NORFOLK, SS. **SUPERIOR COURT DEPARTMENT**
NORFOLK SUPERIOR COURT
DOCKET NO. 2282CR0117

COMMONWEALTH

v.

KAREN READ

COMMONWEALTH'S OPPOSITION TO "DEFENDANT'S MOTION TO DISMISS INDICTMENTS AND MEMORANDUM IN SUPPORT THEREOF"

Now Comes the Commonwealth in the above-captioned matter and submits the following Memorandum in Opposition to the defendant's motion to dismiss based on unsubstantiated claims that the presentation of evidence to the grand jury was unfair and misleading in violation of Commonwealth v. O'Dell, 392 Mass. 445 (1984).

STATEMENT OF THE CASE

On February 2, 2022, the defendant was arraigned in Stoughton District Court and charged with manslaughter, in violation of G. L. c. 265, §13; motor vehicle homicide by negligent operation, in violation of G. L. c. 90, s. 24G(b); and leaving the scene of personal injury/death in violation, of G. L. c. 90, s. 24, (2) (a ½)(2).

A Norfolk grand jury heard evidence in relation to this matter over the span of fourteen days. The Grand Jury heard from 42 witnesses who all testified under oath and received 56 exhibits. The Grand Jury transcripts encompass a total of 1,445 pages.

On June 9, 2022, the defendant was indicted by a Norfolk grand jury 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). The defendant was arraigned in Norfolk Superior Court on June 10, 2022.

On January 5, 2024, the defendant filed a motion to dismiss the indictments pursuant to Commonwealth v. O'Dell, 392 Mass. 445 (1984). The defendant does not challenge the sufficiency of the evidence to establish probable cause for the indictments nor does the defendant challenge the sufficiency of the evidence that established her identity as the perpetrator of the murder. See Commonwealth v. McCarthy, 385 Mass. 160, 163 (1982).

STATEMENT OF FACTS[1]

On January 29, 2022, at approximately 6:04 a.m., the Canton Police Department received a 911 call from a woman reporting a male party, subsequently identified as the victim, John O'Keefe, found in the snow outside 34 Fairview Road. At the time of the 911 call, there was an active blizzard occurring with heavy snow and the temperature was in the teens. Officers Saraf and Mullaney of the Canton Police Department were dispatched along with Canton Fire and EMS. Officer Saraf was the first officer to arrive on Fairview Road and observed three females waving at him from the front yard area of 34 Fairview Road. Officer Saraf's cruiser camera footage captured his arrival and depicts the weather and visibility conditions during the emergency response. In the video, Officer Saraf can be seen utilizing the spotlight attached to the driver's side of his cruiser as he attempts to locate the calling parties in the darkness and blizzard conditions.

[1] Summarized from the 14 volumes of grand jury minutes. The Commonwealth incorporates all transcripts and exhibits from the voluminous grand jury presentation into this opposition.

Looking at the residence of 34 Fairview Road from the street, the three females were in the left corner of the property, near the roadway, in the area of a flagpole and fire hydrant. Officer Saraf observed the victim lying on the ground as two of the females were performing CPR on him. The three females were identified as the defendant, Jennifer McCabe, and Kerry Roberts. Officer Saraf observed the victim to be cold to the touch and not breathing. He returned to his cruiser to retrieve his AED device, however, at this time Canton Fire and EMS arrived and took over resuscitative efforts. Paramedics transported Mr. O'Keefe to the Good Samaritan Medical Center in Brockton where he was subsequently determined to be deceased by Dr. Justin Rice.

Canton Police Lieutenant Paul Gallagher, Detective Sergeant Michael Lank, and Sergeant Sean Goode arrived on scene shortly after the 911 call. Sergeant Goode had contacted Detective Sergeant Lank directly at his home at approximately 6:08 a.m., minutes after the 911 call was received. Sergeant Lank arrived on Fairview Road at approximately 6:24 a.m., following Officer Saraf, Officer Mullaney, and Sergeant Goode's arrivals. Mr. O'Keefe was already in the back of the ambulance when Sergeant Lank arrived and was transported to the hospital shortly after. While on Fairview Road, Sergeant Lank, accompanied by Lieutenant Gallagher, spoke briefly with Ms. McCabe. Subsequently, at approximately 9:00 a.m., Sergeant Lank was contacted at the Canton police station by Ms. McCabe and returned to the residence to speak with her further.

While on Fairview Road, Detective Sergeant Lank attempted to speak with the defendant directly, however she was reported to be overcome by emotion. Detective Sergeant Lank spoke with fellow Canton officers who had the opportunity to speak to the

defendant prior to his arrival on Fairview Road. Sergeant Lank also spoke with the homeowners of 34 Fairview Road, Brian and Nicole Albert.

Following the victim's transport to the hospital, Canton Police Lieuntent Paul Gallagher, Sergeant Lank and Sergeant Goode searched for any physical evidence in the mounds of snow surrounding the immediate area where Mr. O'Keefe was located. Pieces of a broken cocktail style glass and multiple patches of red that appeared to be blood were discovered. The Canton officers secured the glass as evidence and obtained six blood samples from the snow.

The Massachusetts State Police Detective Unit assigned to the Norfolk District Attorney's Office was notified at approximately 6:38 a.m., and members of the Massachusetts State Police responded directly to the Canton Police Department.[2] Trooper Michael Proctor and Sergeant Yuriy Bukhenik were among the troopers who responded and began interviewing witnesses. After leaving the Canton Police Department, they first spoke with Ms. McCabe at her home. Ms. McCabe indicated that she and some friends were at the Waterfall Bar and Grille during the evening of January 28. She arrived with her husband Matthew at approximately 9:00 p.m. At approximately 11:00 p.m., Mr. O'Keefe and the defendant arrived at the Waterfall together. Ms. McCabe stated that Mr. O'Keefe and the defendant have been in a dating relationship for approximately two years and that the defendant stayed at Mr. O'Keefe's house most nights. Ms. McCabe observed the defendant walk into the bar holding a glass cup from C.F. McCarthy's with a clear liquid inside that she believed was a vodka soda drink. The defendant had entered the Waterfall with the glass inside her coat. Mr. O'Keefe and the defendant had been at

[2] The Norfolk District Attorney's Office, by statute (G.L. c. 38, §4) is in charge of all death investigations conducted in Norfolk County.

C.F. McCarthy's, a bar across the street from the Waterfall, prior to coming into the Waterfall. Ms. McCabe observed Mr. O'Keefe to be wearing a baseball hat, jeans and sneakers. She stated that the defendant and the victim appeared to be in a good mood and did not observe any arguing between the two throughout the course of the evening. She further described the atmosphere within the bar as friendly with no arguments amongst any of the patrons. This description of the group and the atmosphere within the bar and between the defendant and the victim was consistent among each of the witnesses present that were interviewed throughout the course of this investigation.

As the bar began to close, everyone within the group was invited back to 34 Fairview Road, the residence of Ms. McCabe's sister, Nicole Albert and her husband, Brian. Ms. McCabe observed the victim and the defendant leave the Waterfall together.

As Ms. McCabe was arriving at her vehicle, she received a text message from Mr. O'Keefe asking "Where to" at 12:14 a.m. Ms. McCabe replied with the address of 34 Fairview Road. At 12:18 a.m., Mr. O'Keefe called Ms. McCabe to ask more specifically where the house was located on Fairview. Ms. McCabe indicated to Mr. O'Keefe over the phone that the house was near his niece's friend's home, whose mother the victim used to date. While inside the residence following her arrival there, Ms. McCabe observed a black SUV, consistent with the defendant's vehicle, a 2021 black Lexus SUV, arrive in front of the residence, from her vantage point at the front door of the home. Ms. McCabe texted Mr. O'Keefe at 12:31 a.m., stating "Hello" and again at 12:40 a.m., "Pull up behind me."; referencing her vehicle's parking spot within the driveway to the home, located on the right side of the property if looking at the residence from the street. Ms. McCabe then observed the black SUV move from its initial place where it had stopped on

the street, near the driveway, and proceed to the left side of the property, in the area where Mr. O'Keefe's body was discovered. At 12:45 a.m., Ms. McCabe texted Mr. O'Keefe again, "Hello", and then observed the black SUV drive away from the home.

At approximately 4:53 a.m., Ms. McCabe received a phone call from the victim's juvenile niece at the defendant's direction. Ms. McCabe answered the call from the victim's niece, spoke to her briefly, and the niece then handed the phone to the defendant. The defendant sounded distraught over the phone and the defendant decided to drive herself over to Ms. McCabe's home. The defendant told Ms. McCabe that she last remembered seeing the victim at the Waterfall Bar. Ms. McCabe informed the defendant that she observed the defendant and the victim leave the bar together. Ms. McCabe also later informed the defendant she had seen the defendant's vehicle in front of the home on Fairview. The defendant informed Ms. McCabe that she and the victim had gotten into an argument the last time that she had seen him. Ms. McCabe then placed several calls to people that had been at the Waterfall or lived close by, including Julie Albert; looking to see if Mr. O'Keefe had gone to their house and spent the night. Julie Albert indicated that she received a missed call from Ms. McCabe at 4:55 a.m., noticing that missed when she awoke later that morning.

The defendant arrived at Ms. McCabe's home around 5:30 a.m. Shortly after the defendant arrived at Ms. McCabe's home, Ms. Kerry Roberts arrived there as she had also received phone calls from the defendant early in the morning looking for the victim. Ms. McCabe then drove the defendant's vehicle from her house back to Mr. O'Keefe's house as the defendant was too hysterical, and Ms. Roberts followed along in her own vehicle.

