

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT
NO. 2282-CR-00117

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COMMONWEALTH OF MASSACHUSETTS,)
Plaintiff)
V.)
KAREN READ,)
Defendant)
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DEFENDANT’S MOTION TO MODIFY CONDITIONS OF RELEASE

Now comes the defendant, Karen Read (“Ms. Read”, or “the Defendant”), and respectfully moves this Honorable Court to modify her pretrial conditions to allow for her release on personal recognizance, with the same conditions. As grounds for this motion, Ms. Read states the following:

- (1) On February 2, 2022, Ms. Read was arraigned in Stoughton District Court on a complaint alleging manslaughter, in violation of M.G.L. c. 265 § 13, Motor Vehicle Homicide, in violation of M.G.L. c. 90 § 24G(b), and Leaving the Scene of Personal Injury and Death, in violation of M.G.L. c. 90 §24(2)(a½)(2).
- (2) The Stoughton District Court, O’Malley, J. presiding, set a cash bail of \$50,000.00 on that complaint, while the case was pending in District Court prior to indictment.
- (3) At the time of her arraignment, Ms. Read was employed in two prestigious professions, earning a healthy income and receiving private health insurance through her employer.
- (4) Ms. Read did not apply for a Superior-Court review of the bail set in Stoughton District Court, as she had posted that amount and instead planned to ask for a reduction upon her expected arraignment in Superior Court after indictment.
- (5) On June 10, 2022, Ms. Read was arraigned in Superior Court after having been indicted for Murder, in violation of M.G.L. c. 265 § 1, Manslaughter while Operating Under the Influence, in violation of M.G.L. c. 265 §13½, and Leaving the Scene of Personal Injury and Death, in violation of M.G.L. c. 90 §24(2)(a½)(2).

- (6) At her arraignment in Superior Court, this Honorable Court, Cannone, J., presiding, set a cash bail of \$100,000.00.
- (7) Since her indictment, Ms. Read has lost her employment and sources of income.
- (8) Ms. Read has also lost her health insurance through her former employer, so she has had to purchase individual private health insurance at significant expense.
- (9) As a result of her 2022 earnings *prior* to losing her employment, Ms. Read did not qualify for public health insurance through MassHealth.
- (10) As discussed during her initial bail hearing in Stoughton District Court, her arraignment in this Honorable Court and during a bail-reduction hearing thereafter, Ms. Read suffers from a number of significant medical conditions, including Crohn's Disease and Multiple Sclerosis.
- (11) Between November 16, 2021, and July 15, 2023, Ms. Read received fifteen intravenous infusions of biologic medications to treat those medical conditions.
- (12) Ms. Read's team of treating physicians are all located in the Boston area.
- (13) On February 8, 2023, this Honorable Court, Cannone, J., presiding, reduced Ms. Read's bail by \$20,000.00, bringing the current total amount of her bail to \$80,000.00.
- (14) M.G.L. c. 276 § 58 gives the Court discretion to modify bail in light of "changed circumstances". M.G.L. c. 276 § 58 ("the Bail Statute").
- (15) The defense in this case has had a difficult time obtaining even the most basic of discovery material from the Commonwealth since Ms. Read's initial arraignment in Stoughton District Court on February 2, 2022. At her Stoughton arraignment, the Commonwealth represented that no police reports had yet been drafted. Since this matter has been pending in this Court, there have been nine court dates, the majority of which have featured arguments on various defense motions to compel.
- (16) There is still important discovery material outstanding, over 19 months after Ms. Read was first arrested.
- (17) Ms. Read has had to spend considerable money on legal fees to properly defend herself and to obtain basic discovery material that should have been voluntarily turned over to the defense by the Commonwealth many months ago.
- (18) The Commonwealth has failed to interview crucial witnesses, has failed to preserve and/or test crucial evidence and has reached incomplete and/or faulty conclusions on the

evidence they have purported to test and/or analyze. In order to properly defend herself, Ms. Read has had to retain numerous expert witnesses to do the work that the Commonwealth has neglected and/or refused to do.

