

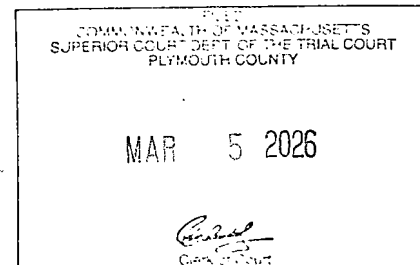
COMMONWEALTH OF MASSACHUSETTS
PLYMOUTH, SS.

SUPERIOR COURT DEPT.
C.A. NO. 2483CV00692

PAUL O'KEEFE, INDIVIDUALLY & AS PERSONAL
REPRESENTATIVE OF THE ESTATE OF JOHN
JOSEPH O'KEEFE, III; MARGARET O'KEEFE,
INDIVIDUALLY AND AS GRANDPARENT / GUARDIAN
OF KAYLEY FURBUSH; and JOHN O'KEEFE, II,
Plaintiffs,

v.

C&C HOSPITALITY, LLC, *d/b/a* C.F MCCARTHY'S;
G&S HOSPITALITY, LLC *d/b/a* C.F. MCCARTHY'S;
WATERFALL BAR & GRILL, LTD *d/b/a* WATERFALL
BAR & GRILL; and KAREN READ,
Defendants.



PLAINTIFFS' REPLY TO KAREN READ'S SUR-REPLY

This dispute arises out of a discovery motion where Plaintiffs seek the preservation and production of non-privileged, discoverable electronically stored information on Karen Read's two cell phones in the custody of the Norfolk District Attorneys' Office. Plaintiffs attempted to convene several Rule 9C conferences to discuss a protocol for preserving and producing the relevant evidence. Rather than respond to Plaintiffs' proposal after the Court issued a temporary order, Defendant Karen Read and her counsel levied two specious allegations against Plaintiffs' counsel, Marc Diller, in a public filing. First, Read alleges Plaintiffs' counsel fabricated evidence (falsifying the content of a recording) to the court. Second, Read alleges that counsel's conduct violates M.G.L. c. 272, § 99(C)(3), the Wiretap Statute. Plaintiffs' counsel REJECTS both allegations. Indeed, defense counsel's baseless accusations aim solely to divert the Court's attention from the central issue of preservation and do nothing to undermine the validity of Plaintiffs' request.

The critical part of the audio remains UNDISPUTED. Read unambiguously, in a frantic state, said “Do you have any clue what’s on the phone that they took?” The intent of the instant motion is to preserve evidence reasonably calculated to lead to the discovery of admissible evidence – her phones.

First, Read’s suggestion that Plaintiffs’ counsel tried to mislead the Court on the preceding parts of the quote is patently untrue. The audio, which was included as an exhibit for the Court’s own review, was provided in an unaltered format and is anything but unambiguous. Indeed, prior to the filing of this motion, other people heard the same audio available to the public online and interpret it the same way that Diller did. *See EX. 1*. The contention that the words were “a-fucking-gain” is an illogical phrase. Based on his listening to the same audio available online and provided to the Court, Plaintiffs’ counsel believed he heard “I’m dead. I’m f****g dead.” *See EX. 2*, Affidavit of Marc Diller. Even Read’s Memo in Opposition to the Emergency Motion filed February 25 did not dispute Plaintiffs’ interpretation. Nor did Defendant raise any concerns about the quotation in her March 1 Emergency Motion for a Hearing. Not until the Court ordered preservation did Defendant Read launch these collateral attacks. Conspicuously absent from the Sur-Reply is an affidavit from Ms. Read.

Regardless of one’s interpretation of the introductory words in dispute, the substance of the quote remains unchanged. Ms. Read is concerned about authorities obtaining access to her phone because of “what’s on the phone they took?” Diller provided support for what he interpreted to be the quote and there is no basis to levy a claim against Mr. Diller that he fabricated evidence or intended to mislead the Court. Moreover, even without considering the recording, Plaintiffs have supplied the Court with ample support demonstrating immediate and irreparable harm if Read’s

phones are returned before their contents are preserved through a typical forensic extraction and imaging.