While driving to Mr. O'Keefe's house, the defendant stated to Ms. McCabe, "Could I have hit him", "Did I hit him". Ms. McCabe stated that the defendant also told her about a cracked taillight on her vehicle. Once they arrived at the victim's home, the defendant had Ms. McCabe look at the cracked taillight, which Ms. McCabe described as the passenger side, right rear taillight as cracked and missing pieces. The three women then proceeded into the home looking for the victim and Ms. McCabe spoke briefly with the victim's niece. Ms. McCabe and the defendant then entered Ms. Roberts's vehicle to go looking for the victim. The defendant was seated in the back passenger's side, while Ms. Roberts drove and Ms. McCabe was seated within the front passenger's seat.

Ms. McCabe stated that they turned onto Fairview Road from Chapman Street and at that time, it was snowing heavily with the wind blowing, creating poor visibility. Ms. McCabe stated that just prior to 34 Fairview, there is a cluster of trees and immediately the defendant stated that she saw the victim. This statement initially confused Ms. McCabe and Ms. Roberts, as they were unable to see Mr. O'Keefe's body lying in the snow. Ms. McCabe stated that the defendant screamed to open the door and ran directly over to the body, near that cluster of trees, and laid on top of him for warmth and began CPR. Ms. McCabe stated that the victim was lying on his back covered with approximately six inches of snow, with his phone later discovered on the ground underneath him, after he was removed by emergency medical personnel. The defendant then yelled at Ms. McCabe twice to Google, "How long do you have to be left outside to die from hypothermia?", or something to that effect.[3]

[3] Following the grand jury presentation, the defendant has centered her claim that an unnamed third party is involved in the victim's death due to data contained within this witness' cell phone records. The Commonwealth's three experts, including the Senior

On January 29, the troopers interviewed Mr. Matthew McCabe, separately from his wife. Mr. McCabe indicated that he had known Mr. O'Keefe for approximately eight years and had met the defendant a handful of times. He stated that he was at the Waterfall Bar on Saturday night and observed the victim and the defendant enter together. He observed the victim to be wearing a baseball hat with a curved visor and the defendant to be drinking a clear liquid drink, possibly vodka. Mr. McCabe stated that he left the bar last from his group and was heading to his in-laws' home at 34 Fairview Road. When he entered his vehicle, his wife Jennifer, was on the phone with the victim telling him to go to 34 Fairview. While at the Fairview residence, he observed a large dark SUV pull up in front of the house on the street. He had been looking out the opened front door, through the glass storm door, and described the SUV's positioning as initially parked in front of the house. Mr. McCabe looked out the window some minutes later and observed the same vehicle had moved toward the left side of the property. Minutes following that, he observed the same vehicle driving off down Fairview, heading in the same direction it had been facing while parked.

Troopers also interviewed the homeowners of 34 Fairview Road, Brian and Nicole Albert. Both confirmed that they had been at the Waterfall Bar the previous evening with family and friends and had left around closing and returned to their home. Throughout the evening, they both indicated that the victim and defendant, neither of whom they knew particularly well, entered the bar and joined their group. They indicated

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Digital Intelligence Expert from Cellebrite, who has vast knowledge about the Cellebrite software used by the Commonwealth and the defendant's examiner to interpret this data, have opined based on testing, artifact knowledge, and the most accurate timestamps, that the google searches for "how long ti die in cild" and at "hos long ti die in cold" were within the witness' cell phone records and occurred at approximately 6:23 a.m. and 6:24 a.m., following the discovery of the victim's body.

that several people from the group had been invited back to their home following the bar, and several arrived staying for approximately one hour. Both indicated in their sworn testimony before the Grand Jury, that their nephew, Colin Albert, while present at the home upon their arrival, had left their home well before any of the guests' arrival from the Waterfall. Several other witnesses called before the Grand Jury similarly confirmed this. Neither were aware that the defendant and victim had planned on coming over, although they would have had no issue if they had been aware. Neither heard nor saw anything outside of their home over the course of the morning until Ms. McCabe awoke them.

Troopers also interviewed Mr. Ryan Nagel. Mr. Nagel's sister, Julie, had been at 34 Fairview the evening of January 28, visiting with the Albert's son for his birthday. Mr. Nagel stated that he had been contacted by his sister asking for a ride home. His friend drove, with Mr. Nagel in the front passenger's seat and his girlfriend in the rear cab, of his friend's Ford F-150 pickup truck to Fairview. As the truck was driving down Cedarcrest Road, he observed a set of headlights of a mid-size black SUV coming from the opposite direction on Cedarcrest, and the truck he was traveling in yielded to the SUV making a right turn onto Fairview and then followed behind it after executing its left turn onto Fairview. Mr. Nagel stated that the truck stopped directly in front of the driveway to the home and remembered the black SUV stopping along the right-hand curb toward the left side of the property. He remained within the truck while his sister exited the home and asked them to come inside. He declined the invitation and his sister eventually decided to stay at the home and make other transportation arrangements. As his sister returned to the house, Mr. Nagel observed the black SUV pull up an approximate one to

one and a half car lengths to the far-left edge of the home's property, where the flagpole was located along with some bushes. He stated that the SUV's driver did not appear to place the vehicle in park at any point he observed it, as the rear brake lights were illuminated throughout his observations to include the third top center light. Mr. Nagel reported hearing no noises coming from the interior of the SUV. Mr. Nagel further indicated that he at no time while in front of the home witnessed anyone enter or exit from the vehicle, nor did he observe any footprints surrounding the vehicle in the then falling snow. Mr. Nagel indicated that as his friend pulled away from the side of the road when they were leaving, they drove past the black SUV, he observed the interior light on within the vehicle, and a Caucasian female operator seated inside the vehicle holding the steering wheel at 10 and 2, staring straight ahead of her.

Later in the day of January 29, Troopers Mathew Dunne and David Dicicco interviewed Ms. Kerry Roberts. Ms. Roberts stated to them that at approximately 5:00 a.m., she received a call from the defendant stating that John had not come home, it was snowing, and that she was worried. The defendant further stated to Ms. Roberts "John's dead. Kerry, Kerry, I wonder if he's dead. It's snowing, he got hit by a plow." Ms. Roberts got dressed and left in her vehicle, eventually meeting the defendant at Ms. McCabe's home where she observed the defendant to be hysterical. Ms. Roberts stated that she believed the defendant was still intoxicated in the morning and had told her that she did not remember last night. Ms. Roberts reported the defendant as stating: "I was so drunk I don't even remember going to your sister's last night", referring to Ms. McCabe's sister, the homeowner of 34 Fairview Road. Ms. Roberts followed the defendant's black Lexus SUV back to Mr. O'Keefe's house. They went inside the home for a period of time

looking for victim to no avail and checking on the victim's niece. While at the victim's home, Ms. Roberts stated that the defendant had told her and Ms. McCabe about a cracked rear passenger taillight and showed both of them that area of her vehicle. Ms. Roberts then drove her vehicle, with Ms. McCabe in the front passenger's seat and the defendant in the rear passenger's side, to 34 Fairview Road. She and Ms. McCabe were scanning the sides of the roadway along the drive looking for the victim, while the defendant periodically screamed and texted on her phone as they drove. Ms. Roberts described the weather as white out conditions as they were driving.

As they arrived in the area of 34 Fairview, Ms. Roberts stated that the defendant screamed, "There he is, I see him" from inside the vehicle and screamed to be let out. Even after initially exiting the vehicle, Ms. Roberts stated that she still could not see the victim in the conditions and further stated that his body was covered in snow. She stated that the victim's body was approximately twelve feet from the roadway. Ms. Roberts stated that they immediately began CPR and Ms. McCabe called 911. Ms. Roberts observed the victim to be lying on his back with his arms by his side. She noticed that his right eye was swollen shut and blood was coming from his nose and mouth. When the paramedics arrived and lifted the victim's body onto the stretcher, Ms. Roberts observed the grass underneath the victim's back, not covered in snow as the remainder of the area was. The defendant repeatedly asked Ms. Roberts, Ms. McCabe, and the officers and paramedics on scene "is he dead?" repeating that phraseology numerous times to each. The defendant further grabbed Ms. Roberts by the arm at one point and asked her if they were really working on John or was he already dead.

In addition, Trooper Bukhenik interviewed Nicholas and Karina Kolokithas. Both were present with the group at the Waterfall on the evening of January 28. They arrived there at approximately 9:00 and 9:30 p.m., respectively as they came in separate cars. They had known the victim for approximately 5-6 years and had met the defendant a handful of times. They stated that the victim and the defendant arrived at the Waterfall together at approximately 11:00 p.m., arriving from C.F. McCarthy's across the street. Mrs. Kolokithas spoke for a period of time with the defendant and observed her to be drinking vodka soda cocktails while at the bar. She also recalled the defendant "pushing quite a bit" for a member of the group, Christopher Albert, the owner of a local pizza shop, to go across the street after leaving the bar to keep partying while he made pies for everyone. When it was time to leave, Mrs. Kolokithas indicated that she walked outside with Ms. McCabe and observed the victim and the defendant to walk out together and proceed to the left of the driveway, and up Washington Street, where their vehicle was parked along the curb, facing back up toward the Waterfall. Mrs. Kolokithas indicated that her vehicle was also parked along Washington Street, but further down and facing the opposite direction. From there, she observed the defendant walking toward the driver's side door of her black Lexus SUV. She further indicated that during the course of her conversation that evening with the defendant, the defendant complained about the victim's mother and the lack of private time the couple had for vacations, because of the children, their activities and responsibilities. She also described her as fine and did not believe the defendant to be overly intoxicated.

