

217

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT  
NORFOLK SUPERIOR COURT  
DOCKET NO. 2282CR0117

COMMONWEALTH

v.

KAREN READ

RECEIVED & FILED  
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NORFOLK COUNTY

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**COMMONWEALTH'S OPPOSITION TO "DEFENDANT'S MOTION FOR  
SANCTIONS AND FOR DISQUALIFICATION OF THE NORFOLK COUNTY  
DISTRICT ATTORNEY"**

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Now Comes the Commonwealth in the above-captioned matter and submits the following in opposition to the defendant's claims that her indictments for second degree murder, in violation of G. L. c. 265, §1; manslaughter while operating under the influence, in violation of G. L. c. 265, s. 13 ½; and leaving the scene of personal injury/death in violation, of G. L. c. 90, s. 24,(2)(a ½ )(2) should be dismissed because of a statement made by Norfolk District Attorney Michael W. Morrissey approximately six months ago and a purported delayed disclosure about an investigation being conducted by the U.S. Attorney's Office. The defendant's claims are misleading and disingenuous as they are premised upon the defendant's misrepresentations and actions, knowingly made to deceive this court and undermine the integrity of the judicial proceedings.

Over the past two years, evidence sought by and presented to the Commonwealth has not shown any credible evidence that another individual is responsible for John O'Keefe's death. What began as Attorney Yannetti representing to the Stoughton District Court in February 2022 that the defendant lacked any criminal intent in a motor vehicle accident, has spiraled into a national conspiracy theory premised upon the defendant's

variety of flawed, unfounded, and sensationalized claims. However, truth is not dictated by the loudest voice.

District Attorney Michael W. Morrissey's August 25, 2023 Recorded Statement

In response to an extraordinary degree of relentless harassment and intimidation of nearly every witness associated with this case, which included a July 22, 2023 “rolling rally” of nearly a hundred people traveling to witnesses’ homes and calling them murderers, on August 25, 2023, District Attorney Morrissey released a recorded statement that cautioned against the improper and unlawful harassment of witnesses. See G.L. c. 268, 13A; G.L. c. 268, 13B; Exhibit A (Transcription of statement)<sup>1</sup>; Exhibit B, par. 31-41 (search warrant affidavit of Massachusetts State Police Detective Lieutenant Brian Tully for the seizure of the defendant’s mobile devices). District Attorney Morrissey’s statement fell well within Massachusetts Rules of Professional Conduct 3.6 (b) (6) that permits an attorney to make a “warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest” and Mass. R. Professional Conduct 3.8 (f) (“statements that are necessary to inform the public of the nature and extent of the prosecutor’s action and that serve a legitimate law enforcement purpose.”).

District Attorney Morrissey’s statement was also an appropriate response under the Mass. R. Professional Conduct 3.6 (c) to rebut the prejudicial effects of the defendant’s and her counsels’ misconduct. Under Mass. R. Professional Conduct 3.6 (c) “a lawyer may make a statement that a reasonable lawyer would believe is required to

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<sup>1</sup> The video of this statement was five minutes and forty-five seconds long and the text encompassed two and half pages in size 14 font. See Exhibit A.

protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity." District Attorney Morrissey narrowly tailored his statement towards the harassment of witnesses and included a synopsis of the Commonwealth's case and evidence, consistent with what had been publicly filed and argued in the courtroom.

Further, District Attorney Morrissey's statement was made in response to an August 22, 2023 ABC News broadcast where Attorney Jackson, Attorney Yannetti, and the defendant sat down for an interview with ABC News' Chief National Correspondent Matt Gutman.<sup>2</sup> During this nine minute and thirty-seven second (09:37) segment, videos of the "Free Karen Read" protests were shown, photographs of witnesses displayed, and the defendant made numerous comments about the evidence and her relationships. When asked what the defense believes to have occurred, Attorney Jackson passionately asserted "pieces of taillight evidence were planted after the fact" and that the victim "walked into the house, I think he was confronted – was likely brought down to the basement – I think that confrontation got physical and he was beaten – beaten to a point of unconsciousness." See video beginning at 7:50. Attorney Jackson then commented about his impressions of the victim's injuries, including a claim that the victim had "defensive wound bruises on the backs of his hands". *Id.* Attorney Jackson continued on, to ultimately declare, without an indica of proof and substantial evidence to the contrary,

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<sup>2</sup> See "Accused slain cop's girlfriend maintains innocence | Nightline" video available at: <https://www.youtube.com/watch?v=1qVSfvON1Ww&t=468s>. Notably, ABC News has 15.8 million subscribers on YouTube and this particular video received over 143,000 views on August 22, 2023 and 927 public comments.

“this was a cover-up – John was murdered inside that house his body was placed outside.” Id.

The defendant’s motion to disqualify and sanction the Norfolk District Attorney’s Office conveniently misrepresents this court’s July 31, 2023, ruling that reprimanded only the defense team, in particular Attorney Jackson for making unethical and inflammatory comments about the Commonwealth and witnesses that “arguably crossed the line of permissibility under Rule 3.6”. See Exhibit D (“Memorandum of Decision and Order on Commonwealth’s Motion to Prohibit Prejudicial Extrajudicial Statements of Counsel in Compliance with Massachusetts Rules of Professional Conduct 3.6 (a)”). This court stated that Attorney Jackson’s inflammatory statements about the Commonwealth and witnesses “appear to have fueled much of the publicity in this case” and that defense counsel did not have “carte blanche to speak with the media” and “[g]oing forward, defense counsel should ensure that their statements are limited in conformity with the rules”. Exhibit D. On July 31, 2023, this court held “at this time” there was not a substantial likelihood that defense counsel’s statements would materially prejudice the proceedings and denied the Commonwealth’s motion without prejudice. See Exhibit D.

Contrary to that warning, the defendant and counsel have continued to give numerous interviews with local and national media outlets where they make unfounded and inflammatory statements about witnesses’ character and reputation, repeatedly describe the Commonwealth and its investigators as corrupt, and on September 15, 2023 Attorney Jackson made a comment to the media in response to District Attorney Morrissey’s recorded statement where he seemingly attacked the intelligence of District Attorney Morrissey by stating: “So listen up, Sir. And I’ll speak slowly, so you

understand. Michael Morrissey we ain't got no quit." Exhibit T. The defendant's continued attempts to materially prejudice the judicial proceedings and to try the case in the media is unprecedented, further supported by the fact that on September 17, 2023, the defendant traveled with Attorney Jackson, Attorney Little, and a woman believed to be a television news producer to the victim's home, in violation of her conditions of release, as well as other places of interest in Canton. See Exhibit H.

When balanced by the amount of public and prejudicial statements made by the defendant and her counsel, the suggestion that District Attorney Morrissey's statement from over six months ago threatens her right to a fair trial is untenable. See Mass. R. Professional Conduct 3.6, comment 7 ("When prejudicial statements have been publicly made by others, responsive statements may have the salutary effect of lessening any resulting adverse impact on the adjudicative proceeding.") Further, the defendant's motion is premised upon case law that governs the breadth of closing argument, a distinction the Commonwealth recognizes as a more stringent standard, not applicable to a narrowly tailored statement made months prior to trial. See Def. Motion for Disqualification and Sanctions at 13-14, n .3.

"Disqualification of counsel [or his office] is not a measure to be taken lightly. In considering whether to disqualify counsel [or the Norfolk District Attorney's Office], a judge must closely scrutinize the facts before [him or her] to determine whether a lawyer's continued participation as counsel taints the legal system." Commonwealth v. Scanlon, \_\_\_ Mass: \_\_\_, (Jan. 18, 2024) (SJC-13375) (internal citations omitted). Motions to disqualify require an intensely fact specific inquiry and a judge should hesitate to disqualify counsel, unless "absolutely necessary." See Slade v. Ormsby, 69

Mass. App. Ct. 542, 546 (2007); see also Commonwealth v. Colon, 408 Mass. 419, 431 (1990) (prosecutors conduct “wholly devoid” of any intentional, egregious misconduct); United States v. Caggiano, 660 F. 2d. 184 (6<sup>th</sup> Cir. 1981) (disqualification of entire district attorney’s office due to conflict of one attorney from prior employment is not appropriate).

Further, dismissal as a sanction is “very strong medicine, and it should be prescribed only when the government misconduct is so intentional and so egregious” and appropriate only upon “a showing of irremediable harm to the defendant's opportunity to obtain a fair trial.” Bridgeman v. Dist. Attorney for Suffolk Dist. 476 Mass. at 298, 316, 322-323 (2017); cf. Commonwealth v. Manning, 373 Mass. 438 (1977) (dismissal and disqualification warranted when the federal officers *working closely with prosecutor* willfully interfered with defendant right to counsel by engaging in calculated effort to induce defendant to abandon defense theory) (emphasis added). The Commonwealth disputes any ethical violations or misconduct surrounding District Attorney Morrissey’s recorded statement, let alone misconduct that taints the legal system or infringes upon the defendant’s right to a fair trial.

Production of letters between the Norfolk District Attorney’s Office and U.S. Attorney’s Office and Department of Justice

As it pertains to a federal investigation related to circumstances surrounding this case, the Commonwealth has not been advised of the parameters or scope of federal activity and the U.S. Attorney’s Office has essentially kept the Commonwealth in the dark about the specifics of its investigation. The majority of correspondence between the Commonwealth and the U.S. Attorney’s Office has been discovery requests for all facts

of an exculpatory nature and all statements of witnesses related to Commonwealth v. Karen Read that may exist to enable the Commonwealth's compliance with discovery obligations under Mass. R. Crim. P. 14(a)(1)(ii), (iii) & (iv); Commonwealth v. Mitchell, 444 Mass. 786, 796 n. 16 (2005).

As detailed in the Commonwealth's correspondence with the U.S. Attorney's Office and Department of Justice, the Norfolk District Attorney initially raised concerns about the impartiality of then acting U.S. Attorney Rachael Rollins and the unprecedented use of federal power to interfere with a state homicide investigation.<sup>3</sup> See Exhibit P (eight letters between the Norfolk District Attorney's Office and the U.S. Attorney's Office and the Norfolk District Attorney's Office and the Department of Justice); see also Exhibit Q (Exhibits "D" and "E" to District Attorney Morrissey's May 18, 2023 letter to the Department of Justice – Office of Professional Responsibility).<sup>4</sup>

The Commonwealth has continually recognized its constitutional obligation to disclose exculpatory information to the defendant, which includes broad obligations to inquire and disclose any facts that would tend to exculpate the defendant or diminish her culpability and all statements of witnesses. See Brady v. Maryland, 373 U.S. 83, 87 (1963); In the Matter of a Grand Jury Investigation, 485 Mass. 641, 649 (2002); see generally Commonwealth v. Donahue, 396 Mass. 590, 602 (1986) (defendant entitled to

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<sup>3</sup> Rachael Rollins resigned on May 19, 2023 following an ethics investigation that she misused the power of her office. Acting U.S. Attorney Joshua Levy assumed her role and is pending confirmation before the United States Senate to become the U.S. Attorney for the District of Massachusetts.

<sup>4</sup> Exhibit "A" of District Attorney Morrissey's letter was the publicly available legal pleadings that existed at the time, Exhibit "B" was Assistant District Attorney Beland's May 9, 2023 letter to U.S. Attorney Levy, previously incorporated into this motion as Exhibit P. Exhibit "C" of District Attorney Morrissey's May 18, 2023 letter was a news article, previously incorporated into this motion as Exhibit F.

new trial when Commonwealth failed to request material and exculpatory reports from Federal Bureau of Investigations). The Commonwealth's obligations also extend to any evidence about a law enforcement officer's untruthful conduct or an adverse credibility determination. See In the Matter of a Grand Jury Investigation, 485 Mass. at 69; Commonwealth v. McFarlane, \_\_\_ Mass. \_\_\_, (Jan. 23, 2024) (SJC-13430) (prosecutor's duty to inquire).

Despite requests made by the Commonwealth on May 9, 2023, and October 12, 2023, it was only on January 16, 2024, that an Assistant U.S. Attorney, not familiar or involved with the investigation, contacted both the Commonwealth and defense counsels Jackson and Yannetti to discuss the possibility of disclosing information in the possession of the Department of Justice pursuant to federal regulations. 28 C.F.R. §§ 16.21 *et seq.* As of February 15, 2024, the Commonwealth has not received any grand jury minutes, reports, exculpatory, inculpatory, or specific information about the investigation conducted by the U.S. Attorney's Office although it has made repeated requests. See Exhibit R (January 18, 2024 email to the U.S. Attorney's Office detailing a joint request for discovery). On February 9, 2024, the Commonwealth, Attorney Jackson, Attorney Yannetti, and Attorney Little, jointly participated in a conference call with the U.S. Attorney's Office. During this call, the U.S. Attorney's Office indicated it may release information to counsel for both parties subject to a stringent protective order but offered no definitive answers or clear guidance on what materials exist nor what will be produced pursuant to federal regulations. See 28 C.F.R. §§ 16.21 *et seq.* The Commonwealth and the defendant anticipate both parties receiving privileged and protected materials from the U.S. Attorney's Office within the next week.



The Commonwealth has diligently investigated the defendant's unsubstantiated allegations of police and prosecutorial misconduct. Efforts to disprove the defendant's allegations have included interviewing additional witnesses; submitting evidence to a veterinary forensic laboratory that concluded there was no canine DNA associated with the swabs taken from the victim's clothing in the areas of the victim's injuries; the voluntary submission of law enforcement officers' DNA profiles to conduct comparative analyses; extensive GPS analysis of the victim's phone's physical locations at various points; and the hiring of two independent forensic examiners, one of which is the Senior Digital Intelligence Expert from Cellebrite to explain how the defendant's supposed expert misinterpreted the Cellebrite data from Jennifer McCabe's cellphone records, confirming that the internet searches for "how long ti die in cikd" and "hos long to die in cold" were definitively conducted at 6:23 a.m. and 6:24 a.m., when the defendant, Ms. Kerry Roberts, and Mrs. McCabe were together on Fairview road, following the discovery of the victim's body. All of these measures were taken by the Commonwealth to acquire any exculpatory evidence and to safeguard and protect the integrity of the judicial system, not subvert it as the defendant has claimed.

The defendant also alleges the Commonwealth improperly released information about the federal grand jury in November 2023 to the media, in response to a public records request (Def. Motion for Sanctions and Disqualification of NDAO at p. 7-8). The Commonwealth denied a public records request as the federal rules of criminal procedure and federal case law dictate secrecy of grand jury proceedings. See Exhibit N; Fed. R. Crim. P. 6 ("Records, orders, and subpoenas relating to grand-jury proceedings must be kept under seal to the extent and as long as necessary to prevent the unauthorized

disclosure of a matter occurring before a grand jury.”); Douglas Oil Co. of California v. Petrol Stops Nw., 441 U.S. 211, 218 (1979) (“We consistently have recognized that the proper functioning of our grand jury system depends upon the secrecy of grand jury proceedings.”) The requestor appealed the Commonwealth’s denial to the Supervisor of Public Records, which at the command of the Supervisor required the Commonwealth to submit a supplemental response explaining why the letter was not a public record. See Exhibit N. The Commonwealth did not release any information or correspondence with the U.S. Attorney’s Office until after this court vacated a protective order on January 23, 2024. See G.L. 66, §10; 950 CMR 32.00.

The defendant has failed to demonstrate any prejudice as the letters detail the Commonwealth’s continuing attempts to obtain discovery, the letters were disclosed well in advance of trial, the materials are expected to be produced by the U.S. Attorney’s Office forthwith, and contrary to representations made by the defendant, the letters pertain to a subject matter the defendant has vast and superior knowledge about.

Attorney Alan Jackson, Attorney David Yannetti, and the Defendant have knowingly engaged in conduct to undermine the integrity of the judicial proceedings and the Commonwealth requests that this Court revisit whether there should be an order as to prohibit extrajudicial statements to protect the right of a fair trial for all parties.

The defendant’s tactical decision to allege wrongdoings by the Commonwealth is conveniently premised on the defendant and counsels’ own misconduct and ethical violations. It is now evident there are numerous false statements made by defense counsel, including those contained within this motion for disqualification and previously filed defense motions that were knowingly made to deceive this court and undermine the integrity of the judicial proceedings.

Following an investigation conducted by a special prosecutor, the Commonwealth has recently learned that for months the defendant, Attorney Alan Jackson and Attorney David Yannetti have secretly conspired to perpetrate fraud upon the court through reckless mistruths, deceit, and hiding behind a social media blogger who has been criminally charged with intimidation of witnesses, to direct and encourage the harassment of those witnesses.

In the defendant's motion to disqualify and sanction the Norfolk District Attorney's Office, the defendant attempts to disassociate herself from Mr. Aidan Kearney, the man she now calls an "intimidator", who used his website "TB Daily News", "Turtleboy Live" YouTube page, and associated social media accounts to perpetually intimidate and harass witnesses expected to testify as part of the Commonwealth's case against the defendant. See Def. Motion for Sanctions and Disqualification of NDAO, p. 14-15 n. 15.<sup>5</sup> However, for months the defendant and counsel have engaged in a concerted effort to use Mr. Kearney as a literal bullhorn to say what they could not and to disseminate information and opinions counsel knows will have a substantial likelihood of materially prejudicing the proceedings.

While the defendant struggles to use Mass. R. Professional Conduct 3.6 (a) as a sword against the Commonwealth, the rules of professional conduct also apply to defense counsel, including Attorney Jackson who is not licensed to practice law in Massachusetts and is admitted under pro hac vice. See S.J.C. Rule 3:15 (pro hac vice applications must

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<sup>5</sup> Following an investigation conducted by a special prosecutor, Aidan Kearney was indicted by a Norfolk grand jury for 16 charges related to intimidation and harassment of witnesses in the case Commonwealth v. Karen Read. See docket 2382CR00313.

include “acknowledgement that the attorney is subject to discipline by the Supreme Judicial Court and the [Massachusetts] Board of Bar Overseers”).

As demonstrated by the search warrants generated as part of the special prosecutor’s investigation, beginning on or around April 17, 2023, the defendant took deliberate action to start sharing defense theories, privileged materials, and evidence with Mr. Kearney through an out-of-state intermediary. See Exhibit B (search warrant affidavit of Massachusetts State Police Detective Lieutenant Brian Tully for the seizure of the defendant’s mobile devices).

The next day, April 18, 2023, Mr. Kearney posted his first story in support of the defendant entitled: “Canton Cover-Up Part 1: Corrupt State Trooper Helps Boston Cop Coverup Murder of Fellow Officer, Frame Innocent Girlfriend.” See Exhibit J.<sup>6</sup> In this article, Mr. Kearney writes that “none of this information has been made public and the Norfolk County DA’s Office hasn’t sent a mountain of exculpatory evidence to Karen Read’s defense attorney until recently” and further describes the impressions of defense counsel as “shocked to discover” evidence wrongly claimed to have been “hidden” from the defense. See Exhibit J.

The defendant had instructed the intermediary to communicate with her through the Signal messaging application, explaining that it provides secure end-to-end encryption and instructed the intermediary to forward all information, which included

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<sup>6</sup> As of February 14, 2024, the website TB daily news has 291 posts pertaining to the Commonwealth’s case against Karen Read and an alleged coverup of evidence in a series entitled “Canton Coverup”. The Commonwealth’s exhibits contain copies of the referenced TB daily news posts with minor redactions for autopsy photographs and any photographs that depict a juvenile; including photographs of individuals who may now be an adult but the photograph was taken while the individual was a juvenile.

witness information, home addresses, grand jury minutes, autopsy photographs, and generally every piece of evidence that the Commonwealth provided to defense counsel onto Mr. Kearney. See Exhibit B at par. 44-45, 54. The defendant would put disclaimers or directives on certain pieces of evidence such as denoting “Do NOT share”; Urgent: do not publish anything from the report...”; and “Make it clear he [Mr. Kearney] didn’t just get it from us. But don’t show the exhibits, just read them ... Please tell him not to share the title – it has Yannetti’s initials in it DRY”, referring to Attorney David R. Yannetti. See Exhibit B at par. 46-47.

While the defendant and her counsel took concerted efforts to publicly distance themselves from Mr. Kearney, beginning in the summer of 2023 the defendant and Mr. Kearney would directly communicate on a regular basis. See Exhibit B at par. 4, 64, 66-70, 77-79. Call detail records from Mr. Kearney’s phone revealed that the defendant’s phone number and Mr. Kearney had 189 phone calls between June and December 21, 2023, communicating for an excess of 40 hours. See Exhibit B at par. 70-71. This was reported to be in addition to frequent text and phone communications made through the encrypted Signal application. See Exhibit B at par. 70-71, 77-79. Additionally, prior to publishing posts on his platforms, Mr. Kearney would seek permission from the defendant or her counsel. See Exhibit B at par. 78.<sup>7</sup>

Call detail records from Mr. Kearney’s phone also revealed that phone numbers associated with Attorney Yannetti and Attorney Jackson communicated with Mr. Kearney at least 29 times. Exhibit B at par. 72, 48, 56-57. Between April 20, 2023 - May 2, 2023,

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<sup>7</sup> Of note, on July 14, 2023 the defendant filed a similar motion seeking the recusal of presiding justice Beverly Cannone, where the unsubstantiated motion was premised on an affidavit submitted by Mr. Kearney. See Exhibit I.

Attorney Yannetti's phone number had 9 calls with Mr. Kearney and between April 20, 2023 – May 1, 2023, Attorney Jackson's phone number had 3 calls with Mr. Kearney. Exhibit B at par. 72. The Commonwealth has a good-faith belief that these conversations continued even after Mr. Kearney was criminally charged in October 2023 for the harassment of witnesses in this case. See Exhibit O.

But what happens in the dark always comes to light. In the Commonwealth's motion to prohibit extrajudicial statements, the Commonwealth referenced a May 3, 2023 incident where from the courthouse stairs, immediately following a hearing in this case, Attorney Jackson encouraged those gathered outside and in particular Mr. Kearney to contact witnesses and ask them inflammatory questions. In this video, Attorney Jackson asks, "don't you want to ask some questions" then proceeds to point directly at Mr. Kearney stating, "I know you do!", to which Mr. Kearney enthusiastically responds: "I have been!"<sup>8</sup>

When the Commonwealth referenced this incident in June 2023 as an example of an inflammatory extrajudicial statement, the defendant criticized the Commonwealth and called this "an absurd characterization of what Attorney Jackson actually said." See Exhibit G ("Defendant Karen Read's Opposition to Commonwealth's 'Motion to Prohibit Prejudicial Extrajudicial Statements of Counsel in Compliance with Massachusetts Rules of Professional Conduct 3.6 (a)'""). What the Commonwealth now knows is that it is not what Attorney Jackson said, but what he did not say, that is so troubling. Prior to making that directive, Attorney Jackson, Attorney Yannetti and the defendant had all

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<sup>8</sup> See "Karen Read Post-Court Press Conference at Norfolk County Superior Court 5.3.2023" available at <https://youtu.be/rOGm4devM0U?t=446> (beginning at 7:25).

communicated with Mr. Kearney and provided him non-public materials, theories of defense, and other pieces of evidence that enabled Mr. Kearney to harass and intimidate witnesses. Those efforts were encouraged and celebrated by Attorney Jackson on the courthouse stairs and immediately following Attorney Jackson, Attorney Yannetti, and the defendant hosted Mr. Kearney for lunch in the Boston Seaport. Exhibit B par. 53.

A clear inference can be made that the defendant and her counsel directly encouraged and manipulated Mr. Kearney to continue personal attacks on witnesses and their family members (including juvenile children) with a sole purpose to embarrass, intimidate, harass, and deter these individuals from testifying. Mr. Kearney publicly stated that the motivation of his actions was to prevent this case from ever going to trial, conceivably a goal shared by the defendant. See Exhibits B and C (search warrant for seizure of the defendant's mobile devices with accompanying affidavit and search warrant for location of defendant's mobile device); see also Mass. R. Professional Conduct 8.4, comment 1 ("Lawyers are subject to discipline when they violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another, as when they request or instruct an agent to do so on the lawyer's behalf. Paragraph (a), however, does not prohibit a lawyer from advising a client concerning action the client is legally entitled to take."); Mass. R. Professional Conduct 3.3 (b), comment 12 ("Preserving Integrity of Adjudicative Process: Lawyers have a special obligation to protect a tribunal against criminal or fraudulent conduct that undermines the integrity of the adjudicative process, such as bribing, intimidating or otherwise unlawfully communicating with a witness, ... paragraph (b) requires a lawyer to take reasonable remedial measures, including disclosure if necessary, whenever the

lawyer knows that a person, including the lawyer's client, intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding.”)

A practice of law premised upon providing non-public material, evidence, encouragement, and guidance to an individual who was actively harassing and intimidating witnesses far exceeds zealous advocacy, extends beyond the bounds of the law, and is contrary to the fundamental principles of justice. See Mass. R. Professional Conduct 8.4 (d) (engaging in conduct that is prejudicial to the administration of justice); Commonwealth v. Michel, 381 Mass. 447, 456 (1980) (internal citations omitted) (Defense counsel may “represent their client zealously within the bounds of the law” but they are “to treat all persons involved in the legal process with consideration, and to uphold the integrity and honor of the legal profession.”)

Likewise, the defendant's claim that she has been materially prejudiced by the Commonwealth's “deliberate misrepresentation” and “deliberate withholding of exculpatory information known to it about a Federal investigation regarding its witnesses” is highly disingenuous and utterly deceptive. See Def. Motion for Sanctions and Disqualification of NDAO, p. 16-17. The evidence now shows that the defendant and her counsel have known about and shared detailed information about a federal grand jury investigation as early as April 13, 2023, and publicly revealed the existence of a federal grand jury in court on May 3, 2023. See Exhibit B par, 43, 61; Exhibit F. The defendant and defense counsels' knowledge about a federal investigation both predates and exceeds that of the Commonwealth.

In the defendant's opposition to the Commonwealth's motion to prohibit prejudicial extrajudicial statements, the defendant writes: “it had indeed been publicly



reported that a federal grand jury had been empaneled. There is a marked difference between stating that something has been reported and revealing something that was previously unknown to anyone. This was not the defense revealing publicly that a federal grand jury had been empaneled – *something about which the defense team would have no knowledge*. Instead, as Attorney Jackson stated [at the May 3, 2023 hearing], this was Ms. Read’s counsel reiterating what had been publicly reported.” (emphasis added). See Exhibit G. These statements are profoundly false. See Mass. R. Professional Conduct 3.3 (a) (1) (“A lawyer shall not knowingly [] make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer); see also Mass. R. Professional Conduct 3.3, comment 4 (“Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal.”)

Prior to Attorney Jackson’s statement, the existence of a federal grand jury had not been widely publicized and was in fact something the defendant and her counsel had utmost knowledge of. The only source to support the defendant’s claim for the existence of a publicized federal grand jury was one footnote to “TB Daily News”, a post authored by Mr. Kearney. See Exhibit G; Exhibit K. In this April 20, 2023 post, Mr. Kearney first announced on TB Daily News: “Breaking News – according to reliable sources close to the matter a federal grand jury has subpoenaed multiple witnesses who were in the home of Boston Police Officer Brian Albert on the night fellow BPD Officer John O’Keefe was killed. ... The only individual who I can confirm with 100% certainty has received a subpoena in hand is Jennifer McCabe.” See Exhibit K (“Canton Cover-up Part 4: Multiple Witnesses In Home Where John O’Keefe Was Killed Subpoenaed By Federal

Grand Jury, FBI Visits Home, Basement Floor Reportedly Replaced”). Notably, call detail records produced in Mr. Kearney’s case reveal that Mr. Kearney spoke with phone numbers associated with both Attorney Yannetti and Attorney Jackson on April 20, 2023. See Exhibit B par. 72. A clear inference should be drawn that Attorney Yannetti and Attorney Jackson were the “reliable sources” that disclosed the existence of a federal grand jury.

On April 23, 2023, through her intermediary the defendant sent a follow-up to Mr. Kearney: “Not public: the feds have been involved longer than anyone is likely guessing” and on April 28, 2023, the defendant expressed frustration as to why Mr. Kearney was not referencing the federal investigation more in his postings and offered additional information, emphasizing that it’s the U.S. Attorney’s Office “they don’t shoot and miss – they have a case – and way more evidence than we do. I know this for a fact. Jen McCabe testifies this coming week. I’m not sure about the others.” Exhibit B at par. 58-59. On April 28, 2023, the defendant subsequently informed Mr. Kearney that “the DA’s office has been informed. That is confirmed. 1000%”. See Exhibit B at par. 59.

On May 5, 2023 Mr. Kearney contacted the defendant about a rumor that FBI agents were in Canton. Two days later, the defendant confirmed a communication with the U.S. Attorney’s Office about the investigation, responding to Mr. Kearney: “NOT PUBLIC: Levy confirmed no swarms of FBI were in Canton two days ago.” See Exhibit B at par. 60. The defendant then boasts that acting U.S. Attorney Joshua Levy: “doesn’t typically prosecute. Like he never prosecutes, he just delegates to the assistants within the divisions. But he’s running this GJ [grand jury].” See Exhibit B at par. 60.

Mr. Kearney openly discussed his knowledge that the defendant was interviewed by federal law enforcement and that the defendant, and her counsel were working closely with the U.S. Attorney's Office. See Exhibit B at par. 81. Communications authenticated by Mr. Kearney and offered by his counsel in a January 8, 2024 hearing for the extension of an abuse prevention order sought by a former-girlfriend of Mr. Kearney, also reveal that on November 28, 2023 Mr. Kearney received information, presumably from the defendant or counsel "about the Feds that I will not be making public" and details a phone call that occurred days prior between Attorney Yannetti, Attorney Jackson and U.S. Attorney Levy. See Exhibit O.<sup>9</sup> It was disclosed to Mr. Kearney that U.S. Attorney Levy requested a conference call with Attorney Yannetti and Attorney Jackson where U.S. Attorney Levy requested the defendant delay the trial date, requested the defendant provide Verizon cellphone records that were ordered by this court on November 15, 2023, and "Levy asked them 'if you are contacted by media in the next coming days or weeks we would appreciate if you did not mention us working together.' Why would he ask that unless he knew something was going to happen and they were contacted for comment on it?" See Exhibit O.

It appears the defendant is the sole source of information for the federal investigation surrounding this case as the U.S. Attorney's Office never requested a police report, photograph, sworn grand jury testimony, witness list, third-party record, or piece of evidence from the Norfolk District Attorney's Office or investigators from the

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<sup>9</sup> The relevant extracted communication is attached to this motion. Upon request of the court, the Commonwealth will provide the entire extraction of communications Mr. Kearney relied upon and offered in Dedham District Court. The over 5400 text messages contain highly personal and intimate details about Mr. Kearney and a domestic violence victim. If requested by the court, they should be produced only under impoundment.

Massachusetts State Police. It is apparent from the statement attributed to U.S. Attorney Levy and the information shared by the defendant that the U.S. Attorney's Office is working closely with the defense.

On January 18, 2024, Attorney Yannetti falsely represented to this court that "District Attorney Morrissey is well aware he's the target of a federal investigation as a result of his conduct in this case." That same day, the U.S. Attorney's Office took an extraordinary step to publicly rebuke Attorney Yannetti's representation by stating: "[w]e are aware of today's hearing in Norfolk County Superior Court in the Karen Read matter. In connection with this matter, at no time has the U.S. Attorney's Office named any person or entity as a target of an investigation, to anyone." Attorney Yannetti's dishonest, widely-publicized representations were made with the sole intent of materially prejudicing the criminal proceedings. See Mass. R. Professional Conduct 3.3 (a) (1) ("a lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer"). Mass. R. Professional Conduct 8.4 (d) (engaging in conduct that is prejudicial to the administration of justice).

As of February 14, 2024, neither District Attorney Morrissey, his assistants, nor Massachusetts State Police troopers assigned to the Norfolk District Attorney's Office have been advised that they are the target of a federal investigation. The evidence, which includes numerous independent laboratories and experts not affiliated with the Commonwealth or the Massachusetts State Police have not discovered a cover-up of evidence, police misconduct, nor a good-faith suggestion that the defendant has a legally viable third-party culprit defense. Commonwealth v. Shakespeare, 493 Mass. 67, 90

(2023) (right to present third party culprit defense not absolute); Commonwealth v. Silva-Santiago, 453 Mass. 782, 800-801 (2009) (latitude to raise third party culprit defense not unbounded due to risk of unfair prejudice to the Commonwealth; defendant must offer relevant evidence, of substantial probative value, that does not confuse jury, nor is too speculative).

Under the guise of pursuing a third party culprit defense, it appears that Attorney Yannetti distorted information and shared those mistruths with Mr. Kearney to publicize a false narrative, that Colin Albert, a juvenile on January 29, 2022, and an individual not present when the defendant and victim arrived at 34 Fairview Road, as the individual who committed the murder of John O'Keefe. As Attorney Yannetti is well aware, this opinion is contrary to the evidence and likely shared with Mr. Kearney as the rules of professional conduct would expressly prohibit Attorney Yannetti from making such a baseless, prejudicial allegation. See Mass. R. Professional Conduct 3.6 (a) , note 5 (extrajudicial statements regarding "the character, credibility, reputation, or . . . identity of a witness"; "opinion[s] as to the guilt or innocence of a defendant"; the performance or results of forensic testing; and "information that the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and that would, if disclosed, create a substantial risk of prejudicing an impartial trial" are subjects likely to have a material and prejudicial effect on a criminal proceeding.)

In February 2022, Stephen Scanlon, a private investigator, contacted and met with Attorney Yannetti. See Exhibit M (Massachusetts State Police Reports dated September 12, 2023 and October 17, 2023). Mr. Scanlon indicated he knew Brian Albert and was interested in helping the defense but did not have personal knowledge about the case nor

did he speak to any witnesses or have “insider knowledge”. See Exhibit M. When Attorney Yannetti inquired of him about seventeen-year-old Colin Albert and an ATF agent who was at 34 Fairview Road, Mr. Scanlon denied knowing either party or details about their association to this case. See Exhibit M. Mr. Scanlon did not conduct any investigation for Attorney Yannetti and it appears their relationship terminated in

February 2022. See Exhibit M.

Sixteen months later in June 2023, Mr. Scanlon received a phone call from Mr. Yannetti distorted

Kearney that was surreptitiously recorded.<sup>10</sup> See Exhibit M. Mr. Scanlon suspected that

Attorney Yannetti provided his information to Mr. Kearney. Exhibit M. During this

unlawfully recorded conversation, which was published briefly on TB Daily News, Mr.

Kearney pressured Mr. Scanlon to adopt assertions that he had personal knowledge Colin

Albert was involved and to state that he knew John O’Keefe was killed inside the house.

Both statements were categorically denied by Mr. Scanlon on this call and are contrary to

the evidence. See Exhibit M.<sup>11</sup>

Approximately three months after that call, on September 6, 2023, Mr. Kearney posted a story that deceptively mischaracterized Mr. Scanlon’s statements and falsely represented Mr. Scanlon as a “whistle blower” to scapegoat Mr. Scanlon as the supposed tipster that could buttress the defendant’s unfounded theory that Colin Albert was involved. See Exhibit L (“Canton Cover-Up Part 133: Whistle Blower Private Investigator Steve Scanlon’s Call to David Yannetti’s Office Was Turning Point In Karen

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<sup>10</sup> Jurisdiction to prosecute Mr. Kearney for wiretap violation does not fall within Norfolk county. See G.L. c. 272, §99.

<sup>11</sup> The Commonwealth has reviewed this recording and provided a copy to the defendant on October 19, 2023. See Commonwealth’s Notice of Discovery XXVI.

Read Defense Strategy.”). Mr. Scanlon has expressed frustration that lies were being spread about him and his involvement in the case, calling the situation “bullshit” as the defense has dragged him into a murder case that he is not involved in nor has personal knowledge about. See Exhibit M.

Further, in this September 6, 2023 post, Mr. Kearney writes: “Our sources at Moakley Courthouse tell us that Steve Scanlon has been subpoenaed and testified in front of a grand jury, specifically about his contact with Brian Albert, and his knowledge of what happened inside 34 Fairview Road.” Exhibit L. An inference can be made that this “source” was the defendant or her counsel as the first contact the Massachusetts State Police had with Mr. Scanlon was on September 8, 2023. See Exhibit M.

Contrary to the defendant’s representations, the Norfolk District Attorney’s Office has no bias or prejudice towards the defendant or personal stake in the outcome of this prosecution. As in any criminal prosecution, the Norfolk District Attorney’s Office is motivated by what the evidence has shown and the interests of truth and justice. See Mass. R. Professional Conduct 3.8, comment 1 (“prosecutor has the responsibility of a minister of justice and not simply that of an advocate.”).

### CONCLUSION

In conclusion, the defendant’s motion should be **DENIED**. The defendant has failed to show any prejudice nor has the evidence in good faith shown that the Commonwealth has engaged in prosecutorial misconduct. See cf. Comm. for Pub. Counsel Servs. v. Attorney Gen., 480 Mass. 700, 724 (2018) (presumptive prejudice warrants dismissal to prevent repetition of misconduct).

Moreover, where a trial date is imminent, the Commonwealth takes this opportunity to renew its request that this court impose an order that restricts any extrajudicial statements or extrajudicial dissemination of evidence until a verdict is returned. See Exhibit D (consideration for denying Commonwealth's June 2023 request was that no trial date had been set, and thereby minimizing potential prejudice); Restatement (Third) of the Law Governing Lawyers §109 (2000) ("a statement made long before a jury is to be selected presents less risk than the same statement made in the heat of intense media publicity about an imminent or ongoing proceeding). This court has an affirmative constitutional duty to minimize the effects of prejudicial pretrial publicity to safeguard due process rights of the accused and the integrity of the judicial system as a whole. See Gannett Co. v. DePasquale, 443 U.S. 368, 378 (1979).

During a September 15, 2023 hearing, defense counsel acknowledged that national publicity will only intensify as a trial date approaches, where as stated by Attorney Yannetti, in his opinion he boasted that defendant is the "most infamous criminal defendant in America." Further, immediately following this court setting a trial date, on September 15, 2023, Attorney Jackson stated to the media: "I can guarantee you that Karen Read and her family will never, ever quit, not until the truth comes out . . . *Not until John O'Keefe's killers are brought to justice.*" (emphasis added). See Exhibit S.

The danger of publicity surrounding pretrial hearings is "particularly acute, because it may be difficult to measure with any degree of certainty the effects of such publicity on the fairness of the trial" and unrestrained extrajudicial statements "could influence public opinion and inform potential jurors of information that is factually incorrect or wholly inadmissible at trial." Id.; United States v. Bulger, 2013 WL 3338749 at \*4-7 (D. Mass.)



(Casper, J.) (Unprecedented public interest and media coverage warranted court order requiring counsel to comply with order restricting extrajudicial statements).

Furthermore, the defendant has previously scoffed at the Commonwealth's "absurd" efforts to preserve her rights to a fair trial and claimed that the Commonwealth "seems to be arguing that it knows better than Ms. Read's legal team how to best preserve her right to a fair trial." Exhibit G. The Commonwealth does not claim it knows better than the defense team, however based on the full picture of representation presented before this court, the Commonwealth has genuine concerns about possible post-conviction claims premised on a defendant's claim that Attorney Yannetti and/or Attorney Jackson were ineffective for violations of the Massachusetts Rules of Professional Conduct and for what the Commonwealth can only assume to be radical, tactical, strategic decisions.

Therefore, the Commonwealth respectfully requests this court engage the defendant in a thorough colloquy about her rights to effective representation and should the defendant wish to proceed with Attorney Yannetti or Attorney Jackson, a clear finding that the defendant waives any legal claims challenging the assistance of her counsel. See S.J.C. Rule 4:01 (Bar Discipline).

Respectfully Submitted  
For the Commonwealth,  
MICHAEL W. MORRISSEY  
DISTRICT ATTORNEY

Date: February 15, 2024

By:

\_\_\_\_\_  
Adam C. Lally  
Assistant District Attorney

*/s/ Laura A. McLaughlin*  
Laura A. McLaughlin  
Assistant District Attorney

**Commonwealth's Exhibits in Support of  
Commonwealth's Opposition to Defendant's  
Motion for Sanctions and Disqualification**

**Exhibits A-T**

## EXHIBIT A

This will be the first statement of its kind in my dozen years as Norfolk District Attorney.

The harassment of witnesses in the murder prosecution of Karen Read is absolutely baseless.

It should be an outrage to any decent person - and it needs to stop.

Innuendo is not evidence.

False narratives are not evidence.

However, what evidence does show is that John O'Keefe never entered the home at 34 Fairview Road in Canton on the night he died. Location data from his phone – recovered **from the lawn beneath his body** when he was transported to the hospital – shows that his phone **did not enter that home**.

Eleven people have given statements that they did not see John O'Keefe enter the home at 34 Fairview that night. Zero people have said that they saw him enter the home. Zero. No one.

Some have, without any evidence, pointed to 18-year-old Colin Albert, a nephew of the homeowner, and accused him of attacking John O'Keefe as he entered the home. But phone evidence shows O'Keefe never entered the home at all.

Testimony from witnesses tells us that 18-year old Colin Albert had left his uncle's home before John O'Keefe and Karen Read had arrived outside the residence.

There was no fight inside that home.

John O'Keefe did not enter the home.

Colin Albert, the young man being vilified was not present when Read's vehicle and John O'Keefe arrived on the street. That is a false narrative.

Colin Albert did not commit murder. Jennifer McCabe, Matthew McCabe, Brian Albert...these people were not part of a conspiracy and certainly did not commit murder or any crime that night. They have been forthcoming with authorities, provided statements, and have not engaged in any cover up. They are not suspects in any crime – they are merely witnesses in the case.

To have them accused of murder is outrageous. To have them harassed and intimidated based on false narratives and accusations is wrong. They are witnesses doing what our justice system asks of them.

The autopsy of John O'Keefe was conducted by a forensic pathologist from the Office of the Chief Medical Examiner. The doctor found that the injuries that left John helpless in the cold were not the result of a fight. She further found that the line of abrasions on his arm was consistent with blunt trauma – **not** an animal attack.

A grand jury of everyday citizens heard the documented evidence and testimony before making its decision. The subject of that murder indictment enjoys the Constitutional presumption of innocence.

Why should the witnesses, who have committed no crime, be afforded less by members of the community? They should not be harassed for telling the government what they heard or saw.

I am asking the Canton community and everyone who feels invested in this case to hear all of the actual evidence at trial before assigning guilt to people who have done nothing wrong. And certainly before taking it upon yourself to harass citizens who, evidence shows, have done nothing in this matter but come forward and bear witness.

We try people in the court and not on the internet for a reason. The internet has no rules of evidence. The internet has no punishment for perjury. And the internet does not know all the facts.

Conspiracy theories are not evidence. The idea that multiple police departments, EMTs, Fire personnel, the medical examiner, and the prosecuting agency are joined in, or taken-in by, a vast conspiracy should be seen for what it is – completely contrary to the evidence and a desperate attempt to re-assign guilt.

Michael Proctor, the State Police trooper being accused of planting evidence outside 34 Fairview Road, was never at Fairview Road on the day of the incident. Proctor and his State Police partner traveled together the entire day, *while other officers were processing 34 Fairview*. Trooper Proctor was not there and did not plant evidence at 34 Fairview Road.

In addition to having no **opportunity** to plant evidence as has been suggested, Trooper Proctor would have no motive to do so: Trooper Proctor had no close personal relationship with any of the parties involved in the investigation, had no conflict, and had no reason to step out of the investigation. Every suggestion to the contrary is a lie.

This should all be seen for what it is – and not used as a pre-text to attack and harass others.

What is happening to the witnesses – some with no actual involvement in the case - is wrong.

It is contrary to the American values of fairness, and the Constitutional value of a fair trial.

It needs to stop now.

I am releasing this as a recorded statement rather than holding a news conference because my remarks need to be so narrowly tailored to the issue at hand while the prosecution is pending in Superior Court.

But the message is the same.

What is happening to these innocent people, these witnesses, is wrong and it needs to stop.

# EXHIBIT B

APPLICATION FOR SEARCH WARRANT G.L. c. 276 §§ 1-7		TRIAL COURT OF MASSACHUSETTS Superior Norfolk		COURT DEPARTMENT DIVISION	
NAME OF APPLICANT Brian Tully		SEARCH WARRANT DOCKET NUMBER <u>2482 SW 0004</u>			
POSITION OF APPLICANT Detective Lieutenant					
I, the undersigned APPLICANT, being duly sworn, depose and say that:					
1. I have the following information based upon the attached affidavit(s), consisting of a total of <u>31</u> Pages, Which is (are) incorporated herein by reference.					
2. Based upon this information, there is PROBABLE CAUSE to believe that the property described below:					
<input type="checkbox"/> Has been stolen, embezzled, or obtained by false pretenses.					
<input checked="" type="checkbox"/> Is intended for use or has been used as the means of committing a crime.					
<input type="checkbox"/> Has been concealed to prevent a crime from being discovered.					
<input type="checkbox"/> Is unlawfully possessed or concealed for an unlawful purpose.					
<input checked="" type="checkbox"/> Is evidence of a crime or is evidence of criminal activity.					
<input type="checkbox"/> Other (specify) _____					
3. I am seeking the issuance of a warrant to search for the following property (describe the property to be searched for as particular as possible):					
<u>Any mobile device capable of communicating and cellphones used by Karen Read (DOB 2/26/80)</u>					
<u>**Seizure only, no search of data as outlined in affidavit. The data on any cellphone seized, may be copied, provided no search of that data will be done absent further warrant or order of the court. **</u>					
4. Based upon this information, there is also probable cause to believe that the property may be found (check as many as apply):					
<input type="checkbox"/> At (identify the exact location or description of the place(s) to be searched): _____					
Which is occupied by and/or in the possession of: _____					
<input checked="" type="checkbox"/> On the person or in the possession of (identify any specific person(s) to be searched):					
<u>Karen Read (DOB 2/26/80)</u>					
<input type="checkbox"/> On any person present who may be found to have such property in his or her possession or under his or her control or to whom such Property may have been delivered.					
THEREFORE, I respectfully request that the court issue a Warrant and order of seizure, authorizing the search of the above described place(s) and Person(s), if any to be searched, and directing that such property or evidence or any part thereof, if found, be seized and brought before the court, Together with such other and further relief that the court may deem proper.					
I <input checked="" type="checkbox"/> have previously submitted the same application.					
I <input type="checkbox"/> have not previously submitted the same application.					
PRINTED NAME OF APPLICANT Brian Tully			SIGNED UNDER THE PENALTIES OF PERJURY X <u>[Signature]</u> Signature of Applicant		
SWORN AND SUBSCRIBED TO BEFORE X <u>[Signature]</u> Signature of Justice, Clerk, Magistrate or Assistant Clerk			DATE <u>1/22/24</u>		

# SEARCH WARRANT

G.L. c. 276 §§ 1-7

TRIAL COURT OF MASSACHUSETTS

Superior

COURT DEPARTMENT

Norfolk

DIVISION

SEARCH WARRANT DOCKET NUMBER

2482 SW 0004

TO THE SHERIFFS OF OUR SEVERAL COUNTIES OR THEIR DEPUTIES, ANY STATE POLICE OFFICER, OR ANY CONSTABLE OR POLICE OFFICER OF ANY CITY OR TOWN, WITHIN OUR COMMONWEALTH:

Proof by affidavit, which is hereby incorporated by reference, has been made this day and I find that there is PROBABLE CAUSE to believe that the property described below:

- Has been stolen, embezzled, or obtained by false pretenses.
- Is intended for use or has been used as the means of committing a crime.
- Has been concealed to prevent a crime from being discovered.
- Is unlawfully possessed or concealed for an unlawful purpose.
- Is evidence of a crime or is evidence of criminal activity.
- Other (specify) \_\_\_\_\_

YOU ARE THEREFORE COMMANDED within a reasonable time and in no event later than seven days from the issuance of this search warrant to search for the following property:

Any mobile device capable of communicating and cellphones used by Karen Read (DOB 2/26/80)

\*\*Seizure only, no search of data as outlined in affidavit. The data on any cellphone seized, may be copied, provided no search of that data will be done absent further warrant or order of the court. \*\*

At:

Which is occupied by and/or in the possession of: \_\_\_\_\_

On the person or in the possession of:

Karen Read (DOB 2/26/80)

You  are  are not also authorized to conduct the search at any time during the night.

You  are  are not also authorized to enter the premises without announcement.

You  are  are not also commanded to search any person present who may be found to have such property in his or her possession or under his or her control or to whom such property may have been delivered.

YOU ARE FURTHER COMMANDED if you find such property or any part thereof, to bring it, and when appropriate, the persons in whose possession it is found before the

Norfolk

Division of the

Superior

Court Department.

Date Issued

1/22/24

Signature of Justice, Clerk-Magistrate or Assistant Clerk

X

Printed name of Justice, Clerk-Magistrate or Assistant Clerk

First or Administrative Justice

WITNESS:

Michael Ricciotti

Peter B. Krupp, Assoc. Justice

# RETURN OF OFFICER SERVING SEARCH WARRANT

A search warrant must be executed as soon as reasonably possible after its issuance, and in any case may not be validly executed more than 7 days after its issuance. The executing officer must file his or her return with the court named in the warrant within 7 days after the warrant is issued G.L. c.276 §3A.

This search warrant was issued on January 22, 20 24, and I have executed it as follows:  
DATE

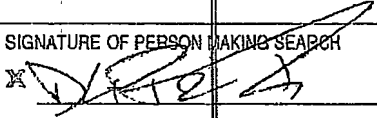
The following is an inventory of the property taken pursuant to this search warrant:

1. Apple iPhone - purple with green case
2. Apple iPhone - white with clear case
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.
- 10.
- 11.
- 12.
- 13.
- 14.
- 15.
- 16.
- 17.
- 18.
- 19.
- 20.
- 21.
- 22.

(attach additional pages as necessary)

This inventory was made in the presence of: Lt. John Fanning

I swear that this is a true and detailed account of all property taken by me on this search warrant

SIGNATURE OF PERSON MAKING SEARCH 	DATE AND TIME OF SEARCH 1/24/24 1445 hrs	SWORN AND SUBSCRIBED TO BEFORE X Signature of Justice, Clerk-Magistrate or Assistant Clerk
PRINTED NAME OF PERSON MAKING SEARCH Brian Tully	TITLE OF PERSON MAKING SEARCH Det. Lieutenant	DATE SWORN AND SUBSCRIBED TO



I, Brian P. Tully, being duly sworn, depose and state that the following is true to the best of my knowledge:

1. I, Detective Lieutenant Brian Tully #3520, am a Massachusetts State Police Officer and have been a police officer since 2006. In July 2012, I was assigned to the Norfolk State Police Detective Unit, where I have investigated and processed serious and violent crimes, including murder, suicides, sudden, suspicious, and unattended deaths, along with drug investigations. In 2019, I was promoted to the rank of Sergeant and supervised homicide and violent crime investigations. In November 2021, I was promoted to the rank of Detective Lieutenant and appointed Unit Commander of the Norfolk State Police Detective Unit (SPDU). I have participated in the execution of search warrants from which various types of evidence have been seized. I am trained in criminal investigation including, specifically homicides/death investigations and crime scene investigation. I have received specialized training and experience in the collection of physical evidence, crime scene processing and the investigations of such cases. I have received specialized training to obtain and analyze cellular telephone data and call detail records in support of criminal investigations. I have testified as an expert witness regarding cell phone technology, cell phone forensics, and their use in criminal investigations. In one such case, Commonwealth v Wilkerson (SJC-12124), the Massachusetts Supreme Judicial Court stated I testified to my "extensive training in applying CSLI records to criminal investigations". I have been an instructor for the Municipal Police Training Council on the topics of homicide investigations and criminal law. I have organized and hosted homicide conferences in Massachusetts and around the country. I have a Master of Arts degree in Criminology from the University of Massachusetts – Lowell and a Bachelor of Arts degree in Criminal Justice/Political Science from Stonehill College. In addition to my assignment in the Division of Investigative Services, I have been assigned to the Division of Field Services working in Troop C (Central Massachusetts) and Troop H (Metro Boston).
  
2. Based upon information contained in the numbered paragraphs below which are the product of my own investigation and my discussions with Massachusetts State Troopers involved in the investigation, I submit that I have probable cause to believe that evidence of a violation of Massachusetts General Laws, Chapter 268, Section 13B (Witness Interference) and a violation of Massachusetts General Laws, Chapter 274 Section 7 (Conspiracy) will be found cell phones and/or mobile digital devices used by Karen Read. This application for Search Warrant is to **SEIZE** devices only, as described below.

### Intimidation of a Witness – Violation of MGL Chapter 268 Section 13B

3. On the morning of January 29, 2022, John O'Keefe was found unresponsive on the front lawn of 34 Fairview Road, Canton, MA. He was transported to Good Samaritan Hospital where he was pronounced deceased. The Office of the Chief Medical Examiner determined the cause of death to be blunt force to the head and hypothermia. Evidence was presented to the Norfolk Grand Jury that indicated the night of January 28, 2022, Read and O'Keefe were at two Canton restaurants, C.F. McCarthy's and the Waterfall, where they met friends. After the Waterfall closed at shortly after midnight, Read and O'Keefe were invited to 34 Fairview Road, Canton. Witnesses stated Read and O'Keefe did not enter 34 Fairview Road. The Norfolk Grand Jury indicted Karen Read on 2nd Degree Murder, Motor Vehicle Manslaughter While OUI, and Leaving the Scene of a Motor Vehicle Crash Causing Death. The indictment alleges Read struck O'Keefe with her motor vehicle and left the scene. The case is currently pending in Norfolk Superior Court (2282CR00117).
4. The lead investigator for the above investigation is Trooper Michael Proctor of the Massachusetts State Police, assigned to the Norfolk State Police Detective Unit. Tpr. Proctor testified before the Grand Jury and continues to conduct investigative work on the case. Michael Proctor is married to Elizabeth Proctor. Elizabeth is not a witness to the investigation, but a family member as mentioned in MGL 268-13B.
5. During the investigation into O'Keefe's death, witnesses were identified, interviewed, and testified before the Grand Jury. These civilian witnesses were present with O'Keefe and Read in the hours leading up to O'Keefe's death and his discovery on January 29, 2022. The witnesses include:
  - a. Matthew McCabe: interviewed by investigators. Matthew was with O'Keefe and Read at the Waterfall Restaurant before O'Keefe's death, observed an SUV (believed to be Read's) in front of 34 Fairview Road, and testified at the Grand Jury.
  - b. Jennifer McCabe: interviewed by investigators. Jennifer was with O'Keefe and Read at the Waterfall Restaurant before O'Keefe's death, observed an SUV (believed to be Read's) in front of 34 Fairview Road, was with Read when O'Keefe was found unresponsive, and testified at the Grand Jury.
  - c. Brian Albert interviewed by investigators. Brian was with O'Keefe and Read at the Waterfall Restaurant, homeowner of 34 Fairview Road, and testified at the Grand Jury.
  - d. Julie Albert (wife of Chris): interviewed by investigators. Julie was with O'Keefe and Read at the Waterfall Restaurant before O'Keefe's death and testified at the Grand Jury.
  - e. Chris Albert (husband of Julie): first interviewed by investigators on February 10, 2022. Chris was with O'Keefe and Read at the Waterfall Restaurant before O'Keefe's death and testified at the Grand Jury.
  - f. Colin Albert: interviewed by investigators, son of Chris and Julie Albert.