(19) For example, law enforcement (namely, Trooper Proctor) neglected to interview at least five individuals who were either (1) present at 34 Fairview in the early morning of January 29, 2022, when the Commonwealth claims Mr. O'Keefe was killed by Ms. Read and/or (2) drove directly past where Mr. O'Keefe's body should have been laying in the Albert's front yard on the early morning of January 29, 2022, *without seeing a body*. There is no excuse for waiting more than a year-and-a-half to interview percipient witnesses in a murder investigation, particularly whereas here many of those statements are exculpatory. Notably, Trooper Proctor did not interview or otherwise speak to Colin Albert until July 18, 2023; Trooper Proctor did not interview or otherwise speak to Caitlin Albert until July 6, 2023; Trooper Proctor did not interview or otherwise speak to Brian Albert, Jr. until July 6, 2023; Sergeant Yuri Bukhenik did not interview or otherwise speak to Allie McCabe until August 25, 2023; and Trooper Proctor did not speak to Brian Loughran until August 10, 2023 (an extraordinarily exculpatory witness that the defense located early on in its investigation in spite of misleading information provided by the Commonwealth, which attempted to obstruct Ms. Read's access to and/or discovery of this witness). Law enforcement was well aware that these individuals were percipient witnesses in this case, but chose not to speak with them until a year-and-a-half after Mr. O'Keefe's death. **The reports memorializing the interviews of these five percipient witnesses were not produced to the defense until Friday September 1, 2023, one year and eight months after Mr. O'Keefe's death.**

(20) Moreover, Ms. Read has been forced to retain numerous experts in order to rebut mistakes and errors made by the Commonwealth during the course of its investigation. These expert witnesses have come at a substantial cost, with substantial hours of work and fees ahead as we continue to investigate this matter and prepare for trial.

(21) Undersigned counsel is providing an affidavit from Ms. Read detailing her finances and expenses *ex parte* in support of this motion.

(22) Since the Court ordered the reduction of her bail, the defense has made several significant discoveries that support Ms. Read's innocence with respect to the indictments

before this court. These discoveries constitute “changed circumstances” within the meaning of the Bail Statute.

- (23) For example, in discovery, the Commonwealth produced a report dated March 6, 2023, memorializing Criminalist Maureen Hartnett’s examination of Evidence Item No. 3-6, which was described as a “Hair from [the] exterior passenger side rear panel” of Ms. Read’s vehicle. According to that report, after microscopically examining the hair, the criminalist definitively concluded that the “light brown” hair recovered from Ms. Read’s vehicle was human. Attorney Lally has repeatedly relied on this (false) inculpatory fact in arguments to this Court, including in his argument to this Court at Ms. Read’s arraignment that her bail should be increased to \$100,000 because an “apparent hair” was recovered from the “rear passenger side quarter panel of the Lexus.” Significantly, Ms. Read was forced to retain her own DNA expert to be present for the Commonwealth’s exhaustive DNA testing of this hair, which was undertaken for the purpose of determining whether the hair was consistent with Mr. O’Keefe’s DNA profile. Significantly, the results of the DNA test established that the hair recovered from Ms. Read’s vehicle was not only inconsistent with Mr. O’Keefe’s DNA profile, but also was not a human hair. Thus, this piece of evidence, which the Commonwealth has repeatedly relied on in arguments to this Court, does not have any evidentiary value whatsoever. Moreover, had the criminalist in this case performed her job competently and correctly concluded that the hair was not human, Ms. Read would not have been forced to expend resources on an expert to appear and oversee the exhaustive DNA testing of a hair that clearly had no relevance in the first place.
- (24) Additionally, as detailed in “Defendant Karen Read’s Motion For Order Pursuant to Mass. R. Crim. P. 17 Directed to Brian Albert, Verizon and AT&T”, and the accompanying affidavit of forensic expert Richard Green (papers 64-66), the defense discovered that prosecution witness Jennifer McCabe viewed a Google search for “ho[w] long to die in cold,” hours before Officer John O’Keefe’s body was discovered in the snow outside of 34 Fairview Road. Ms. McCabe would have had no reason to conduct such a Google search unless she knew that John O’Keefe was lying incapacitated in the cold on Brian Albert’s property during a blizzard.
- (25) The discovery of that Google search – incriminating to Ms. McCabe and exculpatory for

