

Kathleen's office? Hope this helps.

Kevin

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②
On Jun 16, 2015, at 10:45 AM, Patalano, Donna (DAA) <donna.patalano@state.ma.us> wrote:

Hi Kevin,

IK pulled all of our boxes, including those in archives, prior to our last hearing to see if I could just provide a recorded copy of the hearing and did not find a copy in any of our files. I had a student intern double check for me as well. No luck. Do you know if it was a cassette? Or CD?

Kathleen Celio, who had the case while I was not with the office, is now on maternity leave... if the recording had at some point been converted to a digital file, she may have stored it on her computer. But I think it is unlikely (she provided me with her electronic files when I came back to the office and there is no electronic recording in those files she did provide me). She is back from maternity leave in September.

Thoughts now?

-D.

From: Kevin Barron [<mailto:kevinbarronesq@gmail.com>]

Sent: Monday, June 15, 2015 12:51 PM ①

To: Patalano, Donna (SUF)

Subject: Tape

Hi Donna,

Nancy McCann is missing the first June 5, 2001 tape. She thinks the Commonwealth has the tape. They might be in the "archives". The Commonwealth probably has the tape because it requested it in June 2011 after the defense filed its motion for collateral relief with my affidavit and a copy of the errata. Nancy is speaking directly to defendant's family because they keep calling about it.

Kevin

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Or is it just that you want to provide a copy of the recording to the federal court?

From: Patalano, Donna (SUF)
Sent: Tuesday, June 16, 2015 2:22 PM (6)
To: 'Kevin Barron'
Subject: RE: Tape

I just checked with Kathleen (who is on vacation in California) via email to confirm my understanding. She only listened to it at the courthouse. We no longer have a two-track player that we can utilize. I just cannot fathom any court personnel allowing us to take an original recording. It just does not make sense.
What will you do now?

From: Kevin Barron [mailto:kevinbarronesq@gmail.com]
Sent: Tuesday, June 16, 2015 12:55 PM (5)
To: Patalano, Donna (SUF)
Subject: Re: Tape

Nancy suggested that your office might have it. I don't know the policies about original tapes and imagine a two track recording requires special recording equipment so the most convenient thing to do would be to loan the tape - but I know that and am only going on how I understood my conversation with Nancy. Kevin

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On Jun 16, 2015, at 12:38 PM, Patalano, Donna (DAA) <donna.patalano@state.ma.us> wrote:

No, Kathleen does not have it. I have everything our office has (I kept it prepared to have to provide to AGO's office for your habe petition).
Although Kathleen requested the tape, what makes you think she would have taken it? Does Nancy have a memory of giving it to Kathleen? The original? Just can't imagine that.

From: Kevin Barron [mailto:kevinbarronesq@gmail.com]
Sent: Tuesday, June 16, 2015 12:33 PM (3)
To: Patalano, Donna (SUF)
Subject: Re: Tape

Hi Donna,

It was a cassette. Maybe it is in Kathleen's office? I'm surprised they handed over the original. I listened to it a few weeks before filing the motion. Nancy put me in a room and I listened to the tape. She came back and we played the section with the "Batson violation". When I left, the tape was still in the machine. Nancy produced the errata and I filed the errata as an attachment to an affidavit. Then, at some point, Kathleen must have listened to the tape. Has anyone looked in

Subject: Re: iape

I forget, what does the docket entry read? I had not noticed this entry about the Commonwealth (so I thought) getting a copy of the recording (though this may not be the case) until some member of his family or friend (who apparently verifies my reports) pointed it out to me. I do not have that docket entry in my files.

Kevin

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On Jun 16, 2015, at 3:37 PM, Patalano, Donna (DAA) <donna.patalano@state.ma.us> wrote:

Understood. I just want to be absolutely clear, that's all.

From: Kevin Barron [mailto:kevinbarronesq@gmail.com]
Sent: Tuesday, June 16, 2015 3:37 PM
To: Patalano, Donna (SUF)
Subject: Re: Tape

I am not accusing anyone. I thought you had a copy. That's why I asked for it.

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On Jun 16, 2015, at 2:33 PM, Patalano, Donna (DAA) <donna.patalano@state.ma.us> wrote:

I checked the motion that you referenced as "evidence" that we have custody of the recording (Commonwealth's 06/08/2011 motion asking to compel the recording - Paper #94).
First, let me be absolutely clear: we do not have the recording.
That motion (#94) was necessary so that you and Kathleen could listen to the tape at the courthouse (see Commonwealth's Opposition filed 8/1/2011 that stated "In June 2011, the Commonwealth had the opportunity to listen to the tape recording of the jury empanelment, and agrees that there was a transcription error in the original transcript and that the fifth word on line nine of page seventy-three should indeed be "Batson."").

You are making much of nothing Kevin. The tape was never provided to the Commonwealth.
And finally Kevin, what is it you hope to hear?

From: Patalano, Donna (DAA) donna.patalano@state.ma.us
Subject: RE: Tape
Date: June 16, 2015 at 3:59 PM
To: Kevin Barron kevinbarronesq@gmail.com

That's it.

I am not going to follow-up with Nancy. I just wanted to give you as complete information as I have. Maybe if you went to the clerk's file and pulled paper #94 to see the endorsement. I've sent the boxes back already.

Let me know if I can provide any more information.

Good luck,

D.

From: Kevin Barron [mailto:kevinbarronesq@gmail.com]
Sent: Tuesday, June 16, 2015 3:57 PM
To: Patalano, Donna (SUF)
Subject: Re: Tape

Hi Donna,

OK, so it was:

06/08/2011 94 Commonwealth files Motion to compel production of recording of jury impanelment on June 5, 2001.

MOTION (P#94) allowed as endorsed. Ball, J. K. Celio, ADA. Commonwealth files Opposition to the defendant's motion for a new trial (Ball, J notified)

You might have to check with Nancy, but we talked about whether a copy was made - I think she was assuming it was.

I don't know whether you're aware, but Mr. Smith made a motion to Judge Dein for a copy of the recording and she referred it to me and, as I read her, was suggesting I get it for him, hence the renewed motion.

Kevin

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On Jun 16, 2015, at 3:49 PM, Patalano, Donna (DAA) <donna.patalano@state.ma.us> wrote:

From: Kevin Barron [mailto:kevinbarronesq@gmail.com]
Sent: Tuesday, June 16, 2015 3:41 PM
To: Patalano, Donna (SUF)