- g. Juliana Nagel: interviewed by investigators. Juliana was present at 34 Fairview Road when people were arriving from the Waterfall Restaurant and observed an SUV (believed to be Read's) parked in front of 34 Fairview Road.
6. In an April 2023 motion filed by Read's defense attorneys, "DEFENDANT'S MOTION FOR ORDER PURSUANT TO MASS. R. CRIM. P. 17 DIRECTED TO BRIAN ALBERT, VERIZON, AND AT&T", alleged police misconduct and a conspiracy among the civilian witnesses to frame Read for the death of O'Keefe. The motion calls Brian Albert a "suspect" and Jennifer McCabe a "conspirator" who "took calculated steps to purge her phone of this inculpatory" evidence.
7. A local blogger, Aidan Kearney, has adopted defense's claims. Kearney runs a series of websites and social media accounts under the name "Turtleboy". The social media accounts include "TB Daily News" (X "formerly Twitter" – 33,800 followers), "Aidan Kearney - @DoctorTurtleboy" (X – formerly Twitter – 50,000 followers), "Turtleboy" (Facebook – 37,000 followers), and "Turtleboy Live" (YouTube – 48,000 subscribers). Kearney refers to his followers as "Turtle riders".
8. Beginning on April 18, 2023, Kearney began posting articles to his website and social media accounts where he adopted the defense allegations as true and makes personal attacks on the civilian witnesses, members of their family, and their friends. Kearney authors and publishes a blog on the website "tbdailynews.com". The website has a series of articles entitled "Canton Cover-Up". As of December 21, at least 259 articles have been posted to the website under this category regarding Karen Read.
9. Kearney posts weekly videos to YouTube where he has discussed Karen Read and made statements regarding witnesses. Below are a small selection of verbal statements made by Kearney in these videos that have been published to followers and are publicly available for viewing without being a subscriber or follower and have been archived by investigators:
- Episode 594: Turtleboy Returns to Canton (video posted shortly after Kearney visited homes of witnesses)
    - "This is not my last trip to Canton" "I will be back" (57 minute mark)
    - "I'll be back", "Get used to this", "These people think that I'm fucking around, you haven't seen the last of me", "Get used to it, get used to it." (1:19 mark)
  - Episode 598: \*Breaking\* Karen Read Defense Files Motion to Recuse
    - "This guy [Chris Albert] has his head on the swivel, looking for Turtle Riders", "I got bad news for you Chris, I got really bad news for you", "They are literally everywhere", "You guys should just stop going out in public", "It's only going to get worse from here." "I know where y'all were today, you were in Agawam, weren't you?" "You guys were at some sort of little league thing in Agawam." "Alberts, McCabes, all you people

were there. Just know that there will be no... **Life as normal is over.** Life as normal, you had normal for a while there, from January 29th, to about April 2023. You guys literally got away with murder." (8 minute mark)

- o [While discussing video of Chris Albert being confronted outside of a Canton restaurant] "We [Kearney and his audience] are getting to them [Chris Albert and other witnesses]... When you act this way.....That's like a green light for me, time to hit the gas." (19 minute mark)
- o **"I got pictures of you.** You can't leave the fucken country. Turtle Riders we're gonna find you, they're gonna find you. You can't hide anymore, your private life is officially over, over. You leave your house, you're gonna have your picture taken, so you need to get used to the new normal, your new normal.", "Turtle Riders are gonna take pictures of you and they're gonna send it to me, you're famous", **"We need to accelerate it"**, "They [woman who recorded video of Chris Albert confrontation] are doing a fantastic job with this."
- Episode 604: Colin Albert Drops out of School, Brian Higgins Flipping? Is the End Near?
  - o **"I said from the beginning, I don't want this to go to trial"** (17 minute mark)

10 Since April 2023, Kearney traveled to Canton on several occasions. On one occasion, Kearney went to D&E Pizza, 618 Washington Street, Canton, which is owned by Chris Albert. Chris Albert and his wife, Juliana Albert, were with John O'Keefe and Karen Read prior to the homicide. Chris has been interviewed by investigators. During the visit to D&E Pizza, Kearney confronted Chris. Kearney later stated on a video posted on YouTube for his followers to confront Chris Albert, order food from D&E Pizza with the intent of not paying for the food, and harass. Chris Albert stated he has had a vast increase in the number of telephone orders not picked up or paid for since Kearney made those statements on the YouTube video.

11 In July 2023, Kearney posted a blog on his website regarding Chris Albert. The blog contains a video where Chris was confronted by a follower of Kearney's outside a Canton restaurant (also referenced above in video "Episode 598: \*Breaking\* Karen Read Defense Files Motion to Recuse"). In the blog post, Kearney writes, "let's keep this up. I was so proud to see turtle riders unafraid, confronting evil like this in the flesh. The fact that he's still going to places like the Waterfall [Canton restaurant] is because he feels comfortable doing so. But murderers, and those who cover for them, do not deserve to live a comfortable life while Karen Read suffers and fights for justice for John O'Keefe."

- 12 On June 13, 2023, Kearney broadcasted a live YouTube video (Ep #590), which is currently posted on his YouTube<sup>1</sup> page. During the broadcast, Kearney displayed call detail records of Jennifer McCabe from the day O'Keefe was killed, which included phone numbers and names associated with the phone number. These records had previously been attached to a defense motion filed in Commonwealth v Read. Kearney called Juliana Albert, Chris Albert's wife, and left a voice mail message. Juliana stated a person claiming to be Kearney called from phone number 413-262-6909. Kearney left the following voicemail:

*Hi, Julie, this is award-winning journalist Aidan Kearney calling from Turtle Boy Daily News. Just calling to ask you a few questions, that's all. At the board selectman meeting a few weeks ago, you looked great and extremely happy in the front row and extremely comfortable that you wanted to be there. So I just want to ask you just a couple of questions, I'm reading a police report right now from February 10, 2022, which Michael Proctor says he interviewed you and introduced himself for the first time, which confuses me a little bit because it seems that your family has known him for quite some time. I was wondering how your son Colin, who was at 34 Fairview Road the night that John O'Keefe was murdered, ended up in a wedding party with Trooper Proctor and Trooper Proctor's sister before he was actually a trooper, and I wanted to know who did you guys meet, and did you guys just forget about each other over time that you had to be reintroduced again. But what I'd really like to know is if you were in the Canton High School Class of 1994. How the hell did Jenn McCabe win best-looking, were they using Dominion voting machines? How did that happen, and how does that hurt your self-esteem to know that you were in the same graduating class as Jennifer McCabe, and she got best-looking? How does that, how do you cope with that? Do you need therapy, that has to hurt your feelings, right, because that would just devastate me if I lost a horse face. So give me a call back when you got this, and we'll talk soon. Bye!*

- 13 Chris Albert stated he received a phone call from the phone number 413-262-6909 on June 19, 2023. Albert did not answer the call. The following voicemail was left:

*Yes, Chicken Parm Charlie. This is award winning journalist Aidan Kearney calling you back. You messaged me on the night of April 17 when I first wrote the story about your son being involved in the death of John O'Keefe. You said it was unfortunate that I was going to write about that. I have not heard back from you yet, so I'm still following up on that. I'd also like to know about a report that I'm reading right now in which Trooper*

<sup>1</sup> YouTube is a free video sharing website that allows users to upload and view online videos. Users can create and upload to share with others.

*Proctor claims that he was formally introduced to you on February 10, 2022. I'm a little confused by that because we have pictures of your family with Trooper Proctor dating back as far as I believe 2011 if not further, so did you guys both have amnesia that day that you needed to be formally introduced. Do you often need to be introduced to the people that you have known for a long time? Do you live perpetually in Groundhog Day? I know this was right around Groundhog Day when this happened, so maybe it just kept replaying, and you got to do it all over again the next day. I don't know. I'd like to learn more about this, so if you get back to me, that'd be great, and also, I'll take two blackened chicken parms, extra mozzarella, and we'll see you soon. All right.*

14. On July 26, 2023, Sgt. Yuri Bukhenik of the Massachusetts State Police Norfolk SPDU interviewed Colin Albert regarding harassment he has received from Kearney and his followers. Colin Albert is the son Chris and Juliana Albert and was 17 years of age on the day O'Keefe was killed. On April 17, 2023, Kearney posted on Twitter a statement alleging Colin Albert is responsible for the murder of John O'Keefe, specifically stating Colin and O'Keefe were in a fist fight at 34 Fairview Road. Since that post, Kearney authored several additional posts about Colin, his alleged propensity for violence, and personal information including where Colin will be attending college. Since that time, Colin has been the target of harassment and intimidation on social media. Employees of his college, Bridgewater State University, have received emails from people who copied Kearney's false allegations.
15. On July 8, 2023, Kearney broadcast a live YouTube video (Ep #596). During the broadcast, Kearney stated he has Colin Albert's cell phone number. He stated he is going to call it and "hopes the fucker answers". In the video, Kearney places the call via a cell phone while utilizing the speaker. The phone calls goes to voicemail. The greeting of the voicemail states the phone number of the person Kearney is calling, Colin Albert, which is broadcasted on the YouTube video. Kearney leaves the following voicemail. Colin stated the phone call came from phone number 413-262-6909:

*Yo, Colin, it's Turtleboy from them advantage boys. Bang, bang, bang, bang. Yo, we'll fuck any of you dogs up. Yo, you challenged my boys, them advantage boys, to a fight, dog, and we about that life, son. We about that like, and we from Sharon, son. Yo, y'all Canton bitches ain't hot, yo. Us Sharon bitches are advantage boys. Nobody be fucking with us and shit, dog. Yo, call me back. No, but seriously, it's Aidan Kearney from Turtleboy. I just want to know were you the one who killed John O'Keefe or was that your Uncle Brian. Who hit him first? Who hit with the back of the head with the thing? Are you worried that you're going to go to jail for the rest of your life and that you won't be able to play football at Bridgewater State next year? I'd love to have a conversation with you. Your dad kicked me out of your pizza shack, and I didn't get to eat his mediocre chicken parm, so I just wanted to*

*know if you could talk to me about that, and maybe you and I could go for a ride. We could find them advantage boys, bang, bang. I don't know, so give me a call when you get this. Bye.*

16. Colin stated to Sgt. Bukhenik that the intimidation he has received from Kearney has made him sad, scared, and paranoid. He fears physical harm from strangers. Colin attended Bridgewater State University where he was a member of the football team. Colin was enrolled to return in the fall of 2023. Due to the past harassment and the threat of future harassment, Colin choose to withdraw from the university football team.
17. On September 24, 2023, Kearney broadcast a live YouTube video ("Ep 616"). At the 2 hour 31 minute mark, Kearney is talking about an interaction he had with Jillian Daniels, Colin's aunt. While describing their interaction, Kearney stated, "I'm trying to put her like godson, backlash nephew, in jail. And, you know, kind of like, **destroy their life.**"
18. Kearney has targeted Jennifer and Matthew McCabe with many harassing and intimidating statements and acts. The McCabes were with O'Keefe and Read in the hours leading up to O'Keefe's death and were present at 34 Fairview Road, Canton. Read's defense attorneys have alleged the McCabes have lied to investigators and have conspired with other witnesses to frame Read for the murder. Kearney has confronted and harassed the McCabes as a result.
19. On June 6, 2023, the McCabes traveled from their residence in Canton to Billerica, MA to attend a sporting event where their children were participating. Kearney learned the McCabes would be in Billerica. Kearney, whose MA driver's license has an address of 111 Mason Road, Holden, MA, traveled to Billerica, confronted the McCabes and posted videos of the interaction online. Kearney would later write a blog post about the interaction where he stated, "**Jen and Matt McCabe do not deserve to live a normal life** and pretend that they weren't involved in murdering a Boston Police Officer<sup>2</sup>." While the McCabes were seated in the stands, Kearney approached Jennifer McCabe and asked her repeated questions about the alleged conspiracy. On a subsequent YouTube video, Kearney bragged about the confrontation: "I went to her kid's lacrosse game and made a scene there and got kicked out...because I kept calling her a copkiller" (Riss Flex – "ELITE MA CORRUPTION ft. TURTLEBOY! – 1:01 mark).
20. On June 26, 2023, Kearney traveled to the home of Matthew and Jennifer McCabe at 12 Country Lane, Canton. Kearney video recorded his arrival at the residence and later discussed the trip to the residence in a YouTube video ("Ep #594 – Turtleboy Returns to Canton"). In the YouTube video, Kearney stated when he arrived, he noticed the front door to the residence was open. He stated, "Well that [the open door] will makes this

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<sup>2</sup> John O'Keefe was employed as a Boston Police Officer at the time of his death.

easier, she can't close on me." Kearney played the video he recorded at the residence on the YouTube video. Kearney rang the doorbell and video recorded the interior of the residence through a glass storm door. A person is seen inside the home on Kearney's video, which Kearney stated is Jennifer McCabe. Kearney was videotaping into the home for approximately one minute.

21 Sgt. Bukhenik interviewed Jennifer McCabe on July 24, 2023 regarding the harassment and intimidation. Jennifer became upset and stated she is concerned for her safety and wellbeing of her juvenile children. She stated her children are upset, embarrassed, and angry at the false accusations Kearney has been broadcasting. She stated, "The children are afraid to be at their own home." Jen later told Sgt. Bukhenik that Kearney repeatedly keeps showing the pictures of Tpr. Proctor at a cookout and misidentifies children in the photo as her children. She stated Kearney has shown one of her children at her first communion and family photos. Jennifer stated her 15 year old daughter is being recognized and photographed in public, which terrifies her daughter.

22 On September 20, 2023, Kearney broadcast a live YouTube video (Ep #615). During the video, Kearney repeatedly stated that Jen McCabe killed John O'Keefe. At the 1:54 mark in the video, Kearney stated, "I am saying this as a matter of fact, that Jen McCabe participated in killing and planning to kill and cover up the murder of John O'Keefe. I am saying that. That is not my opinion." Later in the video, Kearney displayed a sign on the lawn of Jennifer McCabe's sister in Canton and states:

*"You killed John O'Keefe, you worthless piles of shit, and I'm gonna find you motherfucker. I'm gonna find you. Just know that. You wanna fucking dance? We can fucking dance. I didn't know who you were before this....I thought you were Jen's lesbian sister or some shit. I didn't know shit about you. Now we know all about your son Tommy. Tommy's the lacrosse coach I believe at Canton High School, right? Yeah, whoa. We can talk about Tommy too. We can pay Tommy a visit too. We're gonna go after...you're gonna get the whole fucking deal now. All of it. Allie McCabe, she can get it too. They can all get it. We have left the second generation out of this for a bit but that's over. Except for Brian Albert Jr because he looks functionally retarded. But besides him, the rest of them, they are all gonna get it. They're all gonna get it...Caitlin Albert, we've got some questions for you. Show up at another Bridgewater State football game, I dare you. Daddy's coming to town. These people make me sick."*

23 On June 13, 2023, Kearney broadcast a live YouTube video (Ep #590), which is currently posted on his YouTube page. During the broadcast, Kearney displayed phone records of Jennifer McCabe from the day O'Keefe was killed. The records displayed names next to the phone number, which appears to be the user of the other phone number. These records had previously been an attachment to an unredacted defense motion filed in Commonwealth v Read. During the video broadcast, Kearney cold calls the phone



numbers without names associated. In this process, Kearney called a work cell phone of Tpr. Proctor. Tpr. Proctor stated the phone number that made the call was 413-262-6909. Kearney left the following voicemail:

*Hi Trooper Proctor. This is award winning journalist, Aiden Kearney, calling. I'm calling to talk to you. I do have some questions about you. I have a lot of questions, actually. For starters, why didn't you tell me, one, before doing the investigation that you were good friends with the Albert Family? Why did you, in your report, say that you were introduced to Chris Albert on February 10 when you have known him for more than a decade prior to that? Why did you lie about what time you towed Karen Read's car? Why did you intentionally misspell the names of several key witnesses in your report, and you know, I'm just wondering about all of those things, and maybe you and I can meet up for coffee. Boy, do I have a lot of questions for you. When you were inside Fairview Road that night, or that morning rather, why did you stay there for four and a half hours, and what did you guys talk about and do, and why were you descending stairs with John O'Keefe's phone in your pocket? So, give me a call back, man. We feel like you and I have a lot of catching up to do. I talk about you a lot. I feel like I know you pretty well at this point. I know which year you graduated from the academy. I know you were out in West Brookfield for a while. I know some people that you know, so give me a call back when you get this. Now that I have your number, and everybody watching also has your phone number, which again is 781-364-0165, so I'd like to know. She called you again, you called her at 12:49. We're going to get to that, so now that I have your number, I'm going to plug you in, and we'll talk soon. Bye.*

- 24 As a result of the cell phone number being broadcasted, Tpr. Proctor began to receive random and harassing text messages and voicemails. In the 12 hours following Kearney's calls, Tpr. Proctor received approximately a dozen text messages, phone calls, and voicemails. The content of the calls and messages pertained Tpr. Proctor's alleged involvement in the conspiracy and called for his termination. Tpr. Proctor had to change his work cell phone number to avoid the constant unwanted calls and messages.
- 25 Michael Proctor is married to Elizabeth Proctor. Beginning in April 2023, Kearney wrote blog posts about Elizabeth Proctor. On May 9, 2023, Kearney authored a post about Elizabeth. A video is attached to the post. The video depicts a cellphone screen of an Apple iPhone. The user of the cell phone dials the cell phone number of Elizabeth which is displayed on the screen. Kearney further writes,

"I can think of two people who deserve to lose their jobs over this [alleged conspiracy against Read] though – Michael Proctor and Elizabeth Proctor. These two lowlifes think they are untouchable. They're nothing but bullies who terrorized people for years, but now they've met their match."

- 26 In the post, Kearney states Elizabeth works as a Human Resources Manager at Instron and posts the main phone number for the company. The post then states, "But you're probably not going to reach anyone that way, so feel free to leave a review on their wide open Facebook page or their Twitter account."
- 27 On May 10, 2023, Kearney broadcast a live YouTube video (Ep #580), which is currently posted on his YouTube page. During broadcast, Kearney talks about Elizabeth. He stated he was going to call her. He repeated her cell phone number on the broadcast as he was entering the number into a cell phone. Using the speaker phone option on a cell phone, Kearney broadcasted the phone call. The phone call went to voicemail. Elizabeth stated the phone call came from 413-262-6909. Kearney left the following message:
- Hi, Elizabeth. This is Aidan Kearney calling you back from Turtleboy. We briefly spoke yesterday on the phone. I introduced myself to you, and then you hung up on me, or maybe it was a bad connection, but I just wanted to see how your day at work went today, if it went well. I noticed that your employer took down their social media pages within minutes of the blog I published about your recent behavior, and I just wanted to see what, is it awkward, were you afraid to go in? Just tell me about your day and why because that's the part I don't understand is that you seem to be okay with calling other peoples' work places and interfering with their ability to make a living for themselves, but when it happens to you, maybe it's not as fun, maybe it's not as fun. Do you like that? That's what I want to know. Did you like that? Because you've been doing that to a lot of other people, and do you think it's fair that it happened to you, dear? Do you regret it? Do you regret it? And what's your scumbag husband up to right now? Are you going to visit him in prison? Do you think they'll have conjugal visits? Give me a call back when you get this, and we can chat some more. Bye girl.*
- 28 Following the phone call, Kearney accessed the social media accounts of Instron and laughed as he stated the pages were taken down and stated, "the Turtleboy effect, oh god." Both Michael and Elizabeth Proctor stated they have felt harassed by the acts of Kearney.
- 29 On the previously mentioned September 20, 2023 YouTube video (Ep #615), Kearney displayed a photograph he obtained depicting Brian and Nicole Albert at a Bridgewater State University football game. He described the photograph as the "most satisfying photos I've ever seen". The photograph depicts Brian and Julie Albert hiding their face while a group in front of them in the stands takes a photograph. Kearney later stated, "This is how they live now, like rats... This ends when they go to prison."
- 30 On September 13, 2023, Kearney posted a blog entitled "Canton Cover-Up Part 142: Free Karen Read Billboard Goes Up On Route 1 Outside Gillette Stadium In Foxborough,

Two More To Follow” on his website. The topic of the blog post was about a billboard that read “Free Karen Read” with a picture of Karen Read. Kearney praised the organizers of the billboard. In the post, Kearney wrote:

*“Thank you to everyone who donated as well. Although millions of people know about the injustice that is happening in Norfolk County, I would bet that over half the population of Norfolk County has never heard of Karen Read before. That will change because of this 3-pronged billboard blitz. It’s really important for people in Norfolk County to know about this story because that is where the jury pool would be chosen from.”*

[emphasis added]

### “Rolling Road Rally”

31. Kearney organized and publicized a “Rolling Road Rally” where protesters would travel to the homes of witnesses involved in Commonwealth v Read. On Saturday, July 22, 2023, at approximately 1200 hours, Kearney departed Shaw’s, 134 Nahatan Street, Norwood, accompanied by a number of motor vehicles. Kearney began a YouTube Live video. YouTube Live allows users to broadcast live videos on the YouTube platform which can be later saved and distributed on a user’s account. At the beginning of the video, Kearney is operating a motor vehicle and stated “at least 100, 200 people” are in the caravan of vehicles. He further stated he did not broadcast the locations of the protests prior to the departure of the rolling rally. He stated the address of the first location, 909 Washington Street, Norwood, MA, which is the residence of Brian Albert. Brian Albert was with John O’Keefe in hours before he was killed and O’Keefe was found unresponsive on the front lawn of Brian Albert’s previous residence at 34 Fairview Road, Canton.
32. During the video, Kearney stated the purpose of the rally is to protest a murder cover-up and framing of an innocent woman. He stated some witnesses will be in jail within a year and brags about being able to locate the witnesses wherever they travel. During the duration of the rally, he thanked the other members of rally for attending.
33. The residence at 909 Washington Street, Norwood is the primary residence of Brian, Nicole (his wife) and their three children. The Alberts were aware of the rally and had vacated their home to avoid harassment. At approximately 1218 hours, Kearney arrived at Brian Albert’s residence. The residence is an apartment-style building. Kearney gathered the protesters adjacent to the building. When he arrived at the residence, he used a megaphone, which allowed the amplification of his voice. Kearney described the Alberts as “murders” who are hiding. Kearney used the megaphone to make claims that Albert was involved in the murder of John O’Keefe. Kearney spent approximately 5 minutes outside of Albert’s residence. At the conclusion of the speech, he informed the crowd the next location will be the home of Trooper Michael Proctor, 6 Wentworth Road, Canton, MA.

34. In the days leading up to July 22, cameras were placed outside of several of the locations where the protest was scheduled to occur. Below is a still photo of the video from July 22 at 1222 hours in front of 909 Washington Street, Norwood:



35. Michael and Elizabeth Proctor live at 6 Wentworth Road with their two young children. Michael and Elizabeth Proctor were not working on this Saturday. The Proctors purposely vacated their home and made plans in order to avoid the protest. When Kearney arrived at 6 Wentworth Road, Kearney continued to use the megaphone and stated Tpr. Proctor has "framed" Karen Read and stated personal information about Tpr. Proctor's family. Kearney described Tpr. Proctor as "the most pivotal" in the "cover-up". While in front of the Tpr. Proctor's residence, Kearney described how Tpr. Proctor allegedly participated in framing Karen Read for the purpose of covering for other police officers, planted evidence, and called him a "disgrace". During the speech, Kearney continually pointed to the residence. While in front of the home, members of the protest walked on the lawn of Proctor's residence and spit on his driveway. Kearney's recorded statements at this location were approximately 7 minutes long. Shortly after the speech, Kearney admitted that he did not attempt to obtain a permit authorizing his protest or blocking streets. At the conclusion of the speech, Kearney stated the next location will be the home of Matthew and Jennifer McCabe, 12 Country Lane, Canton, MA. Shortly after entering his vehicle, Kearney stated the purpose of the protest is to "get justice for John O'Keefe and justice for Karen Read that is what we are here to do". Below is a still photo of the video from July 22 at 1245 hours in front of 6 Wentworth Road:



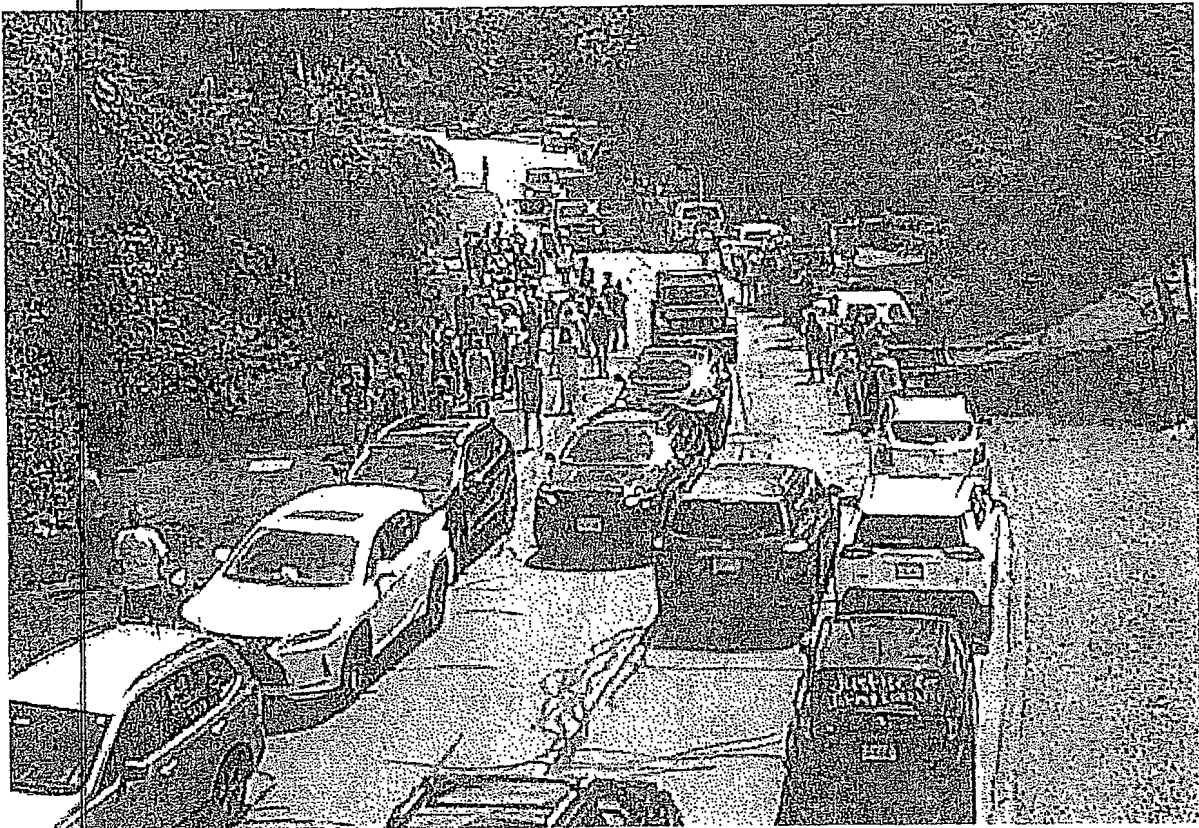
36. Matthew and Jennifer McCabe live at 12 Country Lane, Canton with their four children. Both Matthew and Jennifer were with O'Keefe in the hours leading up to his homicide, received a phone call from Read in the early morning hours of January 29, and Jennifer was with Read when O'Keefe was found unresponsive. During the rally, Matthew, Jennifer, and two of their children were home. Prior to the rally, Kearney posted pictures of the McCabes on vacation and made statements that he [Kearney] can find the McCabes wherever they travel. When Kearney arrived at 12 Country Lane, Kearney exited his vehicle and walked to a camera attached to a mailbox of the residence. He stated he knows where she currently is located and stated "no justice, no peace". Kearney stated that the residences of the home is the McCabe family. Kearney made statements that Jennifer McCabe is going to jail and "she doesn't give a shit about her kids...her kids need to see their mom in jail because the cycle will repeat itself". Kearney then spent several minutes claiming how Jennifer McCabe participated in murder by failing to save John O'Keefe's life, manufactured evidence in the form of a phone call to O'Keefe, made allegations of Jennifer McCabe's actions after the murder, lied to Karen Read, and mislead investigators. Kearney used the bullhorn to state, "I want all Jen McCabe's neighbors to know, in case they don't already know, the people that live right here at 12, they are cop-killers... These are cop-killers that live here." He further states, "They [the McCabes] will try to live like nothing happened but we are not going to let them do that because you do not get to kill police officers and fathers and get away with it." Kearney then stated the protest is going to 78 Highland Street. Kearney spent approximately eight minutes in front of the McCabe's residence.



37 Juliana Nagel, age 25, lives at 78 Highland Street, Canton with her two parents and two siblings. Juliana was home with her mother at the time of the protest. Juliana, and her brother Ryan Nagel, were present at 34 Fairview Road and had been interviewed by investigators. When Kearney arrived at 78 Highland Street, he identified the residence as the home of Juliana Nagel. Kearney made a statement to get the attention of the neighbors of Highland Street. He described how O'Keefe was beaten to death at a house where Juliana Nagel was present. He stated, "at any point, Julie Nagel, you can come out, at any point Julie, nothing is stopping you from telling the truth... You know what happened that night." He continued to state, "You can't get away with it anymore. Too many people know... you are going down with them. Nothing is stopping you from coming forward and telling the police what happened." Kearney claims Nagel lied to investigators about her observations the night O'Keefe was killed and is "complicit in the cover-up of the murder." Kearney stated, "You might as well tell the truth, and let the world know what happened. Neighbors, maybe you guys can help us pressure them into this. Julie Nagel was involved, was at the murder of a Boston Police Officer. She knows what happened and she is actively involved in the cover-up. She should not be able to walk around town like none of this happened while an innocent woman named Karen Read... suffers the consequences of her silence and her complicity. The truth will set you free." Kearney is in front of the residence for approximately ten minutes. At the conclusion of the speech, he stated the next location is home of Canton Police Department Deputy Chief Thomas Keleher. While traveling to the next location, Kearney stated "Julie Nagel's house was a good one. They were home."

38. Canton Police Deputy Chief Thomas Keleher lives at 31 Fairview Road, Canton with his wife and three children. The Kelehers were aware of the potential protest and vacated

their home in order to avoid harassment. Members of the Canton Police responded to the original 911 call reporting O'Keefe's discovery and have testified in the Grand Jury regarding this case. When Kearney arrived at 31 Fairview Road, he identified the home as the residence of Deputy Chief Thomas Keleher. He stated "Tom Keleher knows what happened. He's not stupid... He's seen what happen. He knows the exact time John O'Keefe's body was taken." Kearney then described how allegedly O'Keefe's dead body was brought by a vehicle and thrown onto the front lawn of 34 Fairview Road. Kearney pointed the camera at Keleher's home and stated, "We know that guy who lives in that house is part of the cover-up too. He's a police officer, people trust him in this community. If you're a neighbor here, please know that his guy is covering up for a cop-killer... Your neighbor Tom Keleher is complicit in the death and murder of John O'Keefe. He is complicit in framing of an innocent woman who did nothing wrong by the name of Karen Read. And we are here to let you know that... Tom Keleher is your problem... we are not going to let him [Keleher] get away with it." He was in front of the residence for approximately ten minutes. Kearney stated the next protest location would be the Canton Police Department.



39. During the drive to the police station, Kearney stated the family members of John O'Keefe should believe Karen Read is not responsible for the death and "how much slack are we supposed to give you [John O'Keefe's family]...the time period for the grief, whatever, that we are giving you, like we are not going after you because of the grief, that

is expired. It's expired because you're trying to send an innocent woman to jail for the rest of her life...I don't feel bad for you anymore." Kearney later remarked he was planning on protesting outside the home of former Canton Police Chief Kenneth Berkowitz, but was unsure if he had moved from a specific address he stated. Kearney stated "I don't want to take the chance that he doesn't live there anymore. I don't want to bother innocent people."

40 While in front of the Canton Police station, Kearney addressed Jennifer McCabe by name and stated "look at all the support for Karen Read and John O'Keefe. Everybody here knows what you did...literally everyone who comes by knows what you did Jennifer McCabe and Brian Albert. They know, they know. We are not putting up with it." Near the end of the video, Kearney stated "it is time to arrest the people who killed him [O'Keefe]" and "we are just getting started".

41 During a recorded interview on the YouTube account "Riss Flex" dated August 20, 2023, Kearney made comments about his influence on the jury pool:

*"I want the world to know what happened here. They want the story to be silent, nobody knows about it. They want to be able to find a jury pool that has never heard of any of this shit before so they can manipulate them the same way they have manipulated everyone else and I'm not allowing them to do that. Happy to do it." (ELITE MA CORRUPTION ft. TURTLEBOY! – 1:04 mark)*

#### **Information Subsequent to Arrest of Aidan Kearney**

42 On October 17, 2023, I interviewed Natalie Wiweke Bershneider at her workplace in Gardena, California. Natalie stated she attended Bentley University with Karen Read from 1998 to 2002. Natalie stated she was not close friends with Karen but had friends in common. Following graduation, Natalie returned to California and lost touch with Karen. Following Karen's February 2022 arrest related to the death of John O'Keefe, Natalie contacted Karen to offer support and began a friendship. Natalie stated Karen openly shared her defense theories about the case, which Natalie stated she believed at the time.

43 In April 2023, Natalie noticed a woman by the name of Jennifer Altman on social media who was defending Karen in comments of news reports regarding Karen's criminal case. Natalie stated she contacted Jennifer on Facebook in order to thank her for supporting Karen. Jennifer responded she has a friend, Aidan Kearney, who runs a blog and would like to report on Karen's criminal case. During this text message conversation on April 13, 2023, Natalie sent the following message to Jennifer, "the feds are involved" and described how people involved were "going down". Natalie spoke to Karen about Kearney. The following day Karen told Natalie she would like Kearney to report on the



case. On April 17, 2023, Natalie was put into contact with Kearney through Jennifer. Natalie exchanged messages with Kearney and spoke with him on the phone about Karen's case.

44. Shortly after Karen agreed to work with Kearney, Karen instructed Natalie to download the messaging app Signal<sup>3</sup> on her phone, which she did. Natalie was not familiar with Signal prior to Karen's request. Natalie's understanding of Signal was that it is a more confidential way to communicate as the messages can be auto-deleted after reading. Natalie described the arrangement as follows: Karen would send Natalie a message on Signal intended for Kearney, Natalie would copy and paste the message/photo/video/document into a text message to Kearney. On several occasions, Natalie would take a screen shot of the Signal messages from Karen and send Kearney the screen shot. Natalie stated she would send information to two phone numbers used by Kearney.
45. Natalie stated the content of the messages shared by Karen to her were Karen's defense of the charges, including information regarding witnesses, the home address of Trooper Michael Proctor, pictures of witnesses, autopsy photographs, motions filed by her attorneys, police reports, photographs taken by the MSP Crime Scene Services Section, and feedback about Kearney's blog posts, social media, and videos. This arrangement began on or about April 17. A check of the text messages on Natalie's phone<sup>4</sup> confirmed Natalie's statements. It appeared most of the messages sent by Natalie were authored by Karen. For example, messages would start with "tell TB [Turtleboy]", "From Karen:", or "Not for public but you and Aidan can see...". On April 22, 2023, Natalie messages Kearney "We are all very grateful to you". Kearney responds, "It's my job, glad to help".
46. Kearney would frequently check with Karen (through Natalie) if he could use a piece of material sent to him in his blogs and videos, to which Karen would respond to what he could use. One example of material sent to Kearney but not to be shared publicly is the 911 call reporting John O'Keefe's discovery on January 29, 2022. The audio file was sent to Kearney along with the message "Do NOT share". Other examples include messages sent by Natalie to Kearney, "Urgent: do not to publish anything from the report on Julie Nagel" and "Make it clear he didn't just get I from us [sic]". In another exchange on May 6, Kearney text messaged five photographs that appear to be pictures taken by CSSS of Karen's car, including the tail light. Kearney then asks "Can you walk me through what these are". A later message from Natalie appears to be in response to the pictures, "Can you ask him if he can get those photos from the court? I'm just not positive they are public..." Kearney responded, "And how did she get them?". Natalie responded, "They're in discovery. But I'm not sure they're public (I am the accused, Aidan...)". Kearney later attempts to confirm he cannot talk about the photos on his

<sup>3</sup> Signal is an encrypted messaging service for instant messaging, voice, and video calls. Messages can be set to auto-delete after the user reads the message.

<sup>4</sup> Following the interview, Natalie consented to investigators downloading her cellphone.

show that night, to which Natalie responded, "Don't talk about those on the show tonight".

47 On April 29, Kearney asks if he can talk about or use different material on his YouTube show. Natalie (acting as an intermediary with Karen) responds to Kearney, "Make it clear he didn't just get it from us. But don't show the exhibits, just read them" and "Please tell him not to share the title - it has Yannetti's initials in it DRY", referencing David R. Yannetti.

48 In mid-May, Kearney sent Natalie a picture of himself wearing a t-shirt depicting a Google search bar with the phrase, "how long to die in cold", a reference to a piece of evidence in Commonwealth v Read. Natalie responded that she will ask Karen if he can wear it to court. Natalie later tells Kearney "It's okay to wear the t-shirts how long to die in the cold. I got the okay." Kearney responded, "Really?" and "You asked Alan?", an apparent reference to one of Karen's attorneys, Alan Jackson. Natalie responded "She replied, 'Absolutely!'" Kearney was seen wearing the shirt at the July 25 court date, as shown in pictures above.

Signal intercept  
message/photo

49 Over the course of the text message conversations, Natalie forwards personal information and pictures of many of the named witnesses above, including Jennifer McCabe, Chris Albert, and Colin Albert. In one part of the conversation, Kearney wrote, "Anything else I should talk about that I haven't hit in blogs yet? Feel like I'm out of new material."

50 Natalie stated a second person was acting as an intermediary between Karen and Kearney: Jon Silvera. That statement is corroborated in several text messages between Natalie and Karen. One such message from Natalie to Kearney (again, apparently authored by Karen) reads, "He's confused. Jon sent a report beginning with the '12' and it was about Julie Nagel. Nothing to do with GJ testimony on Colin". Kearney's next text message is "I won't use any GJ testimony. The formatting is obvious [sic] different from the police reports" (emphasis added). Several additional messages state "check your email", suggesting documents were sent to Kearney outside of the text messages.

51 On several occasions, Kearney questions Karen's defense theories. In one such case on April 23, 2023, Kearney does not understand how Karen knows Colin Albert was at 34 Fairview Road when John O'Keefe arrived. Kearney sends the messages, "Hey need to talk to you ASAP" and "It's really important for me to know how we know Colin was in that house [sic]". Natalie (as an intermediary) sent the message "And TB can't say 'the defense had a source that Colin was there'. It's important for us and TB". Kearney responded, "Need to talk. Emergency" and "Well I'm starting to lose confidence Colin was in that house and I'm freaking out". Natalie sent the message, "Brian and Nicole & Chris and Julie all testified he was there. But I can't send GJ testimony because it's sealed." Kearney continued to ask questions. Natalie replied, "She's signaling you" and

"check your signal". Kearney asks "who?" and Natalie responded "Her". In a similar exchange on May 7, Kearney wrote,

"Not gonna lie, this is getting old. I don't like the riddle 'put the clues together' stuff. This isn't a board game. By now she knows that I can be trusted. What you told me mean that the 227 google search MAKES NO SENSE!!"

52 During the interview, Natalie discussed a May 3 court date for Karen's criminal case. Kearney requested for someone to save him a seat in the courtroom. Karen arranged a seat for Kearney. On April 23, Kearney sent the message to Natalie, "I'm excited and honored that her parents would want to sit next to me in court." The seat arrangement is described in a May 2 message sent by Natalie (acting as an intermediary): "I've tried to coordinate TB and Jon/Donny. My parents have a full row with their lawyer, my brother, Ingrid. He can sit right behind them."

53 Natalie recalled Kearney being invited to have lunch with Karen and her defense attorneys, including Alan Jackson and David Yannetti, after the May 3, 2023 court date. A check of the phone revealed one of the first text messages to Kearney, Natalie stated "Karen and her team will be likely be convening at the Omni Seaport after the May 3 hearing." Kearney responded "I'd be happy to meet up with them". On April 28, Natalie sent Kearney the message, "Turtle can meet with Alan on Tuesday [May 3], perhaps?" Natalie stated she spoke with Kearney following the May 3 court hearing. Kearney stated he was nervous to attend lunch with Karen and her attorneys as he would feel out of place. Natalie reassured Kearney he was welcome and stated it was a good opportunity for him. Kearney agreed and stated he was going to attend the lunch. Kearney sent Natalie a text message at 6:28 PM stating "We had a great time". Natalie would later mention Kearney having a "nice time" at the lunch. It should be noted that at all times Natalie was in California, did not attend any Read court dates, and was relaying messages from Karen to Kearney.

54 On May 6, Kearney texted Natalie, "Can I see the hairs? **She showed me in person.**" (emphasis added) Natalie then sent Kearney two pictures of what appears to be a hair next to a measuring tape often used by CSSS when documenting evidence<sup>5</sup>. Natalie then sent the message, "Supposedly the same hair." (These photographs are not part of any public filings.)

55 A check of the text messages from Natalie's phone reveals several instances where it appears Kearney communicated directly with Attorneys Alan Jackson and David Yannetti. The first being on April 22, 2023. Natalie sends Kearney a message "Did you talk to AJ today?" and Kearney responded, "Just saw his text. Gonna call him in a bit."

<sup>5</sup> A hair was recovered from the rear of Read's Lexus following the seizure of her vehicle. The recovered hair has been tested by the MSP Crime Lab and is currently the subject of on-going motions.

On May 2, Natalie sent Kearney the message "Colin has a lawyer. Ask Yannetti about it". On May 5, Natalie sent Kearney the message, "Tell TB from me: Be strong Aidan! Get down for a day, but wake up and keep fighting tomorrow. Please call Alan and spitball your issues with him if you want to" and "Nothing gives you a shot in the arm like talking with AJ". Natalie later asks, "Did you call him" and Kearney replies "Just did".

- 56 On several occasions, the nature of the relationship between Karen, her defense attorneys, and Kearney is discussed. In one such exchange on May 7, Kearney stated he disagrees with Alan Jackson's theory of when O'Keefe was allegedly moved to the front lawn. Kearney wrote,

*"Keep in mind, Karen, AJ, and myself don't officially talk. It would be normal for me to have opinions that differ from the defense, although we all agree that Karen had nothing to do with it. I made it clear that my theory of how he died is simply that - a theory. If there's more information I haven't been given that can prove me theory is wrong I'm all ears."* (emphasis added)

Natalie responded, "I hear you, Aidan. It's good to not be completely in sync. We are open to other theories".

- 57 In public settings, Kearney and the attorneys for Karen Read have denied communicating or mischaracterized the nature of their communication. On September 27, 2023, Boston Magazine published an article about the homicide of John O'Keefe and Karen Read's defense. For the article, the author interviewed Karen, her attorneys, and Aidan Kearney. The article describes Kearney's involvement in the case from April through the July 25 court date. After describing how the author interviewed Kearney at his residence, the article states, "Both Kearney and Read's defense team say they have never been in contact with one another." On October 20, 2023, an X account (formerly Twitter) associated with David Yannetti (@BostonDefender) posted a response to another post alleging Yannetti "tipped off" Kearney about the story. The post, in part, reads, "he (Kearney) and I never communicated until AFTER his first piece on the #karenread case."

- 58 I observed text messages between Natalie and Kearney containing discussions about an investigation being conducted by the FBI and US Attorney's Office. On one such occasion, in an April 23 message sent by Natalie to Kearney: "Not public: the feds have been involved longer than anyone is likely guessing". On April 28, Natalie sends Kearney the following message,

"But I don't understand why he doesn't mention more that the feds are involved. The 1st Asst US Atty. They don't shoot and miss - they have a case - and way more evidence than we do. I know this for a fact. Jen McCabe testifies this coming week. I'm not sure about the others."

59 Kearney responds later on April 28, "Has there been any new information about the fbi investigation and handing out subpoenas?". Natalie responded, "No new info. Just that they are already present the case the GJ as we speak" and "And the DA's office has been informed. That is confirmed. 1000%" [In late April 2023, the Norfolk DA's office was notified by the Boston US Attorney's Office that witnesses involved in Commonwealth v Read were served with subpoenas for a federal grand jury.] In a later exchange, Natalie wrote to Kearney "Bingo was in reference that you go the names of the AUSAs correct" and Kearney responded, "Oh she spoke to David I'm guessing".

60 On May 5, Kearney stated he heard a rumor 20 FBI agents were seen in Canton for "possible arrests". Two days later, Natalie sent Kearney a message that contained in part, "NOT PUBLIC: Levy confirmed no swarms of FBI were in Canton two days ago." The reference to Levy is most likely United States Attorney for the District of Massachusetts First Assistant US Attorney Joshua Levy. In a subsequent conversation, Natalie sent Kearney a picture of what appears to be an organizational chart of the US Attorney's Office with the position of First Assistant US Attorney circled in yellow. Natalie then sent this message, "No rush - but you can tell him: Josh Levy is the 1st Asst. There's only one 1st Asst, and he doesn't typically prosecute. Like, he never prosecutes, he just delegates to the assistants within the divisions (eg, Adam Deitch). But he's running this GJ"

with Alan J.  
Kearney was

61 At the May 3 Norfolk Superior court date, while in open court before Judge Cannone and television cameras, Attorney Alan Jackson reported "federal authorities have now gotten involved in circumstances surrounding this case and have impaled a grand jury, a federal grand jury, to investigate some of these circumstances." Following the court hearing, Alan Jackson, David Yannetti, and Karen Read spoke to the media on the front steps of Norfolk Superior Court. The Commonwealth later filed a motion requesting Read's defense attorneys refrain from make extrajudicial statements.

62 On July 25, 2023, Attorney David Yannetti filed a motion in Norfolk Superior Court entitled, "Defendant Karen Read's Opposition to Commonwealth's 'Motion to Prohibit Prejudicial Extrajudicial Statements of Counsel in Compliance with Massachusetts Rules of Professional Conduct 3.6(a)'"'. Attorney Yannetti addressed Attorney Jackson's statement regarding the federal grand jury:

"The Commonwealth's characterization of statements made by defense counsel —specifically, those attributed to Alan Jackson — is misleading, lacks context, and is outright deceptive...Critically, the Commonwealth — in effort to cast Attorney Jackson's statements in the most nefarious light possible — omitted the prefatory clause preceding this statement. What Attorney Jackson said prior to this statement was '**it's been reported that . . .**'. At the time the statement was made, it had indeed been publicly reported that a federal grand jury had been empaneled.\* There is a marked difference between stating that something has been reported and revealing

something that was previously unknown to anyone. This statement was not the defense revealing publicly that a federal grand jury had been empaneled — something about which the defense team would have no knowledge (emphasis added). Instead, as Attorney Jackson stated, this was Ms. Read's counsel reiterating what had already been publicly reported."

The motion later states, "Attorney Jackson merely reiterated what had been publicly reported."

63. The asterisk (\*) above represents footnote number 37 of the motion which cites a Turtleboy News article that reported the federal grand jury investigation: "Multiple Witnesses In Home Where John O'Keefe Was Killed Subpoenaed By Federal Grand Jury, FBI Visits Homes, Basement Floor Reportedly Replaced, dated April 20, 2023" The first sentence of that Turtleboy article reads "Breaking News – according to reliable sources close to the matter a federal grand jury has subpoenaed multiple witnesses who were in the home of Boston Police Officer Brian Albert on the night fellow BPD Officer John O'Keefe was killed." Karen (through Natalie) sent Kearney information regarding the federal investigation in real-time beginning in April. It is reasonable to assume since Natalie told Jennifer Altman (a friend of Kearney) on April 14 that federal law enforcement was involved and Natalie began communicating with Kearney on April 17, 2023 that Karen or someone from her defense team provided the initial and subsequent information to Kearney regarding the federal grand jury. No evidence exists that Kearney is employed by either attorney nor is he a client of either attorney.

64. On an August 29, 2023 YouTube video (Ep. 609, 17 minute mark), Kearney denies having ever spoken to Karen Read. He described how a follower of his blog connected him with a friend of Karen Read's, which is where he receives his information. He described the relationship with Karen's friend as follows:

"That's what journalists do, they talk to sources. Okay, Karen Read is allowed to have friends and they're allowed to talk to me. **That doesn't mean I'm communicating with her or her lawyers...**I tried friend requesting Karen Read and it came back rejected, but she's not stupid clearly...I've asked her friend, obviously, asked can I talk to Karen Read, can I talk to her? And the answer is no, so what I am going do."

65. On October 30, 2023, Kearney appeared on a live YouTube show "New Bedford Live". At the 37 minute mark, Kearney is asked if he has "ever met Karen Read". Kearney responded,

"I've seen her in court. I've met her family I talked to them, not every day or anything like that but I've had many pleasant conversations with them. But Karen likes to keep a distance, I think, between herself and me simply because they're after her, for one thing, they're after her. And number two, it just, you know,

affects my professional reputation if you know she's my bff or something like that. But I fully support her. I think after this is all over her and I will be friends but for now it's about business"

- 66 Several text exchanges suggest Kearney and Karen communicated directly, without Natalie acting as an intermediary. These messages are in addition to the previously mentioned messages asking Kearney to check his "signal". Natalie stated she never communicated with Kearney on the Signal app and those text messages were informing Kearney that Karen was sending him messages directly on the Signal app.
- 67 One exchange on May 6 involves Kearney disbelieving a portion of Karen's defense and is frustrated. He texted Natalie that he tried calling "her" (Karen). Natalie asks 15 minutes later "Are you guys on the phone now?" and Kearney responds "Yes" and 45 minutes later "We're still talking". Natalie stated she believed Kearney and Read spoke on the phone at length during this time.
- 68 In another such exchange on May 19, Kearney and Natalie are exchanging messages about whether Kearney should write about a certain topic. Natalie sent the message, "Let me run it by her. My bet is she says yes.". The next message sent by Natalie (acting as an intermediary for Karen) is as follows, "Yeah, he already asked me. But its his call".
- 69 Karen Read has been interviewed by other media outlets, including ABC's Nightline and NBC's Dateline. She was interviewed by a reporter from Boston Magazine. She has not acknowledged speaking with Kearney. Furthermore, she took steps to provide Kearney non-public information while appearing to be distant, including using an intermediary, controlling what he can publish publicly, and using a messaging application outside of traditional text messaging.
- 70 Following a falling out between Natalie and Karen in June 2023, the text message frequency dramatically dropped. Natalie was no longer sending Kearney information related to the homicide after mid-June. On June 23, Natalie asked Kearney to talk to Karen about her being mad at Natalie. Kearney responded that he does not want to play mediator and be in the middle, which would be another insinuation Kearney and Karen communicate directly.
- 71 A Special Prosecutor convened a Grand Jury to investigate the intimidation of witnesses involved in Commonwealth v Read. A Grand Jury summons was issued to Verizon requesting call detail records for two of Kearney's phone numbers; 774-303-9017 and 413-262-6909. The subscriber for these accounts is Aidan Kearney. A check of those records revealed 189 phone calls between these phone numbers and the phone number Natalie provided to investigators for Karen Read: 857-310-0835. The duration of phone calls between Kearney and Read totaled an excess of 40 hours. These conversations is in addition to the communication Read and Kearney allegedly have on the Signal app. The

first entry to communication between Kearney's and Read's is May 7, 2023. The frequency and duration of the calls increased greatly beginning in the end of June. The communication continued through the fall and winter of 2023 with the last entry of these phone communicating occurring on December 21, 2023.

72. A check of the phone records from Kearney's phone revealed communication with cell phones associated with David Yannetti and Alan Jackson. A phone number ending in 5359 was checked through LexisNexis, a commercially available database, and was associated with David Yannetti. The 5359 phone number communicates with Kearney's two phones 29 times, including 9 times from April 20 to May 2. A phone number ending in 0555 was checked through LexisNexis and was associated with Alan Jackson. The 0555 phone number communicates with Kearney's two phones 29 times, including 3 times from April 20 to May 1.
73. On October 10, 2023, Aidan Kearney was arrested pursuant to several arrest warrants issued out of Stoughton District Court. He was arraigned in Stoughton DC on the same date, which was widely reported by local media. On October 12, 2023, Natalie received a call on her cell phone from 213-688-0460, which is the main office phone number for Werksman Jackson & Quinn, the California law firm of Alan Jackson. Natalie stated she did not answer the call nor did she return the call. She stated she had never spoken to Alan Jackson, David Yannetti, or any other attorney representing Karen in Commonwealth v Read prior to October 12 or since.
74. On December 20, 2023, the Norfolk Grand Jury returned indictments charging Aidan Kearney with nine counts of Intimidation of a Witness, five counts of Illegal Picketing of a Witness, and three counts of Conspiracy to Intimidate a Witness.
75. In December 2023, I communicated and interviewed a witness relative to ongoing conspiracy to intimidate witnesses of the Commonwealth v Read case. I interviewed her at her residence with another investigator. Given widespread media attention and ongoing intimidation of witnesses involved in the case, this witness will be referred to as the pseudonym Jane. The purpose of using a pseudonym in this affidavit is to prevent the public disclosure of her name at this point of the investigation. During the in-person meeting, Jane relayed the following information.
76. Jane stated she met Aidan Kearney in September 2023 after exchanging messages on Facebook Messenger. Jane stated she would communicate with two of Kearney's Facebook profiles: "Clarence Woods Emerson" and "Aidan Kearney". Jane states she then began communicating with him using the phone number 774-33-9017. Kearney and Jane met in person following a Commonwealth v Read court date and went to her apartment. After that meeting, Jane and Kearney began having a romantic relationship with Kearney staying over her apartment Friday nights.



77. In the beginning of their relationship, Kearney stated he was close with Karen Read's family. He would later state to Jane that he speaks with Karen Read every day. Jane showed me a screen shot that Kearney allegedly sent her showing multiple calls on a certain day that showed "Karen Read - Signal audio" in the call log. Kearney told Jane that there was an intermediary between Kearney and Read, a woman by the name of Natalie. Kearney stated Natalie and Read were angry with each other. Kearney stated to Jane that he then began talking to Read directly.
78. Jane stated Kearney and Read communicate using the Signal app because it is encrypted. Jane stated she does not communicate with Kearney using the Signal app. Jane stated Kearney "runs everything by Karen", meaning all of the blog posts and social media content is approved by Read prior to Kearney publishing. Kearney described Read as difficult, controlling, and gets irritated with him. Jane stated Kearney showed her material related to the investigation of the homicide of John O'Keefe, including the 911 call and cruiser video footage before it was "leaked" on social media. [On December 1, 2023, Kearney posted a live YouTube video entitled "Karen Read Case: Jen McCabe 911 Tape Breakdown". The audio is in fact a voicemail recovered by investigators from John O'Keefe's phone that captures Jen McCabe calling 911 from a different phone reporting finding O'Keefe unresponsive. O'Keefe's phone was recovered by first responders on January 29, 2022. It is reasonable to assume only the Commonwealth and Read's attorneys are in possession of the audio file.]
79. Jane described one instance where Read controlled what Kearney would publish. Kearney wanted to release the Canton Police cruiser video footage he had obtained from Read. Kearney asked Read if he could publish the video on his Turtleboy platform. Jane stated Read said no to the request. Kearney was frustrated and contacted one of Read's defense attorneys, Alan Jackson. Jackson approved the release of the video. Read later found out about Kearney going to Jackson and was angry. [During a November 28, 2023 YouTube live video, Kearney discussed the existence of video from cameras affixed to the Canton Police cruisers who responded to the scene, including the names of the officers whose cruisers had video (2 hour 18 minute mark).]
80. Jane stated different sources of financial benefit for Kearney and his partners. Jane stated Kearney is "doing well" with donations. Kearney had alluded to the fact that he did not pay for a Lexus SUV he recently acquired. Kearney made statement similar to "if my frugal mother ever found out I paid for the Lexus, she would be mad" and "even I didn't pay for it, what's wrong with that". [A check of RMV records revealed the Lexus was purchased in the end of June 2023. Further records revealed the vehicle was paid in full using a personal check.]
81. Jane stated she was told by Kearney that Read's attorneys were working with the US Attorney's Office, specifically Acting US Attorney for the District of Massachusetts Josh Levy. Kearney would talk a lot about the federal Grand Jury and Levy with Jane. Jane

stated Karen Read was interviewed by federal law enforcement. Jane also shared other comments Kearney learned from Read that are corroborated by other information known to this affiant.

82. Jane was served with a summons to appear before the Grand Jury on December 22, 2023. Kearney learned Jane was served a summons and they agreed to meet at her apartment on the night of December 23. During this meeting, Kearney told Jane to tell the Grand Jury she did not remember anything, delete evidence from her phone, and told her he would hire her an attorney if she cooperated with him. Kearney later assaulted Jane, which led to Medfield Police charging Kearney with Assault and Battery on Family/Household Member and Witness Intimidation. Kearney was arraigned in Dedham District Court on those charge on December 26.