Ms. Read – was made by the *defense*, not the prosecution, after running its *own* analysis of Ms. McCabe’s phone through Cellebrite and Axiom, which are widely used industry-standard cell phone forensic tools utilized in criminal investigations across the country at both the state and federal level.

- (26) Expert forensic analyst Richard Green (“Mr. Green”) also uncovered significant deletions of data from Ms. McCabe’s cell phone prior to her turning the phone over to law enforcement, including call entries, the incriminating Google search itself, and a screenshot of contact information for homeowner Brian Albert.
- (27) Ms. McCabe further deleted records of call logs to Nicole Albert, wife of Brian Albert and fellow homeowner of 34 Fairview Road (prior to having sold the house in April 2023).
- (28) Ms. McCabe’s efforts to sanitize her phone provide powerful evidence of her consciousness of guilt.
- (29) As further detailed in Richard Green’s affidavit, analysis of Officer John O’Keefe’s cell phone data unequivocally demonstrates that Officer O’Keefe ascended/descended three flights of stairs between 12:21:14 a.m. and 12:24:37 a.m. on January 29, 2022.
- (30) 34 Fairview Road is a residence that consists of two main floors and a basement, accessed by a staircase, for a total of three stories.
- (31) Despite State Trooper Nicholas Guarino having already analyzed the data (and failing to uncover and report Ms. McCabe’s incriminating Google search), the Commonwealth subsequently retained an outside expert, Jessica Hyde (“Ms. Hyde”), in an attempt to dispute the veracity of Ms. McCabe’s Google search data.
- (32) Ms. Hyde stated in her report (which was provided as two members of Ms. Read’s defense team and one expert witness flew across the country at Ms. Read’s considerable expense for a scheduled evidentiary hearing): “While a definitive reason as to why the timestamp listing the time of 2:27:40 is **unknown**; the time is inconsistent with the timestamps associated with the same search.”
- (33) A table provided in Ms. Hyde’s own report actually supports the fact that Ms. McCabe initially ran this Google Search at 2:27:40 a.m.:

Table 1: Web History Tool Results combined

EST on 11/29/2022	Artifact	Search Term	URL	Source
2:27:40 AM	Google Search/Safari Suspended State Tab	hos long to die in cold	https://www.google.com/search?q=hos+long+to+die+in+cold&ie=UTF-8&oe=UTF-8&hl=en-us&client=safari	private/var/mobile/Library/Safari/BrowserState.db-wal
6:23:49 AM	iOS Safari Cache Record	APPLE SUGGESTED TERM "How long does it take to digest food"	https://c0n1.smoot.apple.com/image?sig=tnfvltCqZD8Q_s_EQNpFag%3D%3D&domain=web_index&image_url=https%3A%2F%2Fpost.healthline.com%2Fwp-content%2Fuploads%2F2020%2F02%2F732x549_THUMB_NAIL_How_long_does_it_take_to_digest_food.jpg&size=120-160-NC-0	private/var/mobile/Containers/Data/Application/A68A18423-421F-98C2-DD014DA8EFDD/Library/Caches/com.apple.mobilesafari/hs.db
6:23:51 AM	Recent Web Searches	how long ti die in cold		private/var/mobile/Containers/data/Application/A68A18423-421F-98C2-DD014DA8EFDD/Library/Preferences/com.apple.mobiles.plist
6:23:57 AM	Google Search / Application Web Usage	how long ti die in cold	https://www.google.com/search?q=how+long+ti+die+in+cold&ie=UTF-8&oe=UTF-8&hl=en-us&client=safari	private/var/mobile/Library/CoreDuet/Knowledge/knowledgeC.db
6:23:56 AM	Google Search	how long ti die in cold	https://www.google.com/search?q=how+long+ti+die+in+cold&ie=UTF-8&oe=UTF-8&hl=en-us&client=safari	private/var/mobile/Library/CoreDuet/Knowledge/knowledgeC.db
6:24:18 AM	Recent Web Searches	hos long to die in cold		private/var/mobile/Containers/data/Application/A68A18423-421F-98C2-DD014DA8EFDD/Library/Preferences/com.apple.mobiles.plist
6:24:47 AM	Google Search	hos long to die in cold	https://www.google.com/search?q=hos+long+to+die+in+cold&ie=UTF-8&oe=UTF-8&hl=en-us&client=safari	private/var/mobile/Library/CoreDuet/Knowledge/knowledgeC.db