On January 30, Troopers Bukhenik and Proctor interviewed Canton Firefighter Katie McLaughlin. She had been assigned to Station One on the 29th and indicated that at

approximately 6:00 a.m., Canton Fire and EMS had been dispatched to 34 Fairview Road for a male party in the snow and unresponsive. Upon arrival, Ms. McLaughlin observed the victim to have trauma to his face and eye area and vomit in his mouth. She observed the victim dressed in jeans, socks and one black Nike sneaker. The victim's shirts were cut by first responders and his chest was exposed for chest compressions. Ms. McLaughlin had exited the ambulance to speak with the defendant as to the victim's identity and medical history. The defendant provided the victim's name and date of birth. Ms. McLaughlin asked the defendant if she knew where the victim had suffered the trauma to his face/eye and the defendant turned to her friend and stated repeatedly, "I hit him, I hit him, I hit him."; in response to the paramedic's question. This statement was also heard and testified to before the Grand Jury by several other Canton Fire Department witnesses, including Timothy Nuttall, and Anthony Flematti; as well as both Ms. McCabe and Ms. Roberts. The defendant further stated to several paramedics that she had last seen the victim at approximately 1:00 a.m., and they had gotten into a fight when she last saw him.

Following their initial witness interviews on January 29, Troopers Bukhenik and Proctor proceeded to the Good Samaritan Hospital to view the victim. They observed six bloodied lacerations varying in length on the victim's right arm. The cuts extended from his forearm to his bicep. Both of the victim's eyes were swollen shut and black and blue in color. The troopers observed a cut to the right eyelid area of the victim. The victim's clothing, consisting of blue jeans, an orange t-shirt, long sleeve grey shirt, and boxer shorts were soaking wet and saturated with blood and vomit. The victim was also observed to have one black Nike sneaker with a white Nike logo on the side.

The victim's medical records, attested to by the attending physician and medical personnel indicate that the victim sustained a right superior orbital ridge region approx. 7mm laceration + surrounding soft tissue swelling/contusion; +breath sounds bilaterally; pulseless; +superficial abrasions right forearm. The time of the victim's death was noted as 7:50 a.m.

On January 31, Dr. Irini Scordi-Bello from the Office of the Chief Medical Examiner conducted an autopsy of Mr. O'Keefe. The doctor advised the troopers that she observed several abrasions to the victim's right forearm, two swollen black eyes, a small cut above the right eye, a cut to the left side of his nose, an approximately two-inch laceration to the back right of his head, and multiple skull fractures that resulted in bleeding of the brain. Dr. Scordi-Bello further advised that the victim's pancreas was a dark red color indicating hypothermia was a contributing factor to his death. Dr. Scordi-Bello opined from her examination that significant blunt force trauma injuries occurred prior to Mr. O'Keefe becoming hypothermic, as evidenced by hemorrhaging in his pancreas and stomach. Mr. O'Keefe had arrived at the Good Samaritan Medical Center with a body temperature reading in the low 80's. The doctor opined that the extensive injuries to his head likely rendered Mr. O'Keefe incapacitated. The doctor further opined that upon viewing Mr. O'Keefe's injuries and her examination of the body, she observed no signs of Mr. O'Keefe being involved in any type of physical altercation or fight.

In addition, Dr. Scordi-Bello testified extensively before the Grand Jury regarding her examination and findings. In her testimony, the doctor described the medical definitions of laceration, contusion, and abrasion; as well as the differences between the three. The doctor testified that the victim had abrasions on his right arm. She described

abrasions as "scratches caused by a blunt object, contact with a blunt object." She went on to describe them as a cluster of them on his right upper arm and on his right forearm; mostly linear and ranging in size from a few millimeters to up to seven centimeters. Dr. Scordi-Bello testified that throughout her thorough external examination of the victim's body she observed no signs of an altercation or fight. The doctor also testified extensively to the injuries or swelling of the victim's eyes. Dr. Scordi-Bello testified that, from her examination of the victim, both external and internal, that the bleeding and subsequent swelling around his eyes was related to very small fractures in the skull. She testified specifically that "the injury initiated or started in the back of the head, caused all the fractures in the skull, and then the eyes got red, or black, or purple because of the seepage of blood from the small blood vessels." The neuropathology report completed by Dr. Renee Stonebridge, also of the Office of the Chief Medical Examiner, are consistent with Dr. Scordi-Bello's findings.

On January 29, Troopers Bukhenik and Proctor also traveled to the defendant's parents' home in Dighton, MA. Upon their arrival, they observed a large black Lexus SUV, bearing MA Reg. #: 3GC684, registered to the defendant, parked outside the garage door in the driveway to the home. The troopers observed the rear right passenger side taillight to be shattered and a large red piece of plastic to be missing from the taillight. The troopers were invited into the home and observed the defendant seated on the living room couch. The defendant agreed to speak with the troopers. The defendant indicated that she had met the victim at C.F. McCarthy's bar in Canton at approximately 9:00 p.m., the evening prior. The victim had been there with friends prior to her arrival. She stated that the victim was drinking beer, and she was drinking vodka sodas. She described the

glassware she was drinking out of as a vase style. The defendant stated that she and the victim left C.F. McCarthy's and went to the Waterfall but denied that she had taken any drink from one bar to the next. She stated that they were at the Waterfall for approximately an hour and during that time; there were no arguments amongst anyone present there. When she and the victim were leaving the Waterfall, she stated they were invited to a house on Fairview Road.

The defendant stated that she had dropped the victim at the house on Fairview and went home since she was having stomach issues at the previous bar. The defendant stated that she dropped the victim off, then made a three-point turn in the street and left. She stated that she did not see the victim enter the residence. The defendant indicated that she first observed the broken taillight in the morning and did not know how she had broken it the previous evening. The victim was uninjured when she dropped him off at the house, however, when she discovered him the next morning, she observed him lying face up, snow on his legs, his eyes swollen, and blood coming from his nose and mouth. She stated that she began providing him mouth to mouth. The defendant further stated that she had attempted to contact the victim throughout the night, calling and texting him numerous times with no response. She stated that they had a verbal argument that morning over what the defendant fed the victim's niece for breakfast.

The black Lexus SUV was seized from the driveway of the defendant's parents' home in Dighton on January 29. The vehicle was then transported via a tow truck to the Canton Police Department. On February 1, members of the Massachusetts State Police Crime Scene Services Section, a Crime Lab chemist, and Trooper Joseph Paul, of the Massachusetts State Police Collision Analysis and Reconstruction Section (CARS),

responded to the department. They observed fragments of broken glass on the rear bumper of the vehicle. The rear right passenger side taillight was shattered and pieces were missing from the red and clear areas. On the right side of the rear tailgate, a deep scratch and minor dent were observed. On the right side of the rear bumper, above a small red light, two scratches were observed as well as one area where the paint was chipped off. Troopers from the CARS Unit performed a rapid acceleration, forward and reverse tests with the vehicle and noted no deficiencies with the vehicle's braking system or other operations. The troopers placed a training figure resembling a human, approximately six feet in height behind the Lexus. The vehicle was operated by a CARS trooper and documented with video from Crime Scene. The vehicle was placed in reverse and started to travel toward the training figure. The rearview camera within the vehicle was operating properly, displayed on a screen in the center of the dashboard, and provided a 360-degree overhead visual. As the Lexus traveled closer to the figure, both auditory and visual ques within the vehicle sounded off, indicating an obstruction to the rear.

In addition, forensic scientist Maureen Hartnett took samples from the defendant's Lexus. She observed damage to the rear of the vehicle on the passenger side including a dent with chipped paint in the trunk door, a broken taillight, and scratches on the bumper. A small apparent hair was noted on the rear passenger side quarter panel. Pieces of an apparent cocktail style glass, consistent with that the victim was seen on video exiting the Waterfall with in his right hand, was also noted on the rear bumper. (Grand Jury Exhibit #53).

On January 29, the Massachusetts State Police Special Emergency Response Team (SERT) was activated to assist in searching for physical evidence outside of 34 Fairview Road. Members from the SERT team located a black Nike sneaker with a white Nike logo along the side, matching the one worn by the victim at the time his body was discovered. In the same area, where the body had been recovered, two red plastic pieces of a taillight were located, consistent with the pieces missing from the defendant's black Lexus. One piece of clear plastic taillight was located in the same area as well, also consistent with the broken taillight of the Lexus. The SERT team discovered these items after digging through the still falling snow.[4]

Subsequently, on February 4, 2022, Canton Police Detective Sergeant Lank was contacted by Lt. Gallagher who had received a call from Canton Police Chief Berkowitz in relation to driving by the residence on Fairview and observing a red broken piece of hard plastic; at this time the weather conditions had improved, and significant amounts of snow had melted in the interim. Sergeant Lank responded along with Detective Taylor, who photographed the item in place and contacted the Massachusetts State Police, who subsequently secured the item from the roadway.