83. Based upon the foregoing facts, there is probable cause to believe that Karen Read (DOB 2/26/80) committed a violation of Massachusetts General Laws, Chapter 268, Section 13B (Witness Interference: Matthew McCabe, Jennifer McCabe, Brian Albert, Christopher Albert, Colin Albert, Juliana Albert, Juliana Nagel, Michael Proctor, and Elizabeth Proctor) which reads,

*"Whoever willfully, either directly or indirectly: (i) threatens, attempts or causes physical, emotional or economic injury or property damage to; (ii) conveys a gift, offer or promise of anything of value to; or (iii) misleads, intimidates or harasses another person who is a:*

*(A) witness or potential witness;*

*(B) person who is or was aware of information, records, documents or objects that relate to a violation of a criminal law or a violation of conditions of probation, parole, bail or other court order;*

*(C) judge, juror, grand juror, attorney, victim witness advocate, police officer, correction officer, federal agent, investigator, clerk, court officer, court reporter, court interpreter, probation officer or parole officer;*

*(D) person who is or was attending or a person who had made known an intention to attend a proceeding described in this section; or*

*(E) family member of a person described in this section,*

*with the intent to or with reckless disregard for the fact that it may;*

*(1) impede, obstruct, delay, prevent or otherwise interfere with: a criminal investigation at any stage, a grand jury proceeding, a dangerousness hearing, a motion hearing, a trial or other criminal proceeding of any type or a parole hearing, parole violation proceeding or probation violation proceeding; or an administrative hearing or a probate or family court proceeding, juvenile*

*proceeding, housing proceeding, land proceeding, clerk's hearing, court-ordered mediation or any other civil proceeding of any type; or*

*(2) punish, harm or otherwise retaliate against any such person described in this section for such person or such person's family member's participation in any of the proceedings described in this section, shall be punished by imprisonment in the state prison for not more than 10 years or by imprisonment in the house of correction for not more than 2 1/2 years or by a fine of not less than \$1,000 or more than \$5,000 or by both such fine and imprisonment. If the proceeding in which the misconduct is directed at is the investigation or prosecution of a crime punishable by life imprisonment or the parole of a person convicted of a crime punishable by life imprisonment, such person shall be punished by imprisonment in the state prison for not more than 20 years or by imprisonment in the house of corrections for not more than 2 1/2 years or by a fine of not more than \$10,000 or by both such fine and imprisonment."*

84. Based upon the foregoing facts, there is probable cause to believe that Karen Read (DOB 2/26/80) committed a violation of Massachusetts General Laws, Chapter 274, Section 7 (Conspiracy to Commit Intimidation of a Witness) by entering into an agreement with Aidan Kearney by providing information, photography, material relative to her criminal defense, and editorial oversight of blog posts and videos intended to harass, intimidate, and cause emotional harm.
85. The information provided by Natalie Wiweke Bershneider and Jane outlines the close communication between Kearney and Read. The communication has continued after Kearney was arrested and arraigned on charges of intimidation of a witness. Read feeding Kearney information was not only providing her defense theory, as she did with the national news outlets. Read (and her attorneys) and Kearney have publicly mischaracterized their relationship. The information fed to Kearney was later cited by Read's defense counsel in a written motion. Kearney's statements of jury influence and preventing the case from reaching trial are clear motivation Kearney and Read are conspiring to commit witness intimidation. As the Witness Intimidation statute allows, Karen Read has indirectly intimidated and harassed the witnesses named in this affidavit.
86. Evidence of such crimes will be found on mobile electronic devices used by Read to communicate, harass, intimidate, and receive information.
87. On December 23, 2023, I applied for and was granted a Search Warrant out of Norfolk Superior Court (2358SW0013) to seize any cell phone presumably used by Karen Read. Efforts to location Read within the seven days of issuance of the Search Warrant were unsuccessful.

88 On January 9, 2024, I applied for and was granted a Search Warrant out of Norfolk Superior Court (2482SW003) to obtain the real time location information of the cell phone associated with 857-310-0835 and a separate Search Warrant (2482SW002) to seize the device. I served the Search Warrant on Verizon and began receiving location information in the afternoon of January 9. The location information suggested the phone was at the residence of Read in Mansfield. On January 10, I obtained a Search Warrant from Stoughton District Court (2455SW0005) to enter the residence to execute the Search Warrant to seize the cell phone(s). After obtaining the Stoughton DC Search Warrant and traveling to Mansfield to execute the Search Warrant, the phone location began to move north to the Seaport area of Boston. Given the wide radius of the location information, the infrequency of the information (every 15 minutes), and the density of the area, the decision was made to monitor the location information overnight. The following day, January 11, the phone location suggested the phone boarded an airplane at Logan Airport and traveled to Sarasota, FL, where it remained for the duration of the time frame authorized by the Search Warrant.

89 Digital forensics is a branch of forensic science encompassing the recovery, preservation, investigation, examination, and analysis of material found on digital devices. Digital forensic software allows forensic examiners to extract data from digital devices and parse it into a readable format. The majority of software programs do not allow for date/time/content restrictions and require the acquisition and extraction of all data from a digital device. Because of these software limitations, I request permission to seize all data of mobile devices seized.

90 Based upon my training and experience I know from my training and experience that today's cell phones are capable of conducting internet searches, storing large amounts of data, and connecting to external devices via USB (universal serial bus) cable and Bluetooth wireless. Bluetooth is a wireless connection over a short distance that allows the exchange of information. Wireless devices such as a security camera can connect to smart phones via wireless and Bluetooth signals. In addition to making traditional telephone calls, cellphones have the capability of accessing the internet over a cellular data connection which would allow you to communicate, upload, and download files while moving from one location to another.

91 I know that people who commit criminal offenses together often communicate prior to or following that crime. Additionally, those who commit criminal offenses often communicate with their co-conspirators prior to or following the crime. I know that it is common for people to communicate via text messaging, multimedia messaging (MMS), phone calls and emails.

92 I know from my training and experience that commonly used digital devices, including smartphones, are portable devices. These mobile devices can be moved from one Wi-Fi

connection to another with ease in conjunction with a cellular connection with a cellular provider. Often people transport these portable devices from location to location.

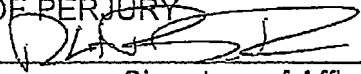
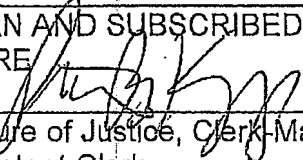
93. I know from training and experience that cell phones used to access the Internet usually contain account names, files, logs, or file remnants which would tend to show ownership and use of the computer as well as ownership and use of internet service accounts used for the internet access. I know from my training and experience that Apple devices that are signed in under the same Apple ID will share information such as internet searches across those devices signed in through Apple's iCloud services. This service allows you to sync and access your data from any of your devices wherever you are.
94. I know from my training and experience that technology has advanced. The mobile cellular telephone is not just a device where one communicates audibly with another individual; but rather it is a computer with telephonic capabilities. An example of this is the Apple iPhone. The Apple iPhone is a line of cell phones that have internet and multimedia functions integrated with them. These devices are designed and marketed by Apple Inc. An Apple iPhone mobile device functions as phone, video camera, camera phone with text messaging and visual voicemail, a portable media player, video conferencing, GPS, digital audio and visual recording capabilities, and internet browser, email client, and Wi-Fi connectivity.
95. I know, based on my training and experience that electronic devices such as smartphones are used to access the internet and a search of the device may reveal log files or file remnants concerning communications, use of the internet service accounts such as X (a.k.a. Twitter), Facebook, and other social media platforms as well as internet access to various websites. I submit that it is reasonable to believe that these devices were accessed to communicate with others before, during and after the commission of the crime.
96. Consequently, there is probable cause to believe that the historical GPS data associated with the cellphone will contain recorded evidence of the physical location of the associated mobile device, whenever the device is moving or stationary. Information and evidence of the associated device and travels should contribute to identifying the locations from which the device departed, the locations, where the associated device traveled to and the time the associated device remained at different coordinates.
97. A thorough inspection of various applications on the cell phone will provide information regarding the care, custody, and control of the phone at a certain date/time. Email and social media log-ins are two examples of such information.
98. I know, based upon my training and experience, as well as consultation with investigators specifically trained in the forensic examination of cellular telephones and other digital/electronic storage devices, that cellular telephones store information. This

information can include, but is not limited to, the telephone number assigned to the phone, a list of recent telephone numbers dialed, a list of telephone numbers for calls received, a list of contacts and information relative to text messages sent and received. I also know that such information can be retrieved by a trained examiner utilizing forensic tools to extract the data from the cellular device. In light of the aforementioned, I know that subscriber information may be obtained from the cellular phone company once the telephone numbers of the cell phone is ascertained. The subscriber information for these cell phone(s) will be material evidence that will aid in positively identifying the known and unknown associates in the commission of this crime. Hence, obtaining access to these cell phones, tablet and laptop computers and the information described above would materially aid the present investigation.

99. Based on all the above, there is probable cause to believe the data held within cellphone(s) used by Karen Read will contain evidence of witness intimidation and conspiracy. That cellphone data has been used as means of committing a crime and is evidence of criminal activity.
100. The evidence for which probable cause exists includes:
- a. Data evidencing ownership, custody or control electronic evidence items including activation date, email accounts, billing records, social media account information, calendars, alerts, reminders, notes, text messages, and pictures or videos from April 1, 2023 through and including date of seizure;
  - b. Data evidencing dissemination of data depicting evidence of Intimidation of a Witness of any witness or family members of a witness involved in murder of John O'Keefe, to include but not limited to Matthew McCabe, Jennifer McCabe, Brian Albert, Christopher Albert, Colin Albert, Juliana Albert, Michael Proctor, and Elizabeth Proctor from April 18, 2023 to date of seizure.
  - c. Data evidencing the on-going conspiracy with Aidan Kearney to Intimidate Witnesses.
101. Karen Read has been charged with criminal offenses since February 2022 and has been represented by attorneys. It is reasonable to assume her electronic devices capable of communication would contain communications with attorney(s) that could be privileged. I respectfully request to only seize such devices. Following the seizure of such devices, no search would commence until such time a taint team or special master protocol is agreed upon by prosecuting attorneys for the Commonwealth and defense counsel.
102. Once a protocol is agreed upon, I will apply for a subsequent Search Warrant to particularize the search. Any reference to searching of devices in this affidavit is mentioned merely to illustrate the purpose to seize such devices.

103. Given request of seizure only, I respectfully request the authority to download and preserve data of any device seized. The download of the data contained on a seized device would ensure the integrity of the data. I know through training and experience users can erase data from a phone remotely. I respectfully request the authority to enter the phone for the sole purpose to place the cellphone in "airplane mode", preventing the device from communicating and receiving an erase command.

104. In the event the device is seized with a passcode, the download of the device would prevent the remote deletion of data. This affiant has access to software that can attempt to bypass passcodes of cellphones. The process of bypassing a cellphone code can take minutes, days, weeks, or months. In the event no passcode is obtained and the phone is locked, I respectfully request the authority to attach seized devices to such software in order to begin the passcode cracking process. In the event the passcode is bypass, I request the authority to download such device.

PRINTED NAME OF AFFIANT	SIGNED UNDER THE PENALTIES OF PERJURY
Detective Lieutenant Brian Tully	
	Signature of Affiant
SWORN AND SUBSCRIBED TO BEFORE	
	1/22/24
Signature of Justice, Clerk-Magistrate or Assistant Clerk	Date

# EXHIBIT C

## APPLICATION FOR SEARCH WARRANT

G.L. c. 276 §§ 1-7

TRIAL COURT OF MASSACHUSETTS



Superior

COURT DEPARTMENT

Norfolk

DIVISION

NAME OF APPLICANT

Brian Tully

POSITION OF APPLICANT

Detective Lieutenant

SEARCH WARRANT DOCKET NUMBER

2482SW0005

I, the undersigned APPLICANT, being duly sworn, depose and say that:

1. I have the following information based upon the attached affidavit(s), consisting of a total of 29 Pages, Which is (are) incorporated herein by reference.

2. Based upon this information, there is PROBABLE CAUSE to believe that the property described below:

- Has been stolen, embezzled, or obtained by false pretenses.
- Is intended for use or has been used as the means of committing a crime.
- Has been concealed to prevent a crime from being discovered.
- is unlawfully possessed or concealed for an unlawful purpose.
- Is evidence of a crime or is evidence of criminal activity.
- Other (specify) \_\_\_\_\_

3. I am seeking the issuance of a warrant to search for the following property (describe the property to be searched for as particular as possible):

See Addendum A

4. Based upon this information, there is also probable cause to believe that the property may be found (check as many as apply):

At (identify the exact location or description of the place(s) to be searched):

Verizon, Attn: VSAT, 180 Washington Valley Road, Bedminster, NJ 07921

Which is occupied by and/or in the possession of: Real Time Location Information for cell phone assigned phone number 857-310-0835

On the person or in the possession of (identify any specific person(s) to be searched):

On any person present who may be found to have such property in his or her possession or under his or her control or to whom such Property may have been delivered.

THEREFORE, I respectfully request that the court issue a Warrant and order of seizure, authorizing the search of the above described place(s) and Person(s), if any, to be searched, and directing that such property or evidence or any part thereof, if found, be seized and brought before the court, Together with such other and further relief that the court may deem proper.

- I  have previously submitted the same application.
- I  have not previously submitted the same application.

PRINTED NAME OF APPLICANT

Brian Tully

SIGNED UNDER THE PENALTIES OF PERJURY

X

Signature of Applicant

SWORN AND SUBSCRIBED TO BEFORE

X

Signature of Justice, Clerk-Magistrate or Assistant Clerk

1/24/24

DATE



## ADDENDUM A

Verizon shall initiate a signal to determine the real time location information of the cell phone associated with 857-310-0835 (E911, pinging, triangulation, ranging data, face or directional azimuth) on the device provider's network, or with such other reference points as may be reasonably available at the request of the Massachusetts State Police for a period of 7 days, beginning with the issuance of this warrant.

In the event Verizon does not have the ability to provide real-time location information, Verizon shall provide the most recent historical location information available and such information provided to the Massachusetts State Police on a continual basis during the 7 day period, beginning with the issuance of this warrant.

# SEARCH WARRANT

G.L. c. 276 §§ 1-7

TRIAL COURT OF MASSACHUSETTS

Superior

COURT DEPARTMENT

Norfolk

DIVISION

SEARCH WARRANT DOCKET NUMBER

24825W0005

TO THE SHERIFFS OF OUR SEVERAL COUNTIES OR THEIR DEPUTIES, ANY STATE POLICE OFFICER, OR ANY CONSTABLE OR POLICE OFFICER OF ANY CITY OR TOWN, WITHIN OUR COMMONWEALTH:

Proof by affidavit, which is hereby incorporated by reference, has been made this day and I find that there is PROBABLE CAUSE to believe that the property described below:

- Has been stolen, embezzled, or obtained by false pretenses.
- Is intended for use or has been used as the means of committing a crime.
- Has been concealed to prevent a crime from being discovered.
- Is unlawfully possessed or concealed for an unlawful purpose.
- Is evidence of a crime or is evidence of criminal activity.
- Other (specify) \_\_\_\_\_

YOU ARE THEREFORE COMMANDED within a reasonable time and in no event later than seven days from the issuance of this search warrant to search for the following property:

See Addendum A

At:

Verizon, Attn: VSAT, 180 Washington Valley Road, Bedminster, NJ 07921

Which is occupied by and/or in the possession of: Real Time Location Information for cell phone assigned phone number 857-310-0835

On the person or in the possession of:

You  are  are not also authorized to conduct the search at any time during the night.

You  are  are not also authorized to enter the premises without announcement.

You  are  are not also commanded to search any person present who may be found to have such property in his or her possession or under his or her control or to whom such property may have been delivered.

YOU ARE FURTHER COMMANDED if you find such property or any part thereof, to bring it, and when appropriate, the persons in whose possession it is found before the

Norfolk

Division of the

Superior

Court Department.

Date Issued

4/22/21

Signature of Justice, Clerk-Magistrate or Assistant Clerk

x

First or Administrative Justice

WITNESS:

Michael Ricciuti

Printed name of Justice, Clerk-Magistrate or Assistant Clerk

Peter B. Knapp, Assoc. Justice

## ADDENDUM A

Verizon shall initiate a signal to determine the real time location information of the cell phone associated with 857-310-0835 (E911, pinging, triangulation, ranging data, face or directional azimuth) on the device provider's network, or with such other reference points as may be reasonably available at the request of the Massachusetts State Police for a period of 7 days, beginning with the issuance of this warrant.

In the event Verizon does not have the ability to provide real-time location information, Verizon shall provide the most recent historical location information available and such information provided to the Massachusetts State Police on a continual basis during the 7 day period, beginning with the issuance of this warrant.

# RETURN OF OFFICER SERVING SEARCH WARRANT

A search warrant must be executed as soon as reasonably possible after its issuance, and in any case may not be validly executed more than 7 days after its issuance. The executing officer must file his or her return with the court named in the warrant within 7 days after the warrant is issued G.L. c.276 §3A.

This search warrant was issued on January 22, 20 24, and I have executed it as follows:  
DATE

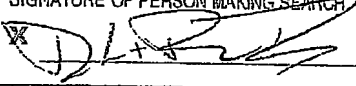
The following is an inventory of the property taken pursuant to this search warrant:

1. Real time locations for cell phone assigned 857-310-0835 from 1/23/24 to 1/25/24
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_ does not have the property in the
6. \_\_\_\_\_ a recent historical
7. \_\_\_\_\_
8. \_\_\_\_\_
9. \_\_\_\_\_
10. \_\_\_\_\_
11. \_\_\_\_\_
12. \_\_\_\_\_
13. \_\_\_\_\_
14. \_\_\_\_\_
15. \_\_\_\_\_
16. \_\_\_\_\_
17. \_\_\_\_\_
18. \_\_\_\_\_
19. \_\_\_\_\_
20. \_\_\_\_\_
21. \_\_\_\_\_
22. \_\_\_\_\_

(attach additional pages as necessary)

This inventory was made in the presence of: Lt. John Fanning

I swear that this is a true and detailed account of all property taken by me on this search warrant

SIGNATURE OF PERSON MAKING SEARCH 	DATE AND TIME OF SEARCH 1/22/24 1458 hrs	SWORN AND SUBSCRIBED TO BEFORE X _____ Signature of Justice, Clerk-Magistrate or Assistant Clerk
PRINTED NAME OF PERSON MAKING SEARCH Brian Tully	TITLE OF PERSON MAKING SEARCH Det. Lieutenant	DATE SWORN AND SUBSCRIBED TO

# EXHIBIT D

111

## COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT  
CRIMINAL ACTION  
22-00117

COMMONWEALTH

vs.

~~KAREN READ~~

**MEMORANDUM OF DECISION AND ORDER ON COMMONWEALTH'S  
MOTION TO PROHIBIT PREJUDICIAL EXTRAJUDICIAL  
STATEMENTS OF COUNSEL IN COMPLIANCE WITH  
MASSACHUSETTS RULES OF PROFESSIONAL CONDUCT 3.6 (a)**

The defendant, Karen Read, is charged with murder in the second degree in violation of G. L. c. 265, § 1, manslaughter while operating under the influence of alcohol in violation of G. L. c. 265, § 13 ½, and leaving the scene of personal injury and death in violation of G. L. c. 90, § 24(2)(a½)(2). The case has generated significant media attention locally and nationally, leading to the present motion. The Commonwealth seeks an order that will prohibit counsel for each party from making extrajudicial statements to the media that would have a substantial likelihood of materially prejudicing the criminal proceedings against the defendant. After hearing and careful review of the parties' briefing, the motion is **DENIED** without prejudice for the following reasons.

### **DISCUSSION**

Unquestionably, there is a substantial government interest in "protect[ing] the integrity and fairness of a State's judicial system...." *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1074 (1991). However, "[t]he regulation of attorneys' speech is limited—it applies only to speech that is substantially likely to have a materially prejudicial effect." *Id.* at 1076.

Consistent with these principles, the Massachusetts Rules of Professional Conduct, provide standards for attorneys with respect to extrajudicial statements. See S.J.C. Rule 3:07, Mass. Rules of Prof. Conduct 3.6. In relevant part, Rule 3.6 states:

- (a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.
- (b) Notwithstanding paragraph (a), a lawyer may state:
  - (1) the claim, offense, or defense involved, and, except when prohibited by law, the identity of the persons involved;
  - (2) the information contained in a public record;
  - (3) that an investigation of the matter is in progress;
  - (4) the scheduling or result of any step in litigation;
  - (5) a request for assistance in obtaining evidence and information necessary thereto;
  - (6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and
  - (7) in a criminal case, in addition to subparagraphs (1) through (6):(i) the identity, residence, occupation, and family status of the accused; (ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person; (iii) the fact, time, and place of arrest; and (iv) the identity of investigating and arresting officers or agencies and the length of the investigation.
- (c) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

The Commonwealth argues that defense counsel has made statements to the media that have a substantial likelihood of materially prejudicing the proceedings and that therefore a court order is necessary to ensure compliance with Rule 3.6 (a). The Court disagrees.

Although it is true that the statements by defendant's counsel cited by the Commonwealth are arguably inflammatory and appear to have fueled much of the publicity in this case, the Court does not find, at this time, that there is a substantial likelihood that the statements will materially prejudice the proceedings.<sup>1</sup> See S.J.C. Rule 3:07, Mass. Rules of Prof. Conduct 3.6 (a). See also *Commonwealth v. Toolan*, 460 Mass. 452, 463 (2011), quoting *Skilling v. United States*, 561 U.S. 358, 384 (2010) (“[P]retrial publicity—even pervasive, adverse publicity—does not inevitably lead to an unfair trial.”). The statements at issue can generally be characterized as responses to the accusations against the defendant and as pertaining to the theory of her defense. They are therefore permitted under the rules. See S.J.C. Rule 3:07, Mass. Rules of Prof. Conduct 3.6 (b) and (c). Further, the likelihood that they could cause any material prejudice is minimized by the fact that no trial date has been scheduled. See Restatement (Third) of the Law Governing Lawyers § 109 (2000) (“a statement made long before a jury is to be selected presents less risk than the same statement made in the heat of intense media publicity about an imminent or ongoing proceeding”). See also *Commonwealth v. McCowen*, 458 Mass. 461, 476 (2010) (risk from “substantial pretrial publicity” obviated by individual voir dire). Accordingly, the Court sees no need for an order at this time.

In so ruling, two points bear emphasis. First, although styled as a request for attorneys on this case to comply with Rule 3.6 (a), the Commonwealth's proposed order goes beyond Rule 3.6. To obtain such an order the Commonwealth must demonstrate that the Rules of Professional

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<sup>1</sup> The Commonwealth's motion also refers to statements made by the defendant's counsel in court as well in court filings. Such statements are not extrajudicial and therefore not properly considered on this motion.

Conduct alone are not sufficient to ensure counsel does not make materially prejudicial statements. See *Care and Protection of Edith*, 421 Mass. 703, 705 (1996) (“any order seeking to enjoin speech must be based on detailed findings of fact that (a) identify a compelling interest that the restraint will serve and (b) *demonstrate that no reasonable, less restrictive alternative to the order is available*”) (emphasis added). The Commonwealth has failed to meet this burden.

All counsel appear to acknowledge in their arguments that they are bound by the Rules of Professional Conduct and therefore subject to the sanctions in place for violating them.<sup>2</sup> See S.J.C. Rule 4:01.

Second, the Court notes that defense counsel’s statements to the media have at times arguably crossed the line of permissibility under Rule 3.6. Even accepting defense counsel’s assertions that such statements have been made only to protect their client from undue prejudice resulting from the publicity initiated by others, under Rule 3.6 (c), a response statement “shall be limited to such information as is necessary to mitigate the recent adverse publicity.” Statements to the media about the investigation of the defendant by representatives from law enforcement, the Norfolk District Attorney’s Office, or others cited by the defendant do not give defense counsel carte blanche to speak with the media. In particular, counsel must be cognizant that statements commenting on the “character, credibility [or] reputation” of a witness or conveying information which counsel “knows or reasonably should know is likely to be inadmissible as

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<sup>2</sup> The Court is not persuaded by the Commonwealth’s argument that this case is similar to *Commonwealth v. Hernandez* where this Court (Garsh, J) issued an order restricting statements to the media. See *Commonwealth v. Hernandez*, BRCR2013-00983, slip op. at 21-25 (Mass. Super. Feb. 10, 2014) (Garsh, J.). The decision to issue the order in *Hernandez* came after the parties were warned about compliance with the rules and an article was published wherein a law enforcement official provided information to the media about a grand jury subpoena. Noting that the adverse publicity had the potential to endanger *the defendant’s* ability to receive a fair trial and that the Rules of Professional Conduct provide for “Special Responsibilities of a Prosecutor” with respect to extrajudicial statements, the Court allowed in part the defendant’s request prohibiting extrajudicial statements by the Commonwealth and its agents. Here, the Commonwealth is seeking to prohibit statements by the defendant’s attorneys and therefore the analysis in that case is largely inapplicable.

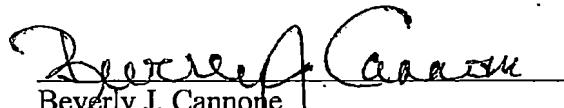


evidence in trial” are “more likely than not to have a material prejudicial effect on the proceeding.” Rule 3.6, Comment [5]. See also *Gentile*, 501 U.S. at 1074 (“Because lawyers have special access to information through discovery and client communications, their extrajudicial statements pose a threat to the fairness of a pending proceeding since lawyers’ statements are likely to be received as especially authoritative.”). Going forward, defense counsel should ensure that their statements are limited in conformity with the rules and neither counsel appear to a party should interpret this decision as precluding a future court order limiting counsel’s Professional Conduct statements.

**ORDER**

For the reasons stated above, it is hereby **ORDERED** that the Commonwealth’s Motion to Prohibit Extrajudicial Statements of Counsel in Compliance with Massachusetts Rules of Professional Conduct 3.6 (a) is **DENIED** without prejudice.

Date: July 31, 2023

  
Beverly J. Cannone  
Justice of the Superior Court

# EXHIBIT E

## COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT  
NORFOLK SUPERIOR COURT  
DOCKET NO. 2282CR0117

### COMMONWEALTH

KAREN READ

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#### COMMONWEALTH'S MOTION TO PROHIBIT PREJUDICIAL EXTRAJUDICIAL STATEMENTS OF COUNSEL IN COMPLIANCE WITH MASSACHUSETTS RULES OF PROFESSIONAL CONDUCT 3.6 (a)

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Now comes the Commonwealth and respectfully moves this Honorable Court issue an order prohibiting all counsels of record: Attorney David Yannetti; Attorney Ian Henchy; Attorney Alan Jackson; and Attorney Elizabeth Little from making extrajudicial statements to the media that could be seen as prejudicial to the criminal proceedings. The Commonwealth and its law enforcement witnesses agree to be bound by the same order, guided by Massachusetts Rules of Professional Conduct 3.6 (a) as well as Massachusetts Rules of Professional Conduct Rule 3.8 (special responsibility of prosecutor).

The conduct of attorneys in Massachusetts is governed by the Massachusetts Rules of Professional Conduct found in Supreme Judicial Court Rule 3:07. Under Massachusetts Rules of Professional Conduct 3.6 (a), “[a] lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be

disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.” (Emphasis added)

(Exhibit A).<sup>1</sup>

Under Rule 3.6 (a) extrajudicial statements regarding “the character, credibility, reputation, or . . . identity of a witness”; “opinion[s] as to the guilt or innocence of a defendant”; the performance or results of forensic testing; and “information that the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and that would, if disclosed, create a substantial risk of prejudicing an impartial trial” are subjects likely to have a material and prejudicial effect on a criminal proceeding. See Comment 5 of Editor’s Notes to Rules of Professional Conduct 3.6; Comment 6 of Editor’s Notes to Rules of Professional Conduct 3.6 (“Criminal jury trials will be most sensitive to extrajudicial speech.”); see also Rules of Professional Conduct 8.4 (d) (engaging in conduct that is prejudicial to the administration of justice).

As stated by the United States Supreme Court, “[l]awyers representing clients in pending cases are key participants in the criminal justice system, and the State may demand some adherence to the precepts of that system in regulating their speech as well as their conduct.” Gentile v. State Bar of Nevada, 501 U.S. 1030, 1074-1075 (1991) (attorneys are subject to ethical restrictions on speech that an ordinary citizen would not be; proof of a “substantial likelihood of material prejudice” satisfies the First Amendment.) Restraints on extrajudicial statements are warranted to protect the integrity

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<sup>1</sup> “The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the Rules are imperatives, cast in the terms “shall” or “shall not.” These define proper conduct for purposes of professional discipline.” Massachusetts Rules of Professional Conduct Preamble and Scope: A Lawyer’s Responsibilities at p. 14.

and fairness of the judicial system and to insure that the outcome of a criminal trial be decided by impartial jurors, based solely on the evidence admitted at trial. See In re Cobb, 445 Mass. 452, 472–473 (2005).

It has long been recognized that adverse publicity has the potential to endanger a defendant's ability to receive a fair trial. Gannet Co. v. DePasquale, 443 U.S. 368, 378 (1979). A trial judge has an affirmative constitutional duty to minimize the effects of prejudicial pretrial publicity in order to safeguard the due process rights of the accused and the integrity of the judicial system as a whole. Id.; Sheppard v. Maxwell, 384 U.S. 333, 362-363 (1966). Our criminal justice system is premised on the principle that the outcome of a criminal trial must be decided by impartial jurors based only on evidence that is admitted at trial. An outcome affected by extrajudicial statements would violate and eviscerate that basic tenet. Gentile, 501 U.S. at 1070; United States v. Flemmi, 233 F. Supp. 2d 75, 79 (D. Mass. 2000) (improper disclosures by law enforcement or attorneys threaten the integrity of judicial proceedings). Thus, restraints on extrajudicial statements by counsel may be warranted in a particular case to protect the integrity and fairness of the judicial system. Gentile v., 501 U.S. at 1075; Sheppard, 384 U.S. at 361.

Notably, “[l]egal trials are not like elections, to be won through the use of the meeting-hall, the radio, and the newspaper.” Bridges v. California, 314 U.S. 252, 27 (1941). For the judicial system to operate fairly and impartially, attorneys must conduct themselves in conformity with their legal and ethical requirements. In re Cobb, 445 Mass. at 472–473. Defense counsel may “represent their client zealously within the bounds of the law” but they are “to treat all persons involved in the legal process with consideration, and to uphold the integrity and honor of the legal profession.” See Commonwealth v.

Michel, 381 Mass. 447, 456 (1980) (internal citations omitted); see also Gentile, 501 U.S. at 1075 (because attorneys have special access to information through discovery, their statements are especially authoritative and likely to be considered knowledgeable, reliable, and true by the general public).

As part of their “trial by media” strategy, the defendant has sought to target the witnesses’ credibility and character through the use of the media and has encouraged the public unwarranted invasion of witnesses’ personal privacy. Contrary with their obligations under Massachusetts Rule of Criminal Procedure 32(f), which necessitates the protection of personal identifying information in publically accessible court documents, and Supreme Judicial Court Rule 1:24, defense counsel failed to redact personal identifying information in their filings and strategically filed motions containing various witnesses’ personal identifying information: names, dates of birth, social security information, addresses, and phone numbers. The statutory purpose of Massachusetts Rule 32(f) and Supreme Judicial Court Rule 1:24 is to “prevent the unnecessary inclusion of certain personal identifying information ... in order to reduce the possibility of using such documents for identity theft, the unwarranted invasion of privacy, or other improper purposes.” See S. J. C. Rule 1:24, § 1.

Additionally, defense counsel filed records that identified a juvenile by name and published numerous autopsy photographs of the victim to the media. Commonwealth v. Bastarache, 382 Mass. 86, 106 (1980) (admissibility of autopsy photographs is left to discretion of trial judge); see also Globe Newspaper Co. v. Chief Med. Examiner, 404 Mass. 132, 136 (1989) (autopsy reports are “medical files or information” exempt from public disclosure).

Defense counsel has failed to sustain its burden of proving their noncompliance with S. J. C. Rule 1:24 and Massachusetts Rule of Criminal Procedure 32(f) was inadvertent. Rather, from the courthouse stairs, following this court's corrective ruling to impound the witness's identifying information, defense counsel directly encouraged media outlets to continue to contact witnesses and ask them inflammatory questions, in step with the defendant's theory of the case. See "Karen Read Post-Court Press Conference at Norfolk County Superior Court 5:3:2023" available at <https://youtu.be/rOGm4devM0U?t=446> (beginning at 7:25). In response to defense counsels' call to action, witnesses have suffered unwarranted invasion of privacy as they have been receiving repeated and harassing phone calls, family members of witnesses have been contacted and harassed, and the victim's family has suffered emotional harm due to the public dissemination of autopsy photographs. See S. J. C. Rule 1:24, §1. As such, this court may consider imposing an order to ensure future compliance with S. J. C. Rule 1:24 and Massachusetts Rule of Criminal Procedure 32(f). See Massachusetts Rules of Criminal Procedure 48 (this court may subject counsel to "such sanctions as the Court may deem appropriate, including citation for contempt or the imposition of costs or fine.")

Following a court hearing on May 24, 2023, again declared from the courthouse stairs, defense counsel took the opportunity to create a substantial likelihood of materially prejudicing the proceedings by attacking both the Commonwealth and its' witnesses. Defense counsel's inflammatory and prejudicial extrajudicial statements alleged that the Commonwealth was "incompetent" and "complicit" in the defendant's self-serving and unfounded proclamation that there is a cover-up of evidence and went as far as describing

the Commonwealth as hiding evidence and “constantly trying to have their foot on Karen Read’s throat”. See <https://www.youtube.com/watch?v=2NwB4BUZrLI>.

The Commonwealth has provided the defendant with a substantial amount of discovery, including the May 22, 2023 findings of the Collision Analysis and Reconstruction Section of the Massachusetts State Police. Consistent with the evidence that was submitted to the Grand Jury, the final collision reconstruction report establishes that the defendant, while intoxicated, in a snowstorm, operated her motor vehicle in reverse for a period of time, before striking the victim at a high rate of speed. Contrary to this compelling and corroborated evidence, the defense strategy has been to identify witnesses and criticized their character, credibility, and reputation in the media, by arguing that all witnesses are involved in an alleged “cover-up” of evidence. Defense counsel Alan Jackson stated: “certainly the Massachusetts State Police is involved. There are people that were in that house that are involved. Brian Albert is involved. Jennifer McCabe is involved. The rest of the folks that were in that house, there's some level of involvement by every one of them. Every single one of them.” See “Karen Read denies killing Boston police officer John O’Keefe, says ‘we know who did it’” (May 24, 2023) (Exhibit B); video available at: <https://www.cbsnews.com/boston/news/karen-read-case-john-okeefe-boston-police-officer-canton-murder/>; Boston Globe, “Karen Read speaks publicly for first time; judge rejects bid by her lawyers to question two witnesses in death of police officer” (May 24, 2023) (Exhibit C).

Counsel’s prejudicial extrajudicial statements were widely reported on local and national media outlets. These statements go further than zealous representation; they are unsubstantiated proclamations, supported only by self-serving speculation and

conjuncture, likely not to be admissible at trial and done with the intent of materially prejudicing the criminal proceedings by risking the impartiality of potential jurors. Such action and intent is expressly prohibited by the Massachusetts Rules of Professional Conduct. See Rules of Professional Conduct 3.6(a), 8.4 (d). The defendant is entitled to raise a third-party culprit defense; however, counsel is prohibited from making repeated extrajudicial statements that they know, or reasonably should know, have a substantial likelihood of materially prejudicing potential trial jurors or witnesses.

Furthermore, during the May 3, 2023 hearing, defense counsel first reported, in open court, during a live television broadcast, that: “federal authorities have now gotten involved in the circumstances surrounding this case and have impaneled a grand jury, a federal grand jury, to investigate some of these circumstances.” See Karen Read, accused of killing boyfriend in Canton, in court for hearing” available at: <https://www.youtube.com/watch?v=OQFsYsPocdk> (beginning at 25:08); see also “Karen Read defense: Problematic investigation into John O’Keefe’s death grabs federal attention” Boston Herald, May 4, 2023 (Exhibit D). As found by the Honorable E. Susan Garsh (Ret.) under similar circumstances in Bristol Superior Court: “given the historical importance of grand jury secrecy, the possible release of extrajudicial statements concerning what might be an ongoing grand jury investigation warrants action by this Court [through an order prohibiting counsel from making extrajudicial statements] to protect not only the fairness of the trial process but also the integrity of the grand jury process.” See Commonwealth v. Aaron Hernandez, “Memorandum of Decision and Order on Defendant’s Renewed Motion for Order Prohibiting Prejudicial Extrajudicial Statements of Their Counsel and Their Agents” (E. Susan Grash, J.) (February 10, 2014) (Exhibit E), affirmed by



Commonwealth v. Aaron Hernandez, SJ-2014-0095 (Exhibit F); see also United States v. Bulger, 2013 WL 3338749 at \*4-7 (D. Mass.) (Casper, J.) (Unprecedented public interest and media coverage warranted court order requiring counsel to comply with order restricting extrajudicial statements).

This case has received national attention, including coverage on traditional new media as well as on blogs, tik-tok, and other social media platforms. The majority of the coverage is directly indorsed by the defendant. See “Karen Read Post-Court Press Conference at Norfolk County Superior Court 5.3.2023” available at <https://youtu.be/rOGm4devM0U?t=446> (beginning at 7:20 Attorney Jackson encourages media blogger to continue attacking witnesses).

A trial judge has an affirmative constitutional duty to minimize the effects of prejudicial pretrial publicity in order safeguard the due process rights of the accused and the integrity of the judicial system as a whole. See Gannett Co. v. DePasquale, 443 U.S. 368, 378 (1979). Notably, the danger of publicity concerning pretrial hearings is “particularly acute, because it may be difficult to measure with any degree of certainty the effects of such publicity on the fairness of the trial” and unrestrained extrajudicial statements “could influence public opinion and inform potential jurors of information that is factually incorrect or wholly inadmissible at trial.” Id.

## CONCLUSION

Whereas a failure to restrain prejudicial extrajudicial statements will have a substantial likelihood of material prejudicing the criminal proceedings, the Commonwealth respectfully moves for a narrowly drawn, restriction on counsels' extrajudicial statements in conformity with their professional and ethical obligations under Massachusetts Rules of Professional Conduct 3.6(a). The Commonwealth and its law enforcement witnesses agree to be bound by the same restrictions as well as those imposed by the Rules of Professional Conduct Rule 3.8, special responsibility of prosecutor.<sup>2</sup> Notably, the Commonwealth's request for this order applies only to the Commonwealth, its attorneys and law enforcement witnesses, and defense counsels.

Undoubtedly, "free and robust reporting, criticism, and debate can contribute to public understanding of the rule of law and to comprehension of the functioning of the entire criminal justice system, as well as improve the quality of that system by subjecting it to the cleansing effects of exposure and public accountability." Nebraska Press Ass'n v Stuart, 427 U.S.A. 539, 559-60 (1976). Therefore, the Commonwealth's proposed order does not impinge upon free and robust reporting; as it does not seek to restrain the media or public access to any courtroom proceeding or publically available document. See Commonwealth v. Aaron Hernandez, SJ-2014-0095 at p. 8 (Exhibit F) (order prohibiting

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<sup>2</sup> Under Massachusetts Rules of Professional Conduct 3.8 (f)(1)-(2) the Commonwealth agrees to "refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6" and to "take reasonable steps to prevent investigators and law enforcement personnel" from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6.

prejudicial extrajudicial statements by counsel does not impinge on free and robust reporting).

The Commonwealth does not seek restraint against Ms. Karen Read herself; potential non-law enforcement trial witnesses; nor does it seek attorney discipline for violations of the rules of professional conduct. The Commonwealth's proposed order seeks only mutual attorney compliance with the Massachusetts Rules of Professional Conduct.

In support of its motion, the Commonwealth proposes the following order:

- 1) No attorney appearing in this case or any person with supervisory authority over them shall release or authorize the release of information about this proceeding that a reasonable person would expect to be disseminated by any means of public communication if the attorney knows or reasonably should know that it will have a substantial likelihood of materially prejudicing potential trial jurors or witnesses or will have a substantial likelihood of heightening public condemnation of the accused or law enforcement.
- 2) No attorney appearing in this case shall make or release or authorize the release of any extrajudicial statement that a reasonable person would expect to be disseminated by any means of public communication concerning any of the following subject matters related to this case:
  - a. the or the expected testimony of a party or prospective witness;
  - b. the existence or contents of any statements made by the defendant to any law enforcement personnel or the refusal or failure of the defendant to make a statement;

- c. the results of any forensic testing;
  - d. the substance of any evidence a party anticipates seeking to introduce at trial;
  - e. information that an attorney knows or reasonably should know is likely to be inadmissible as evidence in a trial and that if disclosed would create a substantial risk of prejudicing an impartial trial;
  - f. the existence and subject matter of any ongoing grand jury or other criminal investigation of the defendant or of any prospective witnesses.
- 3) This Order shall not be construed to prevent any of the attorneys appearing in this case from:
- a. Arguing forcefully, impassioned, or zealously during courtroom proceedings nor a restraint on the defendant's Constitutional rights to defend herself and present a third-party culprit defense.
  - b. Quoting or referring without further comment to public court filings;
  - c. Announcing the scheduling or result of any step in the judicial process;
  - d. Stating an expectation or hope, without further explanation or elaboration about the ultimate outcome of the proceedings.
- 4) The duty to refrain from prejudicial disclosures requires all attorneys in this case to prevent the release of any photographs, reports, or documents that are not in the public record and all attorneys shall take diligent efforts to insure compliance with Massachusetts Rule of Criminal Procedure 32(f) and Supreme Judicial Court Rule 1:24 to prevent the unnecessary inclusion of certain personal identifying information in publically accessible court documents.

5) If either the Commonwealth or defendant has a claim that this order was violated, they shall first file notice with the Norfolk Superior Court and this court may conduct a hearing. Failure to abide by the Rules of Professional Conduct may subject counsel to disciplinary actions, ranging from admonition or disbarment and if egregious, this court may consider disqualifying counsel or revoking pro hac vice admission to the Massachusetts bar. See S.J.C. Rule 4:01, § 4; PCG Trading, LLC v. Seyfarth Shaw LLP, 460 Mass. 265, 269 & n. 6 (2011).

Respectfully Submitted  
For the Commonwealth,

MICHAEL W. MORRISSEY  
DISTRICT ATTORNEY

By:

Date: June 6, 2023

Adam C. Lally  
Assistant District Attorney

/s/ *Laura A. McLaughlin*  
Laura A. McLaughlin  
Assistant District Attorney

## EXHIBIT F

NEWS > CRIME & PUBLIC SAFETY

# Karen Read defense: Problematic investigation into John O'Keefe's death grabs federal attention



Nancy Lane/Boston Herald

Karen Read, charged with the murder of her boyfriend Boston Police Officer John O'Keefe, talks with her attorneys Alan Jackson and David Yannetti as she attends a hearing in Norfolk Superior Court on Wednesday. (Nancy Lane/Boston Herald)

Among the many fireworks at the most recent hearing in the case of Karen Read, charged with killing her boyfriend John O'Keefe last year, is the defense's claim that the investigation is so troubled that the federal government has opened up a case to look into it.

"It's been reported that federal authorities have now gotten involved in the circumstances surrounding this case and have impaneled a grand jury, federal grand jury, to investigate some of these circumstances," defense attorney Alan Jackson said in Norfolk Superior Court Wednesday afternoon.

The case has brought about significant public attention — from both sides — which filled the second-floor courtroom in Dedham to standing room only.

The first set are those who believe Read has been made a “scapegoat,” in the words of defense attorney David Yannetti, by a prosecutor who “has hid evidence, manipulated evidence, stalled, delayed, obfuscated.” Many of these people yelled out their support on the courthouse steps as Read walked down with her lawyers and family members at her side.

The other side are those who, as prosecutor Adam Lally argues, believe the entire defense theory is a “fanciful” conspiracy and that their discovery requests are “the epitome of a fishing expedition” and that Read is guilty. Many of these sported Boston Police Department-branded clothing and “Justice for JJ” — JJ being O’Keefe’s initials — pins.

Following the hearing, the Herald reported largely on evidence the defense is requesting regarding O’Keefe’s wounds — which the defense has long argued could not have been caused by Read backing into him with her SUV during a 3-point.

In particular, they wanted animal control records for Chloe, the German Shepherd owned by Boston Police Sgt. Det. Brian Albert, who owned the home at 34 Fairview Road where O’Keefe was killed, as well as trace evidence that could put the dog as a member of the attack they say killed O’Keefe.

But that’s not all they wanted. The defense painted a picture of a discovery process they say has been anything but helpful or transparent, with Yannetti calling the commonwealth’s discovery work “outrageous” in comments to media following the hearing.

“For 15 months, this has been a quest for the truth conducted by one party, in this case, the defense,” he said. “We have made substantial progress in this case to the point where anybody familiar with this case knows that Karen Reed is innocent.”

That evidence is needed, they say, to prove their version of events: which is that O’Keefe was beaten to death in the home — they say Apple Health data indicates he was walking around in the house — and then his body was dragged to the front yard where by the next morning local responders found it “cold to the touch,” according to prosecutor filings.

But they also are requesting evidence to damage the prosecution’s version of events. The prosecution contends that the couple were out drinking in downtown Canton, where O’Keefe lives, when they met up with acquaintances at Waterfall Bar and Grill and were then invited to Albert’s house.

The prosecution contends that nobody at the gathering saw O’Keefe come in and that Read struck O’Keefe with her vehicle, leaving him to die in the cold and snow, and that a busted passenger-side tail light — and possibly a hair matter sample from the passenger rear door that had not been tested by the Wednesday hearing — points to this version of events.

But the defense argues that Read’s tail light was not busted when she dropped O’Keefe off — she didn’t stay, they say, because she has many health issues and was not feeling well — and that if they had unedited footage from the Canton Public Library security cameras they would be able to prove this.

Yannetti said that the footage they received from the library has a crucial two-minute gap from 12:37 to 12:39 a.m., a time when they say their client would have been driving past on her way back to O’Keefe’s home on Meadows Avenue.

Prosecutor Lally said “I would have a large issue with that” on the defense’s contention that all the evidence points to Read’s innocence. As for the defense not receiving evidence, he said that he has personally reached out to expedite testing and release and that the video they received from the library is the same video he received.

But defense attorneys are not just targeting Lally’s prosecution, but police investigators and in particular State police Trooper Michael Proctor, who they repeatedly characterize as “conflicted” and say has familial connections with those present in the home. More specifically, connections with homeowner Brian Albert and Jennifer McCabe, Albert’s sister-in-law, who they say searched for “ho[w] long to die in cold” hours before O’Keefe’s body was found.

The president of State Police Association of Massachusetts, the union for troopers, came out to throw his support behind Proctor and the investigation.

“This case is actively going on. Our homicide detectives here in Massachusetts are arguably the best in the country. Our solve rate is indicative of that,” SPAM President Patrick McNamara said outside the courthouse Wednesday. “The association supports our members across the commonwealth and the facts of this case will speak for itself.”

# EXHIBIT G

## COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT  
NO. 2282-CR-0117

COMMONWEALTH OF  
MASSACHUSETTS,  
Plaintiff

V.

KAREN READ,  
Defendant

**DEFENDANT KAREN READ'S OPPOSITION TO  
COMMONWEALTH'S "MOTION TO PROHIBIT  
PREJUDICIAL EXTRAJUDICIAL STATEMENTS OF  
COUNSEL IN COMPLIANCE WITH  
MASSACHUSETTS RULES OF PROFESSIONAL CONDUCT 3.6(a)"**

Now comes the defendant, Karen Read ("Ms. Read"), and respectfully moves this Honorable Court to deny the Commonwealth's "Motion to Prohibit Prejudicial Extrajudicial Statements of Counsel in Compliance with Massachusetts Rules of Professional Conduct 3.6(a)."

As grounds therefore, Ms. Read states that her counsel are allowed to make statements that reasonable attorneys would believe are required to protect her from undue prejudice resulting from publicity not initiated by her pursuant to Mass. R. Prof. C. 3.6(c). Further, the government's proposed order would impinge upon defense counsels' First Amendment rights to a degree that is not outweighed by any substantial governmental interest unrelated to the suppression of their statements. *See* U.S. Const. Amend. 1; M.G.L.A. Const. Pt. 1, Art. 16.

**FACTUAL BACKGROUND**

Upon Ms. Read's first arrest in this matter, Boston Police Superintendent-in-Chief Gregory Long ("Superintendent-in-Chief Long") released the following statement: "The Boston Police Department continues to grieve over the tragic loss of our brother Police Officer John O'Keefe. John was a kind person, dedicated to his family, and will be greatly missed by his coworkers and anyone who had the privilege of meeting him. **Today, the Massachusetts State Police and the Norfolk County District Attorney's Office arrested the person responsible for John's**



death.”<sup>1</sup> (Emphasis added) At the very outset of this matter, Superintendent-in-Chief Long — an agent of the Commonwealth — publicly released a statement intended to prejudice Ms. Read’s defense, announcing her guilt before a shred of evidence had been presented or a trial had been conducted. No presumption of innocence was afforded to her by the government, and yet, the Commonwealth issued a public statement to community characterizing her as a killer.

Superintendent-in-Chief Long’s statement was widely disseminated by media outlets.<sup>2</sup> That inherently prejudicial statement was released on both the official Facebook account and official Twitter account of the Boston Police Department, in addition to being posted to the official website of the Boston Police Department.<sup>3</sup>

Following a press release from the Norfolk County District Attorney’s Office, indicating that Ms. Read would be arraigned in Stoughton District Court on February 2, 2022,<sup>4</sup> and following her arraignment, Superintendent-in-Chief Long took the opportunity to speak with members of the press, in full uniform, lamenting the loss of an officer, “especially under circumstances like this,”<sup>5</sup> referring to Karen Read. As of the date of this filing, a video posted by CBS Boston on YouTube, which includes Superintendent-in-Chief Long’s statement, has 83,000 views.

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<sup>1</sup> See BPD News, The Official Website of the Boston Police Department, “Message from Superintendent-in-Chief Gregory Long Regarding Arrest Made in Connection to the Death of Officer John O’Keefe”, dated February 1, 2022. <https://bpdnews.com/news/2022/2/1/message-from-superintendent-in-chief-gregory-long-regarding-the-arrest-made-in-connection-to-the-death-of-police-officer-john-okeefe>

<sup>2</sup> See e.g. ABC News 6, “Mansfield woman posts \$50k cash bail in death of boyfriend, Boston Officer”, February 2, 2022. <https://www.abc6.com/mansfield-woman-held-on-50k-cash-bail-in-death-of-boston-officer/>; 7 News Boston, “DA: Woman arrested in connection with death of Boston police officer found outside Canton home”, February 1, 2022. <https://whdh.com/news/da-woman-arrested-in-connection-with-death-of-boston-police-officer-found-outside-canton-home/>; NBC Boston, “Woman Charged With Manslaughter in Death of Boston Police Officer in Canton”, February 1, 2022. <https://www.nbcboston.com/news/local/woman-charged-with-manslaughter-in-death-of-boston-police-officer-in-canton/2631849/>

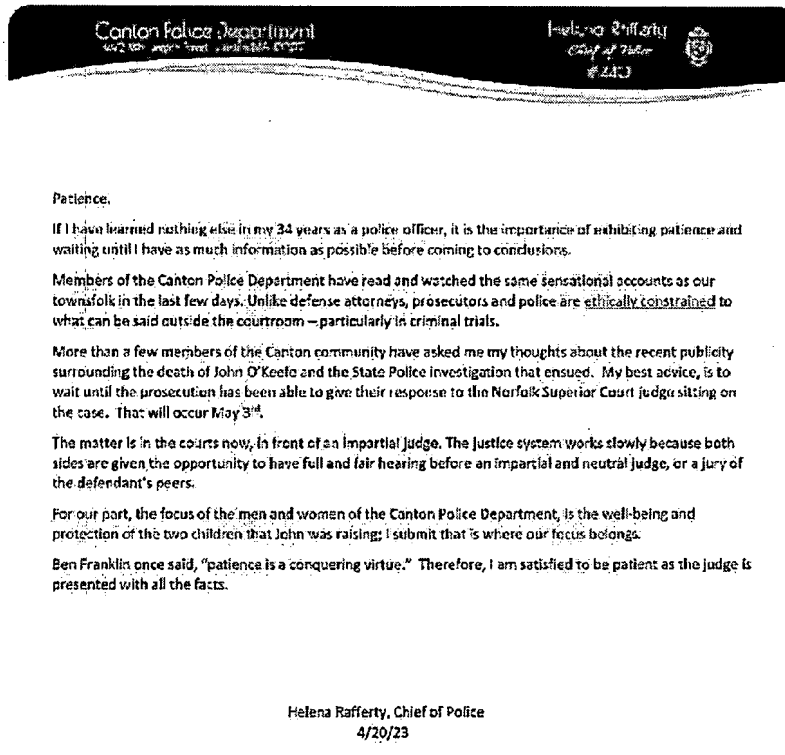
<sup>3</sup> Boston Police Department (Official), Facebook.com, February 1, 2022: <https://www.facebook.com/BostonPoliceDepartment/posts/message-from-superintendent-in-chief-gregory-long-regarding-arrest-made-in-conne/309137591252340/>. Boston Police Dept., Twitter.com, February 1, 2022: <https://twitter.com/bostonpolice/status/1488701635912253440>

<sup>4</sup> Norfolk County District Attorney’s Office, “Mansfield woman arrested for Manslaughter”, February 1, 2022: [https://www.nfkda.com/Press\\_Releases/02-01-22%20Read%20arrested%20in%20Okeefe%20manslaughter.pdf](https://www.nfkda.com/Press_Releases/02-01-22%20Read%20arrested%20in%20Okeefe%20manslaughter.pdf)

<sup>5</sup> CBS Boston, “Karen Read Free On \$50,000 Bail In Death of Boyfriend Boston Police Officer John O Keefe”, February 2, 2022: <https://www.youtube.com/watch?v=4wqodhmfCd0>

Following Ms. Read's indictment by a Grand Jury in Norfolk County, the Norfolk County District Attorney's Office issued yet another press release naming Karen Read as the sole suspect in the death of John O'Keefe.<sup>6</sup>

More recently, following revelations that Jennifer McCabe ("Ms. McCabe") ran a Google search for "ho[w] long to die in cold" at 2:27 a.m. on January 29, 2022 — hours before Officer John O'Keefe's hypothermic body was discovered in the snow on her brother-in-law Brian Albert's 34 Fairview Road residence — both Ms. McCabe's attorney Kevin Reddington and Canton Police Chief Helena Rafferty ("Chief Rafferty") commented publicly. On April 20, 2023, Chief Rafferty posted the following message on the Canton Police Department's Facebook and Twitter pages in which she publicly contended that facts presented by the defense were "sensational accounts," and that Ms. Read's defense attorneys were unconstrained.<sup>7</sup>



<sup>6</sup> Norfolk County District Attorney's Office, "Murder indictment in January death", D. Traub, June 9, 2022: [http://www.nfkda.com/Press\\_Releases/06-09-22%20Murder%20Indictment%20and%20Arrest%20in%20January%20Death.pdf](http://www.nfkda.com/Press_Releases/06-09-22%20Murder%20Indictment%20and%20Arrest%20in%20January%20Death.pdf)

<sup>7</sup> Canton Police, Twitter.com, April 20, 2023: <https://twitter.com/CantonMAPolice/status/1649234367569436675>

Attorney Kevin Reddington, meanwhile, spoke with members of the press on April 24, 2023. In his statement to the Boston Herald, Attorney Reddington stated, in part, “My client, Jennifer McCabe, has been vilified in pleadings. [The defense attorneys] are spinning it . . . It’s going nowhere. The whole scenario is baseless.” He further stated, with no evidence or context regarding what may, or may not have been asked, that Ms. McCabe had taken and passed a polygraph — something that he is well aware (as a prominent defense attorney in the Commonwealth) is *inadmissible* in Massachusetts Courts, but that may nevertheless be a compelling narrative to members of the public.<sup>8,9,10</sup>

David Traub (“Mr. Traub”), spokesperson for the Norfolk County District Attorney’s Office, also publicly spoke to members of the press regarding the critical McCabe Google search data. Mr. Traub made several statements regarding Ms. McCabe’s Google search, including the following:

- “While prosecutors are ethically constrained in the statements that can be made outside the courtroom, the Norfolk District Attorney’s Office is in receipt of the motion filed last week and it is our expectation to have a detailed response to the court May 3 that refutes the assertions in that motion. . . .”<sup>11</sup>

He then immediately went on to state:

- “[It] has not yet been determined that the defense has interpreted the raw data correctly. The Norfolk District Attorney’s office has asked the defense repeatedly.

