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2024 APR 10 AM 10:08 COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS. THE COURTS
NORFOLK COUNTY

SUPERIOR COURT DEPARTMENT
NO. 2282-CR-00117

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

DEFENDANT'S MOTION IN LIMINE TO EXCLUDE IRRELEVANT AND PREJUDICIAL EVIDENCE REGARDING ALLEGED HARASSMENT AND/OR INTIMIDATION OF WITNESSES

Now comes the defendant, Karen Read ("Ms. Read") and respectfully moves this Honorable Court *in limine* to exclude any references to alleged harassment and/or intimidation of witnesses by Aidan Kearney. As grounds for this motion, the Defendant states that the proffered evidence is not probative of any material issue in this case. *See* Mass. R. Evid. 402. Should the Court find that the evidence is relevant, any probative value of the proffered evidence is substantially outweighed by the risk of unfair prejudice. *See* Mass. R. Evid. 403.

FACTUAL BACKGROUND

On March 22, 2024, and April 3, 2024, the Commonwealth produced copies of the grand jury testimony In the matter of: Aidan Kearney to defense counsel. There is significant overlap between the witnesses in this case and the cases that ultimately arose from the *Kearney* grand jury. The witnesses in the *Kearney* matters allege that they have been harassed by Mr. Kearney during the course of his reporting on this case. As a product of his reporting on the *Read* case,

Mr. Kearney has been indicted in this Court for multiple counts of alleged intimidation of a witness, in violation of M.G.L. c. 268 § 13B.

ARGUMENT

I. **EVIDENCE OF MR. KEARNEY'S ALLEGED HARASSMENT OR INTIMIDATION OF COMMONWEALTH WITNESSES IS NOT RELEVANT TO MS. READ'S HOMICIDE PROSECUTION AND SHOULD BE EXCLUDED**

“Motions in limine concerning the introduction or exclusion of purportedly relevant evidence are properly made and considered before and during trial, in advance of the evidence being offered.” Commonwealth v. Spencer, 465 Mass. 32, 42 (2013). *See* Mass. G. Evid. § 103(f) (2023). “The purpose of a motion in limine is to prevent irrelevant, inadmissible or prejudicial matters from being admitted in evidence ... and in granting such a motion, a judge has discretion similar to that which he has when deciding whether to admit or exclude evidence” Commonwealth v. Hood, 389 Mass. 581, 594 (1983). *See* Commonwealth v. Tantillo, 103 Mass. App. Ct. 20, 27–28 (2023), review denied, 493 Mass. 1102 (2023).

“[A]ll relevant evidence is admissible unless barred by an exclusionary rule.” Commonwealth v. Vitello, 376 Mass. 426, 440 (1978). *See* Mass. G. Evid. § 402 (2023). “The relevance threshold for the admission of evidence is low” Commonwealth v. Gerhardt, 477 Mass. 775, 782 (2017). Evidence is generally relevant where “(a) it has any tendency to make a fact more or less probable than it would be without the evidence and (b) the fact is of consequence in determining the action.” Mass. G. Evid. § 401 (2023). “[I]t is not necessary that the evidence be conclusive of the issue. . . . It is sufficient if the evidence constitutes a link in the chain of proof.” Commonwealth v. Lopez, 91 Mass. App. Ct. 572, 576 (2017), quoting Mass. G. Evid. § 401. “Irrelevant evidence is not admissible.” Commonwealth v. Hampton, 91 Mass. App. Ct. 852, 854 (2017). *See* Mass. G. Evid. § 402.

§ 402 of the Massachusetts Guide to Evidence also states that “unless relevant, evidence will not be admitted because it does not make a fact in dispute more or less probable than it would be without the evidence”. Mass. G. Evid. § 402; *see also* Commonwealth v. Seabrooks, 425 Mass. 507, 512 n.7 (1997).

Ms. Read is accused of the following crimes arising out of the death of Officer John 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).

In order to prove murder in the second degree, the Commonwealth must prove the following elements: (1) The defendant caused the death of the alleged victim, (2) The defendant: (a) intended to kill the alleged victim; or (b) intended to cause grievous bodily harm to the alleged victim; or (c) intended to do an act which, in the circumstances known to the defendant, a reasonable person would have known created a plain and strong likelihood that death would result. *See* Model Jury Instructions on Homicide V, “Murder in the Second Degree” (Revised April 2018).

In order to prove Manslaughter while under the influence of alcohol, the Commonwealth must prove the elements of involuntary manslaughter — (1) that the defendant caused the victim's death, (2) that the defendant intended the conduct that caused the victim's death, and (3) that the defendant's conduct was wanton or reckless — plus the elements of OUI — (4) that the defendant operated a motor vehicle (5) on a public way (6) while under the influence of intoxicating liquor (or with a blood alcohol level of .08 or higher). *See* G.L. c. 90, § 24(1)(a);

Commonwealth v. Colturi, 448 Mass. 809, 817–818 (2007); Commonwealth v. Filoma, 79 Mass. App. Ct. 16, 20 (2011); Com. v. Guaman, 90 Mass. App. Ct. 36, 45 (2016).

The crime of leaving the scene of a fatal personal injury is codified in G. L. c. 90, § 24 (2) (a 1/2) (2), the subsection immediately after § 24 (2) (a 1/2) (1), the nonfatal variant. Section 24 (2) (a 1/2) (2) provides, in pertinent part:

“Whoever operates a motor vehicle upon any way ... and without stopping and making known his name, residence and the registration number of his motor vehicle, goes away to avoid prosecution or evade apprehension after knowingly colliding with or otherwise causing injury to any person shall, if the injuries result in the death of a person, be punished” G. L. c. 90, § 24 (2) (a 1/2) (2); Commonwealth v. Rijo, 98 Mass. App. Ct. 871, 875 (2020).