On January 31, investigators observed video from the Ring cameras affixed to One Meadows Avenue, the residence of Mr. O'Keefe. The video was observed by utilizing the Ring application on the victim's cell phone. The data in the application showed that two cameras were connected to the victim's account under his email. The

[4] Through trace analysis and forensic testing, the Massachusetts State Police Crime Laboratory discovered the victim's DNA present on the broken taillight and microscopic pieces of red and clear apparent plastic located in the victim's clothing. Comparison testing was conducted, and the results demonstrate that the microscopic pieces of red and clear plastic are consistent with the broken pieces of plastic from the defendant's right rear taillight.

two cameras cover the front door and the driveway to his home. From 6:00 p.m. on January 28 through 6:00 a.m. on January 29, the Ring application showed approximately fifteen events between the two cameras at the residence. Investigators observed on the Ring video from the driveway camera, the defendant's SUV leaving the right garage door and traveling out of the driveway, onto Meadows Avenue, and turning left onto Pleasant Street at approximately 5:08 a.m. on January 29. The victim's Chevrolet Traverse SUV was parked in the far-right corner of the driveway, and as the defendant's SUV exited in reverse from the garage, it came close to the victim's SUV. No pieces of the defendant's taillight were seen on the video in the driveway, nor observed in Canton PD cruiser camera footage upon their arrival to the victim's residence the morning his body was discovered, nor observed nor recovered from the victim's driveway at any time.

On February 3, 2022, Trooper Evan Brent from Crime Scene Services arrived with Trooper Proctor at the home and documented all sides of the victim's Traverse and the garage doors. No damage was observed anywhere on either the vehicle or the doors. No fragments or pieces of a broken taillight were discovered in the victim's driveway, nor are any observed on the ground or anywhere in the driveway when the defendant's vehicle is seen leaving the driveway at 5:08 a.m. Noticeably absent from the available Ring video footage that investigators diligently sought for, was any video of the defendant's vehicle arriving at the victim's home in the early morning hours of January 29th after leaving the 34 Fairview residence.

On February 1, Troopers Bukhenik and Keefe traveled to C.F. McCarthy's bar and spoke with the manager of the bar. They reviewed and secured video from inside the establishment from January 28 and receipts. From the interior surveillance video, the

troopers observed Mr. O'Keefe walk into the establishment, wearing jeans, black Nike sneakers, a gray and dark gray long sleeve shirt, and a dark baseball hat with an American flag on the front, at approximately 7:37 p.m., along with his friend Michel Camerano. Approximately an hour later, at 8:51 p.m., the defendant enters the bar, wearing a black jacket, black boots, black pants, a handbag/small purse, and a white shirt underneath her jacket. Seven minutes later, at approximately 8:58 p.m., the bartender hands the defendant a tall cylinder style glass containing a clear liquid with a lime in it. At approximately 9:15 p.m., the victim hands the defendant a cylinder style glass, with a clear liquid and a lime in it. At the following times, the troopers observed in the video the defendant receiving a shot glass with a clear liquid in it, which she subsequently pours into her cylinder glass: 9:20; 9:33; 10:22 and 10:29 p.m. At approximately 9:57 p.m., the bartender is observed handing the defendant a tall cylinder style glass with a clear liquid in it and a shot glass with a clear liquid in it, for a total of seven drinks the defendant receives and consumes during her time at this bar. At approximately 10:40 p.m., the victim and the defendant are observed leaving the bar, with the defendant holding her last drink in her right hand as they exit.

On February 1, troopers traveled to the Waterfall Bar, reviewed, and secured both interior and exterior surveillance camera footage, as well as receipts, from that establishment. From the interior camera, the troopers observed the victim and the defendant enter the bar at approximately 10:54 p.m. At approximately 12:10 a.m., the defendant walks out with two females, leaving through the front door. Moments later, the victim stands alone at the table, takes a sip from a short cocktail glass and walks out the front door holding the glass in his right hand. From the exterior camera, the troopers

observed the victim walk out at approximately 12:11 a.m., carrying a short cocktail glass in his right hand, meet up with the defendant, and then the two walk together toward Washington Street. The troopers also observed from this exterior camera that it appeared to have just begun snowing with a light coating on the ground.

On February 2, Troopers Dunne and Moore were canvassing for video footage in relation to this investigation. They proceeded to the Edward J. Lynch, Jr. House at Pequitside Farm on Pleasant Street in Canton. There they were able to retrieve video footage from the town's IT director who confirmed that the date and timestamps on the video were correct. The troopers also viewed and recovered video from the Canton Town Library external cameras, and on February 3, from the Temple Beth Abraham (B'Nai Tikyah). Both the Library and the Temple's cameras overlook Washington Street in Canton. The distance between these two buildings is approximately one mile. From the Library video, at approximately 12:15 a.m., the troopers observed a large black SUV, consistent with the defendant's Lexus, traveling on Washington Street and continue toward the Temple, four minutes after the victim and the defendant exited the Waterfall. At approximately 12:17 a.m., from the Temple video, the troopers observed a large black SUV traveling by the building toward the intersection of Washington and Dedham Streets, in the direction of Fairview Road.

From the Library video, at approximately 5:11 a.m., the troopers observed a large black SUV traveling down Sherman Street, take a left onto Washington and travel in the direction of the Waterfall. At approximately 5:15 a.m., the troopers observed a large black SUV traveling away from the area of the Waterfall on Washington Street, crossing over Sherman and continue on Washington toward the Temple. From the Temple video, at

approximately, 5:18 a.m., the troopers observed a large black SUV traveling by the front of the building toward the intersection of Washington Street and Dedham Streets. In addition, the troopers received via a search warrant, the defendant's Verizon cell phone records. Lieutenant Brian Tully, of the Massachusetts State Police, examined the records and was able to plot the defendant's movements, while the phone was in use for various periods of time. The phone's movements, during these respective time frames from the video evidence, coincided with the directions of travel of the black SUV observed on the videos from the Library and the Temple, during both time frames. These videos and phone records on the morning of January 29, occur after the defendant spoke with Ms. McCabe on the phone after directing the victim's niece to call Ms. McCabe, and after the defendant is seen on the victim's residence's Ring video leaving that home at 5:08 a.m. Furthermore, they evidence the defendant traveling in the direction of 34 Fairview Road, prior to going to Ms. McCabe's home that morning.

On February 22, both the victim's ten-year-old nephew, P.F., and his fourteen-year-old niece, K.F., were interviewed at the Norfolk Advocates for Children Center in Foxboro, MA. The children indicated that they had lived with their uncle, the victim, for approximately eight years following the passing of both of their parents. Both children indicated that the victim and the defendant had started dating approximately two years ago, after having dated some time before in the distant past. They both indicated that the defendant would stay over at their house on Meadows Avenue several nights a week.

P.F. stated that the defendant and victim argued "a decent amount of time" and recalled them yelling at one another. P.F. recalled a recent argument over groceries and the victim expressing the need for a break from the defendant. After that particular

argument, the victim wanted the defendant to leave their house, however she refused. P.F. indicated that he had left the home on January 28 at approximately 8:00 p.m. for a sleepover at a friend's house and was not present at the home overnight. P.F. indicated that neither he nor his sister had access to the Ring System but believed that the defendant did from the family computer within the home.

K.F. indicated during her interview that the defendant and the victim had argued a lot toward the end, approximately two to three times a week. She stated that the victim and the defendant would fight often about random stuff, things people wouldn't normally argue over and it was mostly yelling.

K.F. recalled a recent family trip to Aruba over New Years' during which the victim and the defendant got into an argument. The defendant had accused the victim of kissing someone else and the two argued for approximately 20 minutes in their hotel room, with both children present. She further stated that approximately a week prior to January 29, she was sitting on the stairway inside the house while the victim and the defendant were arguing. K.F. stated that she heard the victim tell the defendant that their relationship had run its course and that it isn't healthy. She stated that the defendant did not want the relationship to end and refused to leave their house.

K.F. stated that she had gone to bed at approximately 11:00 p.m., on January 28, after her friend had left and was awoken by the defendant at approximately 4:30 a.m., with the defendant screaming and acting frantic. The defendant ran into the victim's bedroom to retrieve K.F.'s cell phone and K.F. then began texting and calling the victim with no response. The defendant then had K.F. call Ms. McCabe and put the defendant on the phone with her. After speaking with Ms. McCabe, the defendant left the house and

told K.F. to call Mr. Camerano to come and pick her up. K.F. indicated during her interview that the defendant changed her story several times while speaking to Ms. McCabe on the phone, with initially the defendant stating that she and the victim got into an argument and she dropped him off.

On January 29, Mr. O'Keefe's cell phone was recovered from under his body and the Massachusetts State Police were subsequently able to forensically extract the data from this phone. The forensic extraction of the call logs, voicemails and text messages between the victim and the defendant, including the dates of January 28-29, detailed strains within their relationship, the victim's desire to end their relationship and the defendant's description of their relationship with them and the two children together as "toxic". Several voicemails were recovered from the victim's phone that contain voice recordings from the defendant in the time period surrounding the victim's death. The first voicemail in time consists of the defendant screaming: "John, I fucking hate you!" The defendant continues to leave additional voice messages during this time frame where she is stating that she hates the victim, calls him a "pervert", and accuses the victim of "fucking another girl."

On February 8, Lieutenant John Fanning and Trooper Proctor interviewed Laura Sullivan, Marietta Sullivan, and a Mr. Levy in reference to a group trip to Aruba that occurred approximately four weeks prior to the victim's death. The trip had been organized by Laura. Laura had met Mr. O'Keefe approximately 7 or 8 years prior, through her son's father, who was Mr. O'Keefe's partner within the Boston Police department. Her son's father died while she was pregnant with their son, and Mr. O'Keefe stayed close with the family, becoming the child's godfather. Laura had booked

the trip to Aruba with approximately 70 friends and family and had invited the victim, the defendant, and the victim's niece and nephew. Both Laura and Marietta Sullivan, as well as Laura's boyfriend, Mr. Levy, met the defendant for the first time on this trip. Laura indicated that when they went out to dinner on the first night of the trip, the defendant unexpectedly paid for everyone's dinner. The following day, December 31st, her sister Marietta arrived and ran into Mr. O'Keefe in the lobby of the hotel. Marietta indicated that she was in the elevator going from her room back to the pool bar, and when the elevator reached the ground level, she stepped out and bumped into Mr. O'Keefe. She could see that there was a woman a few steps ahead of him. She gave Mr. O'Keefe a hug and asked him where he was going. She then heard the defendant yell, "John, who the fuck was that", Mr. O'Keefe said "that's Laura's sister", the defendant then said, "I don't give a fuck", then yelled to Marietta "fuck you", to which Marietta yelled back in kind. Both sisters then described the victim and the defendant being aloof from the group for the remainder of their trip.