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<sup>8</sup> Boston Herald, “Lawyer fires back over blame in death of Boston police officer”, April 24, 2023: <https://www.bostonherald.com/2023/04/24/lawyer-fires-back-over-blame-in-death-of-boston-police-officer/>

<sup>9</sup> See *Com v. Mendes*, 406 Mass. 201 (1989).

<sup>10</sup> Mr. Reddington has previously held press conferences to display supposed polygraph results of a client. See e.g. “Kevin Reddington: What we know about the attorney representing the former Fall River mayor”, The Herald News, May 7, 2021: <https://www.heraldnews.com/story/news/courts/2021/05/07/defense-attorney-kevin-reddington-personal-details-and-work-history-brockton-grieg-correia-prominent/4974145001/>

<sup>11</sup> Boston 25, “25 Investigates: Prosecutors to disprove woman who says she’s wrongly charged in death of Boston cop”, April 19, 2023: <https://www.boston25news.com/news/local/25-investigates-prosecutors-disprove-woman-who-says-shes-wrongly-charged-death-boston-cop/Z45NWRH3JZGS7DR66DNPPMMB34/>

during the pendency of this matter to provide any actually exculpatory evidence to support their claims.”<sup>12</sup>

In other words, despite the apparent “ethical constraints” Mr. Traub claimed to cite, he nevertheless directly contacted the press to suggest: (1) that the defense team’s interpretation of the Google search data was not correct; and (2) that the defense team should provide any “actually exculpatory” evidence to the Office of the District Attorney — a request representing a total inversion of the burden of proof required in criminal cases, a burden that underpins the very foundation of United States justice system<sup>13</sup> of the public. . . . compelling narrative . . .

On the date of the May 3, 2023 hearing, the President of the State Police Association of Massachusetts (“SPAM”) — flanked by other members of SPAM — publicly vouched for the credibility of the prosecution’s lead investigator, stating on the courthouse steps that he “came out to throw his support behind [Michael] Proctor and the investigation. . . . [T]his case is actively going on. Our homicide detectives here in Massachusetts are arguably the best in the country. Our solve rate is indicative of that. . . . [T]he association supports our members across the Commonwealth and the facts of this case will speak for itself.”<sup>14</sup>

In addition, an attorney for Brian Albert (“Mr. Albert”) stated in open court and in filings (in an opposition to the Defendant’s Rule 17 Motion regarding Canton Animal Control and Canton Town Clerk Records) that Mr. Albert’s dog, “Chloe,” had no history of attacking human beings. Instead, Mr. Albert’s counsel suggested that Chloe was rehomed following an incident between two dogs: “the defense is asking the reader to conclude that the dog in question has a history of attacking human beings, and that it was sent away because it was violent towards people. As with other defense assertions, this is not true.” Having now received and viewed the records from Canton Animal Control and the Canton Town Clerk, all parties are now aware that Mr. Albert’s counsel’s statement was false and the assertion by the defense *is* true: Brian Albert’s

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<sup>12</sup> *Id.*

<sup>13</sup> It is also worth noting that no member of the Norfolk County District Attorney’s Office has ever requested that Ms. Read’s defense team ever provide any “actually exculpatory evidence” — let alone “repeatedly” made such requests.

<sup>14</sup> Boston Herald, “Karen Read defense: Problematic investigation into John O’Keefe’s death grabs federal attention”, May 4, 2023: <https://www.bostonherald.com/2023/05/04/karen-read-defense-problematic-investigation-into-john-okeefe-death-grabs-federal-attention/>

K-9 German Shepherd “Chloe” attacked not one, but two, separate human beings — both of whom were taken to a hospital as a result of the dog’s attack. One individual was bitten on the arms, neck, and leg. The other was bitten on the left hand.

Finally, and perhaps most egregiously, on June 10, 2023, immediately *after* filing the instant motion requesting that the judge gag the defense team and prevent them from sharing details about the case outside the courtroom, the spokesperson for the Norfolk County District Attorney’s Office told WCVB Boston (the news station where Brian Albert’s attorney works as a legal analyst) that a newly available report prepared by the State Police Collision Analysis and Reconstruction Section establishes that Ms. Read operated her motor vehicle in reverse for a period of time before striking the victim.<sup>15</sup> The title of the article published by WCVB reads: “Karen Read murder case: Prosecution says they have new electronic vehicle data: Also asks judge to rein in defense’s comments.” The hypocrisy is staggering.

In the wake of the deluge of negative and prejudicial media statements from the government, Ms. Read suffered unyieldingly—she lost her job, her teaching position was taken away, friends abandoned her. Karen Read’s reputation was destroyed; she was a community pariah, and that was exactly what was intended by the individuals and agencies behind those statements.

From the outset, as this Court is likely aware, there has been significant media coverage of this case. However, before the instant motion, the Commonwealth had no objection to the extrajudicial statements of police officials, police chiefs, representatives of the DA’s office, counsel for witnesses/suspects, or any other individual or organization. That is because those statements fit neatly into its own narrative of the case and served to prejudice Karen Read within the community. Now that the public has begun to ask serious questions about the validity of this prosecution, criticize the government’s handling of this case, and question whether, in fact, Karen Read is actually “responsible for John’s death” (as stated so boldly by the Superintendent-in-Chief), instead of answer those constituents’ inquiries, the Commonwealth has taken the desperate position that it would rather muzzle the defense.

Trials and hearings are public proceedings. The public has a right to be informed of how its representatives are conducting themselves, and the defense (and others) have a right to be critical

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<sup>15</sup> WCVB, “Karen Read murder case: Prosecution says they have new electronic vehicle data, Also asks judge to rein in defense’s comments”, June 10, 2023: <https://www.wcvb.com/article/karen-read-prosecution-seeking-order-limit-information-outside-court/44157341#>

of the exercise of the Commonwealth's power. While the Commonwealth now seeks to try its case in the dark by seeking an extraordinary order by this Court gagging Ms. Read's entire defense team, the Constitution and basic notions of due process and free speech mandate otherwise. As is oft-recited, *sunlight is the best disinfectant*. The media has begun to take an unprecedented interest in this case. If the media has questions, we—all parties—should be willing and able to answer those questions. Should Mr. Lally or any of his colleagues take issue with anything that has been said to the media, they have every right to correct the record as they see fit. But gagging the defense because the Commonwealth is uncomfortable with the public interest in this case is not only unnecessary, it would be improper. The Commonwealth now seeks a gag order that will prohibit the defense team from being able to respond to media inquiries about the state of the case, and to respond to previous prejudicial statements by the government such as those noted above. Moreover, the Commonwealth has specifically requested that any witnesses and their counsel (including the third parties actually responsible for O'Keefe's death, including Jennifer McCabe and Brian Albert) be allowed to speak in public about this case, with impunity. Tying the hands of Ms. Read's counsel such that they would be barred from rebutting false claims made by those parties would be a gross violation of her Constitutional rights. A claim by the Commonwealth that any extrajudicial statement might affect a potential jury pool is hypocritical. The Commonwealth took an early opportunity to try and convict Ms. Read in the court of public opinion; it cannot now cry foul when the defense responds to that prejudicial and false narrative to the very same public the Commonwealth attempted to influence in the first place.

### **ARGUMENT**

#### **I. MS. READ'S DEFENSE COUNSEL HAVE THE RIGHT AND THE DUTY TO RESPOND TO PREJUDICIAL PUBLICITY IN A MANNER THAT IS REQUIRED TO PROTECT MS. READ FROM THE UNDULY PREJUDICIAL EFFECT OF THAT PUBLICITY UNDER MASS. R. PROF. C. 3.6(c) AND THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION**

Mass. R. Prof. C. 3.6(c) provides the following: "Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent *publicity not initiated by the lawyer or the*

*lawyer's client*. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.” (Emphasis added) Mass. R. Prof. C. 3.6(c). Mass. R. Prof. C. 1.3 states, in part, “[t]he lawyer should represent a client zealously within the bounds of the law.” Mass. R. Prof. C. 1.3.

In its motion, the Commonwealth cites a Supreme Court case, Gentile v. State Bar of Nevada,<sup>16</sup> several times. Every time the Commonwealth cites this case, however, it relies on a section of Chief Justice Rehnquist’s opinion, which concurred in part<sup>17</sup> and dissented in part. The Commonwealth curiously completely ignores Justice Kennedy’s majority and controlling opinion in its motion. The Commonwealth also fails to point out, moreover, that it is repeatedly citing a **concurring** opinion that is not binding precedent. Unlike the Hernandez<sup>18</sup> case cited by the Commonwealth, which involved a “Motion to Prohibit Prejudicial Extrajudicial Statements” filed by *defense counsel* in response to repeated leaks by the Commonwealth, Gentile provides important guiderails for permissible communications by defense counsel in analyzing a precursor to ABA Model Rule of Professional Conduct 3.6.

Mr. Gentile, a criminal defense attorney in Las Vegas, was disciplined by the Southern Nevada Disciplinary Board of the State Bar for a press conference he had held following the indictment of his client.<sup>19</sup> Mr. Gentile’s client was accused of stealing from deposit boxes at Western Vault. Saliently, Mr. Gentile told members of the press that his client was a “scapegoat,” and noted that the State had not “been honest enough to indict the people who did it; the police department, crooked cops.”<sup>20</sup> The deputy police chief involved in the investigation had previously announced that two detectives with access to the deposit boxes had been “cleared” as possible suspects. Local media reported that those two suspects had been “cleared”

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<sup>16</sup> Gentile v. State Bar of Nevada, 501 U.S. 1030 (1991).

<sup>17</sup> Chief Justice Rehnquist “delivered the opinion of the Court with respect to Parts I and II, and delivered a dissenting opinion with respect to Part III, in which Justice WHITE, Justice SCALIA, and Justice SOUTER join.” Gentile, 501 U.S. at 1062. Each time the Commonwealth cites Gentile, it cites a section of Justice Rehnquist’s concurrence.

<sup>18</sup> Com v. Aaron Hernandez, SJ-2014-0095

<sup>19</sup> Mr. Gentile’s client was acquitted on all counts six months later, following a jury trial.

<sup>20</sup> See Gentile v. State Bar of Nevada, 501 U.S. 1030, 1059 (1991) (Appendix A).

by police investigators after passing lie detector tests.<sup>21</sup> In addition, one of the alleged victims of this theft (and a witness at trial) was also reported to have taken and passed a lie detector test.<sup>22</sup>

During his press conference, Mr. Gentile noted that some would-be trial witnesses and alleged victims had “drug backgrounds,” stating that “I can’t name which of the people have the drug backgrounds. **I’m sure you guys can find that by doing just a little bit of investigative work.**”<sup>23</sup> A member of the press questioned Mr. Gentile regarding alleged FBI involvement in the case:

QUESTION FROM THE FLOOR: I have seen reports that the FBI seems to think Commonwealth is along the lines that you do.

MR. GENTILE: Well, I couldn’t agree with them more.

QUESTION FROM THE FLOOR: Do you know anything about it?

MR. GENTILE: Yes, I do; but again, Dan, I’m not in a position to be able to discuss that now.<sup>24</sup>

Following the acquittal of his client, Mr. Gentile was disciplined by the Southern Nevada Disciplinary Board of the State Bar for having violated Nevada Supreme Court Rule 177, a rule governing pretrial publicity almost identical to ABA Model Rule of Professional Conduct 3.6, during this press conference. In *reversing* this action by the State Bar, the Supreme Court of the United States held that Nevada’s application of Rule 177 violated the First Amendment, and that nothing Mr. Gentile said created any real threat of prejudice either to his client’s right to a fair trial or to the State’s interest in the enforcement of its criminal laws.<sup>25</sup>

Justice Kennedy’s majority opinion noted that “[t]here is no question that speech critical of the exercise of the State’s power lies at the very center of the First Amendment.”<sup>26</sup> “It would be difficult to single out any aspect of government of higher concern and importance to the people than the manner in which criminal trials are conducted”. Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 575 (1980). “Public vigilance serves us well, for ‘[t]he knowledge **that every**

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<sup>21</sup> Gentile, 501 U.S. at 1040-1041.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 1049 (emphasis added).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 1033.

<sup>26</sup> *Id.* at 1034.



**criminal trial is subject to contemporaneous review in the forum of public opinion is an effective restraint on possible abuse of judicial power .... Without publicity, all other checks are insufficient: in comparison of publicity, all other checks are of small account’.**” (Emphasis added) *In re Oliver*, 333 US. 257, 270-271 (1948).

Justice Kennedy further noted that “[p]ublic awareness and criticism have even greater importance where, as here, they concern allegations of police corruption.”<sup>27</sup> The Supreme Court noted that — in holding a press conference — Mr. Gentile did not seek to materially prejudice an adjudicative proceeding; instead, Mr. Gentile sought to “**stop a wave of publicity he perceived as prejudicing potential jurors against his client and injuring his client’s reputation in the community.**”<sup>28</sup> Mr. Gentile had acted in part, as the Court noted, because the investigation had taken a serious toll on his client. His client was “not a man in good health.”<sup>29</sup> Further, Mr. Gentile had lost a ground lease on a property of his prior to indictment, based purely on suspicion of wrongdoing.

The similarities between the facts in *Gentile* and Ms. Read’s case are uncanny. In *Gentile*, the defense accused the government of “scapegoating” his client, when in fact the real culprits were police. The media were reporting alleged FBI involvement (which Mr. Gentile carefully commented on). A number of witnesses claimed to have taken polygraph tests. Mr. Gentile’s client suffered difficulties with his health and financial loss as a result of his suspicion of wrongdoing. Finally, Mr. Gentile spoke directly with members of the press to try to counter a “wave of publicity he perceived as prejudicing potential jurors against his client and injuring his client’s reputation in the community.”<sup>30</sup> All of those same facts exist in Ms. Read’s case, and the purpose of Ms. Read’s defense counsels’ statements to the press serve an identical purpose: to attempt to counter a wave of prejudicial statements against Ms. Read, as is allowed under Mass. R. Prof. C. 3.6(c).

Justice Kennedy’s majority opinion states that “[a]n attorney’s duties do not begin inside the courtroom door. He or she cannot ignore the practical implications of a legal proceeding for a client. . . an attorney may take reasonable steps to defend a client’s reputation and reduce the

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<sup>27</sup> *Id.* at 1035, citing *Nebraska Press Assn. v. Stuart*, 427 U.S. 539, 606 (1976) (Brennan, J. concurring in judgment).

<sup>28</sup> *Id.* at 1043.

<sup>29</sup> *Id.*

<sup>30</sup> *Gentile*, *supra* note 27.

adverse consequences of indictment, **especially in the face of a prosecution deemed unjust or commenced with improper motives**. A defense attorney may pursue lawful strategies to obtain dismissal of an indictment or reduction of charges, **including an attempt to demonstrate in the court of public opinion that the client does not deserve to be tried.**<sup>31</sup> The Court found that, since the potential jury pool (i.e., the population) in Clark County Nevada consisted of 600,000 persons, and since Mr. Gentile's statements were made at a time when he knew a jury would not be empaneled for at least six months, there was no likelihood of prejudice based on his statements to the press. Similarly here, no trial date in this matter has been set, and the population of Norfolk County (as of 2022) was roughly 725,531.<sup>32</sup>

Critically, the Gentile Court noted that the respondent and its *amici* **did not present a single** case where statements of a defense attorney had managed to prejudice the prosecution of the State's case:

The various bar association and advisory commission reports which resulted in promulgation of ABA Model Rule of Professional Conduct 3.6 (1981), and other regulations of attorney speech, and sources they cite, present no convincing case for restrictions upon the speech of defense attorneys. *See* Swift, Model Rule 3.6: An Unconstitutional Regulation of Defense Attorney Trial Publicity, 64 B.U.L.Rev. 1003, 1031–1049 (1984) (summarizing studies and concluding there is no empirical or anecdotal evidence of a need for restrictions on defense publicity); *see also* Drechsel, *supra*, at 35 (“[D]ata showing the heavy reliance of journalists on law enforcement sources and prosecutors confirms the appropriateness of focusing attention on those sources when attempting to control pre-trial publicity”) . . .<sup>33</sup>

The Gentile Court further notes that “[o]nly the occasional case presents a danger of prejudice from pretrial publicity. Empirical research suggests that in the few instances when jurors have been exposed to extensive and prejudicial publicity, they are able to disregard it and

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<sup>31</sup> *Id.*

<sup>32</sup> Census.gov, “QuickFacts, Norfolk County, MA” (2023): <https://www.census.gov/quickfacts/fact/table/norfolkcountymassachusetts/PST045222>

<sup>33</sup> *Id.* at 1055-1056.

base their verdict upon the evidence presented in court.”<sup>34</sup> The Court paid special attention to the fact that speech by a defense attorney should be afforded traditional First Amendment protections, and less justification exists for censoring speech of a defense attorney as compared to police or prosecutors.<sup>35</sup> Supreme Court cases recognize that disciplinary rules governing the legal profession cannot punish activity protected by the First Amendment, and that First Amendment protection survives even when the attorney violates a disciplinary rule he swore to obey when admitted to the practice of law.<sup>36</sup>

The Commonwealth’s characterization of statements made by defense counsel — specifically, those attributed to Alan Jackson — is misleading, lacks context, and is outright deceptive. For example, on page 7 of its memorandum, the Commonwealth states: “[F]urthermore, during the May 3, 2023 hearing, defense counsel first reported, in open court, during a live television broadcast, that “federal authorities have now gotten involved in the circumstances surrounding this case and have impaneled a grand jury, a federal grand jury, to investigate some of these circumstances”. Commonwealth’s Motion to Prohibit Prejudicial Extrajudicial Statements of Counsel in Compliance with Massachusetts Rules of Professional Conduct 3.6 (a), at p. 7. Critically, the Commonwealth — in effort to cast Attorney Jackson’s statements in the most nefarious light possible — omitted the prefatory clause preceding this statement. What Attorney Jackson said prior to this statement was “*it’s been reported that . . .*”. At the time the statement was made, it had indeed been publicly reported that a federal grand jury had been empaneled.<sup>37</sup> There is a marked difference between stating that something has been reported and revealing something that was previously unknown to anyone. This statement was not the defense revealing publicly that a federal grand jury had been empaneled — something about which the defense team would have no knowledge. Instead, as Attorney Jackson stated, this was Ms. Read’s counsel reiterating what had already been publicly reported. Most importantly, **that was not an extrajudicial statement**, nor did Attorney Jackson or anyone on the defense team make an extrajudicial statement about that issue. Attorney Jackson stated

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<sup>34</sup> *Id.* at 1054.

<sup>35</sup> *Id.*; see also Mass. R. Prof. C. 3.8.

<sup>36</sup> See e.g. In re Primus, 436 U.S. 412 (1978).

<sup>37</sup> See e.g. TB Daily News, “Multiple Witnesses In Home Where John O’Keefe Was Killed Subpoenaed By Federal Grand Jury, FBI Visits Homes, Basement Floor Reportedly Replaced”, dated April 20, 2023: <https://tbdailynews.com/multiple-witnesses-in-home-where-john-okeefe-was-killed-subpoenaed-by-federal-grand-jury-fbi-visits-homes-basement-floor-reportedly-replaced/>

that in open court, as part of a legal argument to this Court. It is disingenuous for the Commonwealth to muddy the waters when seeking to gag the defense by citing an appropriate argument made in a courtroom in compliance with the defendant's Sixth Amendment rights.

Additionally, the Commonwealth suggests that “defense counsel **directly encouraged media outlets to continue to contact witnesses and ask them inflammatory questions, in step with the defendant's theory of the case.**” This is an absurd characterization of what Attorney Jackson actually said during the “press conference” the Commonwealth references. What Attorney Jackson stated, upon the defense team being encircled by members of the press on the Commonwealth courthouse steps, was: “Don't you want to ask some questions? I know you do. Let me give you a few examples: here's some questions that you might want to think about asking. Why did Jennifer McCabe Google search “how long to die in cold” at 2:27 in the morning, three-and-a-half hours before she would have any reason to believe that John O'Keefe was dying in the cold in front of John O'Keefe's house. . . . why don't you ask the question, why did she scrub her phone? Why did she take the time to scrub her phone before she turned it into the police? Why did she delete any and all reference to her communications with Brian Albert on the 29<sup>th</sup>, on the 28<sup>th</sup>? Here's another question: Why did Brian Albert get rid of the dog? . . .”

Far from being a “call to action” to harass witnesses, these suggestions of possible investigation to the press by Attorney Jackson are reminiscent of Mr. Gentile's suggestion to members of the press that they could find relevant information “by doing just a little bit of investigative work.” Similarly, Attorney Jackson's comments *in court* (which are not “extrajudicial” in nature) regarding the supposed existence of a federal grand jury are reminiscent of Mr. Gentile's statements that he agreed with the FBI's conclusion regarding that case. In contrast with Mr. Gentile's statements — which confirmed that he knew about an ongoing FBI investigation — Attorney Jackson merely reiterated what had been publicly reported. Further, in contrast with Mr. Gentile's statements regarding the FBI's investigation, Attorney Jackson was silent on this issue outside the courtroom.

In addition, the Commonwealth — at several points in its memorandum — fails to differentiate which members of Ms. Read's team have made which statements, despite naming all four attorneys (Attorney David Yannetti, Attorney Ian Henchy, Attorney Alan Jackson, and Attorney Elizabeth Little) in the first sentence of its memorandum. Neither Attorney Henchy nor Attorney Little have made *any* public statements regarding this case, yet the Commonwealth

seeks to impugn the character of — and suggest misconduct by — all four attorneys through misleading characterizations of some of Attorney Jackson’s statements.

Finally, the Commonwealth states that the defense team has engaged in a “trial by media” strategy, while ignoring that it is the Commonwealth that involved the media from the very outset of this case. The Norfolk County District Attorney’s Office began its press releases, stating when and where Ms. Read’s initial District Court arraignment would take place, thereby encouraging members of the press to attend. Further, as noted above, Superintendent-in-Chief Long prejudiced this case, and sought to taint the jury pool, as soon as Ms. Read was charged with a crime by stating “[t]oday, the Massachusetts State Police and the Norfolk County District Attorney’s Office arrested the person responsible for John’s death.” Defense counsel has every right to rebut such an extraordinarily prejudicial statement by pointing out that Ms. Read was *not* responsible for Officer O’Keefe’s death, pursuant to the provisions of Mass. R. Prof. C. 3.6(c). Similarly, defense counsel has every right to rebut the Commonwealth’s repeated assertions, through its Spokesperson David Traub, that it had misinterpreted Jennifer McCabe’s Google search data. The defense also has the right to rebut Mr. Albert’s counsel’s factually false assertions that his dog had no history of violence towards people, as well as Attorney Reddington’s statements that defense counsel’s theory of the case is “baseless” and “going nowhere.” Furthermore, even after the Commonwealth’s filing of this motion, the spokesperson from the Norfolk County District Attorney’s Office has released *yet another* statement to the press falsely suggesting that electronic vehicle data establishes Ms. Read reversed into the victim with her vehicle at a high rate of speed—a suggestion that Ms. Read and her counsel have Constitutional right to rebut. Beyond the right to rebut all of these statements, defense counsel asserts that the defense team has a *duty* to rebut these allegations, in order to zealously represent Ms. Read in accordance with Mass. R. Prof. C. 1.3.

The defense did not initiate a “trial by media” strategy in this matter. The Commonwealth did. The Commonwealth did not protest or complain when the media narrative appeared to be consistent with their theory. It was only when the public took a hard and critical look at the Commonwealth’s theory of the case – based upon publicly filed documents – and started to question that theory that the Commonwealth filed this motion to gag the parties. Given what the Commonwealth has already done to poison the well of public opinion, the defense has the right — and indeed, the duty — to rebut prejudicial statements made by the Commonwealth, the

media, and counsel for parties involved in Officer O’Keefe’s death under both Mass. R. Prof. C. 3.6(c) and the First Amendment.

**II. THE COMMONWEALTH’S PROPOSED “GAG ORDER”, IF ALLOWED, WOULD BE AN IMPERMISSIBLE VIEWPOINT-BASED PRIOR RESTRAINT ON SPEECH, IN VIOLATION OF THE FIRST AMENDMENT AND ARTICLE 16 OF THE MASSACHUSETTS DECLARATION OF RIGHTS**

Prior restraints on speech are presumptively unconstitutional. *See* Com v. Barnes, 461 Mass. 644, 651 (2012); Nebraska Press Ass’n v. Stuart, 427 U.S. 539, 559 (1976). Viewpoint or content-based restrictions on speech are similarly unconstitutional. Ashcroft v. ACLU, 535 U.S. 564, 573 (2002). As the Supreme Court has noted, “Viewpoint discrimination is an egregious form of content discrimination. The government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction”. Rosenberger v. Rectors and Visitors of the University of Virginia, 515 U.S. 819, 829 (1995).

Despite the Commonwealth’s language in its proposed order that it “seeks only mutual attorney compliance with the Massachusetts Rules of Professional Conduct,” the proposed “gag order” is viewpoint-based because it clearly is pointedly designed to apply solely to Ms. Read’s defense team. The Commonwealth has seemingly made no effort to prevent prejudicial extrajudicial statements prejudicing the jury pool against Ms. Read, and is seemingly unconcerned with the statements made by agents of the Commonwealth (e.g. Superintendent-in-Chief Long and the Norfolk County District Attorney’s Office Spokesperson), as there is no mention of any of these statements in the Commonwealth’s memorandum. Only when media coverage began to question the narrative presented by the Commonwealth did it suddenly become concerned with “mutual attorney compliance” with the Rules of Professional conduct. In other words, the Commonwealth was more than happy to have Ms. Read’s trial occur in the court of public opinion right up until the moment when the press began asking questions about the propriety of the Commonwealth’s investigation and, by extension, its case against Ms. Read.

It is clear from the language of the Commonwealth’s memorandum that this attempt to seek a “gag order” against the defense is motivated by its frustration that reporting on this case has begun to include information favorable to the defense. This order seeks to prohibit the defense

from rebutting the Commonwealth's narrative of the case, which has been pervasive since February 1, 2022.

"A trial court's order that prohibits or limits the speech of lawyers or parties before the court, a so-called 'gag order', is a prior restraint."<sup>38</sup> While it is true that "[u]nder some circumstances, First Amendment rights must give way during a criminal proceeding in order to preserve a fair trial," a Court must first determine whether an order restricting speech meets the requisite legal standard for any such restriction.<sup>39</sup> Prior restraints and viewpoint or content-based restrictions can only be justified if they satisfy the strict scrutiny test; that is, they are necessitated by a compelling governmental interest and are narrowly tailored to serve that interest.<sup>40</sup>

The Commonwealth's proposed "gag order" is not justified by a compelling governmental interest. While the Commonwealth cites a number of cases — including those which mention that a trial judge has a duty to minimize pretrial publicity to safeguard the due process rights of the accused<sup>41</sup> — it is worth noting that the Commonwealth cannot point to a *single* case where statements by *defense counsel* prejudiced the *government's* case. Instead, the Commonwealth cites cases, such as the non-binding and off-point slip opinion from Commonwealth v. Hernandez, which was in response to a renewed motion from *defense counsel* regarding pretrial publicity. At issue in that case was an agent of the Commonwealth (specifically, the Massachusetts State Police) repeatedly leaking details of their investigation to the press. The Commonwealth went so far as to apparently alert Sports Illustrated that a professional football player would be served with a grand jury subpoena following a New England Patriots football game, such that a Sports Illustrated photographer was waiting to photograph the moment the Massachusetts State Police served that player following the game. The suggestion that the Commonwealth's proposed order in this case somehow seeks or serves to preserve Ms. Read's right to a fair trial is absurd on its face. The Commonwealth seems to be arguing that it knows better than Ms. Read's legal team how best to preserve her right to a fair trial. The Commonwealth's proposed gag order is clearly in response to media coverage favorable to the defense; it would accordingly apply primarily to the defense (despite the Commonwealth's

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<sup>38</sup> U.S. v. Carmichael, 326 F. Supp. 2d 1267, 1291 (M.D. Ala. 2004)

<sup>39</sup> *Id.* at 1290.

<sup>40</sup> Globe Newspaper Co. v. Superior Court, 457 U.S. 596, 607.

<sup>41</sup> Gannett Co. v. DePasquale, 443 U.S. 368, 378 (1979).

careful language), and therefore cannot be said to serve the compelling governmental interest in seeking to preserve Ms. Read's right to a fair trial.

Even assuming for the sake of argument that there is a compelling governmental interest it seeks to protect, the gag order is not narrowly tailored to achieve its supposed objective. By seeking to preclude the defense from "disseminating by any means of public communication" . . . "the substance of any evidence a party anticipates seeking to introduce at trial," the Commonwealth seeks to ensure that only its narrative — and not that of the defense — is disseminated in the press. By way of a concrete example, the Commonwealth failed to produce in discovery a report noting that Jennifer McCabe ran a Google search for "ho[w] long to die in cold" at 2:27AM on January 29, 2022. This information was discovered by the defense after fighting for a full forensic extraction of Ms. McCabe's phone for an extended period of time. Had the Commonwealth's order been in effect at that time, the defense presumably would have been precluded from "disseminating by any public communication" that it had uncovered this information, lest the defense face "admonition or disbarment" or the "revoking pro hac vice admission to the Massachusetts bar" of Ms. Read's chosen attorneys.

The Commonwealth's request that "all attorneys" in this case be precluded from releasing "any photographs, reports, or documents that are not in the public record" is similarly overbroad. Mass. R. Crim. P. 14(a)(6) authorizes the Court to impose protective orders on materials obtained *through discovery*. It does not authorize the Court to dictate how the defendant's own materials, not obtained through discovery, should be dealt with. ". . . [A] protective order prevents a party from disseminating **only that information obtained through the use of the discovery process. Thus, the party may disseminate the identical information covered by the protective order as long as the information is gained through means independent of the court's processes.**"<sup>42</sup> Accordingly, under the terms of the Commonwealth's proposed order, the defense would be precluded from disseminating "any photographs, reports, or documents" the defense has generated. Even assuming the Commonwealth sought to protect a compelling

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<sup>42</sup> (Emphasis added) Seattle Times Co. v. Rhinehart, 467 U.S. 20, 33-34 (1984); *see also In re San Juan Star Co.*, 662 F. 2d 108, n.1 (1<sup>st</sup> Cir. 1981) (distinguishing cases in which order restricting dissemination of discovery was entered from cases in which court attempts to restrict "information obtained independently of the discovery process".)



governmental interest for the sake of argument, then, the order is not narrowly tailored to achieve that end.<sup>43</sup>

Accordingly, since the Commonwealth's proposed order is both a prior restraint on the defense team's speech and represents a viewpoint- and content-based restriction that is not narrowly tailored to preserve a compelling governmental interest, the Commonwealth's motion must be denied.

### CONCLUSION

It is an axiom that a defendant—no matter who she is—is at a “substantial disadvantage” compared to the juggernaut of the government in a criminal case. Carmichael, 326 F. Supp.2d at 1294 (citing U.S. v. Ford, 830 F.2d 596, 599 (6<sup>th</sup> Cir. 1987)). Given this resulting “imbalance of power, the criminal defendant should have some leeway in addressing the public, and, at the very least, should not be more limited than the government.” *Id.* The Commonwealth, under the guise of seeking a “mutual” gag order, seeks to ensure that it will maintain narrative control in its case against Ms. Read. The Commonwealth's proposed order would cut off defense counsel's ability to *rebut* prejudicial statements made by the Commonwealth, its agents, the media, and attorneys for interested third parties, and represents an impermissible prior restraint on speech. Further, the Commonwealth cannot point to any circumstance in which it would be prejudiced by any statement or statements made by defense counsel to the media or public. That is because, as courts have long recognized, such circumstances simply do not reasonably exist.

As pointedly stated by the United States Supreme Court, “It would be difficult to single out any aspect of government of higher concern and importance to the people than the manner in which criminal trials are conducted”. Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 575 (1980). “Public vigilance serves us well, for ‘[t]he knowledge **that every criminal trial is subject to contemporaneous review in the forum of public opinion is an effective restraint on possible abuse of judicial power** .... Without publicity, all other checks are insufficient: in comparison of publicity, all other checks are of small account’.” (Emphasis added) In re Oliver, 333 US. 257, 270-271 (1948).

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<sup>43</sup> See e.g. Levine v. United States District Court for Cent. Dist., 764 F.2d 590, 599 (9<sup>th</sup> Cir. 1985) (finding order too broad where it was not limited solely to statements that endangered the administration of justice.)

Of course, defense counsel will continue to comply with the Massachusetts Rules of Professional Conduct, and will continue to ensure compliance with SJC Rule 1:24. The order sought by the Commonwealth here, however, goes far beyond seeking to ensure compliance with those rules. Accordingly, Ms. Read respectfully requests that this Honorable Court deny the Commonwealth's motion.

Respectfully Submitted,  
For the Defendant,  
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By her attorneys,



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July 14, 2023

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT  
NO. 2282-CR-00117

_____	)
COMMONWEALTH OF	)
MASSACHUSETTS,	)
Plaintiff	)
	)
V.	)
	)
KAREN READ,	)
Defendant	)
_____	)

**AFFIDAVIT OF COUNSEL IN SUPPORT OF  
DEFENDANT KAREN READ’S OPPOSITION TO  
COMMONWEALTH’S “MOTION TO PROHIBIT  
PREJUDICIAL EXTRAJUDICIAL STATEMENTS OF  
COUNSEL IN COMPLIANCE WITH MASSACHUSETTS  
RULES OF PROFESSIONAL CONDUCT 3.6(a)”**

I, David R. Yannetti, do hereby depose and state that the following is true to the best of my knowledge, information, and belief:

1. I am an attorney licensed to practice in Massachusetts since December 20, 1989. My office address is: Yannetti Law Firm, 44 School St., Suite 1000A, Boston, MA 02108. I represent Karen Read (“Ms. Read”) regarding the above-captioned matter.
2. The “Factual Background” detailed in Ms. Read’s opposition is true and accurate to the best of my knowledge, information, and belief, and is incorporated here in full by reference.
3. I have represented Ms. Read since January 29, 2022, the same day that John O’Keefe’s body was found on the property of Brian Albert. From the beginning, I have carefully followed and reviewed statements made by the Commonwealth and its agents, as well as interested third parties, with respect to Ms. Read.

4. On February 1, 2022, following Ms. Read's first arrest, I became aware of a public statement made by Boston Police Superintendent-in-Chief Gregory Long ("Superintendent-in-Chief Long") that I determined would prejudice the fair adjudication of this matter. That statement had significant potential to taint a potential jury pool in Norfolk County.
5. Specifically, Superintendent-in-Chief Long's statement read as follows: "The Boston Police Department continues to grieve over the tragic loss of our brother Police Officer John O'Keefe. John was a kind person, dedicated to his family, and will be greatly missed by his coworkers and anyone who had the privilege of meeting him. **Today, the Massachusetts State Police and the Norfolk County District Attorney's Office arrested the person responsible for John's death.**"<sup>1</sup> (Emphasis added).
6. This statement — which assumed and suggested Ms. Read's guilt even before she had been arraigned in District Court — was publicly disseminated through the Boston Police Department's official channels and was picked up and repeated by numerous media outlets, including NBC Boston, ABC News, and 7 News Boston.
7. Following Superintendent-in-Chief Long's statement, the Norfolk County District Attorney's office issued a press release, indicating when and where Ms. Read's arraignment would take place.
8. Superintendent-in-Chief Long attended that arraignment, seizing on the opportunity to speak with members of the media in full uniform after Ms. Read's initial appearance. He stated, in

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<sup>1</sup> See BPD News, The Official Website of the Boston Police Department, "Message from Superintendent-in-Chief Gregory Long Regarding Arrest Made in Connection to the Death of Officer John O'Keefe", dated February 1, 2022. <https://bpdnews.com/news/2022/2/1/message-from-superintendent-in-chief-gregory-long-regarding-the-arrest-made-in-connection-to-the-death-of-police-officer-john-okeefe>

part, that to “lose anybody, any member, especially under circumstances like this, it’s tough.”<sup>2</sup>

9. A CBS Boston news clip discussing Ms. Read’s arraignment, which included the above-referenced quote from Superintendent-in-Chief Long, has over 83,000 views to date. From the outset, this case has received significant and overwhelming attention from members of the media.
10. The Norfolk County District Attorney’s office has issued many statements through the media and official channels within its Office, a number of which I deemed similarly prejudicial to the fair adjudication of Ms. Read’s case.
11. In addition to press releases, David Traub (“Mr. Traub”), the spokesperson for the Office, has spoken to the media regarding this matter on more than one occasion.
12. Following revelations that Ms. Jennifer McCabe (“Ms. McCabe”) ran a Google search for “ho[w] long to die in cold” at 2:27AM on January 29, 2022 — hours before Officer John O’Keefe’s body was discovered outside of Brian Albert’s 34 Fairview Road residence — Mr. Traub made the following statements to media outlets: (a) “While prosecutors are ethically constrained in the statements that can be made outside the courtroom, the Norfolk District Attorney’s Office is in receipt of the motion filed last week and it is our expectation to have a detailed response to the court May 3 that refutes the assertions in that motion. . .” (b) “[it] has not yet been determined that defense has interpreted the raw data correctly. The Norfolk

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<sup>2</sup> CBS Boston, “Karen Read Free On \$50,000 Bail In Death of Boyfriend Boston Police Officer John O Keefe”, February 2, 2022: <https://www.youtube.com/watch?v=4wqodhmfCd0>

District Attorney's office has asked the defense repeatedly during the pendency of this matter to provide any actually exculpatory evidence to support their claims.”<sup>3</sup>

13. I thought the latter of these two statements to be extraordinary. Not only was it not true that the Norfolk County District Attorney's Office had asked the defense to provide any “actually exculpatory evidence,” but that statement represented a complete inversion of the burden of proof in a criminal trial.

14. Mr. Traub continued to make public statements on this issue, stating that the prosecution would be disproving the defense team's “interpretation” of the data.

15. Upon information and belief, the defense's “interpretation” of the data is completely accurate. The Norfolk County District Attorney's office has not “disproven” anything. Even an outside expert hired by the Commonwealth was unable to say definitively that Ms. McCabe had *not* ran this Google Search at 2:27AM: “**While a definitive reason as to why the timestamp is listing the time of 2:27:40 is unknown**, the time is inconsistent with the timestamps associated with the same search.” (Emphasis added) Supplemental Filing in Support of Memorandum in Opposition to Defendant's Motion Pursuant to Rule 17 of Criminal Procedure – Directed to Brian Albert, Verizon & AT&T, at p. 32.

16. Canton Police Chief Helena Rafferty, despite her department supposedly having abandoned the investigation into this case (as a result of a conflict of interest, given that John O'Keefe's body was found on the property of the brother of a Canton police officer) on January 29, 2022, released a public statement stating that members of the public should “wait until the

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<sup>3</sup> Boston 25, “25 Investigates: Prosecutors to disprove woman who says she's wrongly charged in death of Boston cop”, April 19, 2023: <https://www.boston25news.com/news/local/25-investigates-prosecutors-disprove-woman-who-says-shes-wrongly-charged-death-boston-cop/Z45NWRH3JZGS7DR66DNPPMMB34/>

prosecution has been able to give their response to the Norfolk Superior Court judge sitting on the case,” and that that response would “occur on May 3.”<sup>4</sup>

17. Jennifer McCabe’s attorney also weighed in publicly on this issue. He stated, to the Boston Herald, “[m]y client, Jennifer McCabe, has been vilified in pleadings. They are spinning it . . . It’s going nowhere. The whole scenario is baseless.” He further noted that Ms.

McCabe had taken and passed a polygraph examination, something I know to be inadmissible in Court, but which may nevertheless represent a compelling narrative to members of the public.

18. An attorney for Brian Albert (“Mr. Albert”) has also attempted to refute, publicly, aspects of the defense theory. It is worth noting that Mr. Albert’s attorney is a legal analyst at WCVB News.

19. In an opposition to a Rule 17 Motion filed by Ms. Read, Mr. Albert’s attorney suggested that Mr. Albert’s dog, “Chloe.” had no history of attacking human beings. Instead, Mr. Albert’s counsel suggested that Chloe was re-homed following an incident between two dogs: “the defense is asking the reader to conclude that the dog in question has a history of attacking human beings, and that it was sent away because it was violent towards people. As with other defense assertions, this is not true.”

20. Having reviewed the records, the defense assertions were indeed true: those records clearly demonstrate that “Chloe” in fact attacked two people, both of whom were taken to the hospital for medical treatment. Despite protestations to the contrary to the media, it was the assertion of Brian Albert’s attorney that was untrue.

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<sup>4</sup> Canton Police, Twitter.com, April 20, 2023:  
<https://twitter.com/CantonMAPolice/status/1649234367569436675>

21. More recently, in its motion to “prohibit extrajudicial statements,” the Commonwealth stated that it has evidence that “establishes that the defendant, while intoxicated, in a snowstorm, operated her motor vehicle in reverse for a period of time, before striking the victim at a high rate of speed.”

22. In a statement to WCVB news, where Mr. Albert’s attorney works as a legal analyst, Norfolk District Attorney’s Office spokesperson Mr. Traub stated that the information in the preceding paragraph was based on their reading of a newly available report prepared by the State Police Collision Analysis and Reconstruction Section of the Read’s vehicle data.<sup>5</sup>

23. That allegation was, again, picked up by a number of media outlets, including Boston Magazine, Boston 25 News, the Patriot Ledger, the Sun Chronicle, and more.

24. The Sun Chronicle stated, in its article on this issue, “Boston television station WCVB Channel 5 reported the information came from a recent report of an analysis of the **black box** in Read’s SUV.”<sup>6</sup>

25. As has often been true in this case, this statement is not quite accurate and is at best misleading. Without further revealing any of the contents of the referenced report, Ms. Read’s “Event Data Recorder” (“EDR”) — which is what is traditionally referenced when referring to a vehicle’s “black box” — showed no events (i.e. no impacts or accidents). Since there were no deployment or non-deployment events (i.e., accidents) recorded, the EDR

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<sup>5</sup> See “Karen Read murder case: Prosecution says they have new electronic vehicle data”, WCVB News, available at <https://www.wcvb.com/article/karen-read-prosecution-seeking-order-limit-information-outside-court/44157341>.

<sup>6</sup> (Emphasis added) see “Gag order sought against lawyers for Mansfield woman accused of killing boyfriend, a Boston cop”, the Sun Chronicle, available at [https://www.thesunchronicle.com/news/local\\_news/gag-order-sought-against-lawyers-for-mansfield-woman-accused-of-killing-boyfriend-a-boston-cop/article\\_5f03b745-593c-5553-9fd4-e5e31de200be.html](https://www.thesunchronicle.com/news/local_news/gag-order-sought-against-lawyers-for-mansfield-woman-accused-of-killing-boyfriend-a-boston-cop/article_5f03b745-593c-5553-9fd4-e5e31de200be.html)



("black box") would not show any of the information referenced by the Norfolk County District Attorney's office in its filing.

26. Upon information and belief, had Ms. Read reversed her vehicle into *anything* at a high rate of speed, the event would have been recorded by her vehicle's EDR.

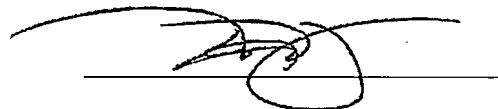
27. All of these statements against Ms. Read have significantly prejudiced her ability to have a fair trial on this matter.

28. I am aware of my obligations under Mass. R. Prof. C-3.6. I am also aware that I am allowed to make similar public statements if I believe that they are required to protect my client from substantial prejudice under Mass. R. Prof. 3.6(c). I am not aware of any case in which the government's case has been prejudiced by defense statements.

29. In my view, statements made by the defense team have been necessary to protect Ms. Read from the substantially prejudicial statements made by the Commonwealth, its agents, members of the media, and attorneys for interested third parties in this case.

30. For these reasons, the defense respectfully requests that this Honorable Court denies the Commonwealth's motion.

Signed under the pains and penalties of perjury this 14<sup>th</sup> day of July, 2023.



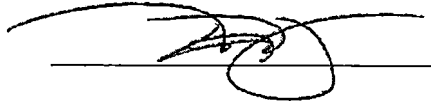
David R. Yannetti

**CERTIFICATE OF SERVICE**

I, Attorney David R. Yannetti, do hereby certify that I served the “Defendant Karen Read’s Opposition to Commonwealth’s ‘Motion to Prohibit Prejudicial Extrajudicial Statements of Counsel in Compliance with Massachusetts Rules of Professional Conduct 3.6(a)’” upon the Commonwealth by emailing a copy on July 14, 2023 to Norfolk County Assistant District Attorney Adam Lally at [adam.lally@mass.gov](mailto:adam.lally@mass.gov).

July 14, 2023

Date



David R. Yannetti  
Yannetti Criminal Defense Law Firm  
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Boston, MA 02108  
[law@davidyannetti.com](mailto:law@davidyannetti.com)  
(617) 338-6006  
BBO #555713

**EXHIBIT H**



*The Commonwealth of Massachusetts*  
*Department of State Police*



MAURA T. HEALEY  
GOVERNOR

KIMBERLY DRISCOLL  
LIEUTENANT GOVERNOR

TERRENCE M. REIDY  
SECRETARY

Division of Investigative Services  
Norfolk State Police Detective Unit

45 Shawmut Road  
Canton, MA 02021

JOHN E. MAWN JR.  
COLONEL/SUPERINTENDENT

JOHN D. PINKHAM  
DEPUTY SUPERINTENDENT

September 21, 2023

To: Detective Lieutenant Brian P. Tully #3520, Commander - Norfolk SPDU

From: Lieutenant John M. Fanning #3253, Norfolk SPDU

Subject: Interviews of Melvin Moreta Acevedo ([REDACTED]) and Roman Martinez ([REDACTED])

Case: 2022-112-33

1. On Sunday September 17, 2023 Sgt Bukhenik was notified by Mark Grossman who lives at [REDACTED] in Canton that Karen Read was in a vehicle in the area of 1 Meadows Ave, Canton on Sunday morning (September 17<sup>th</sup>). 1 Meadows Ave is the current residence of the decedent John O'Keefe's juvenile niece, nephew, and his parents. Mark also sent a picture and Ring Video of the vehicle that Karen was riding in (please see Sgt Bukhenik's report). The vehicle a black GMC Yukon was bearing Ma Reg LV [REDACTED]. It is known to this office that as a part of Karen Read's pretrial conditions, she has a stay away order from the victim's (John O'Keefe) family and residence. On Wednesday September 20, 2023 we identified the registered owner of the vehicle involved as Melvin Moreta Acevedo (1 [REDACTED]).

DIVISION OF INVESTIGATIVE SERVICE  
MASS. STATE POLICE  
Year / Dist / Crime / Case  
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78  
Serial#  
\_\_\_\_\_  
Captain      Supervisor

2. On Wednesday September 20, 2023 at approximately 2pm, Trooper Proctor and I traveled to Melvin's residence in Providence to interview him about his vehicle and who was driving his vehicle on Sunday September 17<sup>th</sup>. We met Melvin and a female resident named Elena at the door; and we were invited into his living room for the interview. Melvin stated that he knows Karen and her lawyer Alan. He said that he has transported them both on two different occasions, to and from court at Norfolk Superior Court in Dedham. Both occasions, Melvin picked them up at the Omni Hotel in Boston and dropped them back off at the same location. Melvin said that on Saturday and Sunday (September 16 and 17, 2023) his coworker Roman Martinez ( [REDACTED] ) drove his vehicle and worked for Karen and Alan. Melvin called Roman on his cellphone and explained to him that we had some questions about his travel over the weekend. Roman three-way called his wife Vianca Vargas ( [REDACTED] ) to help translate our questions and his answers.

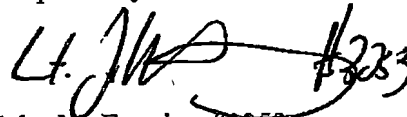
Lieutenant Brian P. Tully #35276 C.

To:

Detective

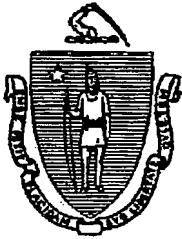
3. Roman said that he picked up Karen, Alan, a blonde woman who he believed to be Karen's attorney, and another woman who he called a witness. He picked up all four occupants at the Omni Hotel in Boston at 4pm on Saturday September 18<sup>th</sup>, 2023, and dropped them all off back at the Omni at 10pm. On Sunday September 17<sup>th</sup>, 2023, he picked up all four occupants again at the Omni Hotel in Boston at 7am. Roman said that when they got into the car Karen wrote down the address 1 Meadows Avenue, Canton for Roman to put in his GPS. Roman said that he does not speak or understand English very well, so she wrote the address on a piece of paper. Roman said that when he arrived in the area of 1 Meadows Ave, they asked him to park far away from the house and to wait there. Roman said that Alan and the other woman described as a "witness" exited the vehicle and started to walk around the area. He said Karen and the blonde attorney stayed in the vehicle. Roman said that Alan and the other woman described as a "witness" exited the vehicle and were gone for less than a minute. Roman said that he became uncomfortable because he saw someone taking pictures of his vehicle. Roman said that after they left the area of 1 Meadows Ave, he was guided to different areas by Karen. Eventually, he dropped all occupants off in Sandwich at approximately 11AM.

Respectfully Submitted,



John M. Fanning #3253

Norfolk County State Police Detective Unit  
Lieutenant, Massachusetts State Police



*The Commonwealth of Massachusetts*  
*Department of State Police*



MAURA HEALEY  
 GOVERNOR  
 KIM DRISCOLL  
 LIEUTENANT GOVERNOR  
 TERENCE M. REIDY  
 SECRETARY

Division of Investigative Services  
 Norfolk County State Police Detective Unit  
 45 Shawmut Rd., Canton, MA 02021

JOHN E. MAWN JR.  
 COLONEL/SUPERINTENDENT  
 JOHN D. PINKHAM  
 DEPUTY SUPERINTENDENT

September 25, 2023

TO: Detective Lieutenant Brian Tully, #3520  
 FROM: Sergeant Yuriy Bukhenik, #3543  
 SUBJECT: Interview of Mark Grossman (DOB [REDACTED]) RE: O'Keefe MV Homicide  
 Case: 2022-112-33

1. On Tuesday, September 19, 2023, at approximately 6:10 PM, Tpr. Clark and I, travelled to [REDACTED] in Canton in order to hold a prescheduled interview with Mark Grossman ([REDACTED]) at his home. Upon our arrival, we met Mark out front of his property and he invited us inside. Following brief introductions, we asked Mark to walk us through the timeline of events as they relate to Karen Read and her legal team members coming to the neighborhood. Mark told us he has known Karen since she and John O'Keefe were dating and that he had seen her around town back in 2022 and their neighborhood when she would visit John O'Keefe. Mark further stated that he has seen Karen Read recently on television and the internet so he is familiar with her appearance.

DIVISION OF INVESTIGATIVE SERVICE  
 MASS. STATE POLICE  
 Year / Dist / Crime / Case  
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 [Signature]  
 Captain      Supervisor

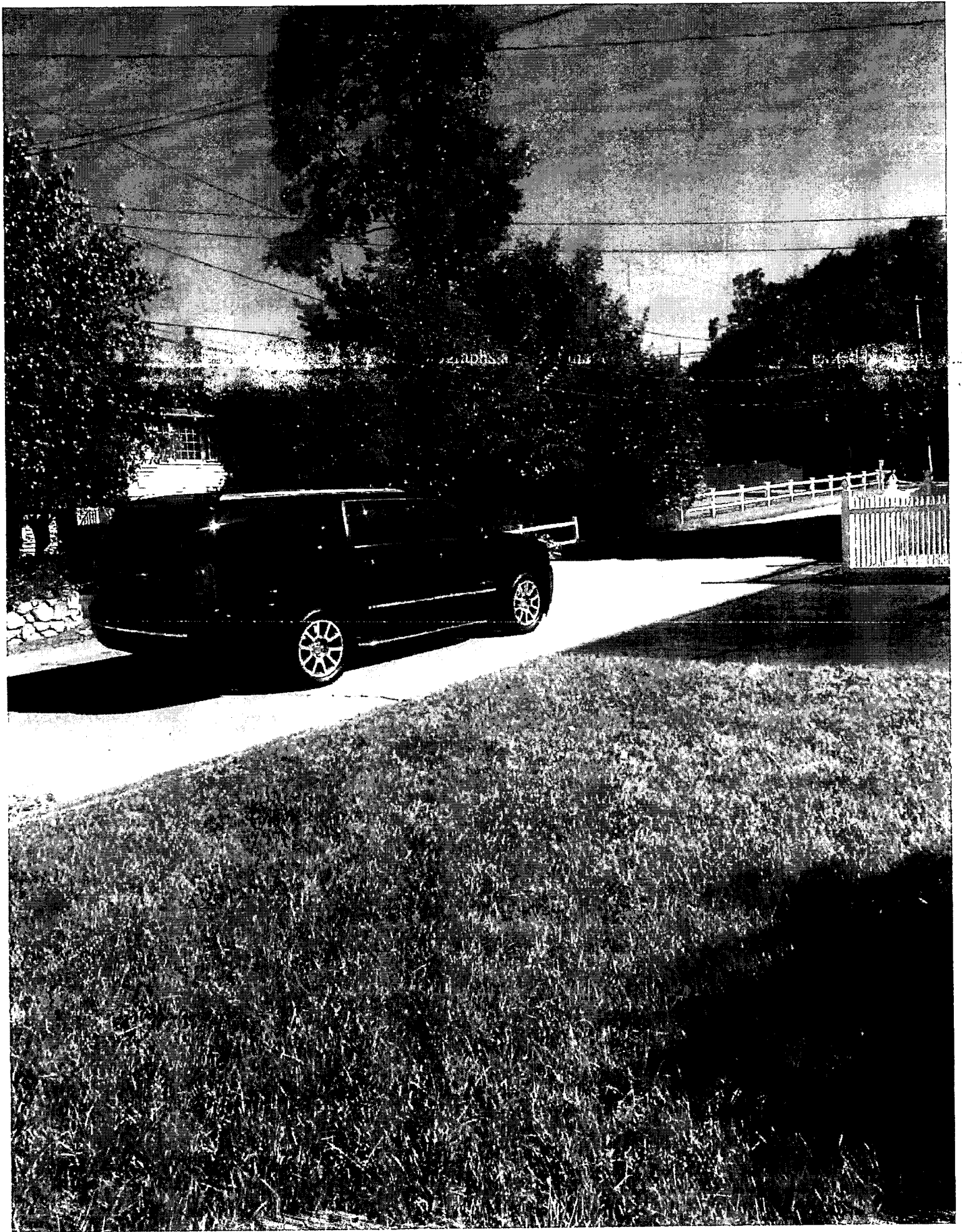
2. Mark went on to say that on Sunday, September 17, 2023, at approximately 9:49AM he saw a black SUV GMC Yukon with a plate (MA: LV [REDACTED]) turn around in his driveway and proceed back out towards Pleasant St. Mark stated that he recognized both Alan Jackson and Karen Read inside the vehicle. According to Mark, Karen was seated in the rear passenger portion of the vehicle leaning forward in the middle seat. When asked, Mark stated he had not seen that vehicle or Karen Read on his street prior to Sunday morning, and has not seen it come back since.

3. Mark further stated that after using his driveway to turn around, the vehicle proceeded slowly toward O'Keefe's home and slowly rolled past the residence at 1 Meadows Ave. Mark stated that he exited his home and took photographs as proof that the described events took place. Mark told us that once at the end of the street and in front of 1 Meadows Ave., the SUV took a left turn onto Pleasant Street. We asked if any of the occupants exited the vehicle or placed it in park, to which Mark stated he did not observe anything like that. I requested that Mark provide any and all photographs of the aforementioned events to which he stated he would. Mark further told us he had a video of the event which was recorded on his Ring video camera, which he would also provide. We thanked Mark for his time and concluded our conversation. Mark provided photos, which have been included with this report. The video links provided by Mark have been archived.