Clearly, the issue of whether Mr. Kearney allegedly intimidated or harassed witnesses (which will ultimately be adjudicated by this Court) is not an element of any of the crimes for which Ms. Read has been indicted. Similarly, the fact that Mr. Kearney did, or did not, intimidate any witness — per the meaning of G.L. c. 268 § 13B — does not constitute a “link in the chain of proof” in relation to any element of any of the crimes for which Ms. Read stands indicted. Commonwealth v. Lopez, 91 Mass. App. Ct. 572, 576 (2017), quoting Mass. G. Evid. § 401. That issue is not probative of any fact of consequence in this action, does not bear on any element of any crime for which she is charged, and is not otherwise admissible as — for example — 404(b) evidence. “The nature of so-called prior bad act ... evidence ... is that it reflects badly on the character of the defendant.” (Emphasis added) Commonwealth v. Veiovis, 477 Mass. 472, 481 (2017), as cited in Commonwealth v. Correia, 492 Mass. 220, 229 (2023).

Ms. Read is not indicted for any alleged conspiracy with Mr. Kearney. The admission of evidence that Mr. Kearney allegedly intimidated witnesses in the *Read* case would serve no legitimate purpose, and would only taint Ms. Read with alleged actions by Mr. Kearney that have yet to be adjudicated one way or another. Both Ms. Read and Mr. Kearney deserve a full and fair adjudication of the crimes for which they actually stand indicted before this Court, separate and apart from one another.

For these reasons, evidence of Mr. Kearney's alleged harassment or intimidation of Commonwealth witnesses should be excluded as irrelevant under § 402 of the Massachusetts Guide to Evidence.

II. SHOULD THE COURT FIND THAT THE PROFFERED TESTIMONY IS RELEVANT, IT SHOULD STILL BE EXCLUDED, AS ANY PROBATIVE VALUE WOULD BE SUBSTANTIALLY OUTWEIGHED BY THE RISK OF UNFAIR PREJUDICE TO MS. READ, AND WOULD TEND TO CONFUSE THE ISSUES BEFORE THE JURY

Per the provisions of §403 of the Massachusetts Guide to Evidence, even relevant evidence may be excluded when its probative value is “substantially outweighed” by the danger of unfair prejudice. *See* Mass. G. Evid. §403; *see also* Commonwealth v. Crayton, 470 Mass. 228, 249 & n.27 (2014) (explaining the same general standard). “[I]n balancing the probative value against the risk of prejudice, the fact that evidence goes to a central issue in the case tips the balance in favor of admission.” Commonwealth v. Jaime, 433 Mass. 575, 579 (2001).

Though Ms. Read reasserts here that this evidence has *no* probative value regarding the crimes for which she has been indicted, should the Court nevertheless find that it is relevant, any probative value is still substantially outweighed by the risk of unfair prejudice to Ms. Read, were this evidence to be admitted at trial.

As noted above, the proffered evidence does not go to any central issue in the case. Commonwealth v. Jaime, 433 Mass. 575, 579 (2001). It is not state of mind evidence. “The state-of mind exception to the hearsay rule calls for admission of 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”. Com. v. Seabrooks, 425 Mass. 507, 511 (1997). It is not consciousness of guilt evidence, because the alleged incidents were not perpetrated by Ms. Read. (An instruction on consciousness of guilt may be given where “there is an ‘inference of guilt that may be drawn from evidence of flight, concealment, or similar acts,’ such as false statements to the police, destruction or concealment of evidence, or bribing or threatening a witness.” Commonwealth v. Stuckich, 450 Mass. 449, 453 (2008); Com. v. Morris, 465 Mass. 733, 737–38 (2013). For the same reason, it is not prior bad act evidence. “The nature of so-called prior bad act ... evidence ... is that it reflects badly on the character of **the defendant.**” (Emphasis added) Commonwealth v. Veiovis, 477 Mass. 472, 481 (2017), as cited in Commonwealth v. Correia, 492 Mass. 220, 229 (2023).

Nevertheless, should the Court find that the proffered evidence has *some* scintilla of probative value, such that it is deemed relevant, any probative value that *does* exist is substantially outweighed by the risk of unfair prejudice to Ms. Read, confuses the actual issues that will be before the jury shortly, and may tend to mislead the jury. *See* Mass. G. Evid. 403.

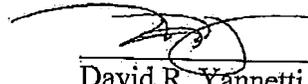
To reiterate, the fact that Mr. Kearney did or did not allegedly intimidate witnesses related to this matter is not of any consequence in this action, does not bear on any element of any crime for which Ms. Read has been indicted, and is not relevant. Any remaining probative value of the evidence that the Court may find exists, then, would be substantially outweighed by the

likelihood of confusing the issues before the jury and the potential prejudice to Ms. Read of the admission of evidence from a separate case before this Court.

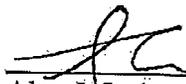
CONCLUSION

For the above reasons, Ms. Read respectfully requests that this Honorable Court excludes any references to alleged harassment and/or intimidation of witnesses by Aidan Kearney

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



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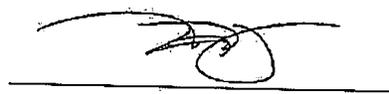
Dated: April 9, 2024

CERTIFICATE OF SERVICE

I, Attorney David R. Yannetti, do hereby certify that I served the "Defendant's Motion *In Limine* to Exclude Irrelevant And Prejudicial Evidence Regarding Alleged Harassment And/Or Intimidation Of Witnesses " upon the Commonwealth by emailing a copy on April 9, 2024 to Norfolk County Assistant District Attorney Adam Lally at adam.lally@mass.gov.

April 9, 2024

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