On February 3, Trooper Proctor and Sgt. Bukhenik spoke with Brian Higgins. Mr. Higgins described the evening of January 28-29 as he was both at the Waterfall and the 34 Fairview residence following the Waterfall. Mr. Higgins indicated that he had met the victim and the defendant at the same time, approximately one year prior. Mr. Higgins indicated two weeks prior to the victim's death he went to the victim's residence for the New England Patriots playoff game against the Buffalo Bills on January 15. Mr. Higgins recalled arriving at some point in the second half of the game and being one of the last guests to leave. Mr. Higgins stated that on January 15, 2022, he was walking toward the front door of the victim's home to exit, when the defendant suggested that she walk him

out through the downstairs garage. While walking through the garage, Mr. Higgins stated that the defendant made an advance on him and surprised him with a kiss on the lips.

During the course of the interview, Mr. Higgins provided the Massachusetts State Police with printouts of his text communications with both the victim and the defendant. Mr. Higgins indicated that he had first received a text from a then unknown to him number, that he subsequently confirmed was that of the defendant, on January 12. The text messages were romantic in nature, with the defendant and Mr. Higgins expressing a mutual liking for each other. In the text communications offered to the grand jury, the defendant confirms their kiss, and urges Mr. Higgins not to worry, as she knows where the cameras are on the victim's house. The defendant then invites Mr. Higgins over to her home in Mansfield, an invitation Mr. Higgins stated he declined. However, the defendant did stop by Mr. Higgins' home on her way home from a night out with friends in Boston; to discuss their relationship prior to January 28, 2022. Mr. Higgins denied any sexual relationship with the defendant. In addition, in these communications, when asked by Mr. Higgins if she was happy in her relationship with the victim, the defendant makes a reference to the victim cheating on her during their recent trip to Aruba.

On January 29, the defendant herself was transported to the Good Samaritan Medical Center. While there, blood was drawn pursuant to her medical diagnosis and treatment at that facility. The ethanol results from her medical records indicate that at 9:08 a.m., on the 29th, her blood had a reading of 93 mg/dl. Nicholas Roberts, a forensic toxicologist from the Massachusetts State Police Crime Laboratory, performed both a serum conversion and retrograde extrapolation of that result, opining that Ms. Read's BAC at 9:08 a.m. time on the 29th was .07-.08%, from his serum conversion analysis.

From his retrograde extrapolation analysis, he opined that her BAC around the time period of 12:45 a.m., would have been between .13% - .29%.

ARGUMENT

DISMISSAL OF THE INDICTMENTS IS NOT WARRANTED BECAUSE THE INTEGRITY OF THE GRAND JURY PROCEEDING WAS NOT IMPAIRED.

"The dismissal of a criminal case is a remedy of last resort because it precludes a public trial and terminates criminal proceedings." Commonwealth v. Cronk, 396 Mass. 194, 198 (1985); Commonwealth v. Cinelli, 389 Mass. 197, 210 (1983) (sanction of dismissal infringes upon public's right to see persons accused of serious crimes brought trial). Massachusetts courts adhere to the long-standing practice of "subjecting grand jury proceedings to only limited judicial review," Commonwealth v. Noble, 429 Mass. 44, 48 (1999), and will not disturb an indictment so long as the evidence presented to the grand jury was sufficient to sustain the indictment and the integrity of the proceedings was not impaired. Id.; Commonwealth v. Mayfield, 398 Mass. 615, 619–620 (1986). To sustain an indictment the Commonwealth need only establish that the evidence presented to the grand jury was sufficient to demonstrate the identity of the accused and probable cause to arrest her. See Commonwealth v. O'Dell, 392 Mass. 445, 450–452 (1984); Commonwealth v. McCarthy, 385 Mass. 160, 163 (1982).

Generally, a court will not inquire into the competency or sufficiency of the evidence before the grand jury. Commonwealth v. Coonan, 428 Mass. 823, 825 (1999). There are two exceptions to this rule, put forth in Commonwealth v. McCarthy, 385 Mass. 160 (1982) and Commonwealth v. O'Dell, 392 Mass. 445 (1984). McCarthy holds that the grand jury must hear sufficient evidence to establish the identity of the accused

and probable cause to arrest. 385 Mass. at 163. Under the O'Dell line of cases, the court may dismiss indictments when the integrity of the grand jury proceeding was impaired by an unfair and misleading presentation. 392 Mass. at 447. It is the defendant's burden to show impairment of the grand jury proceeding, and that burden is a heavy one.

In reviewing the evidence presented to the grand jury, this court views it in the light most favorable to the Commonwealth. See Commonwealth v. Catalina, 407 Mass. 779, 781 (1990). The evidence required to establish probable cause is "considerably less exacting than a requirement of sufficient evidence to warrant a guilty finding" and "does not require the same type of specific evidence of each element of the offense as would be needed to support a conviction." Commonwealth v. O'Dell, 392 Mass. 445, 451 (1984); Commonwealth v. Gallant, 453 Mass. 535, 541 (2009).; Commonwealth v. Roman, 414 Mass. 642, 643 (1993) (probable cause to arrest is defined as "more than mere suspicion but something less than evidence sufficient to warrant a conviction"); Commonwealth v. Santaliz, 413 Mass. 238, 241 (1992) (probable cause is more than a suspicion, but not a prima facie case of the commission of a crime, let alone a case beyond a reasonable doubt), and cited cases; Commonwealth v. Peguero, 26 Mass. App. Ct. 912, 914 (1988) ("Probable cause is satisfied with less than a smoking gun").

Probable cause deals with probabilities, "the factual and practical considerations of everyday life" on which reasonable persons act. Commonwealth v. Humberto H., 466 Mass. 562, 566 (2013). Reasonable inferences, experience, and common sense are all appropriate considerations in determining probable cause. Id. Probable cause may be established through circumstantial evidence and the inferences drawn from the evidence need only be reasonable and possible, not necessary or inescapable Commonwealth v.

Whitaker, 460 Mass. 409, 416 (2011); Commonwealth v. Deane, 458 Mass. 43, 51-52 (2004).

Furthermore, an indictment may be based solely on hearsay evidence. See Commonwealth v. Gibson, 368 Mass. 518, 522-523 (1975); Commonwealth v. St. Pierre, 377 Mass. 650, 655 (1979) (Indictment based on double hearsay testimony permissible where Court announced "We do not depart from the view that an indictment may stand which is based in part or altogether on hearsay"). The Supreme Judicial Court has "consistently and without notable exception held that an indictment may be based solely on hearsay. Only in extraordinary circumstances does the exclusive reliance on hearsay so impair the grand jury proceedings as to warrant dismissal." Commonwealth v. Rakes, 478 Mass. 22, 29-30 (2017) (internal citations and quotations omitted); Commonwealth v. Stevenson, 474 Mass. 372 (2016) (indictment based on Commonwealth's exclusive use of hearsay to bring sexual assault charges fourteen years after crime was appropriate and not an extraordinary circumstance.)

The role of the grand jury is vastly different from that of the petit jury. See Commonwealth v. Fernandes, 483 Mass. 1, 5-6 (2019). "Because of ... the availability of an unprejudiced petit jury at trial, the safeguards deemed necessary to protect an accused before a petit jury are not implicated to the same degree in grand jury proceedings." Commonwealth v. McLeod, 394 Mass. 727, 733 (1985); see Commonwealth v. Geagan, 339 Mass. 487, 499 (1959). That is, the dismissal of an indictment is not required "[a]s long as the evidence before the grand jury was sufficient to warrant a conclusion of probable cause and the integrity of the proceedings was unimpaired." Commonwealth v. Noble, 429 Mass. 44, 48 (1999); citing Mayfield, 398 Mass. at 619-620.

The grand jury are a body whose function is "limited." Commonwealth v. Wilcox, 437 Mass. 33, 39 (2002). The grand jury is an 'investigatory and accusatory body only. It cannot and does not determine guilt." Id., quoting Brunson v. Commonwealth, 369 Mass. 106, 120 (1975). See Commonwealth v. Geagen, 339 Mass. 487, 497 (1959). The nature of the grand jury is largely "historical and practical." Commonwealth v. McLeod, at 733. Aiello v. Massachusetts, 474 U.S. 919 (1985). Generally, a court will not review an irregularity before a grand jury that can be addressed and corrected at a subsequent trial before a petit jury. See e.g., Commonwealth v. Knapp, 26 Mass. 496 (1830).

To sustain a second degree murder indictment, a grand jury must find probable cause that the suspect committed an unlawful killing and that it was done with malice. See Supreme Judicial Court Model Jury Instructions on Homicide. Malice can be established in one of three ways: the defendant intended to cause the victim's death; or the defendant intended to cause grievous bodily harm to the victim; or the defendant committed an intentional act which, in the circumstances known to the defendant, a reasonable person would have understood created a plain and strong likelihood of death. See Commonwealth v. Earle, 458 Mass. 341, 346 (2010).