Respectfully Submitted,

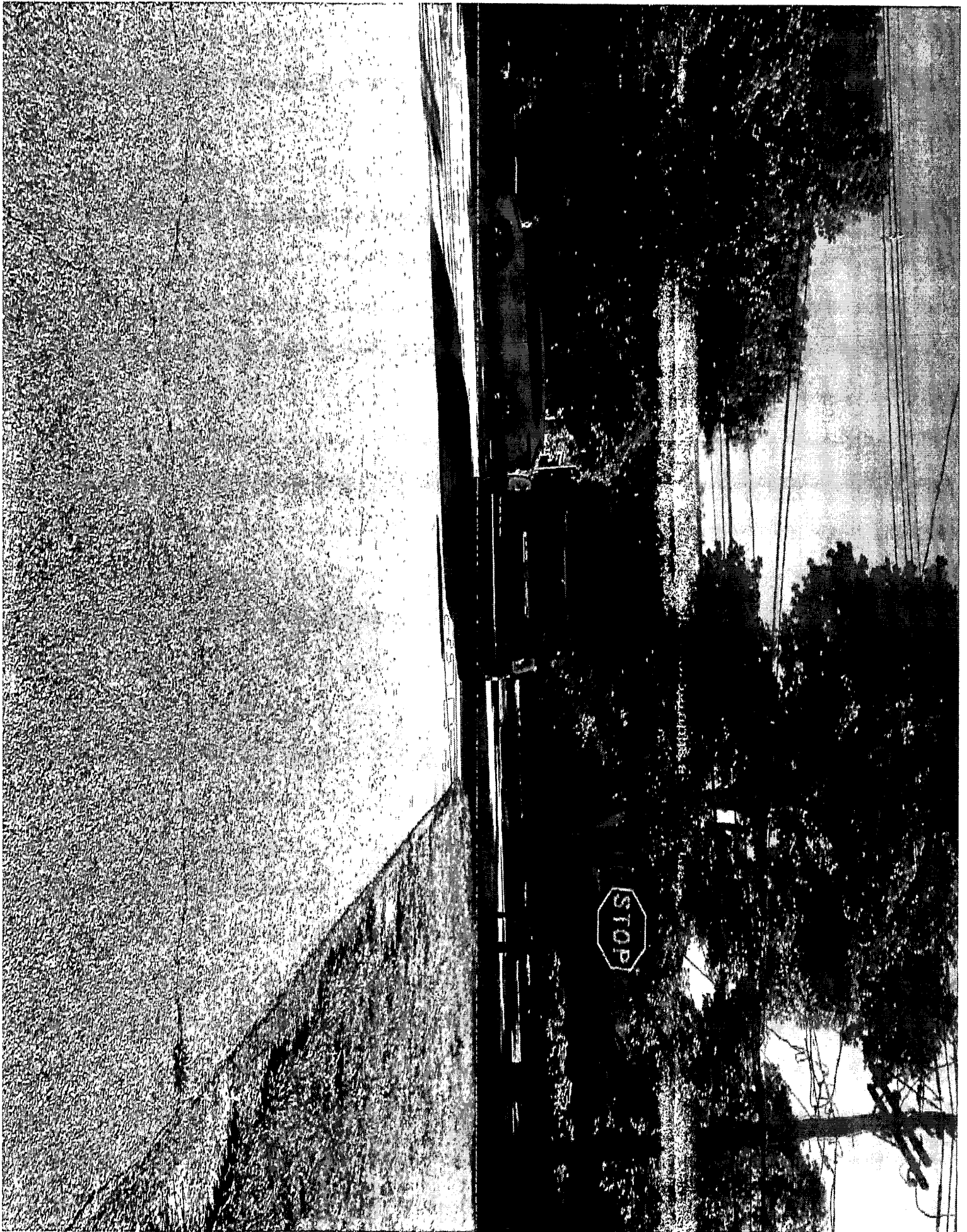
*Sgt. Yuriy Bukhenik #3543*

Sergeant Yuriy Bukhenik, #3543  
Massachusetts State Police  
Norfolk District Attorney's Office









# EXHIBIT I

## COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.  
DEPARTMENT

SUPERIOR COURT

NO. 2282-CR-00117

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COMMONWEALTH OF )  
MASSACHUSETTS, )  
Plaintiff )

V. )

KAREN READ, )  
Defendant )

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### DEFENDANT'S MOTION FOR RECUSAL AND DISQUALIFICATION OF JUSTICE BEVERLY CANNONE

Now comes the defendant, Karen Read ("Ms. Read", or "the Defendant"), by and through her counsel of record, Werksman Jackson & Quinn LLP, and respectfully files the instant request for the recusal and/or disqualification of Justice Beverly Cannone. The defense has uncovered disturbing extrajudicial statements by family members of material witnesses in this case alluding to their family's personal connection and ability to influence Justice Cannone, which when viewed in light of recent procedural irregularities engaged in by this Court to the great detriment of Ms. Read, undermine public confidence in the outcome of these proceedings and create the appearance of partiality such that a reasonable, disinterested observer might question whether Justice Cannone can be fair and impartial in this case, and requiring her recusal and/or disqualification.

The instant Motion is based on the information set forth herein and the supporting declarations filed herewith, and is made pursuant to the due process clause of the Fourteenth Amendment of the United States Constitution, article 29 of the Massachusetts Constitution Declaration of Rights, and various provisions of the Supreme Judicial

Court's Code of Judicial Conduct, which mandate disqualification when a judge cannot be fair or impartial, or where her impartiality might reasonably be questioned by a disinterested third party. This Motion was timely filed pretrial upon discovery of the facts and information giving rise to this motion and in advance of any further proceedings in before this Court. (*Commonwealth v. Dane Entertainment Servs.*, 18 Mass. App. Ct. 446, 448 (1984); *Cefalu v. Globe Newspaper Co.*, 8 Mass. App. Ct. 71, 79 (1979); *Edinburg v. Covers* (22 Mass. App. Ct. 212, 217 (1986); see Affidavit of Alan Jackson; ¶3.)

## INTRODUCTION

The protection of an accused's right to an impartial adjudicator is deeply enshrined in both the United States and Massachusetts Constitutions. (*See Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868, 876 (2009) ("It is axiomatic that '[a] fair trial in a fair tribunal is a basic requirement of due process.'"); Mass. Const., Decl. of Rights, art. 29 ("It is the right of every citizen to be tried by judges as free, impartial and independent as the lot of humanity will admit.")) In keeping with that precept, the rules governing disqualification of judges are codified in the Code of Judicial Conduct, S.J.C. Rule 2.11, which mandates the disqualification of a judge in any proceeding in which either "the judge cannot be impartial or the judge's impartiality might reasonably be questioned[.]" (Code of Judicial Conduct, S.J.C., Rule 2.11.) "Actual impartiality alone is not enough. 'Our decisions and those of the Supreme Judicial Court have commented often and in a variety of contexts on the importance of maintaining not only fairness but also the appearance of fairness in every judicial proceeding.'" (*Com. v. Morgan RV Resorts, LLC*, 84 Mass. App. Ct. 1, 9 (2013), quoting *Adoption of Tia*, 73 Mass. App. Ct. 115, 122 (2008).) In other words, an accused's constitutional right to due process demands that "justice . . . satisfy the appearance of justice." (*Offutt v. United States*, 348 U.S. 11, 14 (1954).) Setting aside the issue of whether Justice Cannone has the ability to be fair in this case, the appearance of justice has already been irreparably compromised in this case.

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). As set forth herein, the following facts and circumstances attendant to this case provide more

than a reasonable basis for a knowledgeable, disinterested member of the public to doubt Justice Cannone's ability to be fair and impartial in this case, requiring her

disqualification: (1) Sean McCabe, a family member of the seminal witnesses (and third party culprits) in this case whom Ms. Read has publicly accused of murdering O'Keefe, made extrajudicial statements to a local investigative reporter that his family has a relationship with Justice Cannone and the ability to influence her; (2) Justice Cannone has routinely refused to rule in a timely manner on defense motions, while advancing and prioritizing motions filed by the Commonwealth and the very witnesses who have claimed an ability to influence her; (3) Justice Cannone denied Ms. Read a full and fair opportunity to be heard on a critical discovery motion requesting records from members of the same family that claim to have a relationship with her; and (4) Justice Cannone has now indicated through the Clerk of Court, in writing, that she intends to deviate from procedure in Norfolk County Superior Court by choosing to keep this case with her so that she can rule on the Commonwealth's Motion to Prohibit Extrajudicial Statements by the Defense (in which she and the third party culprits have a personal interest) in spite of the fact that *she was reassigned to civil court* and this case is properly heard by the judicial officer currently assigned to the criminal session. As such, Ms. Read's constitutional right to due process and a fair and impartial judge require that Justice Cannone be disqualified from these proceedings.

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## II. STATEMENT OF FACTS

### A. A BRIEF RECITATION OF FACTS RELATING TO THIS CASE

Ms. Read sets forth a brief recitation of the facts attendant to this case for the purpose of giving context to the disturbing extrajudicial statements made by Sean McCabe in connection with this case, which support Ms. Reads request for the disqualification of Justice Cannone.<sup>1</sup> At approximately 6:00 a.m. on January 29, 2022, John O'Keefe ("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.

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

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.

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<sup>1</sup> The facts surrounding the allegations in this case are set forth more fully in Ms. Read's Rule 17 Motion for Cell Records. In the event that this or some other Court, requires additional information regarding the state of the evidence in this case, the facts set forth in Ms. Read's Rule 17 Motion for Cell Records are incorporated herein by reference.

Witnesses gave conflicting accounts regarding whether O'Keefe actually existed the vehicle and made his way into the Albert Residence on January 29, 2022. Ms. Read has 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. Conversely, the Alberts and McCabes have maintained that O'Keefe never entered the Albert Residence.

The theory advanced by the Commonwealth in support of the filing of the instant charges against Ms. Read is that she became suddenly angry with O'Keefe outside the home of Boston Police Officer Brian Albert, placed her car into reverse, struck O'Keefe with her vehicle at 27 miles per hour, and shattered the right taillight of her vehicle, before fleeing the scene. However, the photographs of O'Keefe's injuries, which are attached hereto as Exhibit A, speak for themselves and are completely inconsistent with the Commonwealth's theory of the case. (Affidavit of Alan J. Jackson at ¶6, Exhibit A.) Photographic evidence of the injuries in this case clearly suggest that O'Keefe 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 id.*)

Moreover, 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, which appear to be consistent with bite and/or claw marks from an animal (and are clearly inconsistent with a vehicular homicide). (*See id.*) Indeed, significant circumstantial evidence suggests that Brian Albert's K-9 German Shepherd "Chloe" was actually responsible for the injuries to O'Keefe's right arm. Although Brian Albert's attorney made representations in Court and in filings falsely claiming that Mr. Albert's dog, "Chloe," had no history of attacking human beings, newly obtained records from Canton Animal Control and the Canton Town Clerk, establish that counsel's representations to the public and this Court were false. In fact, records obtained from the Canton Town Clerk establish that Brian Albert's K-9 German Shepherd "Chloe" escaped the Albert Residence mere months after

O'Keefe's death and attacked not one, but two, separate human beings. One woman was bitten on the arms, neck, and leg in broad daylight. The other woman was bitten on the left hand. Both individuals were taken to a hospital for treatment as a result of the German Shepherd's vicious attack.

As set forth in lengthy prior court filings, Ms. Read has also unearthed shocking evidence implicating third parties Jennifer McCabe and Brian Albert in O'Keefe's death.<sup>2</sup>

Indeed, an analysis of the *complete* forensic image of Jennifer McCabe's cell phone by Computer Forensics Expert Richard Green—which the Massachusetts State Police and Norfolk County District Attorney's Office withheld from the defense for more than a year—establishes that **Jennifer McCabe, one of the Commonwealth's seminal witnesses, Googled, "hos [sic] long to die in cold" at 2:27 a.m. on January 29, 2022, three hours before she supposedly "discovered" O'Keefe's hypothermic body in the cold snow on her brother-in-law's front lawn.** (Affidavit of Alan J. Jackson at ¶7; Exhibit B.) Ms. McCabe subsequently took steps to purge this search from her phone before turning it over to law enforcement three days later. (*Id.*) The revelations from Jennifer McCabe's cell phone, alone, make Jennifer McCabe and Brian Albert prime suspects in this case. This is just the tip of the iceberg. Significant other evidence (too lengthy to discuss here) further implicates Jennifer McCabe and Brian Albert in O'Keefe's murder.

Regardless, Ms. Read's defense is clearly predicated on a third-party culpability defense, in which Ms. Read will (and has) presented significant evidence to establish that Jennifer McCabe and Brian Albert are implicated in O'Keefe's murder. (Affidavit of Alan J. Jackson at ¶8.) Suffice it to say, even the *appearance* of ties between Justice Cannone and the Alberts and McCabes families would undermine public confidence in

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<sup>2</sup> The facts and evidence supporting Ms. Read's third party culpability defense are set forth more fully in Defendant's Motion for Order Pursuant to Mass. R. Crim. P. 17 Directed to Brian Albert, Verizon, and AT&T, and are incorporated herein by reference. Because the sheer volume of evidence implicating Brian Albert and Jennifer McCabe in O'Keefe's murder is overwhelming, only the most pertinent and inculpatory facts are discussed here.

the outcome of these proceedings and would violate Ms. Read's constitutional right to due process and a fair trial by an impartial judge.

**B. RECENT CLAIMS BY A MEMBER OF THE MCCABE FAMILY THAT THEY ARE CONNECTED TO JUSTICE CANNONE AND CAN INFLUENCE HER DECISIONS IN THIS PROCEEDING**

On May 28, 2023, Jennifer McCabe's brother-in-law, Sean McCabe, made some extremely disturbing statements to a local investigative reporter insinuating that he has a close-knit relationship with Justice Beverly Cannone and an alarming ability to influence her decision-making in this case. (See Affidavit of Aidan Kearney at ¶5, Exhibit 1.) Aidan Kearney, also known as "Clarence Woods Emerson" and "Turtleboy," is a local investigative blogger in Boston, who much to the dismay of Brian Albert and Jennifer McCabe, has reported significantly on this case (nearly 70 blog posts to date) and published numerous articles opining that Ms. Read was framed for O'Keefe's murder by the McCabes and Alberts. (*Id.* at ¶1, 3.) A true and correct copy of Facebook messages exchanged between Mr. Kearney and Sean McCabe (Matthew McCabe's brother and Jennifer McCabe's brother-in-law) between May 26, 2023, and June 1, 2023, are attached hereto as Exhibit 1. (*Id.* at ¶5; Exhibit 1.) Throughout the exchange, Sean McCabe repeatedly threatens Mr. Kearney, for writing nearly 70 blog posts about this case, and for, *inter alia*, exposing connections between members of the McCabe and Albert family and the lead detective assigned to investigate this case, Massachusetts State Trooper Michael Proctor. (*Ibid.*)

However, on May 27, 2023, Sean McCabe took his threats and taunts a step further, and began intimating that his family has a relationship with Justice Cannone (the Justice actively assigned to Ms. Read's case in May 2023). Indeed, on May 27, 2023, Sean McCabe posted a public comment on "Clarence Woods Emerson's" Facebook page, which has nearly 30,000 followers, stating: "I just called in an order asking Judge Bev to institute a Trial By [sic] Combat order against you. They'll be coming to bring you to me any minute now Clarence." (*Id.* at ¶5; Exhibit 1, at 8.) In response, Mr. Kearney took a



screenshot of Sean McCabe's comment, and sent it to him in a private Facebook message asking, "Do you really have a line to judge Cannone?" (*Id.* at ¶5; Exhibit 1, at 8.) The next day, on May 28, 2023, Sean McCabe, knowing full well that he was speaking to an investigative reporter, unabashedly responded: "**Auntie Bev??? Whose seaside cottage do you think we're going to bury your corpse under?**" (*Id.* at ¶5; Exhibit 1, at 9.) Thus, in the same breath that Sean McCabe threatened to murder a local investigative reporter because he was unhappy with the bad press coverage his family has been receiving, he refers to Justice Cannone as being part of the McCabe family and intimates personal knowledge about the location of her home that only someone close to her would know.

*The mere suggestion that the judge assigned to this case is somehow related to and aligned with the same individuals, which credible evidence suggests are the actual third party culprits in this case, should be deeply disturbing to this Court, the public, and Ms. Read.* To be clear, Sean McCabe is related to Jennifer McCabe and Brian Albert—the very family Ms. Read has shown, through credible evidence, is responsible for O'Keefe's murder. Moreover, Sean McCabe's insinuation that he and his family have a personal relationship with Justice Cannone is further legitimized by the fact that his threat contains accurate personal identifying information about Justice Cannone that absent some relationship would otherwise be unknown to Sean McCabe. Shockingly, it appears that the seminal witnesses in this case (i.e. the McCabes and Alberts, or at the very least, their family member) ***possess intimate knowledge about Justice Cannone, including the fact that she owns a seaside cottage on the Cape.*** Indeed, as set forth in the attached Declaration of Alan Jackson, notarized deeds filed with the Barnstable Registry of Deeds confirm that both Sean McCabe and Justice Cannone own property on the Cape in Centerville, Massachusetts, **and live less than four miles apart.** (Affidavit of Alan J. Jackson at ¶9, Exhibit C.) Copies of the deeds confirming the same are filed herewith under order of impoundment. (*Ibid.*) Thus, Sean McCabe's suggestion that he has a relationship or connection with Judge Cannone appears at least facially credible, given that they both own homes in a small town on the Cape less than four miles apart.

Moreover, although McCabe's residence is located further inland, the closest beach access for both homes appears to be the very same, very small, beach. (*Ibid.*)

There are only two reasonable explanations as to why Sean McCabe would know that Justice Cannone owns a "seaside cottage": (1) Sean McCabe either knows Justice Cannone or has crossed paths with Justice Cannone on the Cape; or (2) the McCabes have taken steps to locate and obtain personal identifying information about the judge presiding over this case and communicated that knowledge publicly for the purpose of intimidation. This threat was not limited to Mr. Kearney. Rather, Sean McCabe sent this message to Mr. Kearney knowing full well that Mr. Kearney is an investigative reporter and his conversations and comments about Justice Cannone would be widely publicized on Mr. Kearney's website. In fact, at the very start of his conversation with Mr. Kearney, Mr. McCabe encouraged Mr. Kearney to publicly share their conversation on his website, writing: "So if you want to talk to me, you're gonna hear what I have to say first. Cut & paste this shit all you want sally, but you don't have the stones to look me in the eye." (See Affidavit of Aidan Kearney at ¶5, Exhibit 1, at 1-2.) Thus, Sean McCabe's threat to murder Mr. Kearney and bury him under "auntie bev's" seaside cottage was meant to suggest to Ms. Read and the public at large: Justice Cannone is family; she will back our play.

As set forth in further detail below, whether it be out of fear, intimidation, relationship, or for some other reason, significant procedural irregularities engaged in by Justice Cannone have prejudiced Ms. Read and benefitted the Alberts and McCabes, such that any disinterested third party would have to question Justice Cannone's impartiality in this case.

### **C. FACTS RELATING TO THE PROCEDURAL HISTORY OF THIS CASE**

Ms. Read has engaged in significant pretrial litigation with the Commonwealth in an effort to obtain additional critical discovery, which will further implicate the McCabes and Alberts in O'Keefe's murder. Notwithstanding any issues relating to the substance of the Court's rulings, Justice Cannone has substantially (and increasingly) delayed her

decisions on motions filed by the defense and denied Ms. Read a full and fair opportunity to be heard. A brief summary of the procedural history in this case as it relates to those claims is detailed below.

### 1. MAY 3 HEARING

Ms. Read, through her counsel, timely filed three significant discovery motions in advance of the May 3, 2023, pretrial hearing scheduled in this case. All of these motions were targeted at uncovering additional evidence, which law enforcement had neglected to obtain during the course of their investigation and Ms. Read had reason to believe would exculpate her and implicate the McCabes and Alberts in O'Keefe's death. First, on February 2, 2023, Ms. Read filed a Motion for Order Pursuant to Mass. R. Crim. P. 17 Directed to Canton Animal Control and the Canton Town Clerk ("Motion for Animal Control Records"), requesting records and information concerning a violent skin-piercing incident involving Brian Albert's K-9 German Shepherd and his hasty decision to rehome that dog mere months after O'Keefe's death.<sup>3</sup> (Affidavit of Alan J. Jackson, at ¶10, Exhibit D, Dkts. 53-55.) Subsequently, on April 12, 2023, Defendant Karen Read filed a Motion for Order Pursuant to Crim. P. 17 Directed to Brian Albert, Verizon, and AT&T ("Rule 17 Motion for Cell Records), requesting Jennifer McCabe and Brian Albert's cell phone carrier records during the relevant period along with any cell phones belonging to Brian Albert for the same period. (Affidavit of Alan J. Jackson, at ¶10, Exhibit D, Dkts. 64-66.) Finally, on April 26, 2023, Ms. Read filed Defendant's Renewed Motion to Compel Discovery; Affidavit of David R. Yannetti in Support of Defendant's Renewed Motion to Compel Discovery with Certificate of Service; and Supporting Exhibits ("Renewed Motion to Compel"), requesting defense access to critical items of evidence that have (and continue to be) withheld by the Commonwealth and that the Court impose

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<sup>3</sup> Notably, no reference to Brian Albert's German Shepherd was *ever* made in any of the police reports turned over in connection with this case. Information regarding the skin-piercing incident and Brian Albert's decision to rehome his dog was discovered by defense investigators after interviewing witnesses in the Town Clerk's Office.

dates by which the Commonwealth would need to comply. (Affidavit of Alan J. Jackson, at ¶10, Exhibit D, Dkts. 67-69.)

On May 2, 2023, the day before the hearing was set to take place, the Commonwealth filed its Opposition to Defendant's Motion Pursuant to Rule 17 of Criminal Procedure - Production of Records from Canton Animal Control and the Canton Clerk's Office; and its Memorandum in Opposition to Defendant's Motion Pursuant to Rule 17 of Criminal Procedure - Directed to Brian Albert, Verizon, and AT&T on May 2, 2023 (Commonwealth's Opposition to Rule 17 Motion for Cell Records"). (Affidavit of Alan J. Jackson, at ¶10, Exhibit D, Dkt. 71.) At the hearing, Brian Albert, by and through his counsel of record Gregory Henning, also filed an Opposition to Defendant's Rule 17 Motion for Cellular Devices and Records.<sup>4</sup> (Affidavit of Alan J. Jackson, at ¶10, Exhibit D, Dkt. 73.)

On May 3, 2023, at 2:00 p.m., this Court held a widely publicized pretrial hearing, which was covered by national and local news media outlets. At the hearing, the Court heard argument on the Motion for Animal Control Records and the Renewed Motion to Compel, but reserved ruling on both motions. The parties agreed to defer argument on the Rule 17 Motion for Cell Records until a later hearing because the issues raised in the motion involved significant factual disputes, which would need to be resolved through an evidentiary hearing. As the Court explained on the record, "the parties have agreed for [sic] an evidentiary hearing, and [the Court] rearranged [its] schedule a bit so that we could accommodate you." (Affidavit of Alan J. Jackson, at ¶11, Exhibit E, May 3, 2023, RT at 24:21-24.) Because the Commonwealth's objections to the Defendant's Rule 17 Motion were largely borne out of *factual disputes*, this Court set an evidentiary hearing for May 25, 2023, and ordered that the parties argue the merits of the Motion for Cell Records on that day. (Affidavit of Alan J. Jackson, at ¶11, Exhibit E, May 3, 2023, RT 33:20-34:12.) The Court reserved ruling on the Defendant's Motion for Animal Control

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<sup>4</sup> Although the title of Brian Albert's Opposition does not reflect such, Brian Albert opposed both the release of any cell records *and* the release of any records from Animal Control and the Canton Town Clerk about his dog.

Records and the Renewed Motion to Compel and clearly set this case for an evidentiary hearing on May 25, 2023, at 9:30 a.m. (Affidavit of Alan J. Jackson, at ¶11, Exhibit E, May 3, 2023, RT 51:4-7.)

**In spite of the fact that the hearing on the Motion for Animal Control Records was heard and argued on May 3, 2023, it took Justice Cannone 16 days to finally issue her ruling allowing Defendant's Request for Animal Control Records.**<sup>5</sup> (Compare

Exhibit E, with Exhibit D, Dkt. 79.) Indeed, on May 19, 2023, Justice Cannone allowed Rule 17 of Criminal Procedure motion, and issued an order for production of records from Canton Animal Control and the Canton Town Clerk's Office. (Exhibit D, Dkt. 79.) Notably, those records contained exculpatory information, which substantiated Ms. Read's third party culpability defense and further tied Brian Albert to O'Keefe's death. Since then, Justice Cannone's rulings have become increasingly dilatory.

**To date, it has been 72 days since the May 3 hearing, and in spite of reminders to the Court's Clerk, Ms. Read still does not have a decision on the Renewed Motion to Compel.** (See Exhibit D.) In addition to this Court's apparent refusal to rule on properly noticed motions before the Court, Justice Cannone has denied Ms. Read the ability to be heard.

## **2. THE COURT'S DECISION TO COMPLETELY VACATE THE MAY 25 HEARING ON THE RULE 17 MOTION FOR CELL RECORDS WITHOUT NOTICE TO THE DEFENDANT**

As detailed above, this Court and the respective parties agreed to set the instant case for an evidentiary hearing on May 25, 2023, to resolve factual disputes related to Defendant's Rule 17 Motion for Cell Records. Ms. Read expended significant funds subpoenaing witnesses in preparation for the hearing (including Brian Albert, Jennifer McCabe, and the Commonwealth's computer forensics expert Trooper Guarino), flying in an out-of-state expert to testify regarding his findings on Jennifer McCabe's cell

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<sup>5</sup> Notably, those records contained exculpatory information, which substantiated Ms. Read's third party culpability defense and further tied Brian Albert to O'Keefe's death. Since then, Justice Cannone's rulings have become increasingly dilatory.

phone, and preparing for the examination of witnesses at the evidentiary hearing that was stipulated to by the parties and placed on calendar by this Court. (Affidavit of Alan J. Jackson, at ¶12.)

However, on May 22, 2023, three days before the scheduled hearing—without any advanced notice to Ms. Read or her counsel—the Commonwealth, Brian Albert, and Jennifer McCabe (clearly acting in concert), filed a flurry of motions requesting, *inter*

*alia*, that the evidentiary hearing set for May 25, 2023, suddenly be cancelled.

Specifically, on May 22, 2023, Brian Albert and Jennifer McCabe both filed motions to quash the subpoenas, which had been served on them by Ms. Read’s counsel to testify at the evidentiary hearing. (Exhibit D, Dkts. 81-85.) That same day, the Commonwealth, in a shocking reversal of its position with respect to the evidentiary hearing *it previously asked be put on calendar*, filed an Opposition to Defendant’s Request for Evidentiary hearing on Mass R. Crim. P. 17. (Exhibit D, Dkt. 83.) Shortly thereafter, Brian Albert’s counsel emailed the Court’s Clerk requesting that the hearing on the motions to quash be advanced to a date before the May 25 hearing. (Affidavit of Alan J. Jackson, at ¶13; Exhibit F.) After coordinating schedules, the clerk then set the case for a hearing on the Motions to Quash on May 24, 2023, and indicated that “[Justice Cannone] want[ed] to address [the Commonwealth’s] motion, at least initially.” (*Id.*) Thus, the Court then set a hearing on May 24, 2023, to determine whether the motions to quash should be granted and to hear “at least initially” the Commonwealth’s Opposition to Defendant’s Request for Evidentiary Hearing, which ironically was agreed upon by the Commonwealth in the first place.<sup>6</sup> Notably, the Rule 17 Motion for Cell Records *and* evidentiary hearing were still scheduled to be heard on May 25, 2023. (Exhibit D.)

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<sup>6</sup> The Commonwealth’s complete reversal regarding its position on the evidentiary hearing (and decision to capitulate to the requests of Jennifer McCabe and Brian Albert, who were both clearly desperate to avoid testifying in connection with this case) was diametrically opposed to the position it had been taking for over a month. As set forth in the attached email correspondence between counsel for Ms. Read and Attorney Lally, the Commonwealth was well aware that our office was flying in an expert from out-of-state and would need to make arrangements in advance. Mr. Lally repeatedly and explicitly

Upon appearing in Court for the May 24 hearing, the Court heard argument regarding the motions to quash the subpoenas served on Brian Albert and Jennifer McCabe and (while still sitting on the bench), allowed both motions, precluding Ms. Read from calling them to testify at the evidentiary hearing. (Affidavit of Alan J. Jackson ¶16, Exhibit H.) The Court then heard argument with regard to the Commonwealth's opposition to cancel the evidentiary hearing in total, *which was clearly both necessary and appropriate because, as the Commonwealth argued later during that hearing, the Commonwealth disputed nearly every evidence-based assertion set forth by the defense in its Rule 17 Motion for Cell Records, including whether Jennifer McCabe googled "how long to die in cold" at 2:27 a.m. hours before she claimed to have found O'Keefe's hypothermic body in the snow of her brother-in-law's front lawn.* (Exhibit H.)

Immediately following argument, the Court quickly issued a ruling allowing the Commonwealth's motion to cancel the evidentiary hearing, adopting the Commonwealth's legally *incorrect* theory that there was "no authority for it," and effectively denied Ms. Read the ability to prove that the disputed facts set forth in her Rule 17 Motion for Cell Records were, in fact, true. (Exhibit H, RT 14:19-24.)

Thereafter, the Court then announced to counsel that she would "hear argument on the Rule 17 Motion for Cell Records." (Exhibit H, RT 14:19-24.) Significantly, Ms. Read and her counsel were never notified that there was even a remote possibility that the Rule 17 Motion for Cell Records was going to be heard that day. (Affidavit of Alan J. Jackson,

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reaffirmed his intention to move forward with an evidentiary hearing. On April 27, 2023, he wrote: "I will certainly let you know if the information is disputed and you are free to do whatever you like as far as witnesses are concerned. [I]f it is a disputed issue, I would likely be looking to call witnesses of my own in regard to that. I'll certainly let you know as soon as possible, so both you and the Court can make whatever necessary accommodations to conduct an evidentiary hearing." (Affidavit of Alan J. Jackson, at ¶14, Exhibit G.) At the hearing on May 3, 2023, Mr. Lally indicated to us that the Commonwealth disputed the facts at issue in the Rule 17 Motion for Cell Records, and that we would need to set the case for an evidentiary hearing. (Affidavit of Alan J. Jackson, at ¶15.)

¶17.) Thus, Ms. Read's counsel was forced to argue an extraordinarily factually complex and lengthy legal motion, which was not on calendar for that day—*without any notes or advance notice*, denying her a full and fair opportunity to be heard on a motion with a very real and consequential impact on her ability to defend herself against murder charges. The Court then set the case for another pretrial hearing on July 25, 2023.

Although Justice Cannone acted with the utmost alacrity in ensuring that the May 24 hearing concluded as quickly as possible (and Ms. Read was denied the ability to call the very witnesses necessary to prove the disputed facts set forth in her motion), she was in no such hurry to rule on the motion after the proceedings concluded. **Justice Cannone waited 27 days before ultimately denying Ms. Read's Rule 17 Motion for Cell Records on June 20, 2023.** (See Exhibit D, Dkt. 97.)

**3. THE COURT HAS NOW MADE THE UNILATERAL DECISION TO DEVIATE FROM PROCEDURE AND PREVENT THE CRIMINAL SESSION JUDGE FROM HEARING THE COMMONWEALTH'S MOTION TO GAG MS. READ'S ATTORNEYS**

On June 9, 2023, the Commonwealth filed a Motion to Prohibit Prejudicial Extrajudicial Statements of Counsel in Compliance with Massachusetts Rule of Professional Conduct 3.6 (a) ("Motion for Gag Order"), requesting that defense counsel for Ms. Read be gagged and prohibited from making *any statements about this case whatsoever* to the press. (See Exhibit D, Dkt. 93.) The Commonwealth's Motion for Gag Order was noticed for July 25, 2023, and thus, was requested to be heard at the next pretrial hearing, which was already on calendar in this case.

On June 15, 2023, a mere six days after receiving the Motion for Gag Order, counsel for Ms. Read received an email from Mr. McDermott with the Norfolk Superior Court stating "[t]he Court needs a response to the Commonwealth's . . . Motion to Prohibit Extrajudicial statements." (Affidavit of Alan Jackson, ¶18, Exhibit H.) The clerk further indicated that Justice Cannone wanted to unilaterally advance the hearing on the Motion for Gag Order (which was properly noticed for July 25) to June 27 or June 28.



(*Id.*) Notably, on the same day Justice Cannone sought to advance the hearing on the Commonwealth's Motion for Gag Order, which clearly benefits Brian Albert and Jennifer McCabe, she still had not ruled on Ms. Read's Rule 17 Motion for Cell Records, which had already been under advisement for 22 days. (*See Exhibit D.*) When counsel for Ms. Read pushed back and indicated that our office would need time to respond to the Motion for Gag Order, intended to appear in person, and were unavailable on the dates proposed by the Court, Justice Cannone indicated, through the court clerk, that her efforts to advance the hearing were done because she "was looking to hear this while she was still sitting in a Criminal session." (*Exhibit I.*) Thus, because the defense requested to have the motion heard on the date that was already on calendar (and the date noticed on Attorney Lally's motion), the Court indicated, through her court clerk, that "She [would] hear [the Motion for Gag Order on 7/25 in [the civil] session rather than have the Criminal session hear this." Notably, the press (and court of public opinion) have not been friendly to Justice Cannone, Jennifer McCabe, or Brian Albert. (*Exhibit I.*) Notably, Justice Daniel J. O'Shea is currently assigned to the criminal session, and appears listed on the docket as the justice assigned to this case. (*Exhibit K.*)

Indeed, the public has *already* lost confidence in this Court's ability to be fair and impartial in this case. Attached hereto for the Court's review as *Exhibit J*, are examples of comments culled from various articles about this case published by local and national news outlets, all of which establish that the regular, disinterested people following this case are *already* questioning Justice Cannone's ability to be fair in this case. (Affidavit of Alan J. Jackson, ¶19.)

## II. ARGUMENT

"It is axiomatic that '[a] fair trial in a fair tribunal is a basic requirement of due process.'" (*Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868, 876 (2009) (citing and quoting from *In re Murchison*, 349 U.S. 133, 136 (1933)); *Weiss v. United States*, 210 U.S. 163, 178 (1994) [same].) "Not only is a biased decisionmaker constitutionally unacceptable, but 'our system of law has always endeavored to prevent even the

probability of unfairness. . . . In pursuit of this end, various situations have been identified in which experience teaches that the probability of actual bias on the part of the judge . . . is too high to be constitutionally tolerable. Among those cases are those in which the adjudicator has a pecuniary interest in the outcome and in which he has been the target of personal abuse or criticism from the party before him.” (*Withrow v. Larkin*, 421 U.S. 35, 47 (1975).)

Moreover, as the United States Supreme Court has explained, our system has an obligation to do more than simply protect against proven bias or unfairness on the part of a judge; rather, “[j]ustice must satisfy the appearance of justice[.]” (*Offutt v. United States*, 348 U.S. 11, 14 (1954).) Therefore, “[e]very procedure which would offer a possible temptation to the average man as a judge to forget the burden of proof required to convict the defendant, or which might lead him not to hold the balance nice, clear and true between the state and the accused denies the latter due process of law.” (*Tumey v. Ohio*, 273 U.S. 510, 532 (1927).) So important is the appearance of fairness that it may require a judge to disqualify herself even though she has no actual bias or prejudice and would in fact do her “very best to weigh the scales of justice equally.” (*Taylor v. Hayes*, 418 U.S. 488, 501 (1974).)

The same guiding principle of impartial justice is also expressly enshrined in article 29 of the Massachusetts Constitution’s Declaration of Rights:

It is essential to the preservation of the rights of every individual, his life, liberty, property, and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as free, impartial and independent as the lot of humanity will admit.

“A rigid adherence to that principle is essential to the maintenance of free institutions. . . . It may never be relaxed.” (*Thomasjanian v. Odabshian*, 272 Mass. 19, 23 (1930).) Article 29 is “at least as rigorous in exacting high standards of judicial propriety” as the due process clause of the Fourteenth Amendment. (*King v. Grace*, 293 Mass. 244, 247 (1936)). Thus, the protection of an accused’s right to an impartial adjudicator is deeply enshrined in both the United States and Massachusetts Constitutions.

The Massachusetts Code of Judicial Conduct similarly recognizes that “An independent, fair, and impartial judiciary is indispensable to our system of justice.” (Code of Judicial Conduct, Preamble.) In keeping with these precepts, the rules governing disqualification of judges are codified in the Code of Judicial Conduct, S.J.C. Rule 2.11. Pursuant to Canon 3(E)(1)(a) of the Code of Judicial Conduct, S.J.C. Rule 2.11, “A judge **shall disqualify** himself or herself in a proceeding in which the judge cannot be impartial or the judge’s impartiality might reasonably be questioned[.]” (Code of Judicial Conduct, S.J.C., Rule 2.11.) Thus, the ethical rules provide that a judge must be disqualified unless the judge can satisfy both a subjective and objective standard of impartiality. (S.J.C., Rule 2.11, cmt. 1.)

“The subjective standard requires disqualification if the judge concludes that he or she cannot be impartial.” (*Ibid.*) Conversely, “[t]he objective standard requires disqualification whenever the judge’s impartiality might reasonably be questioned by a fully informed disinterested observer, regardless of whether any of the specific provisions [mandating disqualification] apply.” (*Ibid.*) Thus, in reaching a determination on a motion for disqualification, judges must follow a two-prong test. First, in ruling on a motion seeking recusal, a judge must “consult first [her] own emotions and conscience” to determine whether she can be fair and impartial. (*Commonwealth v. Eddington*, 71 Mass. App. Ct. 138, 143 (2008) (quoting *Lena v. Commonwealth*, 369 Mass. 571, 575 (1976).) If she cannot satisfy this subjective standard, then the judge must recuse herself.

However, even if the judge determines she is impartial, “then she must next attempt an objective appraisal of whether this [is] a proceeding in which [her] impartiality might reasonably be questioned.” (*Id.*; *Demoulas v. Demoulas Super Markets, Inc.* (1998) 428 Mass. 543, 547, n. 6.) If the judge determines that she cannot be impartial or that her impartiality in a case might reasonably be questioned by an objective observer, then the judge is ethically required to recuse herself. (*See id.*) Furthermore, a judge is ethically required to “disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for

disqualification, even if the judge believes there is no basis for disqualification.” (S.J.C., Rule 2.11, cmt. 5.)

As set forth below, Ms. Read cannot and will not speculate as to whether Justice Beverly Cannone can be subjectively impartial in this case. However, Ms. Read is on trial for her life. The suggestion—not by Ms. Read, but by a family member of the third party culprits themselves—that they have a relationship with and the ability to influence Justice Cannone, when considered in light of the significant procedural irregularities that have injured to Ms. Read’s great detriment (and to the benefit of Jennifer McCabe and Brian Albert)—cast a shadow over this case so large that *any* disinterested third party would have to question Justice Cannone’s impartiality in this case. In point of fact, they already have. Thus, as set forth below, Ms. Read respectfully requests that Justice Beverly Cannone disqualify herself from these proceedings.

**A. IF THIS COURT BELIEVES SHE CANNOT BE IMPARTIAL IN THIS CASE, THEN SHE MUST RECUSE HERSELF**

First, as explained above, under the subjective standard of disqualification set forth in Supreme Judicial Court Rule 2.11 of the Code of Judicial Conduct, a judge is required to recuse herself if she cannot be impartial. (Code of Judicial Conduct, S.J.C., Rule 2.11.) Thus, the Court must endeavor to “consult first [her] own emotions and conscience” to determine whether she can be fair and impartial. (*Commonwealth v. Eddington*, 71 Mass. App. Ct. 138, 143 (2008) (quoting *Lena v. Commonwealth*, 369 Mass. 571, 575 (1976).) If the Court subjectively believes she can no longer be fair and impartial, she must recuse herself.

Although Ms. Read will not speculate as to whether Justice Cannone *can subjectively* be fair and impartial in this case, she requests that this Court consult her emotions and conscience to determine whether recusal is required on this ground.

**B. THE FACTS AND CIRCUMSTANCES ATTENDENT TO THIS CASE CLEARLY SUGGEST THAT AN OBJECTIVE DISINTERESTED OBSERVER MIGHT REASONABLY QUESTION JUSTICE CANNONE'S IMPARTIALITY IN THIS CASE, NECESSITATING HER DISQUALIFICATION**

Regardless of whether the Court subjectively believes that she can be fair and impartial, the state and federal constitutions and Massachusetts Code of Judicial Conduct require that a judge disqualify herself where her "impartiality might reasonably be questioned." (Code of Judicial Conduct, S.J.C., Rule 2.11.) "Actual impartiality alone is not enough. 'Our decisions and those of the Supreme Judicial Court have commented often and in a variety of contexts on the importance of maintaining not only fairness but also the appearance of fairness in every judicial proceeding.'" (*Com. v. Morgan RV Resorts, LLC*, 84 Mass. App. Ct. 1, 9 (2013), quoting *Adoption of Tia*, 73 Mass. App. Ct. 115, 122 (2008).) "In order to preserve and protect the integrity of the judiciary and the judicial process, and the necessary public confidence in both, even the appearance of partiality must be avoided." (*Id.*) The Code of Judicial Conduct, S.J.C. Rule 2.11, sets forth five non-exhaustive circumstances explicitly necessitating disqualification, which include the following:

- (1) The judge has a personal bias or prejudice about a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.
- (2) The judge knows that the judge, the judge's spouse or domestic partner, or a person within the third degree of relationship to either of them,<sup>7</sup> or the spouse or domestic partner of such a person is:
  - (a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;
  - (b) acting as a lawyer in the proceeding;
  - (c) a person who has more than a *de minimis* financial or other interest that could be substantially affected by the proceeding; or

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<sup>7</sup> The "third degree of relationship" includes great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and niece. See Code, Terminology.

(d) likely to be a material witness in the proceeding.

(3) The judge know that he or she, individually or as a fiduciary, or the judge's spouse, domestic partner, parent, or child, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or is a party to the proceeding.

(4) The judge, while a judge or a judicial applicant or judicial nominee, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

(5) The judge:

(a) served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer in the matter during such association;

(b) served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy;

(c) was a material witness concerning the matter; or

(d) previously presided as a judge over the matter in another court.

(Code of Judicial Conduct, S.J.C. Rule 2.11(a)(1-5).) However, this list is non-exhaustive and the objective standard mandates "disqualification whenever the judge's impartiality might reasonably be questioned by a fully-informed disinterested observer, regardless of whether" any of the five examples set forth above are at issue. (*Id.*, cmt. 1.)

### **1. SEAN MCCABE'S PUBLIC COMMENTS, ALONE, REQUIRE DISQUALIFICATION**

As explained above, in order to protect public confidence in the judiciary, it is not enough to prevent actual bias, rather "even the appearance of partiality must be avoided." (*Com. v. Morgan RV Resorts, LLC*, 84 Mass. App. Ct. 1, 9 (2013), quoting *Adoption of Tia*, 73 Mass. App. Ct. 115, 122 (2008).) Here, the appearance of partiality cannot be

avoided because Sean McCabe—a family member of the very individuals Ms. Read’s third party culpability defense is predicated on—has claimed that his family has a relationship with Justice Cannone and has the ability to influence her decision-making. Indeed, the Court’s failure to disqualify herself based on Mr. McCabe’s claims alone, would fly in the face of numerous rules set forth in the Code of Judicial Conduct, which are meant to protect erosion of public confidence in the impartiality of the judiciary. In addition to Rule 2.11(A) of the Code of Judicial Conduct, which requires disqualification of a judge where her impartiality might reasonably be questioned, Rule 1.2 similarly requires that “[a] judge . . . act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.” Similarly, Rule 2.4(C), sets forth that a judge “**shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.**”

In exceptional circumstances like this, where a third party culprit’s family member is openly threatening an investigative reporter by claiming a relationship with the judge that is responsible for deciding whether their family member’s privacy interests outweigh a criminal defendant’s right to defend herself in a murder case, that creates the *appearance of impropriety and partiality*. Here, Sean McCabe responded to a direct question about whether he has the ability to influence Justice Cannone in reference to this case with a threat that relayed personal information about the judge, namely— “Auntie Bev?? Whose seaside cottage do you think *we’re* going to bury your corpse under? This statement was clearly meant to convey the impression that his family knows the judge and is in a position to influence her. Moreover, this suggestion is further corroborated by the fact that the threat contains accurate personal identifying information about Justice Cannone that absent some relationship would otherwise be unknown to Sean McCabe. Significantly, the Code of Judicial Conduct comments to Rule 2.11 sets forth that “[a] **judge must also bear in mind that social relationships [or the appearance thereof] may contribute to a reasonable belief that the judge cannot be impartial.**” (S.J.C., Rule 2.11, cmt. 1.) Regardless of whether Sean McCabes claims are true or not, these

threats clearly provide what an objective, knowledgeable member of the public would find to be a reasonable basis for doubting Justice Cannone's impartiality, requiring disqualification. (*Com v. Morgan RV Resorts, LLC*, 84 Mass. App. Ct. 1, 10 (2013).)

## 2. FAILURE TO PERFORM DUTIES FAIRLY AND DILIGENTLY ON MOTIONS MADE BY MS. READ

Canon 2 of the Supreme Judicial Court's Code of Judicial Conduct requires its judges to perform the duties of judicial office impartially, competently, and diligently. (S.J.C. Code of Judicial Conduct, Rule 2.2.) Indeed, S.J.C. Code of Judicial Conduct, Rule 2.5, subdivision (A), explicitly sets forth that a judge is required to "perform judicial and administrative duties competently, diligently, *and in a timely manner*." (S.J.C. Code of Judicial Conduct, Rule 2.5(A), emphasis added.) Indeed, "[t]imely disposition of the court's business requires a judge to . . . [be] expeditious in determining matters under advisement" and to "demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay." (*Id.*, cmts. 3-4.) Further, "A judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs." (*Id.*, cmt. 4.) The failure of a judge to abide by these basic ethical requirements clearly suggests at least the appearance of partiality.

Here, without even reaching the substance of the Court's rulings in this case, there is no question that, for some reason unknown to the defense, Justice Cannone has been dilatory in issuing rulings on defense motions that are under advisement. The Court's new and escalating practice of delaying her rulings on defense motions which have already been argued and heard by this Court first by 16 days on Ms. Read's Motion for Animal Control Records; then by 27 days on Ms. Read's Rule 17 Motion for Cell Records; and in one instance 72 days on Ms. Read's Renewed Motion to Compel Discovery, even in spite of a reminder by counsel that the motion remains under advisement, does not give rise to the appearance of justice or impartiality. (*See, e.g., In re Powers*, 465 Mass. 63, 78 [finding clerk magistrate violated rules of professional



responsibility and should be removed from office for failing to issue decisions on matters for 30 to 45 days].) It would certainly make a reasonable person wonder *why* the Court is suddenly motivated to stall these proceedings and delay Ms. Read's ability to seek and obtain evidence in her case. Furthermore, this Court's significant delays in deciding defense motions under advisement (and in one instance a complete refusal to rule on Ms. Read's properly noticed Renewed Motion to Compel) clearly appears to be one-sided (i.e.

partial), as evidence by the Court's recent attempts to unilaterally advance and hasten a decision on a motion filed by the Commonwealth to gag Ms. Read's counsel.

Moreover, by failing to rule on the Renewed Motion to Compel Discovery, Ms. Read is forced to patiently wait with the weight of false murder charges hanging over her head, in litigation purgatory, unable to access the remainder of the critical evidence she needs in order to prepare her defense, announce ready for trial, or avail herself of any remedies, should they be needed, on appeal. The objective metrics establishing recent and escalating delays in rulings as evidenced by the Court's own docket, alone, clearly provide what an impartial member of the public would find to be a reasonable basis for doubting Justice Cannone's impartiality, requiring disqualification.

### **3. JUSTICE CANNONE'S DENIAL OF MS. READ'S ABILITY TO BE HEARD**

Indeed, as set forth in S.J.C. Rule 2.6, "A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard." As the Supreme Judicial Court has made clear, "The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed." (Code of Judicial Conduct, S.J.C., Rule 2.6, cmt. 1.) In keeping with that precept, a judge's decision to deny a defendant the ability to be heard suggests a lack of fairness and impartiality.

Here, as set forth in more detail above, Justice Cannone denied Ms. Read a full and fair opportunity to be heard on her Rule 17 Motion for Cell Records relating to

Jennifer McCabe and Brian Albert--whose family member (Sean McCabe) has publicly claimed to have a relationship with and the ability to influence Justice Cannone. As detailed above, this Court and the respective parties agreed to set the instant case for an evidentiary hearing on May 25, 2023, to resolve factual disputes related to Defendant's Rule 17 Motion for Cell Records. Ms. Read expended significant funds subpoenaing witnesses in preparation for the hearing (including Brian Albert, Jennifer McCabe, and the Commonwealth's computer forensics expert Trooper Guarino), flying in an out-of-state computer forensics expert to testify regarding his findings on Jennifer McCabe's cell phone, and preparing for the examination of witnesses at the evidentiary hearing that was stipulated to by the parties and placed on calendar by this Court.

The Court's decision to cancel the May 25 evidentiary hearing, adopting the Commonwealth's legally incorrect theory that there was "no authority for it," and effectively denying Ms. Read the ability to prove that the disputed facts set forth in her Rule 17 Motion for Cell Records were, in fact, true smacks of partiality *towards the McCabes and Alberts*. By advancing the Commonwealth's untimely motion (filed a mere three days before the previously scheduled May 25, 2023, hearing) to cancel a legally necessary and appropriate evidentiary hearing served only to deny Ms. Read the ability to be heard and present *evidence necessary to prove she was entitled to the records sought*. The Court's hasty decision to allow the Commonwealth's motion to cancel the evidentiary hearing, while still sitting on the bench, and adopt the Commonwealth's legally incorrect theory that there was "no authority for it," effectively denied Ms. Read the ability to be heard and prove that the disputed facts set forth in her Rule 17 Motion for Cell Records were, in fact, true.

Moreover, aside from the Court's decision to cancel, wholesale, the evidentiary hearing scheduled for the next day, the Court then forced the defense to argue an extremely complex, factually dense motion on the spot, without any advanced notice that the argument on the Rule 17 Motion for Cell Records was going to be heard on that day. Significantly, Ms. Read and her counsel were never notified that there was even a remote possibility that the Rule 17 Motion for Cell Records was going to be heard on May 24,

2023. Thus, Ms. Read's counsel was forced to argue an extraordinarily factually complex and lengthy legal motion, which was not on calendar for that day, *without any notes or advance notice*, denying her a full and fair opportunity to be heard on a motion with a very real and consequential impact on her ability to defend herself against murder charges. A reasonable, disinterested server would certainly question whether this was done in an effort to prevent the defense from having a full and fair opportunity to argue the Rule 17 Motion for Cell Records in a crowded courtroom the next day, where major the Commonwealth national and local news outlets were scheduled to be present and observe the proceedings. Instead, in what *at least appears to be* an attempt to act under cover of darkness, this Court advanced the proceedings, denied Ms. Read's ability to call any witnesses in support of her motion, and forced her counsel to argue a motion that was not properly on calendar that day. The procedural gamesmanship denying Ms. Read the ability to be heard, which was facilitated by Justice Cannone on May 24, 2023, would give any disinterested member of the public a reasonable basis for doubting her impartiality, requiring disqualification.

#### **4. JUSTICE CANNONE'S DECISION TO DEPART WITH NORFOLK COUNTY SUPERIOR COURT JUDICIAL ASSIGNMENTS, AND TAKE THIS CASE WITH HER TO CIVIL COURT**

Finally, the Court's decision to deviate from typical procedure in Norfolk County Superior Court, and reassign this case to herself in spite of the fact that she was reassigned to sit on a civil session so that she can hear the Commonwealth's Motion for Gag Order, which would prohibit the defense from making extrajudicial statements to the press, clearly creates the appearance of partiality.

On June 15, 2023, a mere six days after Attorney Lally filed the Commonwealth's Motion for Gag Order, counsel for Ms. Read received an email from Mr. McDermott with the Norfolk Superior Court stating "[Justice Cannone] needs a response to the Commonwealth's . . . Motion to Prohibit Extrajudicial statements." Thus, Justice Cannone was apparently ignoring the rules of procedure governing the times required for

oppositions and was requesting that the defense hurry up and respond to the Commonwealth's Motion (which was noticed to be heard a full month later), so that she could hear the motion before she was reassigned to a different courtroom. Notably, on the same day Justice Cannone sought to advance the hearing on the Commonwealth's Motion for Gag Order, which clearly benefits Brian Albert Jennifer McCabe, she still had not ruled on Ms. Read's Rule 17 Motion for Cell Records, which had already been under advisement for 22 days. A reasonable person might infer that these actions at least appear to suggest that the judge is *partial* to one side. Moreover, when counsel for Ms. Read informed the Court that we would need time to respond to the Motion for Gag Order, intended to appear in person, and were unavailable on the dates proposed by the Court, Justice Cannone indicated, through the court clerk, that she would exercise supervisory authority to take the case with her to her reassignment in civil court, rather than have the properly assigned criminal session judge hearing the Commonwealth's Motion for Gag Order.

Clearly, the totality of the facts in this case, including the threatening statements and claims made by Sean McCabe suggesting a close-knit relationship between the third party culprits in this case and the judge, the Court's recent and escalating delays in ruling on defense motions that are under advisement, the Court's denial of Ms. Read's ability to be heard on her Rule 17 Motion for Cell Records, and her decision to deviate from procedure and keep this case so that she can decide the Commonwealth's Motion for Gag Order (in which she quite clearly has a personal interest) in spite of her reassignment to civil court, would give any disinterested member of the public a reasonable basis for doubting her impartiality. As such, Justice Cannone must be disqualified from deciding any further issues of consequence in this matter.

//

//

Respectfully Submitted,  
For the Defendant,  
Karen Read  
By her attorney,



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Elizabeth S. Little, Esq., *Pro Hac Vice*  
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law@davidyannetti.com

July 14, 2023

//  
//

**CERTIFICATE OF SERVICE**

I, Attorney David Yannetti, do hereby certify that I served the “Defendant’s Motion for Recusal and/or Disqualification of Justice Beverly Cannone” upon the Commonwealth by emailing a copy on July 14, 2023 to Norfolk County Assistant District Attorney Adam Lally at [adam.lally@mass.gov](mailto:adam.lally@mass.gov).

July 14, 2023

Date

*David Yannetti*

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BBO #555713

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.  
DEPARTMENT

SUPERIOR COURT

NO. 2282-CR-00117

_____	
COMMONWEALTH OF	)
MASSACHUSETTS;	)
Plaintiff	)
V.	)
KAREN READ,	)
Defendant	)
_____	

**AFFIDAVIT OF ALAN J. JACKSON, ESQ. IN SUPPORT OF DEFENDANT'S MOTION FOR RECUSAL AND DISQUALIFICATION OF JUSTICE BEVERLY CANNONE**

I, Alan J. Jackson, Esq., under oath, do depose and state as follows:

1. I am a Partner at the firm Werksman Jackson & Quinn LLP. I represent Defendant Karen Read, *Pro Hac Vice*.
2. I submit this affidavit on personal knowledge in support of Defendant's Motion for Recusal and Disqualification of Justice Beverly Cannone.
3. The attached Motion is made in good faith and was timely filed shortly after I was alerted on June 1, 2023, that an article had been published by investigative journalist Aidan Kearney on Turtleboy Daily News, suggesting that a family member of a material witnesses in this case had made statements suggesting that his family had a personal connection with and the ability to influence Justice Cannone. I have a good faith belief that this shocking information, when viewed in conjunction with recent procedural irregularities engaged in by this Court over the course of the last month to the great detriment of Ms. Read, undermines public confidence in the outcome of these proceedings and creates the appearance of partiality such that a reasonable,

disinterested observer might question whether Justice Cannone can be fair and impartial in this case.

4. This Motion is made in good faith based on the following facts and circumstances attendant to this case, all of which have significantly prejudiced Ms. Read's constitutional right to a fair trial in this matter:

a. Sean McCabe, a family member of the seminal witnesses (and third party culprits) in this case whom Ms. Read has publicly accused of murdering O'Keefe, made extrajudicial statements to a local investigative reporter that his family has a relationship with Justice Cannone and the ability to influence her;

b. Over the course of the last several months, Justice Cannone has routinely (and increasingly) refused to rule on defense motions in a timely manner, while advancing and prioritizing motions filed by the Commonwealth and the very witnesses who have claimed an ability to influence her;

c. Justice Cannone denied Ms. Read a full and fair opportunity to be heard on a critical discovery motion requesting records from members of the same family that claim to have a relationship with her; and

d. Justice Cannone has now indicated, through the Clerk of Court, in writing, that she intends to deviate from procedure in Norfolk County Superior Court by choosing to keep this case with her so that she can rule on the Commonwealth's Motion to Prohibit Extrajudicial Statements by the Defense in spite of the fact that she was reassigned to civil court and this case is properly heard by the judicial officer currently assigned to the criminal session.