Second, Read's counsel accuses Plaintiffs' counsel of misuse of the audio without support by facts or law. Read provides no proof nor affidavit that the call was "obtained through interception" nor knowledge by counsel. This audio was publicly available on the internet since fall, 2025. Plaintiffs' counsel did not direct Kearney to record Read and had nothing to do with recording the audio call. Like countless others who listened to and shared the recording, Plaintiffs' counsel obtained such recording on the internet. Read also provides no proof that she was recorded in a two-party consent state. No affidavit of Read accompanies her filing nor any criminal or civil complaint made against Kearney regarding the recording. Whether it was recorded with her knowledge or consent or not, that remains unknown by attorney Diller, then and now.

The law does not support Defendants' accusation. Indeed, to accuse Attorney Diller, an officer of the Court, of knowingly violating the law in his filing with this Court is outrageous especially when our courts have held that "[n]othing in the Wiretap Statute bars the use of an allegedly illegally obtained communication in a civil proceeding", and disclosure of same is protected by the "litigation privilege." See EX. 3, *Simpson v. Boston Public Health Commission*, Suffolk No. 2084 CV02869, slip. Op. at 1-2 (Mass. Super. Dec. 30, 2024) (Green, J.) See also, *Rich v. Rich*, 28 Mass. L. Rep. 553 (2011) (McGuire, Jr., J.).

Finally, Ms. Read's legal team's attempt to impugn attorney Diller's name and to villainize him in this case (and in the public) is the epitome of **hypocrisy**. The Read legal team itself is on record endorsing use of Kearney's illegally recorded phone calls.¹ See EX. 4, excerpt from the ID

¹ As shown in this behind-the-scenes video of Read's attorneys during her first criminal trial, Read's counsel knows that Diller did nothing wrong here. Attorney Jackson in this docuseries recording acknowledges that "from the very beginning" he was entitled to use an allegedly secret recording from Kearney.

Docuseries. This confirms that Ms. Read's Sur-Reply is a frivolous attack on Plaintiffs' counsel intended to distract from the issue of phone preservation.

The Court should DENY Read's request for sanctions and further order the phones be preserved so that a digital imaging of same can occur for the parties to exchange via civil discovery. Plaintiffs request this Court order the parties to continue the not-yet-responded-to meet and confer and to file within 10 days a proposal identifying a 3rd party to preserve the data and an agreed upon protocol for Defendant Read to review and to produce the discoverable, non-privileged data; or if no agreement is reached the parties shall submit to the Court their respective proposals.

Respectfully submitted,
The Plaintiffs,
By their attorney,

/s/ Marc Diller
Marc Diller, Esq.
BBO # 644997
Diller Law, LLP
50 Congress Street, Suite 420,
Boston, MA 02109

CERTIFICATE OF SERVICE

I, Marc Diller, Esq., do hereby certify that on this 5th day of March, 2026, I served a true and complete copy of the foregoing PLAINTIFFS' REPLY TO KAREN READ'S SUR-REPLY upon all counsel of record.

/s/ Marc Diller
Marc Diller, Esq.

EXHIBIT 1



Karen Read Trial Discussion All opinion's welcome

Mitch Mitch · February 21 at 1:13 PM · 🌐

...

Move on people. Get over it. Nothing to see here!

The developments in the civil trial are ongoing and moving steadily forward.

At the moment, Karen Read is desperately fighting to get her cellphone back after refusing to turn over the password to the court.

This comes after she was caught on a recorded voicemail screaming at Turtleboy, "I'm dead. I'm fucking dead. Do you have any clue what's on my phone that they took?"

Listening to them accuse each other of being liars, they sound like a couple of scumbag criminals with a lot to hide.

More developments:

The SLAPP Motion to Dismiss Read's federal lawsuit will be decided any time now, as her lawsuit is based on unfounded conspiracy theories that lack merit. In other words, it's a hoax peddled by defense attorneys. It's doubtful the judge will even allow the conspiracy theory to be heard.

More developments: Yesterday, further arguments were heard by Karen Read's lawyers. Now, she's begging the judge to retract her words after mistakenly emailing the prosecutors in the case. She just can't help but incriminate herself.

It's true the FKR crowd is thinning out every time Read opens her mouth. Her credibility continues to diminish as it appears she's providing a "slow confession", much like the other murderer, OJ Simpson.

It's typical of FKR supporters to attack the messenger because they have nothing to contribute regarding the posts other than insults and profane expletives.

FKR supporters don't dispute the facts or accuracy of the posts. They simply can't stand the truth and would rather move on. Honesty and self-examination is often painful.

However, here, we honor Karen's words. She's fighting to find the real killers of John O'Keefe. In the civil trial, everyone should cheer her on as she finally takes the stand. Her courageous efforts to speak the truth under oath before God cannot go unnoticed. We must fight for her cause. She must not be silenced!