Direct evidence of a person's specific intent is not always available but may be inferred from the facts and circumstances presented. See Commonwealth v. Gollman, 436 Mass. 111, 116 (2002); Commonwealth v. Casale, 381 Mass. 167, 173 (1980). An intent to kill may be inferred from the defendant's conduct and evidence of consciousness of guilt and when coupled with other probable inferences, is sufficient to prove a defendant's culpability. See Commonwealth v. Porter, 384 Mass. 647, 653 (1981); Commonwealth v. Reynolds, 120 Mass. 190, 197-198 (1876). "In circumstances where a

reasonably prudent person would have known of the plain and strong likelihood that death would follow a contemplated act, "malice may be found without any actual intent to kill or do grievous bodily harm and without any foresight by the defendant of such consequences." Wojcik at 457; Commonwealth v. Grey, 399 Mass. 469, 472 n. 4 (1987). Appropriately considered in the light most favorable to the Commonwealth, the evidence before the grand jury warranted a finding of probable cause that the defendant intended her conduct that resulted in the death of Mr. O'Keefe to warrant the murder indictment.

In comparison, involuntary manslaughter is an unintentional, unlawful killing caused by wanton or reckless conduct. See Commonwealth v. Vanderpool, 367 Mass. 743, 747 (1975); Commonwealth v. Woodward, 427 Mass. 659, 669 (1998). Wanton or reckless conduct is "intentional conduct, by way of either commission or of omission where there is a duty to act, which conduct involves a high degree of likelihood that substantial harm will result to another." Commonwealth v. Welansky, 316 Mass. 383, 399 (1944). The degree of risk of physical harm for involuntary manslaughter is thus "a high degree of likelihood" of "substantial harm," whereas for third prong of malice must be a "plain and strong likelihood of death."

The defendant's motion does not raise any McCarthy claims and thereby waives any suggestion that there was insufficient probable cause to identify her as the perpetrator of the crimes charged nor was the evidence insufficient to warrant the indictments for second degree murder and/or manslaughter while operating under the influence.

The defendant's motion challenges the evidence and resulting indictments only under O'Dell. Dismissal of an indictment based on impairment of the grand jury proceedings requires proof of three elements: (1) the Commonwealth knowingly or

recklessly presented false or deceptive evidence to the grand jury; (2) the evidence was presented for the purpose of obtaining an indictment; and (3) the evidence probably influenced the grand jury's decision to indict. Commonwealth v. Silva, 455 Mass. 503, 509 (2009). The defendant fails to sustain her burden on any of the three elements.

Relying on Commonwealth v. O'Dell, the defendant presents a slanted view of the evidence and conveniently omits the bulk of evidence considered by the grand jury. Specifically, the defendant avers that the Commonwealth knowingly and recklessly presented false and deceptive evidence to the Grand Jury and withheld known inculpatory information for the purpose of obtaining an indictment.

In support of her claims, the defendant challenges the testimony of Canton Police Sergeant Lank and his testimony attributing statements to the defendant that were made in the aftermath of Mr. O'Keefe's body being discovered; a purported deception of Sergeant Lank's relationship with the Albert family; Trooper Proctor's purported false and deceptive statements throughout his testimony; the Commonwealth's failure to elicit a purported inconsistent statement of Christopher Albert; and the Commonwealth's failure to impeach Julie Albert's testimony.

To sustain a claim that the integrity of the grand jury proceeding has been impaired, not only must the evidence have been given with knowledge that it was false or deceptive, but the false or deceptive evidence must probably have been significant in the view of the grand jury and must have been presented with the intention of obtaining an indictment. Commonwealth v. Mayfield, 398 Mass. 615, 621 (1986). Further, "it is not enough for dismissal of an indictment that false or deceptive evidence was presented to the grand jury. Two further elements normally must be shown. First ... a showing that

false or deceptive evidence [and secondly] that the presentation of the false or deceptive evidence probably influenced the grand jury's determination to hand up an indictment." See Id. Even if omitted evidence is considered exculpatory, the court explicitly stated in O'Dell, "we do not announce a rule that would require prosecutors in all instances to bring exculpatory evidence to the attention of grand juries." 392 Mass. at 447; Commonwealth v. McGahee, 393 Mass. 743 (1985); ("Prosecutors are not required in every instance to reveal all exculpatory evidence to a grand jury"); Commonwealth v. Connor, 392 Mass. 838 (1984) ("A prosecutor is not required to present all possibly exculpatory evidence to a grand jury"). Rather, for the integrity of the grand jury proceedings to be impaired and dismissal warranted, the omitted exculpatory evidence "would likely have affected the grand jury's decision to indict." Commonwealth v. Clemmey, 447 Mass. 121, 130 (2006); see Commonwealth v. Connor, 392 Mass. 838, 854 (1984).

This requires a showing not only that the evidence was material to the question of probable cause but that, on the entirety of the grand jury record, the false or deceptive testimony probably made a difference. Mayfield at 622. This is a heavy burden and one that the defendant plainly fails to meet. See Commonwealth v. Pace, 22 Mass. App. Ct. 916 (1986) (failure of prosecutor to inform grand jurors that victim had picked out photograph of someone other than defendant was to some degree misleading but did not require dismissal of indictments). The defendant must establish that such evidence likely would have given effect to a complete defense, resulting in a no bill and any showing by the defendant that a grand jury might have determined that a lesser charge was more

appropriate would not by itself render the entire prosecution unwarranted, nor does it negate probable cause for the offense as charged. See Fernandes, 483 Mass. at 8.

The defendant has failed to make any showing that the Commonwealth engaged in malfeasance or knowingly presented any false testimony to the grand jury. Inaccurate testimony given in good faith does not by itself require dismissal and any inconsistent witness testimonies go to the weight of the evidence and not its admissibility. Commonwealth v. Reddington, 395 Mass. 315, 319-320 (1985) (An officer's mere repeating of what another experienced officer had told him was in good faith); Kater, 432 Mass. at 412 (testimony that was hypnotically aided and deemed unreliable for use at trial and later suppressed did not impair the integrity of the grand jury proceedings).

This case presents a situation completely inapposite to that in O'Dell. Here, the statement attributed to the defendant by Sergeant Lank was duplicative of other evidence from a multitude of witnesses, who did speak directly to defendant and testified to those conversations and the numerous statements and inconsistencies made by the defendant. The Grand Jury heard testimony from Ms. McCabe, Ms. Roberts, and the recorded interview from the victim's niece, in regard to the defendant stating that she did not remember going to the residence on Fairview Road with the victim. Furthermore, the Grand Jury heard testimony from all of the police officers that arrived prior to Sergeant Lank, and their conversations with the defendant. The defendant purposefully omits the evidence from other witnesses to seemingly cast doubt on Sergeant Lank's credibility to support her repeated and unfounded claims of bias. Furthermore, Sergeant Lank's testimony was not remote hearsay guised as direct testimony, as he clearly testified that

he was relaying on his memory of what was told to him by other officers who preceded his arrival, all of whom also testified before the Grand Jury.

As to Sergeant Lank's supposed failure to disclose his relationship with the Albert family, nothing contained within the defendant's attachments bears any remote relevance to the subject before this Grand Jury. At best, it demonstrates a dispute or fight from 20 years ago involving Sergeant Lank and two parties having nothing to do with this case. Neither of the two members of the Albert family alleged to have been involved in this incident from twenty years ago, were present at Fairview Road when Sergeant Lank arrived, nor did he interview either of them. Sergeant Lank performed initial interviews with some of the witnesses, all of whom were separately interviewed by the Massachusetts State Police, and also testified before this Grand Jury.

Sergeant Lank's purported "self-deputizing" and inserting himself into a situation twenty years ago, bears no significance to his response to a dead body which was well within his supervisory duties and responsibilities as a police Sergeant. Despite the defendant's best attempt to construct a connection between this prior incident and this case, none exists, and the facts are entirely inapposite. Sergeant Lank's role in this investigation was minimal at best. Further, every interview or action taken by Sergeant Lank in relation to this investigation occurred in the presence of another detective.

Furthermore, in the civil lawsuit relied upon by the defendant, there were no adverse credibility determinations against Sergeant Lank or any findings of liability. The case was dismissed by agreement of the parties. The prosecutor was wholly unaware of this civil lawsuit from sixteen years ago and even if the prosecutor was aware, he was under no obligation to disclose its existence, especially to a grand jury, as it is not

exculpatory, nor were there findings of civil liability or an adverse credibility determination. See generally Commonwealth v. McFarlane, ____ Mass. ____, (Jan. 23, 2024) (SJC-13430) (prosecutor's duty to inquire).

Furthermore, the Canton Police Department did not "lose" jurisdiction of this case. Pursuant to statute the Norfolk District Attorney's Office and law enforcement officers assigned to the office have the exclusive jurisdiction over all death investigations conducted in Norfolk County. See G.L. c. 38, §4 ("The district attorney or his law enforcement representative shall direct and control the investigation of the death and shall coordinate the investigation with the office of the chief medical examiner and the police department within whose jurisdiction the death occurred") The detective unit of the Massachusetts State Police assigned to the Norfolk District Attorney's Office had exclusive jurisdiction to investigate the homicide of Mr. O'Keefe, regardless of any conflicts within the Canton police department. G.L. c. 38, §4.

Additionally, the testimony before the Grand Jury from a number of witnesses was that no residents of Fairview Road exited their homes upon the early morning arrival of law enforcement and emergency medical services. It was not only Brian and Nicole Albert who were asleep at 6:00 a.m. during a blizzard. The defendant's attempt to stretch knowledge of one person within a family to a close, personal relationship with every member of that person's family and social circle is simply untenable.