5. I have carefully reviewed the discovery produced by the Commonwealth in this case, including all police reports, grand jury minutes, crime scene photographs, and other evidence. The factual assertions and reasonable inferences set forth in Defendant's Motion for Recusal and/or Disqualification of Justice Beverly Cannone fairly reflect the statements summarized in the discovery produced by the Commonwealth and the investigation subsequently engaged in by the defense.

6. Photographs of the injuries to O'Keefe's face, arm, and hands are attached hereto as "**Exhibit A.**"

7. A true and correct copy of the Cellebrite report establishing that Jennifer McCabe, one of the Commonwealth's seminal witnesses in this case, Googled "hos [sic] long to die in cold" at 2:27 a.m. on January 29, 2022, three hours before she supposedly "discovered" O'Keefe's hypothermic body in the cold snow on her brother-in-law's front lawn is attached hereto as "**Exhibit B.**"

8. Ms. Read's defense is predicated on a third-party culpability defense, in which Ms. Read will present significant evidence establishing that Jennifer McCabe and Brian Albert are implicated in O'Keefe's murder.

9. A true and correct copy of notarized deeds filed with the Barnstable Registry of Deeds for residence belonging to Justice Cannone and Sean McCabe are filed herewith under order of impoundment as "**Exhibit C.**" I have conducted a Google maps search and determined that these two residences are located less than four miles apart on the Cape, and the closest beach access for both homes appears to be the very same beach.

10. A true and correct copy of the Norfolk Superior Court Docket in the case of *Commonwealth v. Karen Read* (Case No. 2282CR0017) is attached hereto as "**Exhibit D.**"

11. A true and correct copy of excerpts from the May 3, 2023, proceedings in this case is attached hereto as **“Exhibit E.”**

12. In preparation for the May 25, 2023 hearing, which was abruptly taken off calendar the day before it was scheduled to be heard, Ms. Read I am informed and believe that Ms. Read expended significant funds subpoenaing witnesses in preparation for the hearing (including Brian Albert, Jennifer McCabe, and the Commonwealth’s computer forensics expert Trooper Guarino), flying in an out-of-state expert to testify regarding his findings on Jennifer McCabe’s cell phone, and preparing for the examination of witnesses at the evidentiary hearing that was stipulated to by the parties and placed on calendar by this Court, to her great detriment.

13. Attached hereto as **“Exhibit F,”** is a true and correct copy of email correspondence exchanged between myself, Greg Henning (Brian Albert’s counsel), Elizabeth Little, Ian Henchy, Attorney Adam Lally, David Yannetti, and the clerks of the court, James McDermott and Brian Roche regarding the scheduling of a hearing on May 24, 2023, to hear Brian Albert and Jennifer McCabe’s Motions to Quash and the Commonwealth’s Opposition to the Evidentiary Hearing.

14. Attached hereto as **“Exhibit G”** is a true and correct copy of email correspondence exchanged between myself, attorney Elizabeth Little, Attorney Adam Lally, Attorney David Yannetti, Attorney Ian Henchy, and Attorney Laura McLaughlin regarding the scheduling of an evidentiary hearing in this case.

15. On May 3, 2023, I spoke with Attorney Lally and he indicated to me that the Commonwealth disputed the facts at issue in the Rule 17 Motion for Cell Records, and that we should set the case for an evidentiary hearing.

16. Attached hereto as "**Exhibit H**" is a true and correct copy of the transcript of the proceedings held in connection with this case before Justice Cannone on May 24, 2023.

17. I was not notified by the Court or counsel that the argument on the Rule 17 Motion for Cell Records was going to be heard on May 24, 2023. Because I was informed the case was on calendar to discuss other, different motions, I did not even have my notes regarding the Rule 17 Motion for Cell Records with me on that date.

18. A true and correct copy of my email exchange with Justice Cannone's Court Clerk, James M. McDermott between June 15, 2023, and June 16, 2023 regarding the hearing on the Commonwealth's Motion to Prohibit Extrajudicial Statements of Defense Counsel is attached hereto as **Exhibit I**.

19. Attached hereto as **Exhibit J** is a true and correct copy of approximately 50 comments by individuals unknown to me in various online articles concerning this case, including a June 14, 2023 article by the Boston Globe, a May 24, 2023 article by the Boston Globe, a May 24, 2023 publication by Court TV entitled *Karen Speaks Out*, a May 24, 2023 publication by Court TV entitled *Motions Hearing*, a May 24, 2023 article by CBS Boston, and various tweets culled from Twitter that mention Justice Cannone in connection with the Karen Read case.

20. Attached hereto as **Exhibit K** is a true and correct copy of the case assignments appearing on the docket in connection with Ms. Reads case, which shows that the Honorable Daniel J. O'Shea is assigned to this case for a pretrial hearing on July 25, 2023.

21. I have a good faith belief, based on the totality of the facts in this case, including the threatening statements and claims made by Sean McCabe suggesting a close-knit relationship between the third party culprits in this case and the judge, the Court's recent

and escalating delays in ruling on defense motions that are under advisement, the Court's denial of Ms. Read's ability to be heard on her Rule 17 Motion for Cell Records, and her decision to deviate from procedure and keep this case so that she can decide the Commonwealth's Motion for Gag Order (in which she quite clearly has a personal interest) in spite of her reassignment to civil court, would give any disinterested member of the public a reasonable basis for doubting her impartiality. For the reasons set forth herein, the defense respectfully requests that this Honorable Court grants Defendant's Motion to Recuse and/or Disqualify Justice Cannone.

SIGNED and SWORN to under the pains and penalties of perjury this 14th day of July  
2023.



---

Alan J. Jackson, Esq.

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT  
NO. 2282-CR-00117

COMMONWEALTH OF  
MASSACHUSETTS,  
Plaintiff

V.

KAREN READ,  
Defendant

**AFFIDAVIT OF AIDAN KEARNEY IN SUPPORT OF DEFENDANT’S MOTION FOR  
RECUSAL AND DISQUALIFICATION OF JUSTICE BEVERLY CANNONE**

I, Aidan Kearney, under oath, do depose and state as follows:

1. I am an investigative journalist and Senior Editor at Turtleboy Daily News. Turtleboy Daily News specializes in investigating and exposing stories of interest in the greater Boston area. Stories broken by Turtleboy Daily News have been cited by major news outlets, including The Boston Globe, the Washington Post, and the Washington Examiner. In addition to running the Turtleboy Daily News Blog, I also operate a Facebook Page under the name “Clarence Woods Emerson.”

2. The following facts and information are based on my own personal knowledge, and I could testify competently thereto if called upon as witness to do so. I declare that the following is true and correct to the best of my knowledge.

3. I have closely followed the Commonwealth’s case against Karen Read, which is currently ongoing in Norfolk County Superior Court. Turtleboy Daily news has written and published more than 70 blog posts about the case to date.

4. On May 26, 2023, I located a post on Facebook by Matthew McCabe’s brother, Sean McCabe, at the url: <https://www.facebook.com/seanmccabe02632>, in which he publicly reposted and responded to a blog post I wrote about him and his sister-in-law, Jennifer McCabe. His Facebook page has numerous indicia of reliability, including the fact that he has more than 900 followers, is friends with members of the Albert and McCabe family, lists his occupation as “Boss at McCabe contracting”, lists his

location as Centerville (which is where I am informed and believe he has a construction company), and has posts dating back to 2011.

5. Later that day, on May 26, 2023, I sent Sean McCabe a private message on Facebook, stating "Hey there." He responded less than an hour later with a string of threats and profanities. We continued to exchange messages over the course of the next several days. A true and correct copy of the entirety of my exchange with Sean McCabe between May 26, 2023, and June 1, 2023, is attached hereto as Exhibit 1.

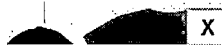
SIGNED and SWORN to under the pains and penalties of perjury this 14 day of July 2023.

*Aidan Kearney*  
Aidan Kearney

# EXHIBIT J

## Canton Cover-Up Part 1: Corrupt State Trooper Helps Boston Cop Coverup Murder Of Fellow Officer, Frame Innocent Girlfriend

👤 Aidan Kearney • April 18, 2023 🔥 452,325



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STORE**



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(game). [Click here to subscribe to our YouTube](#)

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**TB Daily News**



On the morning of January 29, 2022, Boston Police Officer John O'Keefe was found dead outside of the Canton home of Boston Police Officer Brian Albert on 34 Fairview Road. O'Keefe's girlfriend Karen Read was charged with manslaughter, after reportedly backing over O'Keefe with her car after she got into a fight with him and dropped him off at Albert's house after a night of drinking. She was castigated widely as a cop-killing villain, set to face decades



the Massachusetts State Police, Canton Police Department, and Norfolk County DA's Office. This is the story of one woman, alone, facing down some of the most powerful, well-protected people in the state who sought to destroy her life, and exonerate herself.

This is Karen Read and John O'Keefe.





X



Karen is an intelligent, successful accountant and college professor with not even a hint of a criminal record. She had been dating O'Keefe for several years, and loved his niece and nephew (who he adopted) like family. She owned a house in Mansfield that she rented out, but lived with O'Keefe and his niece and nephew at his home on 1 Meadows Avenue in Canton. O'Keefe was a well liked 16 year veteran of the BPD.

On February 2 Read was charged with killing O'Keefe, and she may have actually believed she was responsible.







State Trooper Michael Proctor wrote the criminal complaint for her arrest, noting his 10 years of experience on the MSP Detective Unit at the Norfolk County DA's Office.

1. I, Trooper Michael Proctor (#3863) am a Massachusetts State Police Officer and have been a police officer since 2013. I am presently assigned to the State Police Detective Unit (SPDU) at the Norfolk County District Attorney's Office and have been so since September 2019. During that time, I have investigated and processed serious and violent crimes, including murder, suicides, sudden, suspicious, and unattended deaths, along with drug investigations. Through these investigations, I have participated in the execution of search warrants from which various types of evidence have been seized. I am trained in criminal investigation including, homicide/death investigations, crime scene investigation, collection of physical evidence, crime scene processing and the investigations of such cases. I have received specialized training to obtain and analyze cellular telephone data and call detail records in support of criminal investigations. I have a Bachelor of Arts degree in Criminal Justice from Anna Maria College. In addition to my assignment in the Division of Investigative Services, I have been assigned to the Division of Field Services working in Troop C (Central Massachusetts) and Troop  H (Metro Boston).

2. Based upon information contained in the numbered paragraphs below which are the product of my own investigation and my discussions with Massachusetts State Troopers and Officers with the Canton Police Department involved in the investigation, I submit that I have probable cause for an arrest warrant to be issued for Karen Read (DOB:02/26/1980). I believe that evidence of the crime of Manslaughter, a violation of Massachusetts General Laws, Chapter 265, Section 13; Negligent Motor Vehicle Homicide, a violation of Massachusetts General Laws, Chapter 90, Section 24G (b) and Leaving the scene of an accident resulting in death, a violation of Massachusetts General Laws, Chapter 90, Section 24 (2) (a) 1/2 (2) exists and seek an arrest warrant for Read.

RECEIVED  
STOUGHTON DISTRICT COURT  
MAR 22 2022

**2255CR000066 Commonwealth vs. Read, Karen**

**Party Charge Information**

Read, Karen - Defendant

**Charge # 1:** 265/13/A-0 - Felony    MANSLAUGHTER c265 §13

Original Charge  
265/13/A-0 MANSLAUGHTER c265 §13 (Felony)  
Amended Charge

Charge Disposition	
Disposition Date	Disposition
06/13/2022	Nolle Prosequi - Defendant indicted

Read, Karen - Defendant

**Charge # 2:** 90/24G/A-2 - Misdemeanor - more than 100 days incarceration    MOTOR VEH HOMICIDE BY NEGLIGENT OP c90 §24G(b)

Original Charge  
90/24G/A-2 MOTOR VEH HOMICIDE BY NEGLIGENT OP  
c90 §24G(b) (Misdemeanor - more than 100 days  
incarceration)  
Amended Charge

Charge Disposition	
Disposition Date	Disposition
06/13/2022	Nolle Prosequi - Defendant indicted

Read, Karen - Defendant

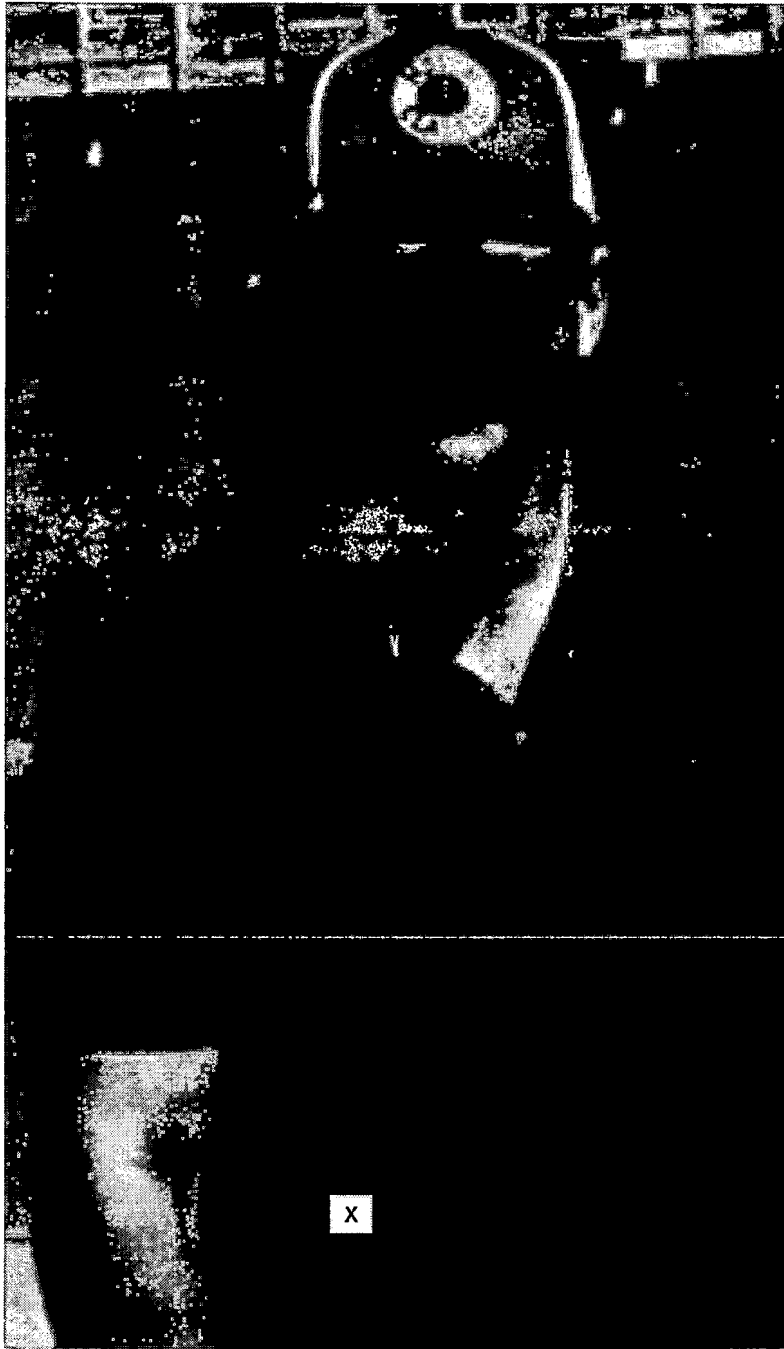
**Charge # 3:** 90/24/B-0 - Felony    LEAVE SCENE OF PERSONAL INJURY & DEATH c90 §24(2)(a)(2)

Original Charge  
90/24/B-0 LEAVE SCENE OF PERSONAL INJURY &  
DEATH c90 §24(2)(a)(2) (Felony)  
Amended Charge

Charge Disposition	
Disposition Date	Disposition
06/13/2022	Nolle Prosequi - Defendant indicted

X





X





The charging documents  e that Canton Officers Saraf and Mullaney were dispatched at 6:04 AM on January 29 to 34 Fairview Road where they found 3 females – Karen Read, Jennifer McCabe, and Kerry Roberts – next to the body of O’Keefe. Read was performing CPR.

FEB - 2022  
CLERK MARGARET

3. On January 29, 2022, at approximately 6:04AM Canton Police Department received a 911 call from a woman reporting a male party, John O'Keefe found in the snow at 34 Fairview Road. At the time of the 911 call there was heavy snow and the temperature was in the teens. Officers Saraf and Mullaney, were dispatched to the scene along with Canton Fire and EMS. Officer Saraf arrived on scene and observed three females waving at him. Looking at 34 Fairview from the roadway the three females were in the left corner of the property. Officer Saraf observed the victim lying on the ground as two of the females were performing CPR. The three females on scene were identified by

Canton PD as Karen Read, Jennifer McCabe and Kerry Roberts. Officer Saraf observed the victim to be cold to the touch, not breathing and returned to his cruiser to retrieve his AED device. At this time, Canton Fire and EMS arrived on scene and took over first aid. Paramedics transported O'Keefe to Good Samaritan Hospital in Brockton. O'Keefe was determined to be deceased several hours later by Dr. Justin Rice.

Jennifer McCabe is pictured in this photo on the right.



On the left is her sister Nicole Albert, the wife of well-connected Boston Police Sergeant Brian Albert. Albert is on the Fugitive Apprehension Team, is a trained MMA fighter, and was featured on the cop show Boston's Finest.





X



At 11:30 AM on January 29, Trooper Proctor interviewed Jennifer McCabe and her husband Matthew McCabe. They told him that they were out at the Waterfall Bar in Canton where Jennifer McCabe met up with her friend John O'Keefe and his girlfriend Karen Read, whom she did not know well. Jennifer told Trooper Proctor that she saw Read enter the bar carrying a vodka soda drink in a glass, which most bars would not allow. The three grown adults in their 40's left shortly after midnight to go to an after party at Brian Albert's house. According to Jennifer she got there first, and at 12:30 witnessed Karen Read drive up in her black Lexus SUV. Since O'Keefe only knew McCabe at this house he texted her to make sure she was there. Jennifer claimed that O'Keefe never entered the house, so she texted him "Hello?" at 12:45 AM, before witnessing Karen drive away in her black SUV.

5. On January 29, 2022 at approximately 11:30AM, Sgt. Bukhenik and I requested to speak with Jennifer McCabe and her husband Matthew both agreed to speak with us. We first spoke with Jennifer who stated her and some friends were at the Waterfall Bar last night in Canton. Jennifer stated her and Matthew arrived at the Waterfall Bar at approximately 9:00PM. At approximately 11:00PM, John and Karen arrived at the Waterfall Bar together. John and Karen have been in a dating relationship for two years and Karen stays at John's house most nights. Jennifer observed Karen walk into the bar holding a glass cup from CF McCarthy's with a clear liquid inside what she believed to be a vodka soda drink. Jennifer observed John wearing a baseball hat, jeans and sneakers. John and Karen were at CF McCarthy's bar across the street before going to the Waterfall Bar. Jennifer stated John and Karen appeared to be in a good mood and did not observe any arguing amongst the two. Jennifer described the atmosphere inside of the bar as friendly and there were no arguments amongst any patrons. As the bar began to close down everyone was invited back to 34 Fairview Road. Jennifer observed Karen and John leave the Waterfall Bar together. As the group was exiting the bar John texted Jennifer "Where to" at 12:14AM. Jennifer replied with the address, 34 Fairview Road. At 12:18AM, John called Jennifer to ask where the house was located on Fairview Road. While inside the residence, Jennifer observed a black SUV arrive in front of 34 Fairview Road from the front door. Jennifer texted John at 12:31AM, "Hello" and at 12:40AM texted "Pull up behind me". Jennifer observed the black SUV move from the initial place the vehicle stopped on the street, near the driveway and then proceed to the left side of the property. At 12:45AM, Jennifer texted John "Hello" and then observed the black SUV drive away. Jennifer stated they discovered John in the area where she last observed the SUV, left side of property. At approximately 4:53AM, Jennifer received a phone call from Karen looking for John. Karen was

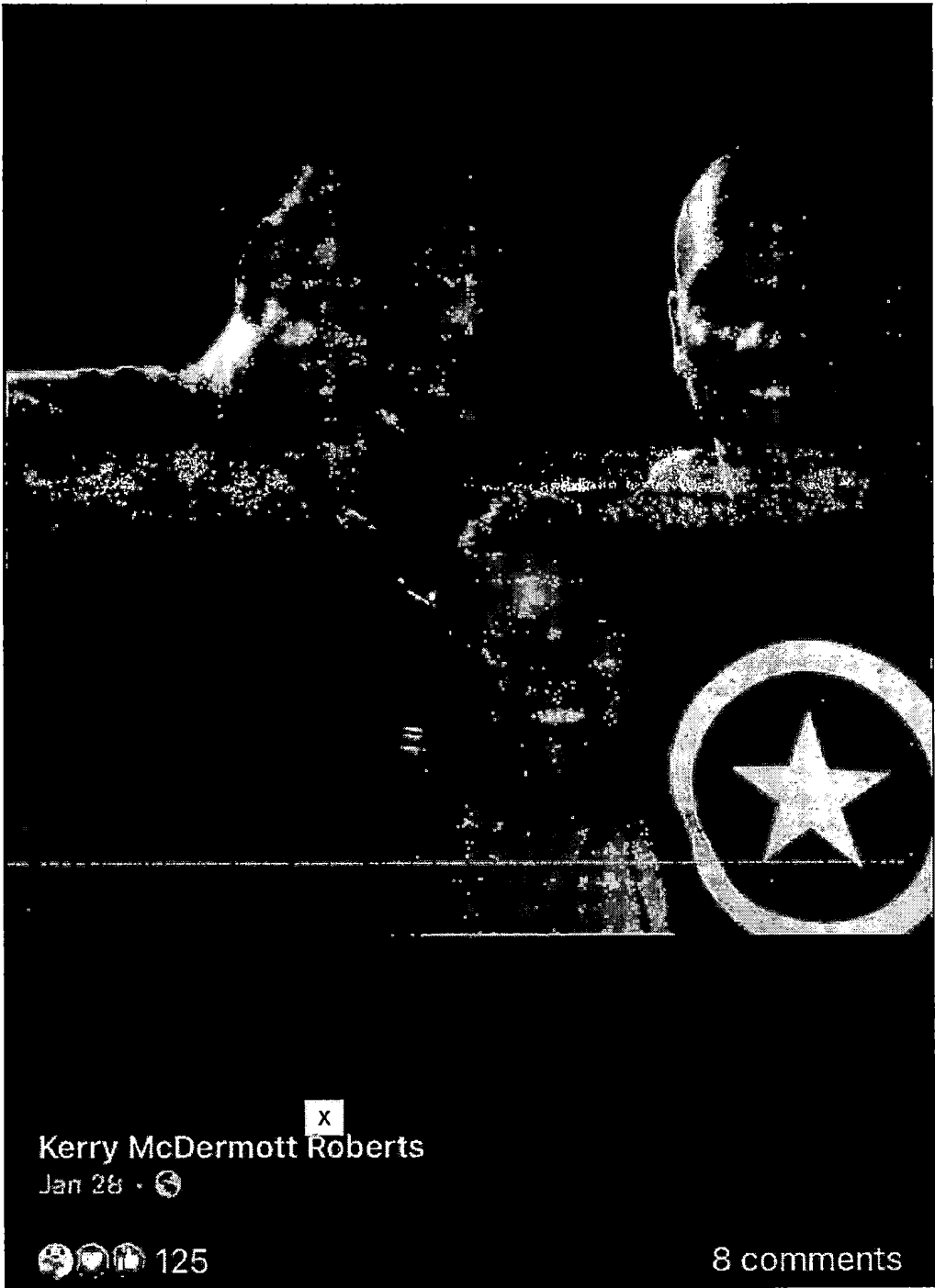
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She told Proctor that she assumed he and Read decided to go home.

Jennifer received a phone call from a distraught Karen at 4:53 AM, looking for O'Keefe. Jennifer, who for some reason was still up at 4:53 AM after a night of drinking, told Trooper Proctor that she offered to help Karen look for O'Keefe,





View Res  
writing the

X

Kerry McDermott Roberts

Jan 28 · 🌐

👍❤️👏 125

8 comments

Karen was hysterical and could not drive in her condition so Kerry drove both of them. Jennifer claims that during the ride Karen said "could I have hit him? Did I hit him?" She also told MSP that Karen's SUV had a cracked tail light. The two of them then jumped in Kerry Roberts' car and they drove back to 34 Fairview Road. When they got there Karen immediately noticed O'Keefe's body

• distraught and drove over to Jennifer's house. Karen told Jennifer she last remembered seeing John at the Waterfall Bar. Jennifer informed Karen she observed John and her leave the bar together. Jennifer drove Karen's vehicle from her house back to John's because Karen was too hysterical to drive and had Kerry Roberts follow them. While driving to John's house Karen stated to Jennifer, "Could I have hit him", "Did I hit him". Jennifer stated Karen told her about a cracked tail light on her vehicle. Once they arrived at John's house, Karen had Jennifer look at the cracked tail light. Jennifer described the passenger side, right rear tail light as cracked. Jennifer and Karen entered Kerry's vehicle to look for John. Karen was seated in the back as Kerry drove and Jennifer was seated in the front passenger seat. Jennifer stated they turned onto Fairview Road from Chapman St, at the time it was snowing heavily creating poor visibility. Jennifer stated just prior to 34 Fairview Road there is a cluster of trees and immediately Karen stated she saw John. Jennifer and Kerry were not able to see John and initially confused by Karen's statement. Jennifer stated Kerry began wiping snow off of John as Karen laid on top of him for warmth and then began CPR.

This was part of the reason she was charged – Trooper Proctor believed that Karen knew exactly where the body would be because she knew that she ran him over and left him to die during the middle of a snowstorm.

O'Keefe's arm had six bloodied lacerations and his eyes were swollen shut and black and blue. His eyelid had a cut on it, and his clothes were covered in blood and vomit. A medical examiner said that he had two swollen black eyes, a cut on the left side of his nose, a two inch laceration in the back of the head, and multiple skull fractures.

6. Sgt. Bukhenik and I arrived at Good Samaritan Hospital to view the victim. I observed approximately six bloodied lacerations varying in length on O'Keefe's right arm. The cuts extended from his forearm to bicep. X both of the victim's eyes were swollen shut and black and blue. I observed a cut to the right eyelid area of the victim. The victim's clothing, blue jeans, orange t-shirt, long sleeve shirt and boxer shorts were saturated and contained blood and vomit. I observed one black Nike sneaker with a white Nike logo on the side belonging to the victim. On January 31, 2022, Dr. Irini Scordi-Bellow from the Office of the Chief Medical Examiner in Mashpee conducted the autopsy of John O'Keefe. Dr. Scordi-Bellow advised of several abrasion to the right forearm, two swollen black eyes, a small cut above the right eye, cut to left side of nose, approximately two inch laceration to the back of the head and multiple skull fractures the resulted in bleeding. Dr. Scordi-Bellow advised the victim's pancreas was a dark red color and hypothermia was a contributing factor.

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FEB - 2 2022

There is no possible way he could have these kind of injuries from being

Kerry Roberts told Trooper Proctor that Karen Read was drunk and hysterical when she saw her at 5 AM, and stated that she was so drunk she didn't even remember going there. Kerry repeated the same story as Jennifer that Karen made statements suggesting that she may have accidentally hit him, or that he had gotten hit by a plow.

8. On January 29, 2022 at 5:25PM, Troopers Matthew Dunne and David Dicicco conducted the interview of Kerry Roberts. At approximately 5:00AM, Kerry received a phone call from Karen stating John did not come home, it was snowing and she was worried. Kerry met Karen at Jennifer McCabe's house and observed Karen to be hysterical. Kerry stated she believed Karen was still intoxicated in the morning and told Kerry she did not remember last night. Karen stated "I was so drunk I don't even remember going to your sister's last night". Jennifer's sister lives at 34 Fairview Road. Kerry followed Karen's black Lexus SUV back to John's house. Kerry drove Jennifer and Karen to 34 Fairview to look for John. Kerry described the weather as white out conditions as they were driving around. As they arrived at 34 Fairview Road, Karen stated "There he is, I see him" from inside the vehicle. Kerry stated only Karen saw John as he was covered in snow and through white out conditions. Kerry stated after they exited the vehicle Karen stated "I see him". Kerry was still not able to see John at that point due to the weather conditions. Kerry observed John approximately twelve feet from the roadway, swollen right eye with a laceration above it and blood around the nose and mouth. Kerry stated they began CPR and called 911. On February 1, 2022, I, Trooper Proctor spoke with Kerry via phone. Kerry stated on January 29, 2022 at approximately 5:00AM she was contacted by Karen. Kerry answered the phone to hear Karen state dead. Kerry, Kerry, I wonder if he's dead. Its snowing, he got hit by a plow!

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At 4:30 PM Trooper Proctor CLAIMED that he went to the home of Karen Read's parents in Dighton and CLAIMED to have observed Karen's SUV parked in the driveway with a shattered tail light. Proctor interviewed her and Karen denied bringing a drink into the Waterfall Bar. She said that she dropped O'Keefe off at the after party at 12:15, but since she didn't know anyone there very well, she was feeling sick, and she was a grown ass woman in her 40's who doesn't go to "after parties," she elected not to stay. She lived with O'Keefe less than three miles away, so getting home wouldn't be a problem for him. Proctor CLAIMED Karen told him that she never saw O'Keefe go inside the house and had no idea how she had a broken tail light. Both of these statements made her look guilty. When she found O'Keefe's body later his eyes were swollen and he was still bleeding from the nose and mouth.

FEDERAL MAGISTRATE

9. On January 29, 2022 at approximately 4:30PM, Sgt. Bukhenik and I arrived at 345 County Road in Dighton, MA. The residence is the home of Karen Read's parents. Upon arrival, Sgt. Bukhenik and I observed a large black Lexus SUV, bearing Massachusetts registration: 3GC684. The vehicle is registered to Karen Read. The vehicle was parked outside in the driveway, in front of a garage door. We observed the rear right passenger side tail light to be shattered. A large red plastic piece was missing from the tail light. Sgt. Bukhenik and I were invited inside by the homeowners, Karen, was seated on a living room couch and agreed to speak with us. Karen stated she met the victim at CF McCarthy's bar in Canton at approximately 9:00PM on January 29, 2022. The victim was there with several friends prior to Karen's arrival. Karen stated the victim was consuming beer and she

was drinking vodka sodas. Karen described the glassware she was drinking out of as a vase style. Karen stated her and the victim left CF McCarthy's and went to Waterfall Bar. Karen stated she did not leave CF McCarthy's or enter the Waterfall Bar with a glass or drink. Karen and the victim were at the Waterfall for approximately one hour. During that time there were no altercations or arguments amongst anyone. When Karen and the victim left the Waterfall Bar they were invited to a house on Fairview Road. Karen stated she dropped the victim at the house on Fairview and went home since she was having stomach issues at the previous bar. Karen stated as she dropped the victim off she made a three point turn in the street and left. Karen did not see the victim enter the house. Karen told investigators she first observed the broken tail light in the morning and did not know how she broke it last night. While at the two bars, Karen stated she did not observe any injuries/cuts on the victims arms and the victim did not suffer any injuries/cuts while at the bars. When Karen discovered the victim in the morning she observed him lying face up, snow on his legs, eyes swollen and blood coming from his nose and mouth. Karen began providing mouth to mouth. Karen attempted to contact the victim throughout the night, calling and texting him numerous times with no response. Karen informed investigators her and the victim were in a verbal argument that morning over what Karen fed the victim's niece for breakfast.

Karen attempted to call and text O'Keefe multiple times after dropping him off. He would never not come home, knowing his niece and nephew needed him in the morning. Trooper Proctor asked her leading questions, designed to incriminate her, about whether or not she had ever been in an argument with O'Keefe. There isn't a couple on earth that hasn't been in a fight before, so Karen felt it was a normal response to tell Proctor that they had an argument over breakfast. This is why you should NEVER talk to police without a lawyer if you are a suspect in a crime. They are not there to be your friend, they are there to get you to say something that will lead to you being charged with a crime.

10. On January 30, 2022 at approximately 1:00PM, Sgt. Bukhenik and I interviewed Firefighter, Katie McLaughlin at the Canton Police Department. Katie was assigned to Station 1 on Saturday, January 29, 2022. Katie stated at approximately 5:00AM Canton Fire and EMS were dispatched to 34 Fairview Road for a male party discovered in the snow and unresponsive. Upon arrival, Katie observed the victim being worked on by Paramedics. Once inside the Ambulance, Katie observed the victim to have trauma to face and eye area and vomit in mouth. Katie observed the victim wearing jeans, socks and one black Nike sneaker. The victim's shirts were cut and chest exposed for chest compressions. Katie exited the Ambulance to speak with Karen as to the victim's identity and any medical history. Katie described Karen as a white female, approximately 5'5", thin, brown/blonde hair, brown eyes and early 40's in age. Karen provided the victim's name and date of birth. Katie asked Karen if she knew where the victim suffered the trauma to his face/eye area. Karen stated Karen turned to her friend and stated, "I hit him, I hit him, I hit him, I hit him."

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JAN - 2 2022

Karen stated b  
not I hit her

Proctor's report also states that two red pieces of a tail light were next to O'Keefe's body, which was the final piece of evidence needed to charge her with manslaughter.

13. On January 29, 2022 the Massachusetts Special Emergency Response Team (SERT) was activated to assist in searching for potential evidence outside of 34 Fairview Road. When looking at 34 Fairview Road from the street there is a fire hydrant on the far left of the property. Members from SERT located a black Nike sneaker with a white Nike logo along the side. The sneaker located by SERT matches the one sneaker the victim was wearing at the time he was transported by EMS to Good Samaritan Hospital. In the same area two red plastic pieces of a tail light were discovered, consistent to the missing pieces on Karen Read's black Lexus SUV. One piece of clear plastic piece of a tail light was located in the same area, also consistent with the broken tail light on Karen Read's SUV.

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Except in the original report it never stated what time the glass was found. This document above is a slightly altered second version of the report. In the original a picture from the crime scene does not show any fragments from a tail light.



But Trooper Proctor never once mentioned that he was close personal friends with the McCabe and Albert family, which was a very prominent name in Canton. Here is a picture from Proctor's sister's Facebook page showing Trooper Proctor with Jennifer McCabe's children.

  
**Courtney Proctor Elburg**

Aug 20, 2017 · 

 Like

 Share

Here is a picture from Proctor's sister's Facebook page showing her at a family party with Chris Albert, the brother of Brian Albert, directly behind her.

**Courtney Proctor Elburg**

Jul 15, 2016 · 🌐

**Dig in!!! — with Karen Barsamian-Proctor.**

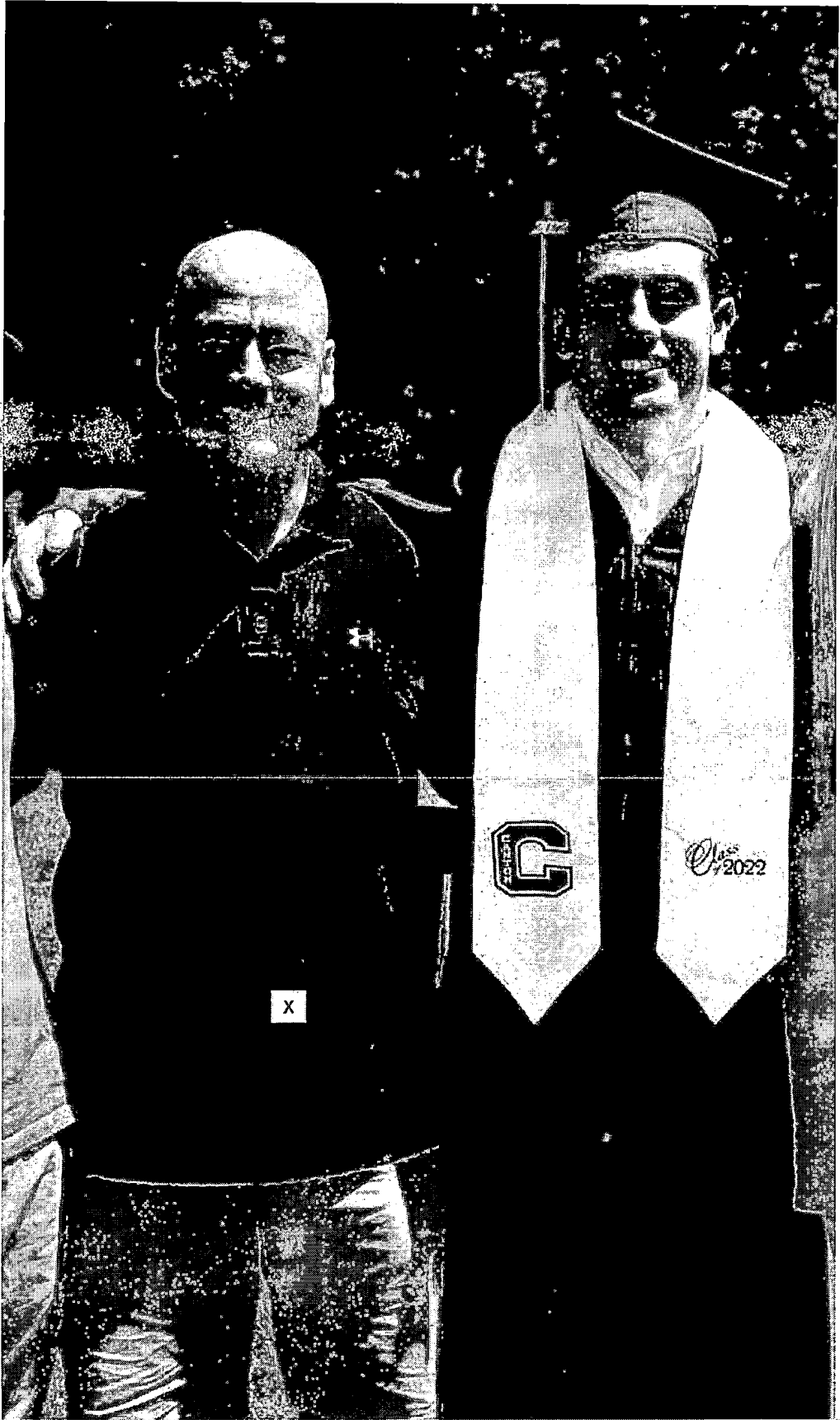


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X

Chris Albert was at the bar with O'Keefe the night he was killed, but it's unknown if he was inside his brother's house that night because Proctor has been deliberately preventing Google from sharing that information. Chris Albert lives at 7 Meadows Avenue in Canton, two doors down from O'Keefe who lives at 1 Meadows Ave. His son Colin Albert, who was an 18 year old senior at Canton High School at the time of the incident, is confirmed to have been in the house at 34 Fairview Avenue that night.





X

Colin was a star football player at CHS and notorious hothead. Two days after O'Keefe died the Canton High School Twitter account announced that he would be playing football at BSU next year.

<https://twitter.com/BulldogCanton/status/1488162414369587205/photo/1>

Colin Albert34 Retweeted



**CantonBulldogFootball** @BulldogCanton · Jan 31, 2022



#34 Colin Albert has decided to continue his playing career as a BSU Bear. Congrats Dog more big hits to come.

jock who thinks Shakespeare was a huge loser, and infamously poses for pictures sticking up his middle finger while drinking Dylan Mulvaney-light.



**Colin Albert34**  
@colinalbert63

Shakespeare was probably a loser 🤔

2:47 PM · Dec 12, 2021

1 Quote 13 Likes

He has anger issues, and gets off on knowing that he comes from a well connected family in town. Colin's uncle Brian is a Boston Police Sergeant.



His Uncle Kevin Albert is a Canton Police Officer.





Tim Albert  
Mar 25 · 🌐



👍❤️ 69

8 comments

The man in the middle is his other uncle Tim Albert, the family moron who takes pride in being from a well connected family despite providing nothing of value to contribute to the family's brand name.

Trooper Proctor's family knew Colin Albert since he was a little boy.





**Courtney Proctor Elburg** updated her profile picture. ...

Mar 5, 2022 · 🌐

Happy 18th to our favorite football star! Colin Albert

👍👍 9

2 comments

➦ Share

**Courtney Proctor Elburg**

Aug 20, 2017 · 🌐

x

Here's a picture Proctor's sister posted on Facebook from her wedding in 2012, showing Trooper Proctor on the far left, and Colin Albert on the right.

Not once did it ever occur to Proctor to mention that he was a close friend to a well connected Canton family of cops and politicians, and was investigating the death of a Boston Police Officer at one of their homes. He was in possession of all evidence related to this crime, and decided who would and wouldn't be investigated.

Colin Albert likes to get in fights and boast about it. A picture he posted on VSCO shortly after the death of John O'Keefe shows his right knuckles covered in abrasions, indicating he had punched someone or something recently.

X

None of this has been made public and the Norfolk County DA's Office hasn't sent a mountain of exculpatory evidence to Karen Read's defense attorney until recently. This evidence proves beyond a shadow of a doubt that she had nothing to do with O'Keefe's death, but suggests that Colin Albert, Brian Albert, Brian Albert's German shepherd, Jennifer McCabe, and every other person in the house that night witnessed the murder of of John O'Keefe and

Unfortunately for them Karen Read is an extremely intelligent and well-resourced woman who can afford world class legal representation. Her attorneys filed a motion demanding a forensic audit of Jennifer McCabe and Brian Albert's cellphones for all communications before and after O'Keefe's death.

**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 co[redacted] and/or passwords necessary to access and/or forensically download the cell phones and/or cloud-based information.

When they received the information last week they were shocked to discover that the Norfolk County DA's Office intentionally hid evidence showing that McCabe had searched "Hos (sic) long to die in cold" at 2:27 AM on the night O'Keefe died.

**I.  
INTRODUCTION**

**"[H]ot 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.<sup>1</sup> 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.

Brian Albert was never questioned at his house, only McCabe's house.

Canton Deputy Police Chief Tom Keleher lives across the street from Brian Albert on Fairview Road.



**Tom Keleher** · 3rd

Deputy Chief at Canton  
Police Department

Canton police department ·  
Suffolk University  
Canton, Massachusetts, United States

500+ connections

 **Message**

**+ Follow**



## Activity

845 followers 

Tom Keleher commented on a post · 3w  
Congratulations!

[Show all activity →](#)

**POSSIBLE CURRENT RESIDENTS FOR [REDACTED]  
FAIRVIEW RD, CANTON, MA 02021-1733**

**Kerri Ann Keleher**

**Age: 52**

**First Seen: Aug 1, 2000**

**Last Seen: Apr 17, 2023**

**VIEW REPORT** 

**Thomas A Keleher**

**Age: 53**

**First Seen: Aug 31, 2007**

**Last Seen: Apr 17, 2023**

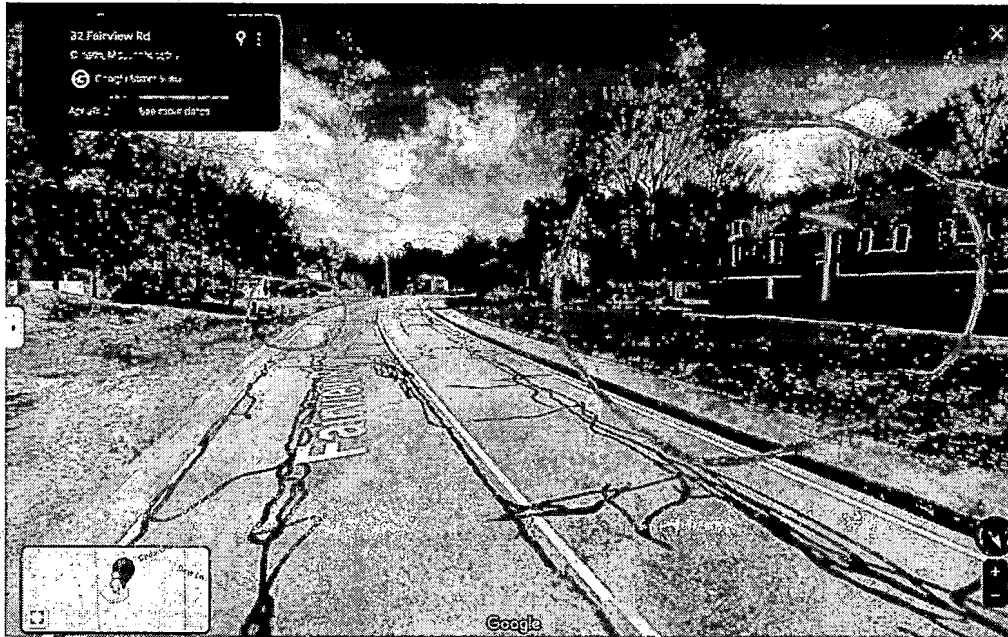
**VIEW REPORT** 

**X**

Keleher's Ring camera would've picked up video of O'Keefe's body that night.

Deput





However, he told police that conveniently did not capture anything of value. It was not subpoenaed.

Jennifer McCabe not only searched "how long to die in cold," she also deleted all communications from her phone between herself and Brian Albert.

X

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, "how 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.

If Jennifer McCabe didn't think it was unusual for John O'Keefe to leave like that then why did she stay X until 5 AM, awaiting Karen Read's phone call about O'Keefe being missing?

If Jennifer McCabe had nothing to hide then why was she destroying critical evidence?

Why was Jennifer McCabe more committed to protecting Brian Robert than her sister Nicole, who was married to Brian?

After O'Keefe got to Albert's home he began texting McCabe to make sure she was there, since she was the only person there he knew well. When he entered

tear into O'Keefe's arm. Despite being their family dog Brian Albert got rid of her and never explained where the dog went.

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.

Definitely in the house that night were Brian Albert, Nicole Albert, Brian Albert Jr, Caitlin Albert, Jennifer and Matthew McCabe, two friends of Albert Jr named Julie Nagel and Sarah Levinson, and ATF agent Brian Higgins, who has an office inside the Canton Police Department. O'Keefe would make 12 at a minimum.

son, Brian Albert, Jr.'s, birth [X] 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.

Here is Higgins pictured with O'Keefe.



O'Keefe's  
...  
...  
...

This means that all of them witnessed the murder, or are aware of it, and have said nothing. Most of them were not questioned by Trooper Proctor.

One witness named Ryan Nagel went to the home to pick up his sister Julie, who ended up staying there. He was the only witness who had no familial ties to the Alberts, and thus no reason to frame Karen Read. He witnessed Read drop O'Keefe off and told police that he did not see any damage to her vehicle, hear any screams, or witness her operating the vehicle erratically. Nagel witnessed Karen Read alone<sup>x</sup> in the SUV, which directly conflicts with Brian Albert and the McCabe's story that O'Keefe never entered the house.

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.)

Additionally, O'Keefe's phone  tracked him walking up and down the stairs inside Albert's house from 12:20 to 12:32 AM. Obviously it would not show this sort of up and down motion if he was inside Karen Read's car or lying on the ground outside the house.

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.<sup>2</sup> 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 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

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 On Xeadows 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.

State Police and the DA's Office deliberately kept all of this information from the defense, including Jennifer McCabe's incriminating Google search.

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

Jennifer McCabe's cell phone analysis shows that she left Albert's house at 1:47 AM, and intentionally chose to drop off two people who lived close to O'Keefe in the middle of a snowstorm so that she could drive by his house and see if Karen Read was there.

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." (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.

police that she assumed O'Keefe had gone home with Read.

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.

Why would she Google that if she thought he was home sleeping?

A normal person would go to sleep at 2:30 in the morning after a night of partying, but McCabe elected to pace around her house nervously, waiting for Karen Read to contact her and ask where O'Keefe was.

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.) X

Somehow she anticipated this happening despite having no idea that O'Keefe was missing. McCabe waited up for Read because:

1. She needed to be with her when Read discovered the body so that she could control the narrative with police.
2. She needed to put the idea in Read's head that she might have accidentally hit and killed O'Keefe while driving drunk, and had no recollection of it. Read truly believed she might have done this and was



Despite barely knowing Karen Read, McCabe gleefully jumped in the car with her and Kerry Roberts. This intentional delay guaranteed that O'Keefe would be dead by the time anyone found him, and he would be unable to tell the real story about what happened.

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.)

Remember, that Jennifer McCabe initially told investigators that Karen Read brought in a drink from another bar to the Waterfall Bar, which only a drunken low class individual would do.

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

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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);<sup>4</sup> (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

Karen Read was well off and classy, and would never do such a thing. Nevertheless, McCabe successfully planted the seed in Read's brain that she may have accidentally killed O'Keefe.

Jennifer McCabe called her sister Nicole Albert at 6:07 AM, then deleted those call logs. Someone answered <sup>X</sup> the phone. This proved that McCabe had made them aware that there was a dead body outside of their house. Yet Brian Robert, a veteran Boston Police Officer and trained first responder, didn't even come outside despite the fact that a crime scene was unfolding on his property.

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).<sup>5</sup> 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

"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.)

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A broken cocktail glass was next to O'Keefe's body which Canton Police initially said was the murder weapon.

<sup>4</sup> 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.)

<sup>5</sup> 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.



After notifying the Albert's about the dead Boston cop on their property Jennifer McCabe Googled "How long does it take to digest food." The presence of food particles in a dead person's stomach help pathologists determine time of death.

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.<sup>6</sup> (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.<sup>7</sup> 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 a haste to cover up her incriminating 2:27 a.m.

At this point Jennifer McCabe was panicking because she knew how suspicious the "how long to die in cold" Google search would be. She decided to search for that same thing again after discovering O'Keefe's body, hoping that it would make it look less suspicious, as this is something a person might search after finding a body outside. In doing so she hoped that it would make the first search disappear, and it might have. Unfortunately she spelt the words wrong the second time she searched.

search about how long it would take O'Keefe to die in the cold, she accidentally searches: "how long ti die in ciki" 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.*)

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She later told law enforcement that it was Karen Read who told her to Google that.

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.)

Luckily for McCabe, Brian Albert's brother is a Canton cop, his other brother is a Selectman, his neighbor is the deputy chief, and the Trooper in charge of the investigation was a close family friend who helped cover up the murder. It was going to be covered up regardless.

When you thought that Jennifer McCabe couldn't get any lower, she also has been sharing fundraisers for O'Keefe, despite helping to cover up his murder.

↻ Jennifer McCabe Retweeted



**Canton Little League** · 2/3/22

Please consider donating to two great kids that are both Canton Little Leaguers. @billburr @CantonHSHockey Furbush Children's Fund

1 12 21

↻ Jennifer McCabe Retweeted



**Kevin Praik** @PraikJ... · 5/23/22

@cantonglax to host "John 'JJ'  
O'Keefe Memorial Game"  
tomorrow, 5/24, @ 6 pm vs  
@Norwoodgirlsla1.

There will be a 50/50 raffle, a  
bake sale, along with the sale of t-  
shirts & hats during the varsity  
game.

All proceeds raised will go directly  
to the O'Keefe  
family.

## John "JJ" O'Keefe Memorial Game





the coverup, and seemed to want to protect Brian Albert more than his own wife. Take from that what you will.

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.)

Jennifer McCabe would never have been able to cover up this murder without the assistance of law enforcement, despite the fact that it was one of their own who was killed. According to <sup>to</sup> <sub>X</sub> Read's defense attorneys the original Canton Police Department report had been altered. In the altered report it never stated that the SERT team found them at 6 PM – after Trooper Proctor had taken possession of Read's vehicle. The altered report also had a different cell phone number that McCabe called after finding the body, indicating that police were taking steps to make sure that Brian Albert was not in any way a suspect.

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);<sup>8</sup> and (2) the Altered Report, replaces Brian Albert's "primary" cell phone number (the very same number Jennifer McCabe deleted from her

already taken possession of her vehicle);<sup>8</sup> and (2) the Altered Report, replaces Brian Albert's "primary" cell phone number (the very same number Jennifer McCabe deleted from her

<sup>8</sup> 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.

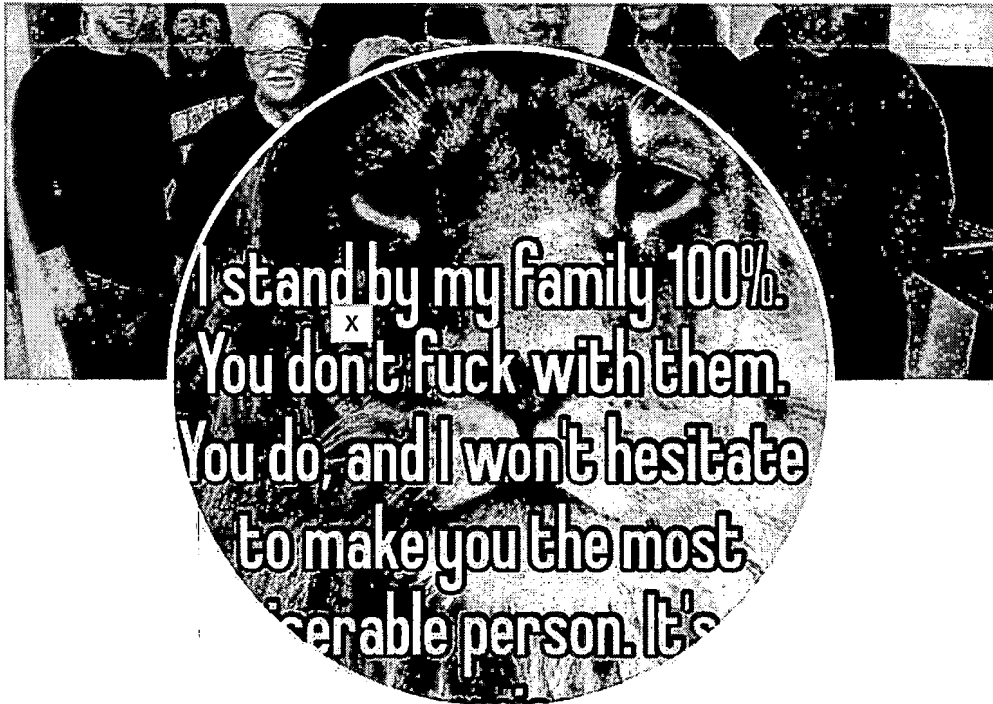
a. First, as set forth more fully in Defendant's Motion for Order Pursuant to Mass. R. Crim. P. 17 Directed to Canton Animal Control and the Canton Clerk's Office, the defense has obtained evidence that Brian Albert rehomed his K-9 German Shepherd dog "Chloe" to some unknown location in the months following 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.

In September 2022 Read's lawyers publicly accused the Albert family in open court of being implicated in O'Keefe's murder, and ordered them not to delete anything from their phones. Two weeks later Tim Albert posted this meme on his Facebook page, stating that "you don't fuck with my family" and that he won't hesitate to make you miserable if you do.



Tim Albert updated his profile picture.

October 16, 2022



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 Cantor lice 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.)

Tim is the loser of the family who seeks their approval by virtue signaling about how loyal he is so that he can enjoy the fruits of their success while contributing nothing himself. This post is clearly a direct attempt to intimidate

After being accused in September by Read's attorneys, Brian Albert immediately decided to sell his childhood home, which had been in the family for generations. It sold quickly, and as a result was never searched by police despite the fact that a Boston cop was probably murdered inside of it.

- 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.<sup>9</sup> (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.**

The person most responsible for the coverup was Trooper Proctor, who failed to speak to key witnesses, protected his close friends, and never applied for geofence data that would show the identities of every person in the house that night.

X

and the Massachusetts State Police<sup>3</sup> — the very agencies that took control of the investigation into O'Keefe's death. Even more alarmingly, Brian Albert has an intimate and personal relationship with Massachusetts State Police Trooper Michael D. Proctor ("Trooper Proctor"), the lead investigator assigned to this case. As a result — and unsurprisingly — Trooper Proctor has consistently frustrated court orders regarding this matter. He has, in particular and among other things, failed to meaningfully obtain and preserve the geofence data that is critical to the investigation in this case. As set forth herein, Ms. Read respectfully but urgently requests that this Court issue an order to ensure that critical geofence data, which will unquestionably provide necessary and exculpatory details regarding the interested parties' movements in the early morning of January 29, 2022, is preserved and produced to defense counsel in a manner that protects Ms. Read's state and federal constitutional rights to defend herself against these serious

However, Brian Albert didn't mention until April in front of a grand jury that his dog was aggressive and not great with strangers that night.