(34) As can be seen in this table, the initial Google search for “hos long to die in cold” was viewed by Ms. McCabe at 2:27:40 a.m. when it appears in a Safari Suspended State Tab.

(35) Ms. Hyde did not attempt to provide any explanation as to why she suggests the search was first conducted at “6:24 am EST” yet appears in the data as “Google Search/Safari Suspended State Tab” at 2:27:40 a.m. Rather, she merely demurred, writing that “. . . a definitive reason as to why the timestamp listing the time of 2:27:40 is **unknown** . . .”

(36) Ms. Hyde does not offer any explanation as to why other search queries do *not* appear in Ms. McCabe’s phone data before the searches were supposedly conducted.

(37) The obvious explanation, as Mr. Green indicated in his affidavit, is that the search was first conducted by Ms. McCabe at 2:27:40 a.m. — hours before the discovery of Officer O’Keefe’s body.

(38) Additionally, the Court’s allowance of the “Defendant’s Motion Pursuant to Rule 17 of Criminal Procedure - Production of Records from Canton Animal Control and the Canton Clerk’s Office” led to additional critical information in support of Ms. Read’s innocence.

(39) Saliently, counsel for Brian Albert, in an opposition to the Defendant’s Rule 17 Motion, represented the following to this Honorable Court in an attempt to keep the animal control records hidden from the defense: “And focus in particular on the characterization of the evidence: ‘a reported violent skin-piercing incident’. *Id.* By saying ‘violent skin-

piercing incident four months after John O’Keefe’s death’, the defense is asking the reader to conclude that the dog in question **has a history of attacking human beings, and that it was sent away because it was violent toward people.** As with other defense assertions, **this is not true.**” (Emphasis added) Opposition of Brian Albert to the Defendant’s Rule 17 Motion for Cellular Devices and Records, (paper 73) at p. 7.

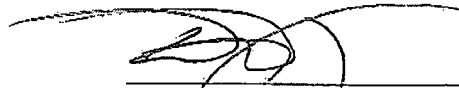
- (40) Mr. Albert’s counsel then went on to suggest that the Alberts merely “re-homed” Chloe, their German Shepherd, after it “went after a neighbor’s pet”. *Id.*
- (41) Of course we now know, “as with other defense assertions,” this *was* true.
- (42) As the parties are all now well aware, the Alberts’ dog attacked not one but *two* separate human beings and a second dog — *in addition to* the dog-on-dog attack referenced by Mr. Albert’s counsel. Both of those people then sought emergency medical attention as a result of their injuries.
- (43) Furthermore, Brian Albert’s wife, Nicole Albert, confirmed to relevant Animal Control authorities that the Alberts *did* send the dog away because it was violent towards people, and they “were afraid that the next time she gets out it could be worse, and we just can’t risk it”.
- (44) It is unthinkable that Brian Albert’s attorney would so blatantly lie to this Court if his client had told him the truth. This Court can only conclude that Brian Albert purposefully lied to his own attorney in an attempt to hide relevant information from the defense. Mr. Albert’s lies are clear and powerful evidence of his consciousness of guilt — and Karen Read’s innocence.
- (45) Mr. Albert (through his counsel) — in an attempt to ensure that the defense would not gain access to these records, which confirmed exactly what the defense had stated — attempted to mislead the Court and would have gotten away with it, had this Court denied the defense motion.
- (46) The essential purpose of bail is to secure the presence of a defendant at trial to ensure that, if the defendant is guilty, justice will be served. *See Commonwealth v. Ray*, 435 Mass. 249, 255 n. 12 (2001), citing *Commonwealth v. Stuyvesant Ins. Co.*, 366 Mass. 611, 614 (1975); *See also L.B. Orfield, Criminal Procedure from Arrest to Appeal* 104, 108 (1947); *Querubin v. Com.*, 440 Mass. 108, 113, 795 N.E.2d 534, 540 (2003). *See generally* M.G.L. c. 276 § 58.