Similarly, the supposed close and personal relationships between Trooper Proctor and all witnesses in this case is entirely unfounded and a desperate creation of the defense. The scant evidence the defendant repeatedly submits to this Court comes in the form of photographs from the trooper's sister's wedding from over a decade ago.

Contrary to the defendant's claim, Troopers Proctor's testimony about the Ring video and what it showed did not mislead the grand jury. The entirety of the Ring video was introduced to the grand jury, and they had the opportunity to closely examine whether the defendant struck the victim's vehicle and assess the evidence in its totality. See Commonwealth v. Silva, 455 Mass. 503, 511 (2009) ("The Commonwealth is not required to present evidence of so-called defenses or otherwise disprove such matters before the grand jury.") The grand jury was also permitted to consider testimony about the conveniently missing portion of the Ring video, the defendant's access to the account, and the defendant's statement that she knew where the cameras were located inside the victim's residence.

Contrary to the defendant's characterization of the evidence, the "formal introductions" section of the report regarding the interview with Christopher and Julie Albert, was read to the Grand Jury by Sergeant Bukhenik, as he wrote that report and had never met either of the witnesses prior to the interviews. The statements the defendant complains of being omitted in the first paragraph of Sergeant Bukhenik' s report are not statements attributed to either Christopher or Julie Albert. They are a recitation as to why witnesses were being spoken to in relation to this investigation. Further, both Christopher and Julie Albert testified before the Grand Jury, and neither they, nor any of the witnesses present that evening, testified to the presence of Chris or Julie Albert at 34 Farview Road at any point that night.

Likewise, Jennifer McCabe's cellphone extraction was admitted as an exhibit before the Grand Jury. Julie Albert testified that she was informed of Mr. O'Keefe's death by Brian Albert when she went to the residence on Fairview Road on January 29th to drop

off a birthday present for her nephew, Brian, Jr., sometime after 8:00 a.m. This was corroborated by her husband, Christopher Albert's sworn grand jury testimony, that he learned of Mr. O'Keefe's passing from Julie within this same time frame. Julie testified that she had a missed call on her cell phone from Jennifer McCabe when she awoke that morning. Ms. McCabe testified that she had called Julie looking for Mr. O'Keefe after receiving the initial call from the victim's niece and speaking with the defendant. Neither Ms. McCabe nor Julie Albert testified to speaking with each other, let alone the imagined and dramatic conversation the defendant now posits occurred. Nothing was hidden from the Grand Jury, they were presented with all of the relevant information, conflicting or otherwise, and left, as they should be, to resolve any factual issues on their own from what they find the facts to be.

The defendant further challenges the Commonwealth's grand jury presentation premised upon an incorrect application of the law. Simply, the manner of death is not a matter for either the grand or trial jury to consider and it would have been impermissible for the Commonwealth to illicit testimony from either Trooper Proctor or the Medical Examiner about the manner of death. In accordance with settled practice, a death certificate should be redacted for the means and manner of death. See e.g., Commonwealth v. Almonte, 465 Mass. 224, 242 (2013); Commonwealth v. Wallace, 460 Mass. 118, 127 (2011).

G.L. 46 § 19 as amended through St.1969, c. 478, and as now amended (see St.1976, c. 486, s 13), provides that "nothing contained in the record of a death which has reference to the question of liability for causing the death shall be admissible in evidence." In a criminal trial, excluding from the death certificate the words "homicide,

"suicide" or "accident" is the better and safer course. See Commonwealth v. Ellis, 373 Mass 1, 8 (1977); Commonwealth v. Lannon, 364 Mass. 480, 482 (1974).

Overall, there is no indication of an intentional or reckless misstatement by any witness nor efforts to mislead and deceive the grand jury. See Commonwealth v. Champagne, 399 Mass. 80, 85 (1987) (no evidence investigating officer knowingly presented false testimony to grand jury; "Irreconcilable inconsistencies between trial evidence and evidence presented to the indicting grand jury are not sufficient by themselves to warrant dismissal of an indictment.") Nor is there any chance that the grand jury would have decided differently as the evidence overwhelmingly supported the indictments. See Commonwealth v. Kelcourse, 404 Mass. 466, 468–69 (1989); Cf. Commonwealth v. Silva, 455 Mass. 503, 508 (2009) ("Inaccurate testimony made in good faith does not require dismissal of an indictment). Similarly, "it is not enough to justify dismissal of an indictment that the jurors received hearsay or hearsay exclusively, and this so even when better testimony was available for presentation to the grand jury." Commonwealth v. St. Pierre, 377 Mass. 650, 655 (1979) (police officer with no personal involvement in the case allowed to present hearsay evidence to a grand jury); See also Mass. R. Crim. P. 4(c).

Furthermore, the defendant avers that the Commonwealth impaired the Grand Jury proceedings by deliberately admitting inadmissible evidence for the purpose of prejudicing the Grand Jury, confusing the issues, and consuming time unnecessarily to secure an indictment against the defendant. The defendant alleges that the Commonwealth accomplished this by introducing prior bad act evidence of the defendant; eliciting purportedly improper lay witness testimony and

improper expert witness testimony; and repeatedly admitting prior consistent statements of witnesses.

The Commonwealth is not required at the grand jury level nor at trial to prove a motive for the murder, thus the defendant's motive or purported lack thereof, is not an element to the crimes charged. No exculpatory evidence was withheld from this grand jury, and even if it were found to have been, the defendant cannot meet her burden that it likely would have changed the grand jury's decision to indict. See Fernandes, 483 Mass. at 7 ("The Commonwealth's burden of proof to obtain an indictment is relatively low and the defendant bears a heavy burden to show impairment of the grand jury proceeding.") (internal citations omitted)

The defendant complains that the Commonwealth attempted to besmirch the defendant in some manner and fabricate problems within her relationship with the victim as a motive for murder by introducing testimony about an incident four weeks prior in Aruba. Yet, the defendant avoids mention or challenge to the venomous voicemails she left on the victim's cellphone as well as the evidence of other issues in their relationship, including the defendant's recent romantic entanglement with Mr. Higgins, in the weeks prior to Mr. O'Keefe's death.

The testimony offered to the grand jury detailed an incident four weeks prior to the victim's death where the defendant became enraged at the victim for speaking to a female friend who was on their group vacation in Aruba. This incident was observed by numerous individuals and discussed among friends and family. See Commonwealth v. Gibson, 368 Mass. 518, 524–525 (1975) ("A grand jury has broad investigative powers to determine whether a crime has been committed and who has committed it. The jurors

may act on tips, rumors, evidence offered by the prosecutor, or their own personal knowledge.")

This evidence as well as testimony from the victim's niece and nephew, demonstrated the hostile relationship between the defendant and victim that existed at the time of the victim's death. While the incident in Aruba occurred four weeks prior, the grand jury was also permitted to consider testimony that days prior to the victim's death, the victim expressed a desire to terminate the relationship and the defendant refused to leave the victim's home. Further, in the context of the evidence as a whole, this incident in Aruba seems to be a turning point in the relationship as the defendant told Mr. Higgins shortly thereafter, that her relationship with the defendant was a "very fucked up situation" and details that she observed the victim "all over [a] friend's sister in the lobby of our hotel" and accused the victim of having "hooked up with another girl" while in Aruba. In the voicemails left on the victim's phone, the defendant also screams at the victim for apparently "fucking another girl." Further, the defendant tells Mr. Higgins that while in Aruba that victim got very intoxicated and "sloppy" on New Year's Eve which "really affected" her.

Further, evidence presented to the grand jury also demonstrated strains in the relationship due to the defendant's frustrations with the "thankless" role of providing assistance to the victim's niece and nephew and admits "the issues with the kids bother me more than [the victim] actually cheating. They're constant and it feels like a lose/lose."

Evidence of a defendant's prior bad acts is inadmissible "for the purposes of showing [the defendant's] bad character or propensity to commit the crime[s] charged."

Commonwealth v. Helfant, 398 Mass. 214, 224 (2017), Mass. G. Evid. § 404(b)(1) (2021). Such evidence, however, may be admissible if it is relevant for other purposes. See, e.g., Commonwealth v. West, 487 Mass. 794, 806 (2021), quoting Commonwealth v. Carlson, 448 Mass. 501, 508-509 363 (2007) ("Evidence of a hostile relationship 'that tends to explain the purpose of a crime is relevant to the issue of malice or intent' ..."); Mass. G. Evid. § 404(b)(2). The Court has recognized a range of permissible relevant purposes, including "to show a common scheme or course of conduct, a pattern of operation, absence of accident or mistake, intent, or motive." See Commonwealth v. Butler, 445 Mass. 568, 574 (2005); see also Commonwealth v. Kater, 432 Mass. 404, 412 (2000) (At the grand jury, the rules of evidence are less stringent than at trial, where at trial the decision regarding the admission of this evidence is left to the discretion of the trial judge).