Ms. Read has always maintained that she drove her boyfriend, Mr. O'Keefe, to drop him off at the Albert residence on the night in question. According to Ms. Read, once there, Mr. O'Keefe exited the vehicle to confirm that they were at the right house.<sup>11</sup> Ms. Read waited for him for quite some time, but he never returned. After calling him several times with no answer, she eventually left, presuming he proceeded into the house for the party. Notably, Brian Albert testified at the grand jury that sometime after arriving home, he retrieved and brought his "large German Shepherd" dog downstairs because it was "barking." Mr. Albert testified that he kept the dog restrained because it was "not great with strangers," and then let the dog outside, unaccompanied so that it could go to the bathroom in the fenced-in back yard of the house.<sup>12</sup>

The Commonwealth's theory of this case, led by Trooper Proctor's investigation, appears to be that Ms. Read became suddenly angry with Mr. O'Keefe outside the Fairview Residence, reversed into him with her vehicle while negotiating a three-point turn, intentionally hit him in the head with the taillight during a blizzard, killing him and shattering the taillight lens, and then fled the scene. **Ryan Nagel's testimony, however, completely undermines the Commonwealth's theory by confirming that Mr. O'Keefe had already left the vehicle and the surrounding area before Ms. Read could possibly have initiated a three-point turn, supposedly striking Mr. O'Keefe in the head with the back of her vehicle.**

Despite being an after party, everyone at 34 Fairview Avenue fled the home within an hour after O'Keefe arrived.

To be clear, no witness su<sup>x</sup>ts that they observed Ms. Read strike Mr. O'Keefe with her vehicle, injure him in any way, make a three-point turn, or otherwise drive erratically on the night in question. Not one. The Commonwealth's theory is predicated entirely on flimsy speculation and presumption, underpinned by a questionable and biased investigation and highly dubiously claimed physical "evidence." Meanwhile, at least six individuals claim to have left the Albert residence in the early morning of January 29, 2022, after Ms. Read had left the Fairview Residence and returned home: Jennifer McCabe and Matthew McCabe purportedly drove Julie Nagel and an unnamed female home at 1:30 a.m.<sup>13</sup>; Brian Higgins supposedly went to complete "administrative work" at the Canton Police Department around 1:30 a.m.<sup>14</sup>; and Colin Albert returned home to his parents' residence at approximately 12:30 a.m.<sup>15</sup> Yet, none of these individuals — not one — claims to have seen Mr. O'Keefe's body sprawled in Brian Albert's front yard, mere feet from the very roadway all of them would have driven on.

Canton Police used red solo cups to store blood evidence at the scene of the crime, but did not discover any pieces of a broken tail light in their first search.

approximately two hours using the leaf blower to "clear" off the scene "pretty good"<sup>22</sup>. That morning, they recovered the following evidence from the crime scene: (1) a clear broken drinking glass; and (2) six frozen blood drops, which they placed into over-the-counter red Solo plastic cups that a neighbor provided.<sup>23</sup> **No red or clear pieces of plastic consistent with a taillight lens were observed or recovered by any of the officers inspecting the scene at that time.**

So then how did she break her tail-light? Surveillance video from Read's home show her backing into O'Keefe's car slightly on the way to search for him.

Finally, the fact that law enforcement retrieved pieces of Ms. Read's taillight outside the Brian Albert's house during multiple subsequent searches is particularly unsettling, given that a motion-activated Ring Camera from Mr. O'Keefe's residence shows that the damage to Ms. Read's vehicle actually occurred hours later, at 5:07 a.m. on January 29, 2022, when she left the residence to begin her frantic search for Mr. O'Keefe, long after he was already dead. Video surveillance footage captured at 5:07 a.m. on January 29, 2022, shows Ms. Read reverse her Lexus SUV out of Mr. O'Keefe's parking garage such that the right rear taillight of her vehicle struck Mr. O'Keefe's parked Chevy Traverse. As shown in the attached video, video surveillance clearly shows Ms. Read's vehicle striking the Chevy traverse at 0:18, causing the Traverse to jostle back and forth<sup>31</sup>. As Ms. Read drives out of frame from left to right, a flash of the white taillight bulb is clearly visible through what is an obvious a crack in the red taillight lens. It is undisputed that after the Lexus struck the Chevy, it *never* went back to the scene at Brian Albert's house. It did, however,  into police custody before the police miraculously started finding pieces of the taillight at 34 Fairview Road.

How did they find the pieces of the tail light later, after the Canton Police did not find any in their first report? Conveniently they appeared hours after Proctor took Read's vehicle and State Police, perhaps on a hunch, decided to search it again. Luckily they found it this time. Even more remarkably Canton Chief Ken Berkowitz also decided to go to the scene of the crime on a hunch and noticed more pieces of the tail light form his moving vehicle.

According to Kevin O'Hara, Team Leader of the Massachusetts State Police Special Emergency Response Team ("SERT Team"), he received a call from State Police Lieutenant Brian Tully on the afternoon of January 29, 2022, stating he did not have authorization to dispatch the SERT Team "yet" but was going to need assistance searching for evidence on the roadway in front of the residence located at 34 Fairview Road. Subsequent reports confirm that at 5:30 p.m., the SERT Team along with Detective Lieutenant Brian Tully from the Massachusetts State Police conducted a second search of the crime scene located outside the Fairview Residence. This time, police recovered three pieces of red and clear plastic from

<sup>22</sup> GJ testimony of Michael Lank is attached hereto as Exhibit 19.

<sup>23</sup> GJ testimony of Michael Lank is attached hereto as Exhibit 20.

<sup>24</sup> GJ testimony of Michael Lank is attached hereto as Exhibit 21.

<sup>25</sup> Affidavit is attached hereto as Exhibit 22.

<sup>26</sup> *Id.*

the exact same area Sergeant Lank and his colleagues had searched hours earlier and saw no such "evidence." Trooper Proctor claimed in his report that the plastic shards were consistent with Ms. Read's taillight<sup>27</sup>.

Significantly, Trooper Proctor's timeline of events, as set forth in his sworn affidavit in support of the Geofence Warrant, is provably false. Security footage taken from Ms. Read's parents' residence at 345 Country Hill Drive establishes that Ms. Read's black Lexus SUV was towed from the driveway by X amond Towing in North Dighton, MA at 4:12 p.m., not 5:30 p.m. as Trooper Proctor's affidavit suggests<sup>28</sup>. That altered timeline means that both the Lexus SUV as well as Trooper Proctor would be unaccounted for during the entirety of that one-hour-and-18-minute gap. Thus, Trooper Proctor and certain personnel from the Canton Police Department (where the vehicle was towed) had unfettered access not only to Ms. Read's vehicle (and its taillight), but to the crime scene as well, for more than an hour *before* the SERT team executed its search of that scene. Thereafter, that search miraculously revealed — for the first time — red and white pieces of plastic found on the ground consistent with the taillight of Ms. Read's vehicle, thereby establishing the *only* physical evidence against Ms. Read in the entire case.



The investigation of the crime scene, however, did not stop there. According to Detective Michael Lank's testimony before the grand jury, on February 4, 2022 (one full week after Mr. O'Keefe's passing), Ken Berkowitz, the Chief of the Canton Police Department, purportedly drove by the Fairview Residence on a whim and saw *from his moving vehicle* an additional piece of red plastic that was consistent with the taillight of Ms. Read's vehicle. It is worth recalling that this was a scene that had been searched, re-searched, and searched again by no fewer than three sets of police officials. Yet Chief Berkowitz claims that he glanced from his moving car while driving, saw a tiny shard of lens material on the ground many yards away and — at speed — recognized the shard's evidentiary value, and stopped his car to report the finding. Straining credulity does not begin to describe this account.<sup>29</sup> It is worth noting that one of the officers under the Chief's command – Kevin Albert – is Brian Albert's brother.

Berkowitz had been called by ATF Agent Brian Higgins, who was in the house when O'Keefe was murdered, immediately after the killing.

Detective Lank testified that the Chief of Police then notified the Massachusetts State Police to report what he had discovered. Before state troopers arrived, however, Canton Police officers had already responded to the scene and taken photographs of what the Chief of Police claimed to have found on Fairview Road on February 4, 2022. When an incredulous grand juror specifically inquired as to why the Chief of Police had responded to the Fairview Residence and how he discovered the evidence, Detective Lank explained "nobody called the chief." When pressed further by the juror as to why he "just wandered over there," Detective Lank recounted through hearsay, "He was driving down Fairview Road and he saw it, the evidence" (*Id.*). Equally suspicious is that Brian Higgins testified that his close personal friend, the Chief of Police Ken Berkowitz, called Higgins for some unknown reason in the early morning of January 29, 2022, *just before* Brian Albert notified Higgins that Mr. O'Keefe had been found dead in his front yard<sup>30</sup>. Chief Berkowitz's re x d and convenient involvement in an investigation that is outside his jurisdiction should, at the very least, raise eyebrows, especially considering his close ties to the January 29, 2022 occupants of 34 Fairview Road.

Trooper Proctor also went out of his way to make sure that Google didn't send him all the Geofence data that the defense had requested.

### III. CHRONOLOGY AND PROCEDURAL HISTORY RELATING TO THE GEOFENCE WARRANT

Prior to indictment, on April 28, 2022, undersigned counsel filed (and the Court, O'Malley, J., allowed) "Defendant's Motion for Preservation of Google Geofence Data" in Stoughton District Court<sup>32</sup>. In that motion, the Defendant requested preservation of so-called "geofence"<sup>33</sup> data stored by Google, corresponding to the location of the alleged crimes for the time period of **January 28, 2022, to January 29, 2022**. In the same motion, the Defendant noted that 18 U.S.C. § 2703(f) provides that "A provider of wire or electronic communication services or a remote computing service, upon the request of a governmental entity, shall take all necessary steps to preserve records and other evidence in its possession pending the issuance of a court order or other process." 18 U.S.C. § 2703(f). The Defendant further noted that "[s]uch preservation requests are routinely issued by the Commonwealth in criminal investigations, by means of transmitting a form or document to the provider of wire or electronic communication services"<sup>34</sup>.

On May 13, 2022, Trooper Proctor forwarded a preservation request to Google's Law Enforcement Compliance Department.<sup>35</sup> In that request, Trooper Proctor notes "[t]he preservation request applies to the following address, 34 Fairview Road, Canton, MA . . . on

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<sup>32</sup> See "Defendant's Motion for Preservation of Google Geofence Data", attached hereto as Exhibit 27.

<sup>33</sup> In contrast with traditional search warrants, which permit searches related to known suspects and locations, "geofence" or "reverse location" warrants specify a defined location and time

January 28, 2022, through and including January 29, 2022."<sup>36</sup> The request specifies that it applies to "A. Any location data currently stored in relation to any devices identified within the set parameter. B. Account information: To include all account owner/user identification information, to include all information listed in the 'your personal info' within the Google My Account Screen. C. Application History: To include all apps downloaded from the Google Play Store to any devices within the set parameter."<sup>37</sup>

On May 16, 2022, Google acknowledged receipt of this initial preservation request.<sup>38</sup> On May 18, 2022, after realizing t<sup>X</sup>he preservation request, as worded, would *exclude* applications containing location data that had been downloaded from the Apple "App Store,"<sup>39</sup> undersigned counsel emailed Assistant District Attorney Adam Lally ("ADA Lally") requesting modification of the preservation request to include *all* smartphones.<sup>40</sup> ADA Lally responded to this email the next day, on May 19, 2022, with a modified preservation request designed to include iPhones.<sup>41</sup>

To date, however, defense counsel has received neither the automated acknowledgement from Google that would indicate that this amended preservation request was ever received, nor a confirmation from Google noting its intent to comply with the amended request.<sup>42</sup>

Trooper Proctor further indicates that any records produced in response to the geofence warrant be provided directly to him, via email or digital storage media. See Geofence Search Warrant Application for 34 Fairview Road, dated August 4, 2022, at p. 22-23. Put simply, Trooper Proctor will singularly make any and all determinations of relevancy regarding the data produced by Google, as the data will be produced directly to him and no one else. Given Trooper Proctor's close familial relationships with the prosecution's witnesses (and potential suspects) in this case, his insistence on being the sole gatekeeper of this information raises serious questions as to the objectivity of the instant investigation and unquestionably creates an appearance of impropriety.

Karen Read is a completely innocent woman, wrongly charged by corrupt cops who would see her rot in prison in order to cover up a murder of a fellow officer. If she didn't have the resources then none of this would've come out. Trooper Proctor and the DA's Office went out of their way to make sure evidence that they knew would exonerate her, was never given to her defense team. As a result O'Keefe's niece and nephew, whom she loved as her own, believe she killed their father.

Trooper Proctor, Brian Albert, Colin Albert, and Jennifer McCabe should all spend significant amount of time in jail, and two of them should be charged with murder.

The Canton Police Chief and Deputy Chief should be fired.

Karen Read should sue the  all for millions and millions of dollars.

Every other person in that house should be charged with obstruction of justice, as they witnessed a crime and never reported it. Do you understand how difficult and remarkable it is for at least 11 people to keep their mouths shut for over a year after witnessing the murder of a cop? That's the kind of fear that the Albert family put into these people.

# EXHIBIT K

## Canton Cover-Up Part 4: Multiple Witnesses In Home Where John O'Keefe Was Killed Subpoenaed By Federal Grand Jury, FBI Visits Homes, Basement Floor Reportedly Replaced

📍 Aidan Kearney • April 20, 2023 🔥 93,730

Karen Read is  
the world's



- See all parts of the Canton Cover-Up Series
- Watch the Live Shows and videos

Breaking News – according to reliable sources close to the matter a federal grand jury has subpoenaed multiple witnesses who were in the home of Boston Police Officer Brian Albert on the night fellow BPD Officer John O'Keefe was killed. The FBI has taken over the investigation and they have visited the

homes of multiple witnesses, including people who weren't in the home but were called by Jennifer McCabe in the hours after O'Keefe was placed outside in the snow. The only individual who I can confirm with 100% certainty has received a subpoena in hand is Jennifer McCabe, the sister in law of Brian Albert who played a major role in the coverup. The person who would now be leading this investigation is none other than US Attorney for Massachusetts, Rachael Rollins. Surely her distaste for the police will make this an enjoyable case for her to prosecute.

#### FEATURED VIDEOS



Sources are also reporting to us that Brian Albert put in his retirement papers two days ago. Had he remained on the job and been charged with a felony he would be placed on unpaid leave. This is likely an attempt to salvage his pension.

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FROM \$10 A MONTH



TB Daily News



Additionally, we have it on good authority from [redacted] liable source that Brian Albert paid to have his basement floor ripped up and replaced sometime after John O'Keefe was killed. However, we do not know who did it or the exact date. If you have any knowledge about who ripped up the basement floor and when, please feel free to email [turtleboysports@gmail.com](mailto:turtleboysports@gmail.com). It is believed that John O'Keefe was thrown down the basement stairs between 12:21 and 12:24

and was beaten badly down there. The finished basement contained lifting weights, but the defense has not been granted access to the house, and the State Police never stepped foot inside of the house as part of their investigation.



Maybe a neighbor or someone walking their dog noticed a flooring company parked in the driveway for a few days. Maybe the mailman will read this and saw something. Maybe he hired a Boston Police Officer he trusted who had a side gig as a contractor. Someone knows something and they are likely scared to come forward. I want to assure anyone reading this who has more information that I have never and will never reveal a source, even when compelled to do so by a court. Email [turtleboysports@gmail.com](mailto:turtleboysports@gmail.com) or message Clarence Wood Emerson on Facebook.

Some have speculated at the lack of motive, but not all murders require a motive. Colin Albert's family did not like John O'Keefe. Some have described O'Keefe as a "get off my lawn guy." Colin's parents, including his selectman father Chris, reportedly taunted John O'Keefe while he was away on vacation by showing pictures of themselves drinking beers in O'Keefe's yard. They didn't like each other at all. I do not believe that they intended to kill him that night, but these are drunk brutes, and O'Keefe was 6'2" 220. He likely fought back, which would necessitate an extreme amount of force and violence to take him down.

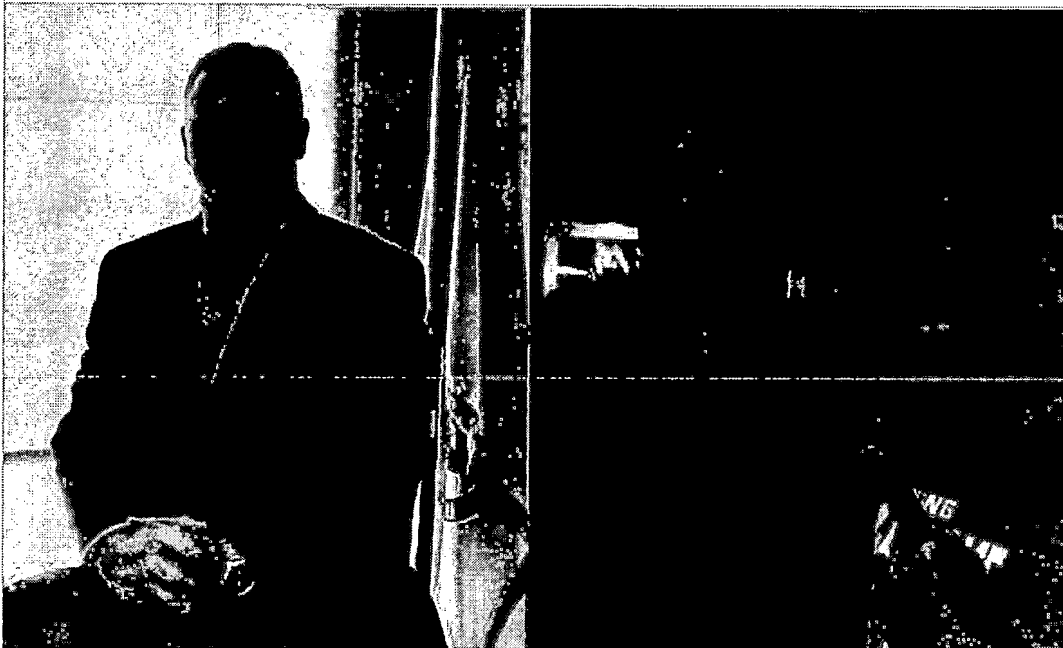
Again, it is embarrassing and shameful that Norfolk County DA Michael Morrissey is continuing to disgrace his office by pursuing criminal charges against Karen Read. It's a sad day for justice when you're so corrupt that you have to be replaced by Rachael Rollins. I will be discussing all of this on the Live Show Saturday night at 9 PM. [Click here](#) to subscribe to our Youtube channel and stand by for new information that we will be reporting.



# EXHIBIT L

## Canton Cover-Up Part 133: Whistle Blower Private Investigator Steve Scanlon's Call To David Yannetti's Office Was Turning Point In Karen Read Defense Strategy

© Aidan Kearney • September 6, 2023 • 33 🔥 42,324



- Framed - Video for Full Background on Canton Cover-Up Story
- Donate to the Karen Read Defense Fund
- See all parts of the Canton Cover-Up Series
- Watch the Live Shows and Videos

FEATURED VIDEOS

This is Steve Scanlon from Boston.

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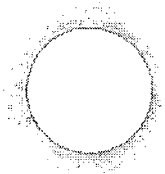
**TB Daily News**







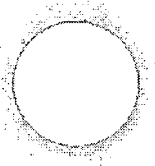
 **@DoctorTurtleboy** 





I've mentioned his name several times on the Live Show, and made references to his involvement in the Canton coverup, but I've never written about until now so a lot of people are confused about who he is. He is not a villain in this story, and is not believed to have been involved at all in the coverup of John O'Keefe's murder. He never wanted to be part of this story, but he has nonetheless played a vital role in the evolution of this case.

Thirty years ago Scanlon met Brian Albert when they worked as corrections officers together, and they were both on the BPD boxing team.





Soon after Albert became a Boston police officer, and Scanlon started working as a private investigator.

Contact [REDACTED] or visit  
[www.scanloninvestigations.com](http://www.scanloninvestigations.com) for a  
more in-depth biography of the firm.



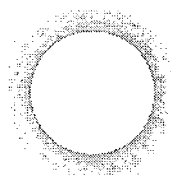
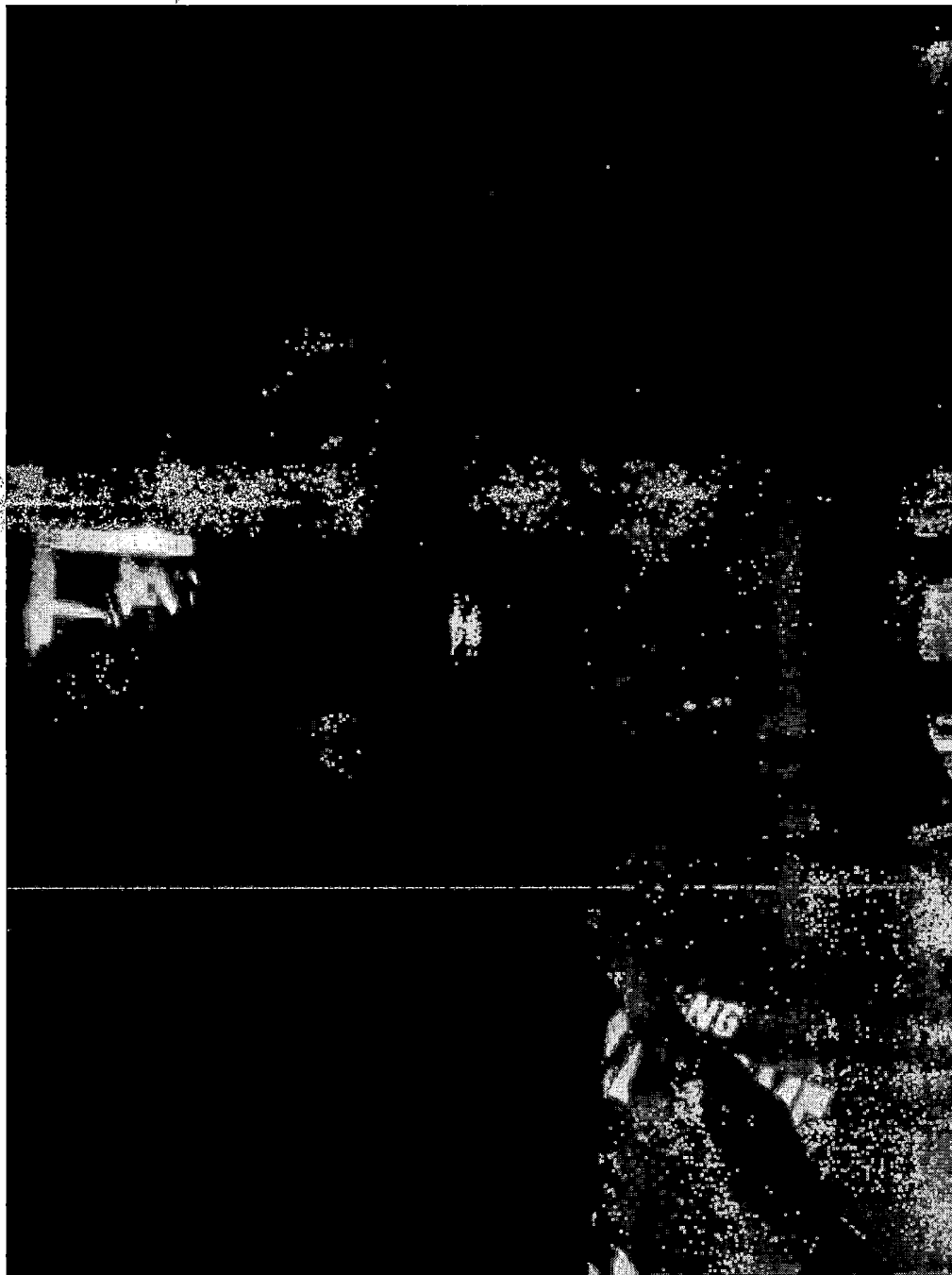
**Stephen Scanlon**

Scanlon Investigations Group is a  
licensed & bonded private

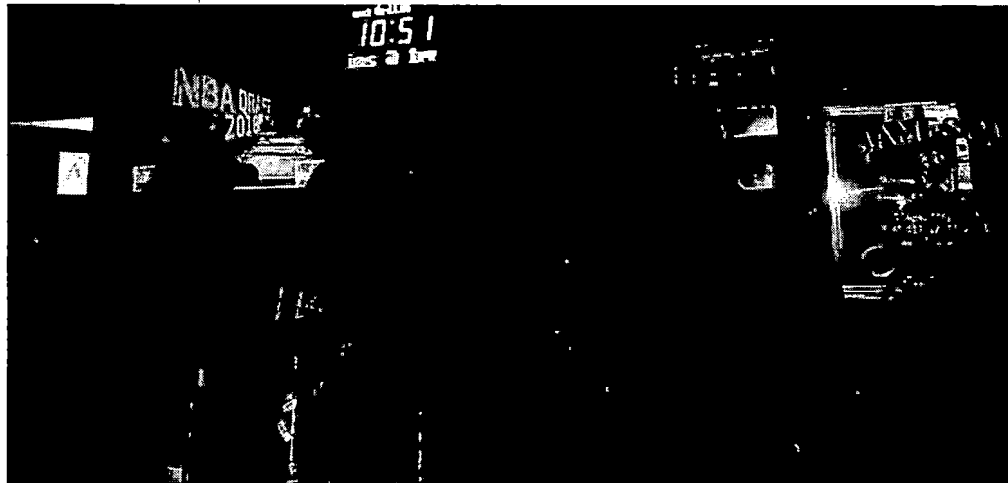


Scanlon told me that he spoke to Brian once every 5 years, and that they were merely acquaintances. However, there are pictures of them together on his Facebook page, which we have used in stories before.

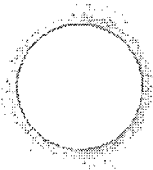






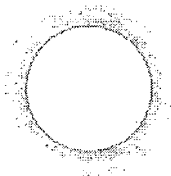


In almost every picture Brian Albert is in, he is the focus of attention. This 30 year old image is the only time I've ever seen him smiling.



In almost every picture Brian Albert gives the camera a menacing look, and often has his fist pointed out in order to prove what a tough guy he is. Scanlon told me that he has not spoken with Brian since John O'Keefe was killed.

I spoke with Scanlon in June after his name kept getting brought up by tipsters who said he knew a lot about what happened inside 34 Fairview Road. He told me that on February 3, 2022, he contacted Attorney David Yannetti after seeing Karen Read being arraigned on the news, to tell Yannetti that he believed that John O'Keefe was beaten inside that house.



Scanlon told me that "this thing stinks, and an innocent person should not be blamed if they didn't do it." He said that he reached out to Karen Read through Facebook messenger to offer her free PI help, but that when he never heard back from her he decided to go directly to Yannetti.

*"This dude got beat up,"* he reportedly told Yannetti.

But what part of the story "stunk" on February 3? And how would Scanlon know that John was beaten inside the house if he wasn't there?

concerned on the news, to be  
beaten inside the house

Karen Read by  
John O'Keefe

He told me that "if someone backs up into a guy they're gonna have bodily injury and bruising," and John didn't have that. The autopsy photos had not been released by February 3, but he told me he knew what John's body looked like from hearing news reports about swollen eyes.

*"It looked like a fight."*

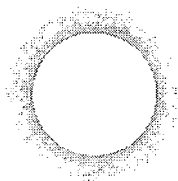


Scanlon told me that he had told Yannetti that he had heard that Brian Albert's nephew was involved in the beating, and that an ATF agent was also there. He didn't know the names of either of them at the time, but they fit the profile of Colin Albert and Brian Higgins. This was likely the first time Yannetti had heard that Colin Albert was inside the house, which was a huge clue since Colin had previous disputes with his former neighbor John O'Keefe.

Prior to Scanlon's visit to Yannetti's office, Karen's only attorney at the time was publicly skeptical of the Commonwealth's story and said that his client should not be charged with manslaughter. However, at the time Yannetti hadn't made any comments alleging that O'Keefe was beaten inside the house. Scanlon's tip likely confirmed any suspicions Yannetti had, and was the official beginning of the defense's pursuit of a third party culprit defense.



... charge  
... ar... arment:

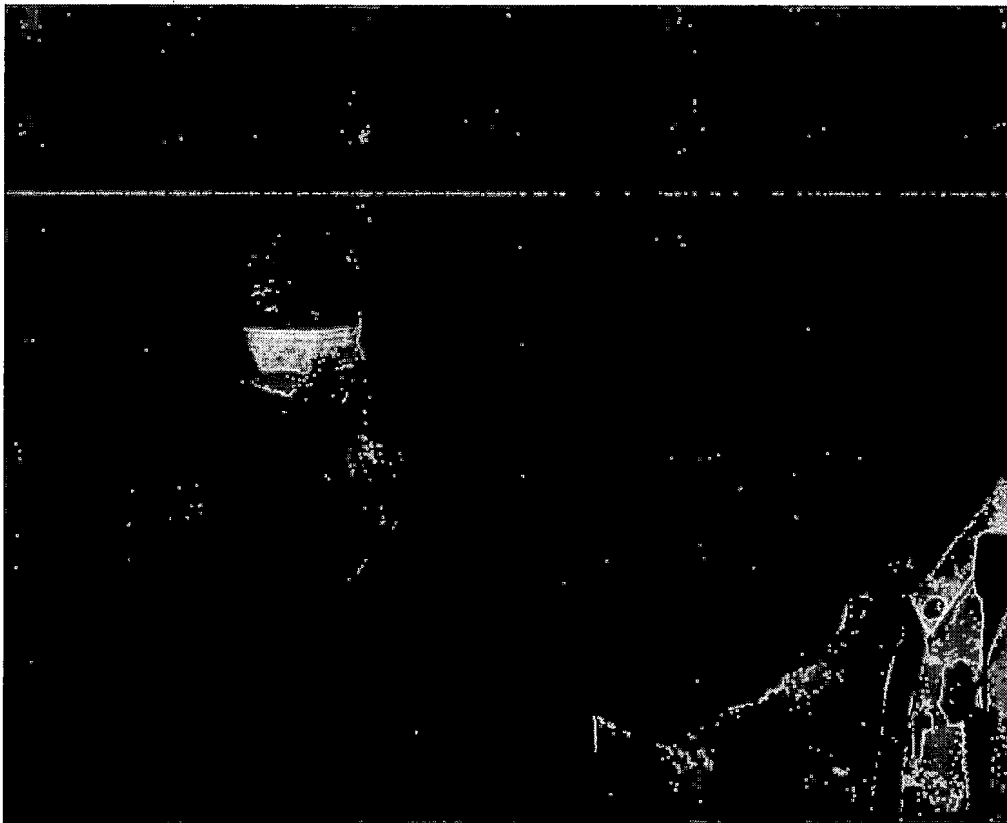


Scanlon seemed v nervous while talking to me. He denied having first hand knowledge of what happened, or said that someone in the house told him what happened.

*"It was only my opinion."*

But why would a PI approach a defense attorney if he was just another person with an opinion? I got the impression while speaking with Scanlon that he knew more, but feared the wrath of Brian Albert. He admitted to me that once they started to pursue Brian Albert's involvement he refused to speak with them anymore.

Scanlon genuinely sounded like he felt bad for Karen Read and couldn't have it on his conscience that an innocent woman was being charged with a crime that he knew she didn't commit. However, he wasn't willing to go all the way because he knew Brian Albert. He wanted to help, so long as his name was never brought into it. He wanted to be the whistle blower, without actually being named as the whistle blower.



I find it hard to believe that Steve was beaten up on February 3 based on the description of the injuries from a February 2, 2022 Boston.com story:

Scanlon could've been certain that John was likely on media reports. The autopsy photos

*Via an autopsy, authorities found O'Keefe had multiple skull fractures. His pancreas was also a dark red color, which meant that hypothermia contributed to his death, according to Lally. Both of O'Keefe's eyes were swollen shut. He also had multiple cuts to his right arm as well as a two-inch cut on the back of his head.*

Perhaps Scanlon's background as a boxer led him to believe that the swollen shut eyes were evidence that John had been involved in a fight. But at this point it wasn't made public that John was found on the snow. I remember when the story first broke and I had assumed she hit him in the driveway, which knocked him unconscious when his head hit the concrete (I hadn't really thought it through).

To me it just didn't seem realistic that Scanlon could've heard this description and immediately felt so confident that John was beaten inside the house that he messaged Karen Read and went to her attorney's office in Boston. I don't believe him when he told me that he had no personal information or insight into the matter.

I believe that he went to Yannetti's office because someone told him that John O'Keefe was beaten inside the house.

But who could've told him that? Surely Brian Albert wouldn't confess to a random friend of his who clearly likes to blab. But Scanlon does have a daughter who is around the same age as the Albert children, and lives in a town nearby. She is virtually invisible on social media and there are no images we could find of her with anyone involved in this case.

But people talk. One of the most common arguments made by people who claim there was no conspiracy was that you can't get that many people to keep their mouths shut about a murder. I don't disagree with that. Steve Scanlon's testimony confirms this theory – someone in that house told someone who wasn't in the house what happened. Eventually that got back to Scanlon, and he couldn't live with the conscience. He just wasn't willing to divulge who his source was. He wanted to have fun because the excitement of being involved in a murder mystery appealed to him, he just wasn't willing to go all the way.

At least three young women his daughter's age – Emily Fabbiano, Mary Kent, and Kathryn Doody – were present inside the house and claim to have left prior to John O'Keefe arriving. Three other women were inside the house when O'Keefe arrived – Sarah Levinson, Julie Nagel, and Caitlin Albert. All it takes is one of those women telling a friend, who promises not to tell anyone, but then goes and tells one more friend who they trust not to tell anyone.

This is how I believe that Steve Scanlon became aware of what happened. I believe he heard a rumor that a lot of people had heard, and to his credit he is the only person who couldn't live with the fact that Karen Read was being blamed for it. He doesn't want to divulge who his source of information is, which is why he's pretending that he went to Yannetti based on a hunch after hearing a physical description of John's body on the news.

Our sources at Moakley Courthouse tell us that Steve Scanlon has been subpoenaed and testified in front of a grand jury, specifically about his contact with Brian Albert, and his knowledge of what happened inside 34 Fairview Road. If and when the indictments come we will find out what he told the grand jury. But Scanlon's February 3 trip to David Yannetti's office was the first turning point in this story, and will be a major part of the way this story is retold when it finally comes to an end.

33 COMMENTS



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# EXHIBIT M



## The Commonwealth of Massachusetts Department of State Police



MAURA HEALEY  
GOVERNOR

KIM DRISCOLL  
LEUTENANT GOVERNOR

TERRANCE M. REIDY  
SECRETARY

Division of Investigative Services  
Norfolk County State Police Detective Unit  
45 Shawmut Rd., Canton, MA 02021

JOHN E. MAWLR  
COLONEL/SUPERINTENDENT

JOHN D. PERHAM  
DEPUTY SUPERINTENDENT

September 12, 2023

TO: Detective Lieutenant Brian Tully, #3520  
FROM: Sergeant Yuriy Bukhenik, #3543  
SUBJECT: Stephen Richard Scanlon (DOB [REDACTED]) RE: O'Keefe MV Homicide  
Case: 2022-112-33

1. On Friday, September 8, 2023, at approximately 12:00 PM, Tpr. Proctor and I, travelled to in an attempt to interview Stephen Richard Scanlon (DOB 7/27/1967) at his home. Upon our arrival, we met Stephen out by the building's garage entrance. Following brief introductions, we asked Stephen for a few minutes of his time. Stephen told us he knew exactly why we were looking to talk to him and that he is very upset by what is happening and that the whole thing was complete "Bullshit". Stephen further told us that he was not happy with the lies that are being spread about him and over all being dragged into a case that he has nothing to do with.

DIVISION OF INVESTIGATIVE SERVICES  
MASS. STATE POLICE  
Year / Stat / Crime / Case  
7/12  
2023  
Captain [Signature]  
Supervisor [Signature]

2. Stephen went on to say that he has known Brian Albert for many years but has not seen him in person in 3 to 4 years now. The two used to work on a fugitive task force many years ago and were also on the same boxing team. On occasion Brian and Stephen would socialize together and grab a beer. I asked Stephen if he could tell me why he thought his name would be brought into this case at this point, at which point Stephen told us that he would like his attorney present with him while he answered any of our questions. Stephen told us he is represented by Attorney Tim Flaherty and that his number is 617-██████████ We thanked Stephen for his time and concluded our conversation.

SEARCHED INDEXED  
SERIALIZED FILED  
DEC 12 2011  
RESPECTFULLY SUBMITTED,

Sgt. Yuriy Bukhenik #3543  
Sergeant Yuriy Bukhenik, #3543  
Massachusetts State Police  
Norfolk District Attorney's Office



*The Commonwealth of Massachusetts*  
*Department of State Police*



MAURA HEALEY  
 GOVERNOR  
 KIM DRISCOLL  
 LIEUTENANT GOVERNOR  
 TERENCE M. REIDY  
 SECRETARY

Division of Investigative Services  
 Norfolk County State Police Detective Unit  
 45 Shawmut Rd., Canton, MA 02021

JOHN E. MAWN JR.  
 COLONEL/SUPERINTENDENT  
 JOHN D. FINNIGAN  
 DEPUTY SUPERINTENDENT

October 17, 2023

TO: Detective Lieutenant Brian Tully, #3520  
 FROM: Sergeant Yuriy Bukhenik, #3543  
 SUBJECT: Stephen Richard Scanlon (DOB [REDACTED]) interview at NDAO RE: O'Keefe MV  
 Homicide  
 Case: 2022-112-33

1. On Monday, October 16, 2023, at approximately 1:00 PM, Lt. Fanning and I, were able to interview Stephen Richard Scanlon (DOB [REDACTED]) during a pre-scheduled time, which I set up through his attorney Tim Flaherty. The interview took place at the Norfolk District Attorney's Office, located in Canton. Upon their arrival, I directed Mr. Flaherty and Mr. Scanlon to the community room, which is where the meeting was held. Following brief introductions, we asked Stephen if in, or around February 2022 he reached out to Attorney Yannetti over the phone or had he visited his law offices as it related to the O'Keefe homicide out in Canton.

DIVISION OF INVESTIGATIVE SERVICE  
 MASS. STATE POLICE  
 Year / Dist / Crime / Case  
 80  
 Serial  
 JMF  
 Captain

2. Stephen stated that he initially reached out to Karen Read over Facebook messenger and told her that he was a Private Investigator and would be willing to put another set of eyes on the investigation, even mentioning that he would do it free of charge. Karen Read recommended that Stephen contact her attorney David Yannetti. Stephen stated that he was not sure of the exact date, but that he eventually called Yannetti's office and offered the same services, suggesting that O'Keefe might have been beaten up and that he was not sure what happened but would be willing to work on the case, obviously only if agreed on by Yannetti and his client (Karen Read). Following their phone conversation, David Yannetti asked Stephen to come into the office to further discuss the matter, which Stephen did, back in early 2022.

3. Stephen went on to say that during his visit to Yannetti's office there was another individual present during their meeting. Stephen identified the male party as Paul Mackowski who is also a private investigator in Massachusetts and the two had crossed paths in the past. During the meeting, Stephen was asked if he knew Colin Albert and an ATF Agent, both of whom were allegedly in the home during the evening hours when O'Keefe was killed. According to Stephen, this was the first time he had heard of Colin Albert and an ATF Agent being possibly involved in the matter, and both had been mentioned by Mackowski and Yannetti. Prior to the meeting concluding, Stephen stated that Yannetti handed him a check for \$1,200-\$1,500 and asked him to keep his eyes and ears open in the Canton area in regards to the O'Keefe case. Although Stephen took the check, he consulted with his attorney Tim Flaherty and returned it back to Yannetti, since he was not working on the case and he further felt it would be a conflict of interest.

4. In days and weeks following their meeting, Stephen was in communication with an individual named Jack Hollow. Mr. Hollow, according to Stephen is a mutual friend of both Stephen and Mackowski, and used to do work with Brian Albert. Hollow shared information which he had learned from Mackowski. That information being that Yannetti and his team were looking into Colin Albert and the ATF Agent since Colin allegedly had "Beef" with O'Keefe. I asked Stephen how come he did not reach out to investigators when he learned this information, to which he stated that everything he had learned was 4<sup>th</sup>, 5<sup>th</sup> or even 6<sup>th</sup> person removed from the source, thus he did not think that it was credible or important to reach out to us at that time.

5. At this point Stephen circled back about an event he had mentioned earlier in our conversation. Stephen had told us that he was at Paddy's Irish House in Newton for lunch one of the days following the homicide taking place, and the local news was broadcasting coverage on the case.

He sparked up a conversation on the matter with the bartender who told him that she lives in the neighborhood where O'Keefe was found and that days following the investigation, she received a call from an unknown party telling her that the police were looking for Ring camera footage and not to release it to the authorities. Stephen didn't know the bartender and only provided a physical description of the female and her approximate age being in the 30's. Stephen told us that he also shared this information with Mackowski and Yannetti during their meeting as well.

6. Stephen once again reiterated that he told Yannetti and Mackowski that his opinion and theory was that O'Keefe looked like he could have been beat up, but he had no personal knowledge of what actually happened or who could have been involved in the murder. The name Colin Albert and the ATF agent were mentioned by Yannetti and Mackowski in the meeting and not Stephen. which Stephen did, t

7. We asked when was the last time he spoke to Brian Albert, since the two used to work together. Stephen told us that he last spoke to Brian in April of this year and that he considers Brian a friend. Stephen told us he knows both Brian and his wife. He has also met Chris Albert and Kevin Albert at Brian's house years prior. Stephen estimated it to be around 1998-2001 during the time when Brian was in a bad car crash and Stephen would stop by the house to check in on Brian.

8. Stephen was asked if he had ever had a phone conversation with Aidan Kearney and whether or not the conversation was recorded by either of them and if so, was Stephen advised by Kearney about the recording. Stephen stated that in approximately June of 2023, he spoke with "Turtleboy" following a Saturday night live show that Aidan Kearney does on YouTube. The following morning (Sunday) after the show, during the episode where Kearney mentioned Stephen by name and his alleged connection to the case, Stephen woke up to a Facebook message from Aidan stating something along the lines of "Tik tok tik tok, you should call me. You shouldn't be scared of Brian Albert, you should be scared of me." Stephen told us he asked Kearney for his number and called him. Prior to talking with Kearney, Stephen told us he stated "before I speak to you any further, is this being recorded?" To which Kearney stated "Absolutely not, that would be illegal." During their conversation, Stephen told Aidan that he did not know Colin or the ATF agent in question and he didn't know anything about the case. Aidan told Stephen that he was not talking to the defense but to close friends of Karen's and that is where he is getting his information. Stephen told us that he suspected that Yannetti was feeding Aidan his information on the case and the investigation.

9. Stephen recalled sitting on the beach during the summer of 2023, when a friend of his "Irish Ray" who is also a retired private investigator contacted Stephen and told him that a recording of

Aidan and Stephen's conversation was shared online by Aidan. This was the same conversation that Aidan assured Stephen was not being recorded. Stephen went on saying how upset he was about Aidan recording him without his consent, especially after promising him he would not do such a thing. Stephen had to fight back tears as he told us how upsetting it was to have Aidan drag his daughter into this mess as well. Stephen told us that Aidan told him to call a 401 area code number that Sunday morning, which is the line that their conversation was held on and at the same time recorded.

10. We were further told by Stephen that Gretchen Voss of the Boston Magazine publication had reached out to him for comment on a story she published, but he never returned her calls. Stephen once again told us that his theory was all based on his opinion and the media reports and that he himself had no personal knowledge of the O'Keefe incident. Additionally, Stephen never spoke to anyone involved in the case, so he would not have any insider information either. At this point Stephen's attorney Mr. Flaherty jumped in and stated that as a result of Aidan's blogs and YouTube Live shows, there has been a significant impact on Stephen and his livelihood due to the publicity generated by Aidan. Stephen is losing work as a result and it is impacting his reputation in the professional field and on personal levels.

11. Without having anything further to add, we thanked both Stephen and Mr. Flaherty for their time and concluded the interview.

Respectfully Submitted,

*Sgt. Yuriy Bukhenik #3543*

Sergeant Yuriy Bukhenik, #3543  
Massachusetts State Police  
Norfolk District Attorney's Office

# EXHIBIT N

## *The Commonwealth of Massachusetts*



Michael W. Morrissey  
District Attorney

Office of the District Attorney  
FOR THE NORFOLK DISTRICT

45 Shawmut Road  
Canton, MA 02021  
781-830-4800  
Fax: 781-830-4801

November 14, 2023

Ted Daniel, Investigative Reporter  
WFXT-TV  
Boston 25 News  
Via Email: ted.daniel@boston25.com

RE: Public Records Request

Dear Mr. Daniel:

This responds to your November 1, 2023, public records request to the Norfolk District Attorney's Office (NDAO) in which you requested under G.L. c. 66, § 10: "any letters, emails or other correspondence Norfolk DA Morrissey or any members of his staff has sent to any DOJ entity that mention 'Dustin Chao' or 'Laura Greenberg-Chao' or any similar versions of those names."

One letter was identified and is being withheld from public inspection at this time pursuant to statutory exemptions because it is substantively connected to recommendations on legal matters found within an active and ongoing criminal investigation and contains privileged attorney work product. See G.L. c. 4, § 7 (26)(d) (intra-agency letters relating to policy positions being developed by the agency); *DaRosa v. City of New Bedford*, 471 Mass. 446 (2015) (attorney work product falls within the scope of exemption (d)); *Attorney General v. Facebook, Inc.*, 487 Mass. 109, 127 (2021) ("The greatest protection is provided to opinion work product, or work product that conveys the 'mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.'" (citation omitted)). See also G.L. c. 4, § 7 (26)(f) ("investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest").

Furthermore, the identified record contains confidential personnel information protected by privacy exemptions. See G.L. c. 4, § 7 (26)(c) ("personnel and medical files or information and any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy"); *Worcester Telegram & Gazette Corp. v. Chief of Police of Worcester*, 58 Mass. App. Ct. 1, 5 (2003) ("core categories of personnel information that are 'useful in making employment decisions regarding an employee'" may be withheld from disclosure).

You have a right to appeal this response in accordance with G.L. c. 66, § 10 and 950 CMR § 32.08 (2021) to: Supervisor of Public Records, Office of the Secretary of the Commonwealth, Public Records Division, One Ashburton Place, 17<sup>th</sup> Floor, Boston, MA 02108.

Ted Daniel  
November 14, 2023  
pg. 2

Best,

**/s/ Brandon P. Hunt**

Brandon P. Hunt  
Assistant District Attorney  
Records Access Officer  
Norfolk District Attorney's Office

RECEIVED  
NOV 15 2023





**The Commonwealth of Massachusetts**  
William Francis Galvin, Secretary of the Commonwealth  
Public Records Division

Manza Arthur  
*Supervisor of Records*

November 14, 2023  
SPR23/2752

Ted Daniel  
Boston 25 News  
25 Fox Drive  
Dedham, MA 02027

Dear Mr. Daniel:

I have received your letter appealing the response of the Norfolk County District Attorney's Office to your request for records.

I have directed a member of my staff, Connor McElroy, to review this matter. Upon completion of the review, I will advise you in writing of the disposition of this case. If in the interim you receive a satisfactory response to your request, please notify this office immediately.

Any further correspondence concerning this specific appeal should refer to the SPR case number listed under the date of this letter.

Sincerely,

A handwritten signature in cursive script that reads "Manza Arthur".

Manza Arthur  
Supervisor of Records

cc: Brandon P. Hunt, Esq.

## Hinshaw, Ryan (SEC)

---

**From:** Daniel, Ted (CMG-Boston) <Ted.Daniel@boston25.com>  
**Sent:** Tuesday, November 14, 2023 2:49 PM  
**To:** SEC-DL-PREWEB  
**Subject:** REQUEST FOR APPEAL  
**Attachments:** 2023-133 NDAO Public Record Response\_Daniel.pdf

Good afternoon,

I'm requesting the Secretary of State's Office to compel the Norfolk DA's office to produce a document they are withholding.

The letter is related to an alleged conflict-of-interest claim, the DA's office has made in a federal probe that has been discussed in open court and widely reported.

<https://www.wcvb.com/article/probable-cause-hearing-to-be-held-for-girlfriend-of-boston-police-officer-charged-in-his-death/39923674#>

<https://www.bostonherald.com/2023/05/04/karen-read-defense-problematic-investigation-into-john-okeefe-death-grabs-federal-attention/>

The Norfolk DA's Office claims the release of the letter would prejudice investigative efforts.

That argument doesn't make sense because the Norfolk DA's office is the agency allegedly being investigated.

The DA's office can make a claim to withhold their own investigative techniques, but that argument is irrational when they are not the investigators.

Public record law states: "Information relating to an ongoing investigation may be withheld if disclosure could alert suspects to the activities of investigative officials."

Does this mean they are withholding the letter because they don't want alert themselves to an investigation, they are fully aware of?

The investigation began, at minimum 8 months ago, and the DA's office provides no evidence that it remains active.

If the letter contains personnel information, the Office can make a claim to have that specific information redacted but there are no legal grounds to withhold the document in its entirety.

The DA's office employs attorneys, and they generate correspondence. Can they now argue that every letter written by an attorney at their office contains "privileged attorney work product"?

An alleged conflict of interest does not constitute "privileged attorney work product".

Thank you for your consideration,

Ted Daniel

Reporter

WFXT-TV

Boston 25 News

---

**From:** PublicRecords, NDAO (NFK) <NDAO.PublicRecords@MassMail.State.MA.US>

**Sent:** Tuesday, November 14, 2023 1:38 PM

**To:** Daniel, Ted (CMG-Boston) <Ted.Daniel@boston25.com>

**Cc:** Traub, David (NFK) <david.traub@mass.gov>

**Subject:** [EXTERNAL] RE: Public Records Request

**CAUTION: This email originated from outside of CMG. Do not click links or open attachments unless you recognize the sender and know the content is safe.**

Good Afternoon Ted,

Please find attached the Norfolk District Attorney's Office response to your November 1, 2023, public record request.

Best,  
Brandon

**Brandon P. Hunt**

Assistant District Attorney | Records Access Officer | Norfolk District Attorney's Office  
Main: 781.830.4800 | Fax: 781.830.4801 | Email: [NDAO.PublicRecords@mass.gov](mailto:NDAO.PublicRecords@mass.gov)

This e-mail message is generated from the Norfolk District Attorney's Office and is subject to the Massachusetts Public Records Law. If you have received this email in error, please notify the sender by return email and delete it from your computer system.

---

**From:** PublicRecords, NDAO (NFK)  
**Sent:** Monday, November 6, 2023 11:18 AM  
**To:** Daniel, Ted (EXT) <[ted.daniel@boston25.com](mailto:ted.daniel@boston25.com)>  
**Cc:** PublicRecords, NDAO (NFK) <[NDAO.PublicRecords@MassMail.State.MA.US](mailto:NDAO.PublicRecords@MassMail.State.MA.US)>; Traub, David (NFK) <[david.traub@mass.gov](mailto:david.traub@mass.gov)>  
**Subject:** RE: Public Records Request

Good Morning Ted,

Your request for public record was received on November 1, 2023, and is actively being worked on. Public Record Law provides a period of 10-business days to respond to requests. See G.L. c. 66, § 10(a). I appreciate your patience in this matter and will keep you informed of any changes.

Best,  
Brandon

**Brandon P. Hunt**

Assistant District Attorney | Records Access Officer | Norfolk District Attorney's Office  
Main: 781.830.4800 | Fax: 781.830.4801 | Email: [NDAO.PublicRecords@mass.gov](mailto:NDAO.PublicRecords@mass.gov)

This e-mail message is generated from the Norfolk District Attorney's Office and is subject to the Massachusetts Public Records Law. If you have received this email in error, please notify the sender by return email and delete it from your computer system.

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**From:** Traub, David (NFK) <[david.traub@mass.gov](mailto:david.traub@mass.gov)>  
**Sent:** Monday, November 6, 2023 10:56 AM  
**To:** Daniel, Ted (EXT) <[ted.daniel@boston25.com](mailto:ted.daniel@boston25.com)>  
**Cc:** PublicRecords, NDAO (NFK) <[NDAO.PublicRecords@MassMail.State.MA.US](mailto:NDAO.PublicRecords@MassMail.State.MA.US)>  
**Subject:** RE: Public Records Request

It was received and sent to our public records address ([ndao.publicrecords@mass.gov](mailto:ndao.publicrecords@mass.gov)) the same day. I am aware that it is in process.

---

David Traub  
Press Officer/Director of Communications  
Office of Norfolk District Attorney Michael W. Morrissey-  
Cell Phone: 781-844-9865  
FAX: 781-562-0822

*The preceding email message (including any attachments) contains information that may be confidential, may be protected by the attorney-client or other applicable privileges, or may constitute non-public information. It is intended to be conveyed only to the designated recipient(s) named above. If you are not an intended recipient of this message, please notify the sender by replying to this message and then delete all copies of it from your computer system. Any use, dissemination, distribution, or reproduction of this message by unintended recipients is not authorized and may be unlawful.*

*All defendants are presumed innocent until proven guilty beyond a reasonable doubt.*

---

**From:** Daniel, Ted (CMG-Boston) <[Ted.Daniel@boston25.com](mailto:Ted.Daniel@boston25.com)>  
**Sent:** Monday, November 6, 2023 10:52 AM  
**To:** Traub, David (NFK) <[david.traub@mass.gov](mailto:david.traub@mass.gov)>  
**Subject:** Re: Public Records Request

**CAUTION:** This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Hi David,

Circling back on this.

Thanks,

Ted

Sent from my iPhone

On Oct 31, 2023, at 5:36 PM, Daniel, Ted (CMG-Boston) <[Ted.Daniel@boston25.com](mailto:Ted.Daniel@boston25.com)> wrote:

Hi David,

This is Ted Daniel from WFXT-TV, Boston 25 News. I hope you are well. Under Massachusetts public records law, can you please provide me with any letters, emails or other correspondence Norfolk DA Morrissey or any members of his staff has sent to any DOJ entity that mention "Dustin Chao" or "Laura Greenberg-Chao" or any similar versions of those names.

Please let me know if you have any questions.

Ted Daniel  
Investigative Reporter  
WFXT-TV  
Boston 25 News  
(781) 467-1379

@teddanielnews

Ted D. Wright

Ted (CMG-Boston)



Michael W. Morrissey  
District Attorney

## The Commonwealth of Massachusetts

Office of the District Attorney  
FOR THE NORFOLK DISTRICT

45 Shawmut Road  
Canton, MA 02021  
781-830-4800  
Fax: 781-830-4801

November 14, 2023

Ted Daniel, Investigative Reporter  
WFXT-TV  
Boston 25 News  
Via Email: ted.daniel@boston25.com

RE: Public Records Request

Dear Mr. Daniel:

This responds to your November 1, 2023, public records request to the Norfolk District Attorney's Office (NDAO) in which you requested under G.L. c. 66, § 10: "any letters, emails or other correspondence Norfolk DA Morrissey or any members of his staff has sent to any DOJ entity that mention 'Dustin Chao' or 'Laura Greenberg-Chao' or any similar versions of those names."

One letter was identified and is being withheld from public inspection at this time pursuant to statutory exemptions because it is substantively connected to recommendations on legal matters found within an active and ongoing criminal investigation and contains privileged attorney work product. See G.L. c. 4, § 7 (26)(d) (intra-agency letters relating to policy positions being developed by the agency); *DaRosa v. City of New Bedford*, 471 Mass. 446 (2015) (attorney work product falls within the scope of exemption (d)); *Attorney General v. Facebook, Inc.*, 487 Mass. 109, 127 (2021) ("The greatest protection is provided to opinion work product, or work product that conveys the 'mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.'" (citation omitted)). See also G.L. c. 4, § 7 (26)(f) ("investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest").

Furthermore, the identified record contains confidential personnel information protected by privacy exemptions. See G.L. c. 4, § 7 (26)(c) ("personnel and medical files or information and any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy"); *Worcester Telegram & Gazette Corp. v. Chief of Police of Worcester*, 58 Mass. App. Ct. 1, 5 (2003) ("core categories of personnel information that are 'useful in making employment decisions regarding an employee'" may be withheld from disclosure).

You have a right to appeal this response in accordance with G.L. c. 66, § 10 and 950 CMR § 32.08 (2021) to: Supervisor of Public Records, Office of the Secretary of the Commonwealth, Public Records Division, One Ashburton Place, 17<sup>th</sup> Floor, Boston, MA 02108.

