Team for the Special Prosecutor have both moved to quash the subpoena. On December 6, 2017, the Court heard arguments from all parties and took the matter under advisement. The Court rules as follows.

Many procedural safeguards ensure that a defendant's fundamental right to due process is protected. Pursuant to Supreme Court Rule 412, the Special Prosecutor is obligated to provide any discovery material tending to negate the guilt of the defendant or reduce his punishment. In *Brady*, the Supreme Court held that the prosecution violates an accused's constitutional right to due process of law by failing to disclose evidence favorable to the accused and material to guilt or punishment. *Brady v. Maryland*, 373 U.S. 83, 87 (1963). This rule encompasses evidence known to police investigators, but not to the prosecutor. *Kyles v. Whitley*, 514 U.S. 419, 438 (1995). The prosecutor has a duty to learn of favorable evidence known to other government actors, including the police. *Id.* at 437.

The accused's Sixth Amendment right to compulsory process encompasses production of documentary evidence by subpoena *duces tecum*, independent of and in spite of discovery rules. *People ex rel. Fisher v. Carey*, 77 Ill. 2d 259 (1979). A subpoena *duces tecum* should be allowed and upheld if: (1) The material sought is relevant and usable as evidence; (2) The material cannot be obtained any other way; (3) Counsel cannot prepare for trial without the material; and (4) The subpoena is issued in good faith and the request is not a fishing expedition. *See United States v. Nixon*, 418 U.S. 683 (1974).

However, under *Carey*, the court must not hesitate to act on motions to quash subpoenas which are oppressive, unreasonable, or overbroad. *Carey*, 77 Ill. 2d at 270. The permissible breadth of a subpoena is measured by the subject matter and scope of the matter under investigation. *People v. Mileris*, 431 N.E. 2d 1064 (1st Dist. 1981). A subpoena *duces tecum* may be subject to a motion to quash if, for example: (1) it is not specific enough (*People v. Smith*, 237 Ill. App. 3d 901 (3d Dist. 1992)); (2) it is overbroad (*People v. Teller*, 207 Ill. App. 3d 346 (2d Dist. 1991)); (3) Compliance would be unreasonable or oppressive; (4) Compliance would violate the Fifth Amendment right against self-incrimination (*United States v. Doe*, 465 U.S. 605 (1984)); (5) Compliance would violate the Fourth Amendment protection against unreasonable searches and seizures (*Donovan v. Lone Steer, Inc.*, 464 U.S. 408 (1984)); (6) The material sought is privileged (*Appeal of Hughes*, 633 F.2d 282 (3d Cir. 1980)); (7) The material sought is not relevant (*People v. Perez*, 258 Ill. App. 3d 465 (5th Dist. 1994)).

The circuit court is required to weigh the evidence including the impact of any undisclosed evidence on the verdict. See *People v. Beaman*, 229 Ill. 2d 56, 72–73 (2008); See *People v. Harris*, 206 Ill.2d 293, 311 (2002). Such an analysis requires applying established law to the facts. *People v. Beaman*, 229 Ill. 2d 56, 72–73 (2008). In making the materiality

determination, courts must consider the cumulative effect of all the suppressed evidence rather than considering each item of evidence individually. *People v. Hobley,* 182 Ill.2d 404, 435 (1998), citing *Kyles,* 514 U.S. at 436–41.

The subpoena submitted by the defense in this instant matter is not sufficiently specific and seeks irrelevant and privileged material. Each basis to quash the subpoena will be discussed in turn.

First, there are no specific details regarding the alleged information that Kalven provided Torres with defendant's *Garrity*-protected statements. Indeed, the timeline of events suggests that is not possible. Jamie Kalven spoke with Torres in November 2014 after Torres' statement to IPRA had already been memorialized on October 28, 2014. *Report of Proceedings*, December 6, p. 26. As such, Torres could not have been exposed to *Garrity*-protected statements and there is an independent source for Torres' statement, which is his own observations, not necessarily a "leak" in the Chicago Police Department (CPD) as the defense suggests. *Report of Proceedings*, December 6, p. 26-7.

Second, the information sought is irrelevant. The *Garrity* team of the Special Prosecutor's Office stated that they turned over 50,000 pages of discovery plus an additional 8,700 page of Laquann McDonald's DCFS records. *Report of Proceedings*, December 6, p. 21. The defense indicates that they have indeed received over 500,000 pages of discovery. *Report of Proceedings,* December 6, p. 22. In all of those documents, there is simply no evidence to support the allegation that Mr. Kalven received *Garrity*-protected material. While such evidence, if it existed, could be relevant to support the defendant's theory that there is a "leak" and a criminal violation, there is simply no evidence to support such an allegation in the hundreds of thousands of pages of documents tendered in discovery and Jamie Kalven himself has denied

having access to *Garrity*-protected statements. Further, any alleged "leak" is a collateral matter that is wholly irrelevant to any of the elements in a first degree murder trial. Investigation into this issue is an internal matter to be handled by CPD. Therefore, to uphold the subpoena of Jamie Kalven would be nothing more than a fishing expedition in search of information that the timeline of events, discovery documents, and testimony suggest simply does not exist.

Third, pursuant to the Illinois Reporter's Privilege Act, "No court may compel any person to disclose the source of any information obtained by a reporter..." 735 ILCS 5/8-901. However, if the requirements for divestiture have been satisfied, then a court may compel a reporter to disclose the source of information. *People v. Palacio*, 240 Ill. App. 3d 1078 (4th Dist. 1993). Here, Kalven's source of information is protected by the Reporter's Privilege. Further, Mr. Herbert stated, "Judge, quite frankly, we don't necessarily care who the actual source was in this case." *Report of Proceedings*, December 6, p. 38. As such, Kalven's source is irrelevant.

Moreover, the claim that Kalven received copies of *Garrity*-protected statements is contradicted by other sources that made the same information available the day after the shooting. The CPD Office of New Affairs Press Release from October 21, 2014 contains the same information that the defense claims could only have come from the defendant's *Garrity*-protected statements. *See Kalven's Exhibit 1.* As such, the claim that Kalven's information could only have come from *Garrity*-protected information is contradicted by the press release. Pat Camden, an FOP representative, was also quoted in the Chicago-Tribune providing the same information. *See Kalven's Exhibit 2.* Thus, Kalven's information could have come from multiple sources other than *Garrity*-protected statements. Given that there is no evidence to support the allegation that Kalven even possessed *Garrity*-protected statements, Kalven's source of information - information that it has not been proven he ever had - is irrelevant.

Finally, even assuming *arguendo*, that Kalven was exposed to the *Garrtiy*-protected statements, there is still no taint. Defendant's non-*Garrity*-protected statements to Detective March are more comprehensive, meaning they contain the same or greater information than the *Garrity*-protected statements. As such, witnesses could have been aware of the information contained in the *Garrity*-protected statements via the non-*Garrity*-protected statements. Because the non-*Garrity*-protected statements are broader and include the immunized statements, any material statement contained in the *Garrity*-protected statements was available via the substance of the defendant's non-*Garrity*-protected statements and therefore no taint exists.

CONCLSUION

Based on the foregoing discussion, it is hereby ordered that the State's Motion to Quash the Subpoena of Jamie Kalven is hereby GRANTED.

ENTERED: Vincent M Gaughan
Honorable Vincent M. Gaughan 1553
Circuit Court of Cook County
Criminal Division

DATED: Dec 13, 2017

ENTERED
JUDGE VINCENT GAUGHAN-1553
DEC 13 2017
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK