

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT
DOCKET NO. 2282CR0117

COMMONWEALTH

VS.

KAREN READ

2025 MAR 21 AM 9:12
OFFICE OF THE CLERK
SUPERIOR COURT DEPARTMENT
NORFOLK COUNTY

**COMMONWEALTH'S MOTION TO COMPEL COMMUNICATIONS
BETWEEN THE DEFENDANT AND ATTORNEY YANNETTI STORED WITHIN
THE DEFENDANT'S CELL PHONE DATA**

The Commonwealth seeks all texts, emails, or written communications between the defendant, Karen Read and Attorney David Yannetti, restricted to those communications that occurred between January 29, 2022, and February 2, 2022.¹ The privilege holder, Karen Read, has waived her attorney-client privilege with Attorney Yannetti relative to any statements about her collision with John O'Keefe, during the time of January 29, 2022 through February 2, 2022. The defendant voluntarily and intentionally disclosed the existence of these communications and her initial thoughts about her culpability for causing the death of John O'Keefe during various public

¹ Pursuant to a search warrant the Commonwealth received the contents of the defendant's cell phone. Because of an observed attorney-client communication, the phone data was provided with the assent of the defense, to the Attorney General's Office and a court-ordered taint team protocol was implemented. The Commonwealth received the defendant's phone data with any privileged communications excised. Given the defendant's public waiver of the attorney-client privilege as it pertains to the defendant's conversations with Attorney Yannetti on January 29, 2022, and the following three days, the Commonwealth is entitled to the communications between the defendant and Attorney Yannetti for this waived, narrow period of time.

interviews. The communications, confirmed by the defendant to exist, are no longer privileged, nor confidential because the defendant chose to widely and publicly disseminate them.²

In support of this motion, the Commonwealth acknowledges and respects that the Attorney-Client privilege protects privileged communications between a client and his or her attorney. Mass. R. Evid. 523 provides:

Waiver of Privilege

(a) Who Can Waive. A privilege holder or the holder's legally appointed guardian, administrator, executor, or heirs can waive the privilege.

(b) Conduct Constituting Waiver. Except as provided in Section 524, Privileged Matter Disclosed Erroneously or Without Opportunity to Claim Privilege, a privilege is waived if the person upon whom this Article confers a privilege against disclosure

(1) voluntarily discloses or consents to disclosure of any significant part of the privileged matter or

(2) introduces privileged communications as an element of a claim or defense.

(c) Conduct Not Constituting Waiver. A person upon whom this Article confers a privilege against disclosure does not waive the privilege if

(1) the person merely testifies as to events which were a topic of a privileged communication, or

(2) there is an unintentional disclosure of a privileged communication, and reasonable precautions were taken to prevent the disclosure.

² To ensure that ONLY the communications that were waived are provided, the Commonwealth requests that this Honorable Court review in camera all text messages and written communications stored in the defendant's phone data for the time between January 29, 2022, and February 2, 2022.

In this case the privilege holder, the defendant, has clearly and intentionally waived her attorney-client privilege regarding specific conversations she had with Attorney Yannetti regarding the collision between her vehicle and John O'Keefe.

For example, in the defendant's recorded interview with Gretchen Voss on June 20, 2023 (Transcript pg.105 line 23) the defendant concedes " Q: You never said, "Did I hit him? I hit him." A: I said "Could – did I, could I – did I hit him?" And then, you know, when I talked to David, now this is later, David said, 'Karen, if you incapacitated him in any way, there's capability there' And I thought, all right, maybe this is what – maybe – I said to my mother, just to go forward a second, they were asking me 'what was it like Did they come out? What was the house like...' Attorney Yannetti, Attorney Jackson and Attorney Little were in attendance along with the defendant and Ms. Voss.

Second, in a Vanity Fair article entitled: "Karen Read Tells Her Story (Part 1): A Murder Trial in Massachusetts" with a caption: "as Karen Read's second murder trial looms, she's ready to talk about what she says really happens" published on October 29, 2024, the defendant, who according to the publication was "notably aware that anything she said 'could be used against her'" volunteered a "rumor" that alleged representations made by the Massachusetts State Police that there is text message between her and counsel that implicates herself is a "provable lie".

Third, in the now airing five-part docuseries on Investigation Discovery and HBO Max, entitled "A Body in the Snow: The Trial of Karen Read" the

defendant professes “And then when I hired David Yannetti, I asked him those questions the night of January 29th. Like David what if, I don’t know, what if I ran his foot over, or, or, what if I clipped him in the knee and he passed out and or went to care for himself and he threw up or passed out and David said yeah then you have some element of culpability. So that’s how I thought about things for about three days.”

The privilege holder is the defendant, and the defendant intentionally waived her privilege by disclosing her conversations, to a nation-wide audience, with her attorney. The attorney-client privilege can be waived only by the client. See In the Matter of a John Doe Grand Jury Investigation, 408 Mass 480 (1990).

In addition to rendering the communications non-privileged, the communications are relevant as admissions and statements of the defendant. These statements are admissible substantively and Attorney Yannetti’s statements to the defendant are admissible pertaining to the defendant’s state of mind. Also, the defendant’s admissions and Attorney Yannetti’s statements are relevant to challenge the defense’s later purported claims of third-party culpability. The communications have relevance to rebut the defense’s potential claims that some other person committed the crimes that caused the death of John O’Keefe. Moreover, the defense has suggested that as part of its defense it is likely to pursue a Bowden type defense. The potential evidence is relevant to rebut claims of law enforcement contrivance.

Respectfully Submitted
For the Commonwealth,

By: */s/ Hank Brennan*

Date: March 20, 2025

Hank Brennan
Special Assistant District Attorney

NORFOLK, SS.

SUPERIOR COURT
DEPARTMENT NORFOLK
SUPERIOR COURT
DOCKET NO. 2282CR00117

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NORFOLK COUNTY

COMMONWEALTH

v.

KAREN READ

**COMMONWEALTH'S MOTION FOR RECORDS: UNSOLVED
PRODUCTIONS, INC.**

Now comes the Commonwealth and respectfully requests this Honorable Court,
pursuant to Mass. R. Crim. P. 17 and Commonwealth v. Lampron, 441 Mass. 265 (2004),
issue a court

order to:

Unsolved Productions, Inc.
Attn: Margaret Jarrett, Registered Agent
1 Ashburton Place
21st Floor
Boston, MA 02108

Unsolved Productions, Inc.
Attn: Terry Meurer, President
4303 West Verdugo Avenue
Burbank, CA 91505

Ordering the Keepers of the Records of Unsolved Productions, Inc. to produce to the
Criminal Clerk's Office of Norfolk Superior Court: all unedited video and audio
recordings in the possession of Unsolved Productions, Inc. and producer Terry Meurer
from the docuseries "A Body in the Snow: The Trial of Karen Read".

In support of its motion, the Commonwealth states the following:

1. 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, §13 ½; and leaving the scene of personal injury/death in violation, of G. L. c. 90, §24 (2)(a ½)(2).
2. A jury trial on all three indictments began on April 16, 2024. Following a deadlocked jury and a finding of manifest necessity, the court declared a mistrial. The defendant's retrial is scheduled to begin on April 1, 2025; however, the Commonwealth has assented to the defendant's request to temporarily delay the trial due in part to the defendant's appeal to the First Circuit Court of Appeals.
3. On March 17, 2025; March 18, 2025; and March 19, 2025, Investigation Discovery and HBO Max aired a 5-part docuseries entitled "A Body in the Snow: The Trial of Karen Read". The aired docuseries is approximately four-and-a-half hours of a "behind the scenes" look at the defense team as it prepares for the April 2024 jury trial and features extensive interviews with the defendant Karen Read, Attorney Alan Jackson, Attorney David Yannetti, and Attorney Elizabeth Little.
4. Terry Meurer, President of Unsolved Productions and the producer of the 5-part docuseries has described in media interviews, that the access to the defendant and her defense team was "unprecedented". As part of this docuseries, the defendant and her counsel permitted cameras to record their trial preparation sessions in the "war room"; the car rides to and from court where the defendant and her counsels discuss upcoming testimonies and trial strategies, often commenting on the

evidence, prosecutor, or the court; and one-on-one interviews with the defendant, and defense counsels.

5. Every statement made by the defendant pertaining to the facts and circumstances surrounding the death of John O'Keefe is relevant and evidentiary especially given the nature of past statements made by the defendant.
6. In this five-part docuseries, the defendant again makes inconsistent statements with previous statements she had made to law enforcement, witnesses, and most revealing to other media reporters during other voluntary interviews. For example, the defendant now claims that she unequivocally saw John O'Keefe enter 34 Fairview Road and admits to consuming large amounts of vodka and being significantly impaired. Her position even within this five-part docuseries waives from a claim that she remembers every detail from January 29, 2022 to admissions that maybe her memory wasn't as clear where she had been drinking.
7. The defendant confirms animosity in her relationship, confirms the altercation with Marietta Sullivan in Aruba, confirms her flirtatious texts with Brian Higgins, confirms that she was angry with John O'Keefe and convinced that John may have been cheating on her with other women who resided in the neighborhood around 34 Fairview Road. The defendant further discusses going to John O'Keefe's residence during the late morning of January 29, 2022 and mocks Mrs. O'Keefe's opinion that John "looked like he had been hit by a car".
8. Contrary to representations made to the court on March 18, 2025, the defendant admits on the March 17, 2025 aired episodes that she used an intermediary to share discovery with Aidan Kearney, then with permission of her defense counsels shared

“public” information, presumably all discovery provided to the defense that would ordinarily not be deemed “public” due to the investigatory nature of the prosecution with Mr. Kearney. Mr. Kearney then used this material to advance the defendant’s narrative and direct harassment of witnesses. She further admitted that she spoke with Mr. Kearney regularly about her case. Further, contrary to representations made to this court, on the March 18, 2025 episodes, the defendant expressed reckless indifference that the witnesses, many who came to the defendant’s aid, have been intimidated and harassed and the defendant stated: “Jen McCabe, it’s me or her. . . Either I’m going down, Jen, or you are.”

9. This five-part docuseries is also ripe of new information previously unknown to the Commonwealth. For example, the defendant’s statement that John O’Keefe exited her vehicle, holding her vodka soda drink; that she clearly saw John’s body from Kerry Roberts’ vehicle and that she pulled a small piece of glass from John O’Keefe’s nose.
10. The defendant further reveals her initial beliefs in the immediate aftermath of John O’Keefe’s death stating to Attorney Yannetti and waiving any associated privileges, “what if I ran his foot over, or, or, what if I clipped him in the knee and he passed out and or went to care for himself and he threw up or passed out”
11. The defendant has repeatedly used the media to promote her position, explicitly stating in a Vanity Fair article: “if I can get the entire truth [as articulated by the defendant] of this case out in the public forum, that, to me, is priceless.” During this five-part docuseries, the defendant declares that “doing this film is my testimony...I want to say what happened, exactly as it happened.” This trial-by-media strategy has repeatedly been employed by the defendant and defense counsels for over three years.

The Commonwealth is entitled to and justice dictates production of the defendant's own statements, particularly as proclaimed to be "what exactly" happened.

12. In the defendant's various media interviews, she contradicts her own statements and makes admissions that: the victim did not appear "mortally wounded"; that she thought she "clipped" and unknowingly incapacitated the victim. Further statements are likely relevant when compared to past statements.
13. The defendant's statements are not hearsay and are instead substantive evidence admitted for its full force of proof. When a defendant deliberately undertakes a public relations campaign and saturates the public, and the potential jury pool with statements likely to reach the potential juror pool they also run the risk that statements may not be beneficial and be incriminatory. The helpfulness or unhelpfulness of the statement does not direct legal basis for disclosure.
14. The unaired statements made by the defendant and her counsels would be relevant and material to put the relevant aired statements, many which will be introduced at trial, in context. Further, the absence of details provided in the unaired footage is fertile grounds for examination of witnesses at trial.

Discussion

Pursuant to Massachusetts Rule of Evidence 801 (d) (2) (A) the Commonwealth seeks to introduce multiple statements made by the defendant. A defendant's statement is not hearsay and is admissible against the defendant when the statement was made by or adopted by the defendant. See Massachusetts Rule of Evidence 801 (a) ("statement" includes a person's oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.). The hearsay exemption for statements by a party opponent encompasses any extrajudicial statement made by

a party opponent, not just statements that are inculpatory or against the party's interest. See Mass. G. Evid. § 801 (2023); Commonwealth v. Kozubal, 488 Mass. 575, 584 (2021); Commonwealth v. Spencer, 465 Mass. 32, 46 (2013). The defendant and her counsel cannot avail themselves of a media strategy to publicize and promote the defendant's varying claims to the public at large and the potential jury pool while simultaneously excising statements and admissions that may not be favorable to her cause.

Further, under Massachusetts law, it is well settled that “[n]ews reporters do not have a constitutionally based testimonial privilege that other citizens do not have.” See Matter of John Doe Grand Jury Investigation, 410 Mass. 596, 598 (1991). In Massachusetts there is no qualified journalist privilege that protects against disclosure of confidential and non-confidential press materials. Even if such privilege did exist, parties seeking disclosure of non-confidential materials are entitled to seek discovery from a media entity if they can show “that the materials at issue are of likely relevance to a significant issue in the case and are not reasonably obtainable from other available sources.” Gonzales v. Nat’l Broad.Co., 194 F.3d, 29, 36 (2d. Cir. 1999) (NBC ordered to provide complete and unedited footage from motor vehicle stop where it would assist the trier of fact in assessing whether in a civil rights claim, police had probable cause to stop vehicle and to determine whether police had engaged in pattern or practice of stopping vehicles based on race).

The records are not otherwise procurable reasonably in advance of trial as they are not held in the care, custody, or control of the Commonwealth or the defendant, and the entity will not produce the records without a court order. The Commonwealth cannot properly prepare for trial without such production and inspection in advance of trial, and the failure to obtain such inspection may tend unreasonably to delay the trial. The

Commonwealth expects to introduce the records at trial as evidence of the charges against the defendant. Furthermore, the defendant is entitled to review these records, in their entirety, prior to trial. A part of the Commonwealth's consideration to assent to the defendant's request for a short delay in the trial, is in part due to this plethora of new information revealed to a national audience, that is extremely relevant and material to the defendant's criminal intent and conduct.

An affidavit in support of this motion is attached. For the above-stated reasons, this motion should be allowed.

Respectfully Submitted,
For the Commonwealth

Michael W. Morrissey
District Attorney

s/ Hank Brennan

Hank Brennan
Specially Appointed Assistant District Attorney

/s/ Adam C. Lally

Adam C. Lally
Assistant District Attorney

/s/ Laura A. McLaughlin

Laura A. McLaughlin
Assistant District Attorne

Date: March 20, 2025