In a domestic violence homicide, evidence such as prior disputes are relevant to show the "volatile nature of the relationship between the defendant and the victim in the weeks and months preceding the murder and to explain the defendant's intent and state of mind toward the victim." Commonwealth v. Da Lin Huang, 489 Mass. 162, 173-174 (2022) (evidence of domestic dispute at defendant's apartment before killing, including physical contact, was relevant to show volatile nature of defendant's relationship with victim and defendant's intent); Commonwealth v. Rintala, 488 Mass. 421, 446-447 (2021) (evidence of defendant's prior arrest for assault and battery of victim, defendant's and victim's restraining orders against each other, and pending divorce proceedings admissible in homicide prosecution to show motive and hostile relationship); Commonwealth v. Almeida, 479 Mass. 562, 567-569 (2018) (evidence of defendant's

previous threat to stab his girlfriend to death admissible to show parties' violent relationship); Commonwealth v. Oberle, 476 Mass. 539, 550-552 (2017) (allowing previous domestic violence incident by defendant against victim to be admitted in prosecution for subsequent domestic violence to show nature of relationship between the two, and to show intent, motive, and absence of mistake or accident); Commonwealth v. Miller, 475 Mass. 212, 229-230 (2016) (evidence of domestic violence committed by defendant against his girlfriend, which led to confrontation between defendant and murder victim, properly admitted to show "contentious nature" of relationship between defendant and victim, which provided motive for killing); Commonwealth v. Bonomi, 335 Mass. 327, 355 (1957) (evidence that defendant formed an attachment for another may form the basis of an inference that the defendant entertained feelings of hostility toward spouse prior to killing).

Following, the public incident in Aruba, there was evidence from the defendant's own statements to Mr. Higgins and observations of others, including the victim's niece and nephew that there was a continuing animosity between the defendant and victim in the weeks and days prior to the victim's death. Including evidence of the defendant's vitriol hatred for the victim as captured in a voice recording and the defendant's admissions to numerous witnesses at different times that the last thing she recalls was getting into an argument with the victim.

Moreover, "[t]he state of mind exception to the hearsay rule calls for evidence of a murder victim's state of mind as proof of the defendant's motive to kill the victim when ... there also is evidence that the defendant was aware of that state of mind at the time of the crime and would be likely to respond to it." Commonwealth v. Qualls, 425 Mass. 163,

167 (1997). A murder victim's intent to end a romantic relationship is material to the defendant's motive for killing the victim. Commonwealth v. Lowe, 391 Mass. 97 (1984); Commonwealth v. Boridine, 371 Mass. 1 (1976). The Grand Jury received evidence from the victim's nephew and niece that they had heard the victim communicate his intentions to end the relationship to the defendant and reviewed text communications from the victim's cellphone which further corroborated that the defendant directly communicated his desire to end the relationship to the defendant.

The defendant's attempt to equate the evidence here with that in Commonwealth v. Brown, 490 Mass. 615, 621 (1986) is entirely misguided. The Court in Brown, found that voluminous records from the Department of Corrections were introduced to the Grand Jury and contained "disciplinary reports citing each [codefendant] for numerous allegations of disruptive behavior – including violent assaults on other inmates, manufacture of weapons, and threats against staff members while incarcerated." Id. at 666. The Court found that, unlike the complained of evidence here, nowhere in the more than one hundred pages of records was there evidence of any connection between the defendant and his co-defendant during their incarceration together, and thus the evidence offered "no permissible probative value whatsoever." Id. at 666.

The defendant is unable to demonstrate that the evidence was presented falsely or recklessly, or that it likely influenced the grand jury's decision. Commonwealth v. Barlow-Tucker, 493 Mass. 197, 210 (2024) The testimony about the incident in Aruba was summarized by those who witnessed it firsthand and those who received details about the incident from the defendant. There is no indication that any of the evidence pertaining to the relationship between the victim and the defendant was false, particularly

where the defendant's own statements and actions confirmed the hostility and problems within the relationship. Nor was any of the testimony and evidence introduced recklessly. See Brown at 184. Moreover, even if the trial court deems the prejudicial impact of the evidence may be outweighed by its probative value at trial, the inclusion of the evidence before the grand jury does not impair the integrity of the grand jury proceedings. The cumulative evidence bore upon the defendant's intent and state of mind and was presented to provide the Grand Jury with a full picture and understanding of the context of the crimes they were investigating.

The defendant next complains, of the means in which the Commonwealth introduced evidence and witnesses' testimonies. First, the defendant oddly claims that the Commonwealth used the victim's brother, who testified before the grand jury that he is employed as a salesman, as an expert witness about the victim's injuries. Contrary to the defendant's representation, the victim's brother did not testify to his opinion about the victim's injuries before the grand jury. The isolated statement, that the victim looked as someone who had been hit by a car, was contained within Trooper DiCicco's recitation of his police report that encapsulated his interview with the victim's brother. The defendant somehow draws a corollary to Commonwealth v. Buckman, 461 Mass. 24 (2011), which involved a post-conviction DNA expert testifying to "faint results" for an inconclusive DNA comparison in the context of a murder trial. The defendant's reliance on Buckman is far from persuasive as the circumstances could not be more inapposite.

The defendant also challenges the recitation of Trooper Guarino's report that stated he was investigating a motor vehicle homicide and was using his expertise in the area of forensic extraction to investigate the circumstances surrounding the victim's

death. Expert testimony is generally admissible even if the testimony touches on the ultimate issue before the jury. Commonwealth v. Woods, 419 Mass. 366, 374-375 (1995). An expert may not, however, offer an opinion as to the defendant's innocence or guilt. Commonwealth v. Hesketh, 386 Mass. 153, 161 (1982). No expert opinion was elicited in the recitation of Trooper Guarino's report. The reference to investigating a motor vehicle homicide merely delineates the category of crime being investigation and Trooper Guarino's report offered no opinion on the defendant's actions in any way, let alone touch upon an opinion of her innocence of guilt.

Moreover, the defendant challenges the limited instances where hearsay was admitted, and a law enforcement officer read from a fellow-officer's report. The defendant cites a number of federal cases in which the practice of federal prosecutors, at one time, was to have a single witness testify as to every other witness' recounting and read from every other officer's report. That was not done here. This single-witness policy was cited with disapproval by the federal courts as it routinely relies on hearsay, producing evidence which appears smooth, well integrated and consistent, making even weaker cases appear strong. United States v. Arcuri, 282 F. Supp. 347, 349 (1969). The defendant complains of the opposite, as 42 different witnesses testified before this Grand Jury, and any reports regarding those witnesses' initial interviews were also read into the record by law enforcement officers that conducted the interviews. Thus, presenting the grand jury with any consistencies or inconsistencies between the time the witness was first interviewed and their testimonies before the grand jury. The Commonwealth is well aware that prior consistent statements of a witness are not admissible at trial, and the defendant attempts to conflate the standard of evidence before the grand jury with that of

the trial jury. Any duplicative testimony did not influence the grand jury as the grand jury could assess the witnesses who personally appeared before them. Further, this practice of having an officer read their report summarizing a prior interview was done with an abundance of caution to have the grand jury consider any and all exculpatory evidence. A grand jury has broad investigative power to determine whether or not a crime has been committed, and its function is to inquire into all information that might possibly bear on its investigation. In re Grand Jury Investigation, 427 Mass. 221, 226, cert. den., 525 U.S. 873 (1998).

Lastly, if this court was to find that any of the variety of claims the defendant complained of were improper, any errors were harmless because the evidence to indict the defendant was overwhelming and reliable. See Commonwealth v. Smith, 450 Mass. 395, 399 (2008). Further, the defendant is unable to show in the context of the totality of the evidence that any of her claims improperly swayed the decision to indict or probably made a difference in the grand jury's decision to indict. See Commonwealth v. Matthews, 450 Mass. 858, 874-5 (2008); Commonwealth v. Carr, 464 Mass. 855, 867 (2013); Commonwealth v. Hunt, 84 Mass. App. Ct. 643, 657-9 (2013) (prosecutor's unfair, imprudent, and reckless disregard for truth in presenting false identification testimony to grand jury and failure to disclose exculpatory evidence did not warrant dismissal of murder indictment in light of other evidence that was highly probative of guilt); Commonwealth v. Vinnie, 428 Mass. 161, 175 (1998) (deliberate introduction of defendant's prior criminal activity to grand jury did not require dismissal of indictment given that there were multiple witnesses and cumulative evidence against defendant was powerful); Commonwealth v. Olsen, 35 Mass. App. Ct. 929, 931 (1993) (despite

"needless but dangerous overkill" in form of propensity evidence introduced to the grand jury for the purpose of securing an indictment, defendant failed to make a showing that such evidence probably made a difference); Commonwealth v. Callagy, 33 Mass. App. Ct. 85, 88 (1992) (informing grand jury that a suspect elected to exercise his right to remain silent did not impair integrity of grand jury where reference to his refusal probably did not influence the grand jury's decision to indict).

The physical evidence, witness testimonies, and circumstantial inferences provided more than a sufficient basis for probable cause for the grand jury to return these indictments. "By design, all evidence is meant to be prejudicial; it is only unfair prejudice which must be avoided" and the defendant's challenges to the evidence or self-serving interpretation of the facts is suited for trial and not the basis to dismiss a proper indictment. Commonwealth. v. Kindell, 84 Mass. App. Ct. 183, 188 (2013) "An indictment returned by a legally constituted and unbiased grand jury ... if valid on its face, is enough to call for trial of the charge on the merits. The Fifth Amendment requires nothing more." Costello v. United States, 350 U.S. 359, 362-363 (1956).

CONCLUSION

Viewed in the light most favorable to the Commonwealth, the integrity of the grand jury proceedings was not impaired whereas the Commonwealth did not knowingly or recklessly present false or deceptive evidence; the purpose of any supposed improper evidence was not offered for the purpose of obtaining an indictment; and no improper evidence was relied upon to materially influence the grand jury's decision to indict. For all these reasons, and those advanced by the Commonwealth during oral argument, this Court should **DENY** the defendant's motion in all respects.

Respectfully Submitted
For the Commonwealth,

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By: _____

Date: February 21, 2024

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