Ted Daniel  
November 14, 2023  
pg. 2

Best,

**/s/ Brandon P. Hunt**

Brandon P. Hunt  
Assistant District Attorney  
Records Access Officer  
Norfolk District Attorney's Office

FILED IN DISTRICT COURT

RE: DANIEL DANIEL



**The Commonwealth of Massachusetts**  
William Francis Galvin, Secretary of the Commonwealth  
Public Records Division

Manza Arthur  
Supervisor of Records

November 29, 2023  
SPR23/2752

Brandon P. Hunt, Esq.  
Assistant District Attorney  
Norfolk County District Attorney's Office  
45 Shawmut Road  
Canton, MA 02021

Dear Attorney Hunt:

I have received the petition of Ted Daniel, of *WFXT-TV, Boston 25 News*, appealing the response of the Norfolk County District Attorney's Office (Office) to a request for public records. See G. L. c. 66, § 10A; see also 950 C.M.R. 32.08(1). On November 1, 2023, Mr. Daniel requested "any letters, emails or other correspondence Norfolk DA Morrissey or any members of his staff has sent to any DOJ entity that mention [identified individuals] or any similar versions of those names." On November 14, 2023, the Office responded and identified a single responsive record. The Office withheld this record pursuant to Exemptions (d), (c), and (f) of the Public Records Law. G. L. c. 4, § 7 (26)(d), (c), (f). Unsatisfied with the Office's response, Mr. Daniel petitioned this office and this appeal, SPR23/2752, was opened as a result.

It is my understanding that the Office intends on providing a subsequent response to Mr. Daniel.

Accordingly, the Office is ordered to provide Mr. Daniel with a response to his request in a manner consistent with the Public Records Law and its Regulations within 10 business days. A copy of any such response must be provided to this office. It is preferable to send an electronic copy of the response to this office at [pre@sec.state.ma.us](mailto:pre@sec.state.ma.us). Mr. Daniel may appeal the substantive nature of the Office's response within ninety days. See 950 C.M.R. 32.08(1).

Sincerely,

A handwritten signature in black ink that reads "Manza Arthur".

Manza Arthur  
Supervisor of Records

cc: Ted Daniel





# The Commonwealth of Massachusetts

Office of the District Attorney  
FOR THE NORFOLK DISTRICT

45 Shawmut Road  
Canton, MA 02021  
781-830-4800  
Fax: 781-830-4801

Michael W. Morrissey  
District Attorney

December 13, 2023

Ted Daniel, Investigative Reporter  
WFXT-TV  
Boston 25 News  
Via Email: ted.daniel@boston25.com

RE: Supplemental Response Pursuant to Public Record Response Appeal SPR23/2752

Brandon J. ... Esq.

Dear Mr. Daniel:

The Norfolk District Attorney's Office (NDAO) responded on November 14, 2023, to your November 1, 2023, public records request in which you requested under G.L. c. 66, § 10: "any letters, emails or other correspondence Norfolk DA Morrissey or any members of his staff has sent to any DOJ entity that mention [identified individuals] or any similar versions of those names." Unsatisfied with the response, you filed an appeal with the Supervisor of Records to compel disclosure of an identified record. In response, the Supervisor of Records requested that this office provide this supplemental response.

After our initial letter, dated November 14, 2023, cited one responsive record, counsel in an active criminal prosecution received the same record as part of a larger Rule 14 discovery. See Mass R. Crim P. 14, as appearing in 442 Mass. 1518 (2004). The court is considering a motion for a protective order that would exclude further dissemination of the record. Accordingly, the record is withheld from public inspection at this time. See G.L. c. 4, § 7 (26)(a) ("specifically or by necessary implication exempted from disclosure by statute), G.L. c 268, § 13D(e), See also *New England Internet Café, LLC v. Clerk of Superior Court*, 462 Mass. 76, 83 (2012) (The presumption of publicity of a judicial record is not absolute and can be limited upon a demonstration of good cause).

As previously referenced in our original November 14, 2023, response, it is the position of the NDAO that the identified letter is withheld from public inspection at this time pursuant to statutory exemptions because it is substantively connected to recommendations on legal matters found within an active and ongoing criminal investigation and contains privileged attorney work product conveying the opinions and conclusions of an attorney concerning litigation. See G.L. c. 4, § 7 (26)(d) (intra-agency letters relating to policy positions being developed by the agency); *DaRosa v. City of New Bedford*, 471 Mass. 446 (2015) (attorney work product falls within the scope of exemption (d)); *Attorney General v. Facebook, Inc.*, 487 Mass. 109, 127 (2021) ("The greatest protection is provided to opinion work product, or work product that conveys the 'mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.'" (citation omitted)); G.L. c. 4, § 7 (26)(f) ("investigatory materials necessarily compiled out of the public view by law enforcement or other investigatory officials the disclosure of which materials would probably so prejudice the possibility of effective law enforcement that such disclosure would not be in the public interest").

Ted Daniel  
December 13, 2023  
pg. 2

Furthermore, to the extent the appeal references a federal probe, this record concerns a federal grand jury investigation and is therefore exempt from disclosure pursuant to Massachusetts Public Record Law. See G.L. c. 4, § 7 (26)(a), G.L. c. 268, § 13D(e) (“Any grand jury transcript or document citing or describing grand jury testimony filed with any court shall be filed and maintained under seal . . .”). See also *WBZ-TV4 v. District Atty. For Suffolk Dist.*, 408 Mass. 595, 599 (1990) (“requirement that grand jury proceedings remain secret is deeply rooted in the common law of the Commonwealth.”); *Globe Newspaper Co. v. Police Com’r of Boston*, 419 Mass. 852, 865-866 (1995) (recognizing that there are several interests served by maintaining strict grand jury confidentiality, such as “protection of the grand jury from outside influence, including influence by the news media; protection of individuals from notoriety and disgrace; encouragement of free disclosure of information to the grand jury; protection of witnesses from intimidation; and enhancement of free grand jury deliberations.”); Mass. R. Crim. P. 5(d) (secrecy of grand jury proceedings).

Additionally, the identified record contains confidential personnel information protected by privacy exemptions. See G.L. c. 4, § 7 (26)(c) (“personnel and medical files or information and any other materials or data relating to a specifically named individual, the disclosure of which may constitute an unwarranted invasion of personal privacy”); *Worcester Telegram & Gazette Corp. v. Chief of Police of Worcester*, 58 Mass. App. Ct. 1, 5 (2003) (“core categories of personnel information that are ‘useful in making employment decisions regarding an employee’” may be withheld from disclosure).

You have a right to appeal this response in accordance with G.L. c. 66, § 10 and 950 CMR § 32.08 (2021) to: Supervisor of Public Records, Office of the Secretary of the Commonwealth, Public Records Division, One Ashburton Place, 17<sup>th</sup> Floor, Boston, MA 02108, or by email at [pre@sec.state.ma.us](mailto:pre@sec.state.ma.us).

Best,

**/s/ Brandon P. Hunt**

Brandon P. Hunt  
Assistant District Attorney  
Records Access Officer  
Norfolk District Attorney’s Office

cc: Manza Arthur, Supervisor of Records

# EXHIBIT O

11/28/2023						I found out some information on the way home about the
18:38		SMS	Outgoing		Sent	Feds that I will not be making public
11/28/2023						
18:38		SMS	Outgoing		Sent	Questions been asked
11/28/2023	11/28/2023					
18:39	18:39	SMS	Incoming	1.78E+10	Read	Really
11/28/2023	11/28/2023					
18:42	18:42	SMS	Incoming	1.78E+10	Read	Good or bad? Yes. They requested a conference call over the weekend. Josh levy himself. Asking questions like 'is there any chance the trial date could be delayed?' Only one reason to ask that. Asking for all communications with DA office. Asking for Jen mccabes cell phone records be sent to them as soon as they get them. Keep in mind, feds likely have Jen's phone records already, so they may want to see them because they suspect whoever hands them over to the defense will delete things that won't match up with their records The mere fact that they are the ones seeking out Karen's lawyers tells you that this is far from over, and that they want more info for this case Levy asked them 'if you are contacted by media in the next coming days or weeks we would appreciate if you did not mention us working together.' Why would he ask that unless he knew something was going to happen and they were contacted for comment on it?
11/28/2023						
18:42		SMS	Outgoing		Sent	
11/28/2023						
18:43		SMS	Outgoing		Sent	
11/28/2023						
18:45		SMS	Outgoing		Sent	

Winesap, LLC  
 11/28/2023 18:45

# EXHIBIT P



The Commonwealth of Massachusetts

OFFICE OF THE DISTRICT ATTORNEY  
FOR THE NORFOLK DISTRICT

MICHAEL W. MORRISSEY  
DISTRICT ATTORNEY

45 SHAWMUT ROAD  
CANTON, MA 02021  
(781) 830-4800  
FAX (781) 830-4801

May 9, 2023

Joshua S. Levy  
First Assistant United States Attorney  
United States Attorney Office  
District of Massachusetts  
1 Courthouse Way, Suite 9200  
Boston, MA 02210

Dear First Assistant Levy:

I write to follow up on our conversations regarding the issuance of federal grand jury subpoenas to at least two witnesses to the Commonwealth's investigation into the death of John O'Keefe. As you know, indictments have issued in Norfolk Superior Court and the prosecution is ongoing. See Commonwealth v. Karen Read, No. 2282CR00117.

As a prosecuting agency, the Norfolk District Attorney's Office has the constitutional duty to provide the defendant with exculpatory evidence. The obligation in Massachusetts to provide exculpatory information pursuant to *Brady v. Maryland*, 373 U.S. 83, 87 (1963), and its progeny means "not only the constitutional obligation to disclose exculpatory information but also the broad obligation under our rules to disclose any facts that would tend to exculpate the defendant or tend to diminish his or her culpability." *In the Matter of a Grand Jury Investigation*, 485 Mass. 641, 649 (2020). Under the Massachusetts Rules of Criminal Procedure, mandatory discovery includes all facts of an exculpatory nature and all statements of witnesses. See Mass. R. Crim. P. 14(a)(1)(ii), (iii) & (vii).

To effectuate our discovery obligations, we are requesting, at the earliest possible opportunity, discovery of all statements of witnesses to the investigation of the death of John O'Keefe, and resulting prosecution, including both statements to investigators and grand jury minutes. The Commonwealth also has the duty, at the time we become aware that statements of witnesses exists, to notify the defendant of items under Rule 14 that the prosecutor knows to exist but are not within the care, custody, or control of the prosecution, and to provide all information known as to the item's location and the identity of the persons possessing that item.<sup>1</sup>

<sup>1</sup> While at this time, given the limited disclosure of information, this office is aware only that your investigation is likely to produce statements of witnesses through their grand jury testimony and through any interviews of those

See Mass. R. Crim. P. 14(a)(1)(E)(i); *Commonwealth v. Mitchell*, 444 Mass. 786, 796 n.16 (2005). We appreciate the sensitivity and need for discretion as to any ongoing federal investigation. While we are unaware of the parameters of federal activity, we cannot forgo our constitutional or state duties. We are willing to file a motion for a protective order under Mass. R. Crim. P. 14(a)(6) to request limitation of the disclosure of the information to defense counsel only; any decision of such request, of course, is solely within the authority of the Norfolk Superior Court judge.<sup>2</sup> Similarly, we are willing to facilitate the process or to a request under Fed. R. Crim. P. 6(e)(3)(E)(i) or (iv) for authorization from a federal district court judge for production of the grand jury minutes and related material, if any.

Additionally, this Office has constitutional and state obligations to provide exculpatory information of which we are aware in all cases, including exculpatory information relating to all witnesses and or members of the prosecution. *Committee for Public Counsel Services v. Attorney General*, 480 Mass. 700, 730-733 (2018); *Commonwealth v. McFarlane*, 102 Mass. App. Ct. 264 (2023), *petitions for further appellate review pending*. This would include any investigations into misconduct related to professional duties. *Id.* at 275 & n.16. If any such information exists, it is imperative that we learn of it in a timely manner.

In sum, while we appreciate the notification that subpoenas issued, it is imperative that at the earliest opportunity we are able to provide discovery to the defendant.

Sincerely,



Lynn Beland  
First Assistant District Attorney

witnesses, the duty of notification in Mass. R. Crim. P. 14(a)(1)(E)(i) also applies to: statements by Karen Read, the defendant in this state criminal homicide prosecution; statements of any person who testified before a grand jury; facts of an exculpatory matter; and material and relevant police reports, photographs, reports of physical examinations of any person, and scientific tests and experiments.

<sup>2</sup> Under Mass. R. Crim. P. 14(a)(1)(E)(ii), a party to the state criminal proceeding may move for an order for any individual, agency, or other entity in possession, custody, or control of items relating to the state criminal case, to preserve such items for a specified time.



The Commonwealth of Massachusetts

OFFICE OF THE DISTRICT ATTORNEY  
FOR THE NORFOLK DISTRICT

MICHAEL W. MORRISSEY  
DISTRICT ATTORNEY

45 SHAWMUT ROAD  
CANTON, MA 02021  
(781) 830-4800  
FAX (781) 830-4801

May 18, 2023

Office of Professional Responsibility  
U. S. Department of Justice  
950 Pennsylvania Ave., N.W., Suite 3266  
Washington, DC 20530-0001

production of the grand

Additionally, the

Re: Investigation by the Office of the United States Attorney for the District of Massachusetts

Dear Sir or Madam:

I write to formally request that an ongoing investigation being conducted by the United States Attorney's Office for the District of Massachusetts be examined by the Office of Professional Responsibility and, should the investigation continue, that it be transferred to another office without history of conflict, bias, and abuse of prosecutorial discretion as outlined below.

The Norfolk District Attorney's office has undertaken an extensive investigation into the facts and circumstances of the death of John O'Keefe in Canton, Massachusetts on January 29, 2022.

The facts and evidence gathered, including more than 40 individuals testifying before the Norfolk County grand jury, led to the second-degree murder indictment of Karen Read. Read was the operator of the vehicle that, the evidence demonstrates, struck her boyfriend, Boston Police Officer John O'Keefe. O'Keefe was then left to die in the snow on the side of Fairview Road, Canton, during the evening of January 29, 2022. The case has been systematically making its way through Norfolk Superior Court with ongoing discovery still active and open, including motions under advisement and motions not yet heard.

The defendant, through counsel, has been raising specious issues of a third party culprit and complaints of witness and police misconduct as they attempt to confuse by offering not *different* interpretations of Commonwealth statements, evidence, and positions, but *inventing* them out of whole cloth. No actual substantiated evidence supporting police misconduct or any federal violations have been identified by the defendant, the District Attorney's Office, or the Massachusetts Superior Court during the ongoing discovery process. (See exhibit A: Defendant filings and Commonwealth's response.)

Approximately three weeks ago, multiple state witnesses who have been brought before the state grand jury notified the Norfolk District Attorney's office that they were contacted by the FBI and

subsequently received subpoenas to appear before a Federal Grand Jury. Shortly after those notifications to the Norfolk District Attorney's office, Joshua Levy, First Assistant in the Boston office of the United States Attorney's Office contacted Norfolk First Assistant District Attorney Lynn Beland to suggest that they were conducting an investigation that may involve a number of witnesses in the Commonwealth v. Read murder case. At that time, Attorney Beland expressed some concerns about both the jurisdiction and the timing of any actions being taken by the United States Attorney's Office, as they could imprudently impact the ongoing murder prosecution of Karen Read.

Based on the collective experience of several of my colleague Massachusetts District Attorneys and a former federal prosecutor, it appears to be unprecedented for the federal government to step into the middle of an ongoing state murder prosecution prompted only by inflammatory and ethically dubious defense strategy.

In the conversation with First Assistant Norfolk District Attorney Lynn Beland, Assistant United States Attorney Joshua Levy declined to identify what jurisdiction the federal government had in this murder case. In what appears to be a highly unusual and possibly abusive exercise of power, Attorney Levy indicated that the U.S. Attorney's Office was still proceeding ahead with an investigation that would involve individuals who were active participants in events and/or witnesses in the state case. Attorney Beland reminded AUSA Joshua Levy that any statements and or testimony taken in such an investigation that pertain to any of the witnesses in the ongoing state murder trial may create an ongoing obligation for state prosecutors to provide defense with access to all information and statements gathered or recorded as a result of the federal investigation. The United States Attorney's Office offered the opinion that, "you can't turn over information that you don't have." This position leaves state authorities potentially unable to meet the Constitutional mandate expressed in Brady v. Maryland and corresponding Massachusetts State Rules.

Since that call concluded, we have confirmed that witnesses have testified before the Grand Jury. Rule 6 of the Federal Rules of Criminal Procedure allows that under certain compelling circumstances, information may be provided to all counsel, including those not before the federal grand jury (See exhibit B - letter). Recent court filings and statements by defense counsel in the Read matter suggest that defense attorneys were the source of the initial complaint and allegations prompting this action by the U.S. Attorney's Office (See exhibit C: Report in the Boston Herald); Read's defense counsel's recent court filings raise -- out of thin air and apparently purposeful misstatement of fact -- unsupported claims of a cover-up by investigators and witnesses including municipal, state, and federal law enforcement. As shown in attached documents, many or all of these unsupported allegations can be vetted and reviewed by the judges of the Massachusetts Superior Court during the discovery and motion sessions or available appellate review.

I am unaware and strongly doubt any prosecutor or State Police misconduct in Commonwealth v. Karen Read. The only allegations to that effect have been in unsupported news claims or defense

filings that had not even been answered at the time AUSA Levy confirmed the existence of a federal grand jury.

It raises the question why the apparatus of the DOJ would intervene – even as such issues are still being assessed by a justice of the Massachusetts Superior Court – without some additional impetus on the part of the United States Attorney's Office.

Without dismissing the important role of the DOJ in investigating allegations of police misconduct and federal violations, we bring to your attention what appears to be additional concerns concerning motive, conflict or appearance of conflict, and potential bias by the Office of the United States Attorney for Massachusetts – which might explain these unprecedented proceedings.

I predicate the following information with the fact that it has been the policy of the Norfolk District Attorney's Office during my 12-year tenure as District Attorney to maintain a close working relationship with the United States Attorney for Massachusetts. Notable in that relationship was the cooperation of the Norfolk District Attorney's office in the prosecution of a 35-year old murder case that was committed in Sharon, Mass, which involved the Whitey Bulger gang in United States v. Flemmi.

The Norfolk District Attorney's Office had statutory jurisdiction to pursue the case, but in the interest of cooperation acceded to the request of the United States Attorney at the time to allow federal prosecutors to proceed with the case. As a result of that agreement, the Norfolk District Attorney's Office and Massachusetts State Police assigned to the Norfolk District Attorney's office worked closely with the US Attorney's Office on the case. During this period, AUSA Dustin Chao, without nexus to that prosecution, asked a Massachusetts State Police detective involved in the matter if he had any kind of damaging information on the district attorney, first assistant, or the Norfolk District Attorney's Office.

This sua sponte question was not without context. Laura G. Chao, Dustin's wife, had been an employee of the Norfolk District Attorney's Office prior to the case mentioned above. Not long into her tenure, it became apparent to her supervisors that she required more seasoning and legal experience if she was to succeed in a superior court role. She was offered the chance to gain more trial experience in the district court without any loss of compensation. Instead, she resigned and filed an ethics violation complaint with the Mass. Board of Bar Overseers against the First Assistant in the Norfolk District Attorney's Office. The complaint before the Board was summarily dismissed in short order. Laura G. Chao was, instead, cited for a violation of her ethical obligation to provide accurate address information for her practice – long after separation, she was misrepresenting her address as the Norfolk DA's Office. (See exhibit D.)

I began composing this letter well before the May 17, 2023 publication of the DOJ Office of the Inspector General report 23-071, which has apparently prompted the resignation of the current United States Attorney of the District of Massachusetts. My attention is drawn to several portions of Section II, particularly as they pertain to the weaponization of the US Attorney's Office for



personal, political, and retributive purposes. (P. 46 "Hayden 'Will regret the day he did this to you. Watch.'"; P. 66 "We asked Rollins whether her disclosure ...was retribution for the wrongs she believed Hayden had committed..."; P. 69 "Additionally, we determined that days after Hayden prevailed in the September 6 primary election, Rollins sought to damage Hayden's reputation."; P. 70 "The evidence demonstrated...she used her position as U.S. Attorney...in an ultimately unsuccessful effort to create the impression publicly...that DOJ was or would be investigating Hayden for public corruption.")

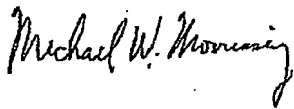
These DOJ findings and questions reinforce my belief that the United States Attorney's Office for the District of Massachusetts must be removed from whatever investigation is being conducted into the Read matter. I believe that a reasonable person could conclude that the same type of tactics are being employed against the Norfolk District Attorney's Office in the Read investigation. The outgoing United States Attorney has made no secret of her personal animosity toward me, including repeated crude, outlandish personal and professional attacks against me in the media during her time as Suffolk District Attorney. (See exhibit E.) The head of the public corruption unit has raised the specter of personal retaliation for his wife's departure from the Norfolk District Attorney's Office. The public has the right to a US Attorney's Office that is fair and unbiased as it executes its responsibilities.

Weaponizing the United States Attorney's Office to conduct an unprecedented intervention into an open state murder case appears to raise the same concerns outlined in the DOJ's report.

I submit that the pattern of using the USAO for personal purposes established in Report 23-071, coupled with the obvious conflict of AUSA Chao, make it impossible to conclude that a fair evaluation of the unprecedented Read intervention can be conducted by any party within the Massachusetts office. It is impossible to determine how far the tentacles of bias have spread out from the Chief of the relevant unit and the titular head of the office.

I formally request that an impartial federal official unaffiliated with the US Attorney's Office for Massachusetts review and investigate the steps and actions that are being taken by current members of the Massachusetts office, exploring this apparent bias and whether it predisposed them to abuse their prosecutorial discretion in this matter. In the unlikely case that an impartial review finds that a DOJ investigation into the Karen Read matter is appropriate – even before the issues at hand have been vetted by the Norfolk Superior Court Judge hearing the case – I request that the investigation be re-assigned from parties with clearly stated and documented bias against members of the Norfolk District Attorney's Office to attorneys entirely outside the office of the United States Attorney for Massachusetts.

Sincerely,



Michael W. Morrissey  
District Attorney for the Norfolk District

United States Attorney  
proceedings.



U.S. Department of Justice

Office of Professional Responsibility

950 Pennsylvania Avenue, N.W., Suite 3266  
Washington, D.C. 20530

June 1, 2023

The Honorable Michael W. Morrissey  
District Attorney  
Office of the District Attorney for the Norfolk District  
45 Shawmut Rd.  
Canton, MA 02021

Dear Mr. Morrissey:

The Office of Professional Responsibility (OPR) received your May 18, 2023 letter requesting that OPR investigate the decision by the United States Attorney's Office for the District of Massachusetts (USAO) to subpoena individuals who are witnesses in your pending state prosecution, *Commonwealth v. Read*, No. 2282cr00117, to testify before the grand jury in an ongoing federal investigation. You stated that the USAO's investigation is "possibly [an] abusive exercise of power" and likely based "only" on defendant Karen Read's "specious" claims of "witness and police misconduct." In addition to an investigation of the USAO's investigative decision, you requested that OPR transfer the USAO's pending investigation to another office "without a history of conflict, bias, and abuse of prosecutorial discretion."

OPR has jurisdiction to investigate allegations of misconduct involving Department of Justice (DOJ) attorneys that relate to the exercise of their authority to investigate, litigate, or provide legal advice, as well as allegations of misconduct by law enforcement personnel that are related to allegations of attorney misconduct within the jurisdiction of OPR. However, it is the policy of this Office to refrain from investigating such issues or allegations if an active investigation is ongoing or litigation is pending.

With regard to your request that another office be assigned to the pending grand jury investigation, a matter outside of OPR's jurisdiction, OPR forwarded your complaint to the Executive Office for United States Attorneys (EOUSA) for whatever action it deems appropriate. Further inquiry regarding that issue may be directed to EOUSA General Counsel Jay Macklin at [Jay.Macklin@usdoj.gov](mailto:Jay.Macklin@usdoj.gov).

Thank you for advising OPR of your concerns.

Sincerely,

*Jeffrey R. Ragsdale*

Jeffrey R. Ragsdale  
Counsel

cc: Jay Macklin -  
General Counsel  
EOUSA

Handbook  
Attorney



U.S. Department of Justice

*Joshua S. Levy*  
*Acting United States Attorney*  
*District of Massachusetts*

Main Reception: (617) 748-3100

*John Joseph Monkley United States Courthouse*  
*1 Courthouse Way*  
*Suite 9200*  
*Boston, Massachusetts 02210*

June 12, 2023

Lynn Beland  
First Assistant District Attorney  
Norfolk County District Attorney's Office  
45 Shawmut Road  
Canton, MA 02021

Dear First Assistant Beland,

Thank you for your letter dated May 9, 2023. My apologies for the delay in responding, but I have been tied up with transition issues. We understand your office has important discovery obligations in any criminal prosecution. At this juncture, we have no issue with you advising defense counsel about the contact we have had with your office and the information we have shared if you determine such a disclosure is warranted under Mass. R. Crim. 14.

We are mindful of the important concerns raised in your letters and will be back in touch with you as circumstances dictate.

Sincerely yours,

A handwritten signature in black ink, appearing to read "J. Levy", written over a horizontal line.

*Joshua S. Levy*  
Acting United States Attorney

cc: Adam Deitch, AUSA



The Commonwealth of Massachusetts

OFFICE OF THE DISTRICT ATTORNEY  
FOR THE NORFOLK DISTRICT

MICHAEL W. MORRISSEY  
DISTRICT ATTORNEY

45 SHAWMUT ROAD  
CANTON, MA 02021  
(781) 830-4800  
FAX (781) 830-4801

June 21, 2023

BY EMAIL: Jay.Macklin@usdoj.gov  
Jay Macklin  
General Counsel  
Executive Office for United States Attorneys  
United States Department of Justice  
950 Pennsylvania Ave., NW, Room 2242  
Washington, DC 20530-0001

June 12, 2023

Re: June 1, 2023 Letter from OPR regarding review of conflict of interest

Dear General Counsel Macklin:

This letter is to inquire about the status of a request for a transfer of investigation due to a conflict of interest. On May 18, 2023, the Office of the Norfolk District Attorney sent to the Department of Justice Office of Professional Responsibility (OPR) a letter raising concerns as to a potential investigation by the United States Attorney Office for the District of Massachusetts involving witnesses relating to a pending state criminal matter, *Commonwealth v. Karen Read*, and the death of John O'Keefe in Canton, Massachusetts on January 29, 2022. This office has subsequently received a June 1, 2023 letter from Jeffrey R. Ragsdale, Counsel for OPR, reflecting that to the extent that the letter indicated that the pending grand jury investigation should be reassigned, the appropriate office to address that request was the Executive Office for United States Attorneys (EOUSA).

This is to inquire about the status of this request and to provide contact information for any further information you may require. If you have any questions or are looking for any additional information, I may be contacted as set out above.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lynn Beland".

Lynn Beland  
First Assistant District Attorney  
781-830-4826



U.S. Department of Justice

Executive Office for United States Attorneys

General Counsel

Three Constitution Square  
175 N Street, NE, Ste 5.200  
Washington, DC 20530

(202) 252-1550

August 3, 2023

Lynn Beland  
First Assistant District Attorney  
Office of the District Attorney  
for the Norfolk District  
45 Shawmut Road  
Canton, MA 02021

@usdoj.gov

BY MAIL: Jay Macklin

Dear Ms. Beland:

This responds to your June 21, 2023, letter concerning your putative request for a recusal of the United States Attorney's Office for the District of Massachusetts from the pending state criminal matter, *Commonwealth v. Karen Read*. As you indicate, the Department of Justice Office of Professional Responsibility (OPR) informed you that they had referred your May 18, 2023, letter to my office for whatever action I deem appropriate.

Consistent with the terms of the referral from OPR, I contacted Acting United States Attorney Joshua Levy. Based on my understanding from that discussion with USA Levy, his office has a very different opinion of the circumstances in this case than as presented in Mr. Morrissey's letter. His office has not reached any official determination whether prosecution is warranted, but they believe it is essential to continue their investigation given the information of which they are aware. At this time, we see no basis for a recusal in this investigation.

Thank you for your contact information and willingness to provide additional information as needed.

Sincerely,

Jay Macklin  
General Counsel



The Commonwealth of Massachusetts

OFFICE OF THE DISTRICT ATTORNEY  
FOR THE NORFOLK DISTRICT

MICHAEL W. MORRISSEY  
DISTRICT ATTORNEY

45 SHAWMUT ROAD  
CANTON, MA 02021  
(781) 830-4800  
FAX (781) 830-4801

October 12, 2023

Joshua S. Levy  
First Assistant United States Attorney  
United States Attorney Office  
District of Massachusetts  
1 Courthouse Way, Suite 9200  
Boston, MA 02210

Dear First Assistant Levy:

This is to follow up on our previous communication dated May 9, 2023 and your June 12, 2023 response. On September 15, 2023, the Norfolk Superior Court set a trial date of March 12, 2024 in Commonwealth v. Karen Read, No. 2282CR00117, on the indictments for second-degree murder, manslaughter while operating under the influence, and leaving the scene of personal injury and death.

Under the Massachusetts Rules of Criminal Procedure, mandatory discovery includes items and information within the Commonwealth's possession, custody or control relevant to the case including: statements by the defendant Karen Read; statements of persons who testified before a grand jury and grand jury minutes; facts of an exculpatory matter; material and relevant police reports, photographs, tangible objects, reports of physical examinations of any person, and scientific tests and experiments, and statements of persons intended to be called as witnesses; and disclosure of promises, rewards or inducements made to witnesses the party intends to present at trial. See Mass. R. Crim. P. 14(a)(1)(A)(i)-(iii), (vii) & (ix). The Commonwealth also has the duty to notify the defendant of items under Rule 14(a)(1)(A)(i)-(viii) that are known to exist but are not within its care, custody, or control, and to provide all information known as to the item's location and the identity of the persons possessing that item. See Mass. R. Crim. P. 14(a)(1)(E)(i); *Commonwealth v. Mitchell*, 444 Mass. 786, 796 n.16 (2005).<sup>1</sup>

To effectuate our discovery obligations, we are requesting statements to investigators and grand jury minutes of witnesses in your investigation, as well as, to the extent they may exist,

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<sup>1</sup> Under Mass. R. Crim. P. 14(a)(1)(E)(ii), a party to the state criminal proceeding may move for an order for any individual, agency, or other entity in possession, custody, or control of items relating to the state criminal case, to preserve such items for a specified time.

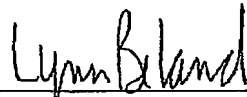
any of the other above described items or materials. Given the impending trial date, prompt disclosure is critically important. If there is need for limited disclosure of such items, please include such a request. We are willing, with the appropriate foundation, to file a motion for a protective order under Mass. R. Crim. P. 14(a)(6) to request limitation of the disclosure of the information to defense counsel only; any decision of such request, of course, is solely within the authority of the Norfolk Superior Court judge. Similarly, we are willing to facilitate the process or to a request under Fed. R. Crim. P. 6(e)(3)(E) for authorization from a federal district court judge for production of the grand jury minutes and related material, if any, and to discuss, per that rule, under what conditions that material may be released for use in the state judicial proceeding.

Justina S. Levy

Additionally, this Office has constitutional and state obligations to provide exculpatory information of which we are aware in all cases, including exculpatory information relating to all witnesses and or members of the prosecution. *Committee for Public Counsel Services v. Attorney General*, 480 Mass. 700, 730-733 (2018); *Commonwealth v. McFarlane*, 102 Mass. App. Ct. 264 (2023), *petitions for further appellate review pending*. This would include any investigations into misconduct related to professional duties. *Id.* at 275 & n.16. If any such information exists, it is imperative that we learn of it in a timely manner.

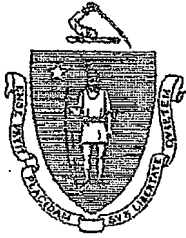
It is imperative that at the earliest opportunity we are able to provide discovery to the defendant. If the investigation remains ongoing, we request notice of that status and information as to when the investigation may be concluded, in particular whether the investigation is anticipated to conclude prior to the March 2024 trial date.

Sincerely,



Lynn Beland  
First Assistant District Attorney





The Commonwealth of Massachusetts

OFFICE OF THE DISTRICT ATTORNEY  
FOR THE NORFOLK DISTRICT

MICHAEL W. MORRISSEY  
DISTRICT ATTORNEY

45 SHAWMUT ROAD  
CANTON, MA 02021  
(781) 830-4800  
FAX (781) 830-4801

November 22, 2023


The Federal Bureau of Investigation  
Boston Office  
Jodi Cohen, Special Agent in Charge  
201 Maple Street  
Chelsea, MA 02150

Dear SAC Cohen:

It was a pleasure to meet you at the State House for the Governor's Press Conference on Hate Crime Enforcement. I wanted to again extend my welcome and best wishes to you in your role as the Boston Special Agent in Charge and look forward to working with you in the future. I also wanted to renew this office's offer for your agents to speak to the State Police who were involved in the John O'Keefe, Canton murder investigation. My First Assistant District Attorney also mentioned our willingness to talk to the FBI to the Acting US Attorney in a recent phone conversation.

If you would like to have your investigators talk to the State Police, they can contact Detective Lieutenant Brian Tully at 781-830-4800.

Sincerely,

  
Michael W. Morrissey  
Norfolk District Attorney

cc: Colonel John E. Mawn, Jr.  
Dt. Lt. Brian Tully

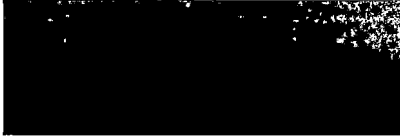
# EXHIBIT Q

OFFICE OF THE BAR COUNSEL  
BOARD OF BAR OVERSEERS OF THE SUPREME JUDICIAL COURT  
99 High Street  
Boston, Massachusetts 02110  
(617) 728-8750  
Fax: (617) 482-2992  
www.mass.gov/obebbo

Ex. D

CONSTANCE V. VECCHIONE  
BAR COUNSEL

October 5, 2015



RE: BBO File No(s). C3-15- [REDACTED] Lynn M. Beland, Esq.)

Dear [REDACTED]

We have reviewed and investigated your allegations of misconduct against Assistant District Attorney Lynn Beland.

Based upon an investigation, we do not find evidence that Attorney Beland inappropriately applied prosecutorial standards to this matter and do not find evidence of violations of the Massachusetts Rules of Professional Conduct. Accordingly, this file has been closed. A copy of Attorney Beland's response to the allegations is enclosed for your review.

Thank you for bringing this matter to our attention. Enclosed please find a copy of a letter from the Chair of the Board of Bar Overseers advising you of your right to have this decision reviewed by a member of the Board.

It also appears that your business address on file with the registration department of the Board of Bar Overseers is not accurate. Pursuant to Supreme Judicial Court Rule 4:02(1), you are required to update the registration department with any change of information previously submitted, including residential address, office address and business email address, within fourteen days of such change.

Very truly yours,

A handwritten signature in black ink, appearing to read "Sherri Gilmore".

Sherri Gilmore  
Assistant Bar Counsel

SG/tmh  
Enclosure  
cc: Thomas R. Kiley, Esq.

Ex. F

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT

SUFFOLK, ss.

No. SJC - 11693

COMMONWEALTH OF MASSACHUSETTS,  
Appellee

v.

NYASANI WATT & SHELDON MATTIS  
Defendant-Appellants

---

COMMONWEALTH'S OPPOSITION TO MOTION OF FOUR DISTRICT  
ATTORNEYS TO VACATE THIS COURT'S REMAND OR, IN THE  
ALTERNATIVE, TO INTERVENE

---

Suffolk County District Attorney Rachael Rollins, representing the Commonwealth, respectfully asks this Court to deny without a hearing the motion by the district attorneys for the Cape & Islands, Essex, Norfolk, and Plymouth districts. The motion, essentially to intervene in a Suffolk County prosecution, is without precedent or legal basis. In a pleading that strains credulity, these four men claim that their "interests" would not be "adequately represented" by the Suffolk County District Attorney in a Suffolk County case (Mtn. 3). This motion is nothing more than a misogynistic wolf in sheep's clothing. Never has this Court allowed one (let alone

four) elected district attorneys to intervene in another district attorney's matter. That long-standing record should be left intact. The motion should be denied on the papers.<sup>1</sup>

The men's first requested relief -- vacating the remand without prejudice "to action by the legislature" -- is not even a recognized legal mechanism. In fact, it is impossible to find precedent

---

<sup>1</sup> In November 2013, a Suffolk County jury convicted Mr. Mattis and his co-defendant, Nyasani Watt, of first degree murder for the shooting death of Jaivon Blake. Mr. Watt, who was seventeen years old at the time of the murder, was sentenced to life in prison with the possibility of parole after fifteen years. *Commonwealth v. Watt*, 484 Mass. 742, 754 (2020). Mr. Mattis, who was eighteen years old at the time of the murder, was sentenced to life in prison without the possibility of parole. *Id.* at 754-755. In its June 2020 decision, this Court affirmed the convictions of both men and declined to revisit the issue of the constitutionality of a life sentence with the possibility of parole for juveniles. *Id.* at 754 (citing *Commonwealth v. Okoro*, 471 Mass. 51 (2015), and *Commonwealth v. Lugo*, 482 Mass. 94 (2019)). The Court noted, however, that the research in the area of the brain development of young adults has progressed in the six years since the Court decided *Diatchenko v. District Attorney for the Suffolk Dist.*, 466 Mass. 655 (2013), and stated that it is time to "revisit the boundary between defendants who are seventeen years old and thus shielded from the most severe sentence of life without the possibility of parole, and those who are eighteen years old and therefore exposed to it." *Id.* at 755-756. Thus, Mr. Mattis's case has been remanded to the Superior Court for an evidentiary hearing on this subject. *Id.* at 756. On July 2, 2020, the undersigned District Attorney received the motion from the four non-parties which it opposes here. No advanced copy was sent before the men filed their motion, nor did they make a courtesy call to the undersigned District Attorney.

that addresses these men's convoluted and perplexing request, which is perhaps why they provided no legal support for their requested relief. To the extent the men ask this Court to exercise its authority pursuant to G.L. c. 211, § 3, they have not even touched, never mind met, the very high burden to justify the exercise of that extraordinary authority. "No party, including the Commonwealth, should expect this court to exercise its extraordinary power of general superintendence lightly." *Commonwealth v. Fontanez*, 482 Mass. 22, 24-25 (2019) (quoting *Commonwealth v. Richardson*, 454 Mass. 1005, 1006, (2009), S.C., 469 Mass. 248 (2014)). The men actually concede that they can resort to filing an amicus brief (Mtn. 3, 11).<sup>2</sup> Thus, they have another avenue through which to argue any "interests"

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<sup>2</sup> This matter, as the men admit, will be greatly impacted by an extensive scientific record and thus seems especially amenable to an amicus who submits a "Brandeis brief". See Alan B. Morrison, *THE BRANDEIS BRIEF AND 21ST CENTURY CONSTITUTIONAL LITIGATION*, 18 *Lewis & Clark L. Rev.* 715, 715 (2014) (describing the Brandeis brief as "an advocacy tool used to persuade a court facing a difficult constitutional question how extra-record materials can help the court decide in favor of the advocate"). In fact, in 2019, the Supreme Judicial Court amended the amicus rule to add the words "or its officer or agency" in order "to make it clear that an officer or agency of the Commonwealth may also file an amicus brief as of right." *Mass. R. App. P.* 17 (Reporter's Notes).

- real or otherwise. For this reason alone, the request that this Court exercise its extraordinary powers under G.L. c. 211, § 3, must be denied.

The men's second requested relief -- for declaratory relief for a non-party to a criminal case -- is also completely without legal basis. It is well-settled that a complaint seeking declaratory relief may not be used post-conviction to avoid the gatekeeper provision of G.L. c. 278, § 33E, or to challenge the legality of a sentence even when the plaintiff *is the defendant* in the underlying criminal case. See *Shipps v. District Attorney for the Norfolk Dist.*, 472 Mass. 1001, 1002 (2015). These four men are not parties, nor can they be parties to this case. See G.L. c. 12, § 27.<sup>3</sup> The party in the instant case is the Commonwealth, represented by District Attorney Rachael Rollins -- the first female District Attorney of Suffolk County and the first woman of color (Black) to serve as a District Attorney in the history of the

---

<sup>3</sup> Section 27 reads: "District attorneys within their respective districts shall appear for the commonwealth in the superior court in all cases, criminal or civil, in which the commonwealth is a party or interested, and in the hearing, in the supreme judicial court2. . . ." G.L. c. 12, § 27 (emphasis added).

Commonwealth of Massachusetts - who was elected to represent the Commonwealth for cases within her district, Suffolk County. Query: what is it about District Attorney Rollins that is making these four men so worried about and interested in her ability to handle Suffolk County's investigations, cases, and appeals? By their own admission this matter addresses issues at the heart of *Diatchenko v. District Attorney for the Suffolk Dist.*, 466 Mass. 655 (2013). Tellingly, none of these men felt compelled to file a motion to intervene in that Suffolk County case. In fact, these four men have never filed any such motion under the administrations of the 15 men that preceded District Attorney Rollins. The purpose here by these men is not to intervene, but rather to interfere. Their motion, therefore, should be summarily denied.

Finally, the notion that these four men should be permitted to intervene in a criminal matter being adjudicated in another county is absolutely preposterous. As the men acknowledge (Mtn. 7-8), intervention is "a concept foreign to criminal procedure." *Republican Co. v. Appeals Court*, 442 Mass. 218, 227 n.14 (2004); see also *Miranda v. A Justice of*

*the Superior Court Dept. of the Trial Court, 479 Mass. 1008, 1008 (2018)* ("there is no basis in the Rules of Criminal Procedure or other law for a defendant to intervene in another defendant's unrelated criminal case"). Evidentiary hearings are routinely conducted by DAs' offices in individual cases throughout the Commonwealth that lead to rulings by this Court that impact, not only other DAs' offices, but members of the public throughout the Commonwealth. This does not, and never has, entitled one district attorney to intervene in a criminal matter being adjudicated in another district attorney's jurisdiction. Were it otherwise, each evidentiary hearing in criminal matters throughout the Commonwealth would become nothing short of a three-ring circus. The wheels of justice -- which already work very differently for far too many people -- would grind to a halt.

The men's reliance on this Court's analysis in *Bridgeman v. District Attorney for the Suffolk District, 471 Mass. 465 (2015)* is also sadly misplaced. Most significantly, *Bridgeman* involved intervention in a civil matter, as in, not even a criminal case. In *Bridgeman*, the Committee for Public



Counsel Services filed a motion to intervene, pursuant to Mass. R. Civ. P. 24(a), in an action brought pursuant to G.L. c. 211, § 3. *Bridgeman*, 471 Mass. at 468. "An action seeking relief under G.L. c. 211, § 3, is regarded as a new and separate civil action in the county court." *McMenimen v. Passatempo*, 452 Mass. 178, 191(2008). Accordingly, this Court appropriately analyzed the motion to intervene under Mass. R. Civ. P. 24(a). *Bridgeman*, 471 Mass. at 481-482. Here, these four men seek to intervene in an underlying criminal action in a separate, distinct and unrelated county to their own. There simply is no procedural mechanism under which they can lawfully do so.

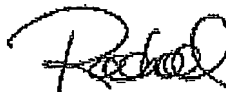
Moreover, the office of undersigned District Attorney Rachael Rollins does not require the "assistance" of these men (Mtn. 4 n.4) to create a factual record in this case. The suggestion that their assistance is required is as misogynistic and paternalistic as it is racist. The men's motion was served on behalf of "The Commonwealth" (Mtn. 13), but the Commonwealth is already capably represented in this matter by the elected District Attorney that the people of Suffolk County chose and her very capable

Assistant District Attorneys. Any intervention by these four men in this matter would be unprecedented, unlawful, and completely unnecessary.

CONCLUSION

As the lack of citation to any relevant case law illustrates, there is no legal basis upon which the relief sought by these four men could be grounded. Accordingly, their motion should and must be denied. These men have been tasked with enforcing the law in their own individual districts, not with finding creative ways to circumvent it. Their lawless and frivolous motion should be denied.

Respectfully submitted,



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RACHAEL ROLLINS  
District Attorney  
For The Suffolk District  
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One Bulfinch Place  
Boston, MA 02114  
(617) 619-4000

July 2, 2020

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify under the pains and penalties of perjury that I have today made service on counsel for the defendants and "The Four District Attorneys" via electronic mail addressed as follows:

Elizabeth Doherty, Esq.  
d4fr@msn.com

(for defendant Watt);

Ruth Greenberg, Esq.  
ruthgreenberg44@gmail.com

(for defendant Mattis); and

David F. O'Sullivan, Esq.  
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(for "The Four District Attorneys")

/s/ *Dara Z. Kesselheim*

---

Dara Z. Kesselheim  
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July 2, 2020

# EXHIBIT R

**McLaughlin, Laura (NFK)**

**From:** Alan Jackson <ajackson@werksmanjackson.com>  
**Sent:** Thursday, January 18, 2024 4:00 PM  
**To:** LaMacchia, Brian (USAMA)  
**Cc:** Lally, Adam (NFK); McLaughlin, Laura (NFK); David Yannetti; Elizabeth Little  
**Subject:** Commonwealth v. Karen Read (2282CR0117): Joint Request

**CAUTION: This email originated from a sender outside of the Commonwealth of Massachusetts mail system. Do not click on links or open attachments unless you recognize the sender and know the content is safe.**

Dear AUSA LaMacchia,

follow:

The Norfolk District Attorney's Office and counsel for the defendant in the matter of Commonwealth v. Karen Read (Norfolk Superior Court docket no. 2282CR0117) submit the following joint request for information pursuant to 28 C.F.R. §§ 16.21 et seq. This request supplements prior ones made by the Norfolk District Attorney's Office to United States Attorney Joshua Levy on May 9, 2023, and October 12, 2023. We understand that there is an ongoing federal investigation into matters that relate to the state court prosecution of Ms. Read. We further understand that such federal investigation includes, but is not limited to, proceedings before a grand jury, at which evidence has been presented in the form of sworn testimony and the possible presentation of documentary and/or other evidence. The purpose of this letter is to formally and respectfully request that the United States Attorney for the District of Massachusetts and Department of Justice disclose to counsel for Ms. Read and the Norfolk District Attorney's Office any and all discovery in its possession that is or reasonably could be described as material to the case. Such request should be read in the broadest terms and is intended to be as inclusive as possible.

The joint request includes, but is not limited to, any and all of the following categories of discovery:

1. Grand jury minutes;
2. Grand jury transcripts;
3. Grand jury testimony;
4. Witness statements, whether or not such witness provided grand jury testimony;
5. Witness interviews, in any form whether written or recorded (audio / video / transcribed);
6. Disclosure of any and all promises, rewards or inducements made to witnesses;
7. Statements of Karen Read;
8. Investigative reports;
9. Interview notes of investigators;
10. Other documents created in furtherance of the investigation;
11. Search warrants (whether to government agencies, private third party entities, or otherwise);
12. Search warrant returns;
13. Documents or real evidence obtained in response to any and all search warrants;
14. Subpoenas;
15. Documents or real evidence obtained in response to any and all subpoenas;
16. Photographs and videos;
17. Records requests and/or Freedom Of Information Act (FOIA) requests, and their resultant disclosures;
18. Physical evidence;
19. Expert reports and/or findings;
20. Results of any and all physical or forensic testing performed in furtherance of the investigation.

Given that both Ms. Read and the Norfolk District Attorney's Office are unaware of the specifics of your investigation, there may be categories not listed above but that are responsive in spirit to this request. Please accept this as a respectful request for those unnamed categories of discovery as well. We understand and are mindful that work product and/or otherwise privileged materials will not be provided, and this request does not include those items. The Norfolk District Attorney's Office and Ms. Read intend that this request be ongoing and respectfully seeks notification of when your investigation concludes to assure both parties have the full extent of discovery. As you are aware, the case is scheduled for jury trial on March 12, 2024. Prompt attention to this request is greatly appreciated by both parties.

Should you have any questions or concerns, please contact Assistant District Attorney Adam Lally and counsel for Karen Read.

Respectfully,

Alan Jackson  
WERKSMAN JACKSON & QUINN LLP  
888 West 6<sup>th</sup> Street, Fourth Floor  
Los Angeles, CA 90017  
213-688-0460 (ph)

Adam Lally  
Assistant District Attorney  
Norfolk District Attorney's Office  
45 Shawmut Road  
Canton, MA 02021

## EXHIBIT S

LOCAL NEWS

# Judge sets Karen Read trial date in John O'Keefe murder case

By **WBZ-News Staff**

September 15, 2023 / 9:15 AM EDT / CBS Boston

Alan Jackson  
WORKSHEET FOR POLICE QUINCY

DEDHAM - Karen Read, charged with killing her boyfriend, Boston Police Officer John O'Keefe, was in Norfolk Superior Court Friday for the latest hearing in her second-degree murder case. In a new development, Judge Beverly Cannone set a trial date for March 12, 2024.

O'Keefe's body was discovered in a pile of snow outside the Canton home of fellow officer Brian Albert, who hosted a gathering there in January of 2022. Prosecutors say Read hit O'Keefe with her SUV. Read has alleged a coverup by state and local police in the case.

Read appeared emotional as the crowd cheered and chanted for her, hoisting signs that say she's been framed and wearing "Free Karen Read" shirts.

People are wearing "Free Karen Read" shirts and holding signs outside the Norfolk County Superior Court, voicing their support for her ahead of a hearing at 9 a.m. [@wbz pic.twitter.com/L7kPGABdKw](https://www.wbztv.com/pic.twitter.com/L7kPGABdKw)

— Anna Meiler (@AnnaMeiler) [September 15, 2023](#)

In court on Friday, the defense accused the Commonwealth of withholding critical evidence in the case - 56 items of physical evidence they've been unable to view or test, including tail light pieces. They also requested that Read be released on personal recognizance and her \$80,000 in bail money returned so that she can pay experts and legal fees to defend herself.

Her attorneys say her finances are being drained, but also that the circumstances surrounding this case have changed since her arraignment.

"I can guarantee you that Karen Read and her family will never, ever quit, not until the truth comes out," attorney Alan Jackson said. "Not until John O'Keefe's killers are brought to justice."

Prosecutors say the facts surrounding the case have not changed and they requested that Read's bail remain the same. The next court hearing is scheduled for December 8.

September 10, 2011

# Exhibit T

NEWS > CRIME & PUBLIC SAFETY

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## Trial date set for Karen Read, Mansfield woman accused of killing boyfriend, Boston Police Officer John O'Keefe



**Matt Stone/Boston Herald**

Karen Read, with her attorneys David Yannetti, left, and Alan Jackson, takes in the crowd of supporters on the courthouse steps following a hearing in her murder case at Norfolk Superior Court in Dedham Friday. (Matt Stone/Boston Herald)





By **FLINT MCCOLGAN** | flint.mccolgan@bostonherald.com

PUBLISHED: September 15, 2023 at 12:14 p.m. | UPDATED: September 16, 2023 at 12:05 p.m.

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boyfriend

The Karen Read case finally has a trial date: March 12.

The swell of support for Read, of Mansfield, has become so huge that Massachusetts State Police troopers and local police were in place at the court in Dedham this morning to direct traffic, erect temporary barriers along the sidewalk and even close out access to the court well before Friday's hearing began because, as a trooper said, "we're at capacity."

Read is accused of drunkenly striking her boyfriend of two years, Boston Police Officer John O'Keefe, with her Lexus SUV — busting the vehicle's taillight, a detail that has been hotly argued — and leaving him to die in the cold, early morning hours of Jan. 29, 2022, in the front yard of 34 Fairview Road in Canton.

The intensity on the Norfolk Superior Court steps was just a prologue for the fiery hearing inside the courtroom, where Read's three attorneys delivered impassioned arguments for a medley of requests, chief among them from David Yannetti, Read's original attorney who appeared at her Stoughton District Court arraignment 19 months ago.

He argued that Read have her bail returned and be released on personal recognizance as "expenses continue to mount and indeed would skyrocket" as the case moves forward to "level the playing field" against the state's "unlimited resources."

"My client is one of the most recognizable defendants in the country," Yannetti said as he argued his plea before Judge Beverly J. Cannone in a packed, largely Read-friendly courtroom that was prone to cheers, derisive laughter at the

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Cannone requested that Yannetti submit a written affidavit explaining Read's financial situation within a week for her to rule on the bail motion. Yannetti said his client would surrender her passport, which he held up in court, and sign any waiver of rendition the court presents. Prosecutor Adam Lally said that should bail be lifted, he would like an additional requirement that Read be alcohol free and submit to random testing.

He also said the landscape of the case has changed dramatically since Cannone initially imposed bail, expounding upon information the defense has uncovered, or puts forward in theory. The defense has argued that homeowner Brian Albert, another BPD officer and trained boxer, as well as his sister-in-law Jennifer McCabe and his nephew Colin Albert are those perhaps really responsible for O'Keefe's death.

The defense attorneys have also cast major doubt on MSP Trooper Michael Proctor's investigation of the case, saying that he is obviously too close to the Albert family to be a fair investigator.

Cannone couldn't help but give a small laugh when she announced the limited capacity the hearing was originally scheduled for. With so much activity on the docket behind the scenes since the last court date, Friday's hearing lasted for two hours of not only impassioned argument but complex legal scheduling details.

Cannone imposed a deadline of Nov. 16 for all non-evidentiary motions and said she doesn't want any more "piecemeal" motions. Motions argued or decided in court were:

Judge Cannone allows a defense motion requesting materials from the Canton Town Clerk.

Cannone approved a prosecution motion for a court order to Alarm.com for exterior footage of the driveway and public roadway of the night in question for the Read home in Dighton, which Lally wrote in the Sept. 1 request was to find out the existing state of Read's vehicle and taillight. The defense had no objection.

Judge Cannone allows a defense motion granting a court order for Google Nest security camera data that the defense team says was installed at the time of O'Keefe's death. Albert's attorney, Greg Henning, said he had no objection. Cannone granted an extended timeline for the camera footage as indicated in a proposed order.

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There appeared to be some confusion between the defense and prosecution's understanding of the request, as defense attorney Alan Jackson was under the impression the prosecution's proposal would not include the night O'Keefe died, a proposal he called "ridiculous."

The Commonwealth's requests for raw, unedited interview tape from Read's nationally televised interviews with NBC and ABC will have to be decided at a later date due to confusion over whether the networks legal teams were aware of the requests.

Lally said "there's a fair inference that there is more material" than what was broadcast. Jackson said the defense team has no objection because "it's really not our dog in the fight."

McCabe said hi  
O'Keefe's death

Defense attorney Elizabeth Little, who has been involved in evidentiary motions, demanded that the court set firm deadlines for evidence sharing with the defense. She said that, legally speaking, much or all of the evidence should have been shared before the first pre-trial conference in August of last year.

She said prosecutor Lally had promised swift sharing of details but had obfuscated timelines and was remiss in following up on crime lab emails, which she called "deception." Lally said he's not withholding any evidence. Cannone set a deadline of Nov. 3 for testing to be completed on all remaining items and that there had better be good reason should anything remain untested.

Once the hearing ended, the scene at the courthouse steps was reminiscent of a circus, with the defense thronged by a mass of supporters. Jackson's comments to them at times became a call-and-response as he hammered home defense points in their theory of a cover-up, one the team says goes at least as far up as Norfolk DA Michael Morrissey who recently released a rare public statement decrying outside theories in the case.

"I'll say this slowly so you can understand," Jackson said to an appreciative crowd. "Michael Morrissey, we ain't got no quit. ... Ms. Read and her family will never, ever quit."

In the parking lot, Read's family was all smiles.

"We feel very strengthened by this outpouring of support for our daughter Karen," her father, William Read, told the Herald. He said many of the supporters took

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Nathan Read, Karen Read's brother, told the Herald that a support event scheduled from 6 to 9 p.m. Friday at the Star Drive-in in East Taunton had sold out.



Karen Read supporters scream out as she leaves court. (Matt Stone/Boston Herald)



**Matt Stone/Boston Herald**  
William and Janet Read, Karen Read's parents, and her brother Nathan Read listen in court during Friday's hearing in Norfolk County Superior Court in Dedham. (Matt Stone/Boston Herald)



**Matt Stone/Boston Herald**

Supporters for killed Boston Police Officer John O'Keefe, who wear "Justice for JJ" pins, sit as Karen Read appears in court. (Matt Stone/Boston Herald)