- (47) Ms. Read has continued to appear at every court appearance in both District and Superior Court, and follow every court order imposed upon her. In addition to her medical expenses, Ms. Read continues to make payments on her vehicle, which was seized pursuant to a search warrant.
- (48) Moreover, Ms. Read has expended significant resources retaining numerous experts in order to defend against the allegations made in the indictments, as well as counsel from two coasts due to the volume of information in this case and the severity of the charges. This case has been widely publicized in both the local and national media. Ms. Read has widescale public support and is eager to refute these false allegations at trial. She represents no flight risk.
- (49) Due to the substantial change in her financial circumstances, and the loss of her employment — in addition to her medical issues and expenses — retaining the experts necessary to investigate these allegations and present a defense at trial now represents a significant financial hardship.
- (50) The above-referenced discoveries – and others – by the defense constitute “changed circumstances or other factors not previously known or considered” in the Defendant’s previous motion to modify pretrial conditions of release. M.G.L. c. 276 § 58.
- (51) The Defendant acknowledges that the “changed circumstances or other factors not previously known or considered” referenced in the Bail Statute generally enables the Court to increase bail, where the previous order was “ineffective to reasonably assure the appearance of said defendant before the court”. *See generally* M.G.L. c. 276 § 58. That, however, is not the case here.
- (52) In this case, the “factors not previously known or considered” in fact favor Ms. Read, namely the Commonwealth’s continued denial of basic discoverable information to the defense (one year and eight months after Mr. O’Keefe’s death) and significant errors in the Commonwealth’s analysis of the physical evidence in this case (which has necessitated the retention of costly defense experts to correct those mistakes). These new factors, not previously known to this Court, warrants releasing Ms. Read on her own personal recognizance.
- (53) The Sixth Amendment to the United States Constitution and Article 12 of the Massachusetts Declaration of Rights guarantee a defendant's right to present a defense,

including the right to call witnesses to testify on behalf of the defense. Commonwealth v. Durning, 406 Mass. 485, 494–495, 548 N.E.2d 1242 (1990), citing Commonwealth v. Chappee, 397 Mass. 508, 517, 492 N.E.2d 719 (1986).

- (54) “The right to offer the testimony of witnesses ... is in plain terms the right to present a defense.” Washington v. Texas, 388 U.S. 14, 19 (1967).
- (55) Absent a reduction in her bail, it will be difficult, if not impossible, for Ms. Read to continue to retain (and therefore compensate for trial testimony) the expert witnesses necessary to present an effective defense at trial, which may in turn violate her due process rights.
- (56) Accordingly, Ms. Read respectfully submits that it is in the interests of justice for the Court to order her release on personal recognizance and return the \$80,000.00 in bail previously posted. Significantly, Ms. Read is willing to sign a waiver of rendition and will surrender her passport to this Court to further provide assurances that she will continue to attend every future court hearing while she and her defense team work diligently to exonerate her of these false charges.

Respectfully Submitted
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By her attorneys,



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Dated: September ____, 2023



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Dated: September 7, 2023