2025 Karen Read: "No one has fought harder for justice for John O'Keefe than I have. Than I have and my team."

1995 OJ Simpson: "I'm going to do everything I can to find the person who did this. I'm not going to rest. I'm going to find the killer and bring them to justice. I'll find the real killers."



Susan Haggerty



... 3:33 PM 1/3/25

She said dead. Maybe you couldn't understand the Fall River accent. What's a f'ing gain? Usually a "gain" is a positive thing not something you have a meltdown over. Your explanation makes no sense. I'm sure the audio that Diller has is a lot clearer.

8:15 PM · Feb 28, 2026 · **107** Views

10:10 



<  **Free Karen Read** ...
Birchtree3 · Oct 25, 2025 · 

**Why did Karen
recently say "I'm
dead if they get my
phones."**

 27  192 



Most relevant ▾

EXHIBIT 2

COMMONWEALTH OF MASSACHUSETTS
PLYMOUTH, SS. SUPERIOR COURT DEPT.
C.A. NO. 2483CV00692

PAUL O'KEEFE, INDIVIDUALLY & AS PERSONAL
REPRESENTATIVE OF THE ESTATE OF JOHN
JOSEPH O'KEEFE, III; MARGARET O'KEEFE,
INDIVIDUALLY AND AS GRANDPARENT / GUARDIAN
OF KAYLEY FURBUSH; and JOHN O'KEEFE, II,

Plaintiffs,

v.

C&C HOSPITALITY, LLC, d/b/a C.F MCCARTHY'S;
G&S HOSPITALITY, LLC d/b/a C.F. MCCARTHY'S;
WATERFALL BAR & GRILL, LTD d/b/a WATERFALL
BAR & GRILL; and KAREN READ,

Defendants.

AFFIDAVIT OF MARC DILLER, ESQ.

I, Marc Diller, Esq., on my oath, do hereby attest and declare as follows:

1. I am an attorney licensed to practice law in the Commonwealth of Massachusetts.
2. I have been a member of the Massachusetts Bar since 1999, and from the date of my admission through and including the present date, I have remained in good standing with the Massachusetts Board of Bar Overseers and never been sanctioned by a Court of any jurisdiction.
3. I am a partner of the law firm known as Diller Law, LLP, and I work in the firm's Boston office located at 50 Congress Street, Suite 420, Boston, MA 02109.
4. I have maintained professional leadership positions within the Massachusetts bar.
5. I am counsel for the family and Estate of John J. O'Keefe, III, who are Plaintiffs in this action.
6. I provide this affidavit in support of Plaintiffs' Reply to Karen Read's Sur-Reply, in response to statements that are contained in the Defendant's Sur-Reply.

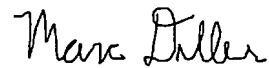
7. I obtained the audio attached as Exhibit J to Plaintiffs' Emergency Motion for Protective Order ("the audio") on the internet.
8. The audio was reported to be a conversation between Ms. Read and Aiden Kearney.
9. I first heard the audio on the internet sometime in the fall, 2025.
10. I believed the audio to be relevant to the existence of discoverable information on Karen Read's phones in the possession of the NDAO.
11. In preparation for filing this motion, I listened to the audio and I believed I heard Ms. Read say, "I'm dead. I'm fucking dead. Do you have any idea what's on the phone that they took?"
12. I listened to it numerous times and that is what I continued to hear.
13. I played the audio to other people, who also believed they heard Ms. Read say "I'm dead. I'm fucking dead."
14. I provided the audio for the Court's review in the exact form it appeared on the internet and did not alter the sound or format in any way.
15. I do not know who recorded the audio and do not know whether such audio was obtained in violation of the wiretap statute.
16. I do not know who leaked the audio or how it became publicly available on the internet
17. I did not direct Aidan Kearney to record Read, had nothing to do with any alleged recording of the call, and played no role whatsoever in the audio becoming publicly available online.
18. I did not falsify the content of a recording, fabricate evidence or intend to mislead the Court in any way.
19. I provided the audio as support for the proposition that Karen Read expressed concern over the contents of her phones becoming public.

20. I did not learn that people were alleging another interpretation of the prefatory words in the quote I provided until after the motion, opposition and reply memorandum were filed.

21. I attempted to convene with Read's counsel multiple 9C meet-and-confers concerning a preservation protocol.

22. Rather than responding to my 9C requests, Read filed her Sur-Reply.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 5th DAY OF
MARCH, 2026.



Marc Diller, Esq.

EXHIBIT 3

NOTIFY

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 2084CV02869

NICOLE SIMPSON

v.

BOSTON PUBLIC HEALTH COMMISSION

ORDER

**ON DEFENDANT'S MOTION FOR IN CAMERA REVIEW OF RECORDING
AND FOR ORDER DEEMING RECORDING ADMISSIBLE AS EVIDENCE**

Plaintiff Nicole Simpson is a former employee of the Defendant Boston Public Health Commission (BPHC). She asserts six counts in this case, four counts for discrimination and retaliation under state and federal law (Counts I-IV), and two counts for violation of the Wiretap Statute, G.L. c. 272, § 99.

At issue on this Motion is a recording of an incident involving an argument between Ms. Simpson and a subordinate that took place on December 5th, 2017. What occurred in that incident is a central issue in the case because, after that incident, BPHC placed Ms. Simpson on administrative leave without pay and, she alleges, ultimately compelled her to resign. Complaint ¶¶ 14, 19. The recording of the incident was made by the subordinate, who then forwarded it to supervisors at the BPHC. In her complaint, the Plaintiff alleges that the recording was made without her consent in violation of the Wiretap Statute, G.L. c. 272, § 99. Although she does not contend that the BPHC *made* the recording, she asserts that BPHC *used* the recording when it made its employment decision as well as when it prepared its written response to Plaintiff's complaint in the MCAD, and that such use was a violation of G.L. c. 272, § 99(C)(3) & (Q), which provides criminal and civil penalties for willfully using communications obtained in violation of the Wiretap Statute. (BPHC, for its part, denies that it listened to the recording before making its employment decisions at issue in this case.)

On this Motion, the BPHC requests a determination that the recording is admissible on summary judgment. BPHC seeks this ruling in advance, before preparing and filing its motion for summary judgment, so that it will know whether it may permissibly rely on the recording and include it in the evidentiary record on summary judgment. Ms. Simpson opposes the motion, contending that such use would itself constitute a violation of the Wiretap Statute.

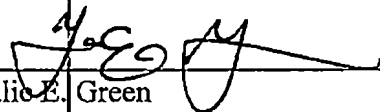
After careful consideration of the parties' arguments, the Court concludes that the Wiretap Statute does not bar the use in evidence of the recording at issue in this case, or transcripts of that recording. Nothing in the Wiretap Statute bars the use of an allegedly illegally

obtained communication in a civil proceeding. See *McDermet v. DirectTV, LLC*, No. CV 19-11322-FDS, 2021 WL 217336, at *5 (D. Mass. Jan. 21, 2021) (denying motion to strike transcripts of recordings submitted on summary judgment, concluding that “[e]ven if defendants are correct that McDermet obtained and disclosed the recordings illegally [in violation of G. L. c. 272, § 99], that is not a sufficient basis to strike them or the corresponding statements of fact.”); *London-Sire Recs., Inc. v. Doe I*, No. 04CV12434-NG, 2009 WL 10728828, at *1 (D. Mass. Jan. 9, 2009) (“Neither the rules of evidence nor the Fourth Amendment bar the use of evidence arguably unlawfully obtained by private parties in their private suits.”). The only remedies provided in the Wiretap Statute are criminal and civil penalties, not exclusion of evidence in a civil proceeding. *Id.* Indeed, the Wiretap Statute contains explicit provisions about the use of illegally obtained communications in evidence, but those provisions are limited to criminal trials; there are no provisions limiting the use of such communications in civil trials.

Further, although it is beyond the scope of this Motion, any civil claim against BPHC under the Wiretap Statute for use of the recording as evidence in a civil proceeding would likely be barred by the litigation privilege, which provides immunity from civil liability generally for statements and actions made during the course of a judicial proceeding. *Bassichis v. Flores*, 490 Mass. 143 (2022).

The Court however declines BPHC’s request to review the recording *in camera* to determine whether Plaintiff consented to the recording. To the extent that question remains relevant, it is a disputed issue of fact on which both parties are entitled to be heard.

The parties also jointly request an enlargement of the deadline for service of summary judgment motions to a date sixty (60) days after resolution of this Motion. Accordingly, the deadline for service of summary judgment motions is enlarged to February 28, 2025.


Julie E. Green
Justice of the Superior Court

December 30, 2024

EXHIBIT 4

Video provided in native format.