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COMMONWEALTH OF MASSACHUSETTS

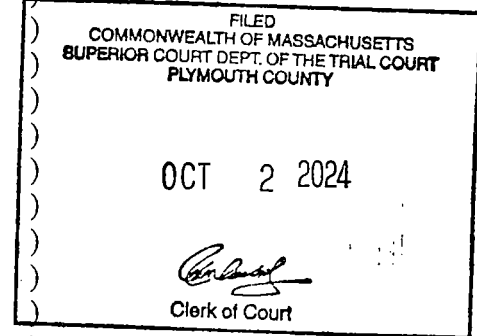
PLYMOUTH, ss.

SUPERIOR COURT DEPARTMENT
C.A. NO.: 2483CV00692

PAUL O'KEEFE, AS PERSONAL REPRESENTATIVE
OF THE ESTATE OF JOHN JOSEPH O'KEEFE III;
PAUL O'KEEFE, INDIVIDUALLY; JOHN O'KEEFE II;
MARGARET O'KEEFE; and MARGARET O'KEEFE AS
GRANDPARENT / GUARDIAN OF KAYLEY FURBUSH
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' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S
MOTION TO STAY CIVIL PROCEEDINGS**

In the instant motion, Civil Defendant Karen Read seeks to stay civil discovery largely because "Ms. Read's ability to vigorously defend herself from criminal prosecution will be substantially prejudiced should this civil litigation proceed while her criminal trial takes place," and because "the privileges afforded to Ms. Read under the Fifth Amendment would be substantially impacted should this action proceed while the criminal prosecution is ongoing." Additionally, Ms. Read claims "the only potential prejudice to the plaintiffs is the inconvenience of a brief time delay." *See* Defendant Karen Read's Motion To Stay Civil Proceedings Pending Resolution Of Criminal Trial.

In certain cases, we may agree. Here, however, Ms. Read consistently and voluntarily disregards her Fifth Amendment privilege as she attempts to craft her own narrative and poison

the jury pool in both the criminal and civil cases. Karen Read has spoken publicly in interviews, that we know of, with NBC's Dateline, ABC's Nightline, ABC's 20/20, Vanity Fair, NBC's Today, and a yet-to-be-disclosed Netflix documentary. In light of her open willingness to speak publicly, Ms. Read's current reliance on her Fifth Amendment right to silence appears to be less about avoiding self-incrimination and more about controlling the narrative to suit her interests.

The Court, in its discretion, certainly should not reward her ulterior motive of self-promotion.

The right not to self-incriminate does not come with the right of self-promotion.

I. LEGAL STANDARD

The movant carries the "heavy burden" of establishing that a stay is warranted. See Microfinancial, Inc. v. Premier Holidays Int'l, Inc., 385 F.3d 72, 77 (1st Cir. 2004) citing Austin v. Unarco Indus., Inc., 705 F.2d 1, 5 (1st Cir. 1983)).

It is well settled that "the Fifth Amendment privilege against self-incrimination 'applies alike to civil and criminal cases.'" See U.S. Trust Co. of New York v. Herriot, 10 Mass. App. Ct. 313, 316 (1980) citing McCarthy v. Arndstein, 266 U.S. 34, 40 (1924).

Testimony given in a civil deposition does not waive Fifth Amendment privilege for purposes of subsequent criminal trial. See Com. v. Fiore, 53 Mass. App. Ct. 785. (2002)

Nevertheless, there is no constitutional requirement that a civil proceeding must yield to a criminal one, even in the presence of a defendant's perceived need to assert the Fifth Amendment privilege. See Herriot, 10 Mass. App. Ct. at 316. "The United States Constitution rarely, if ever requires a stay of civil proceedings pending the outcome of criminal proceedings." Soe v. Sex Offender Registry Bd., 466 Mass. 381, 388 - 392 (2013) citing Afro-Lecon, Inc. v. United States, 820 F.2d 1198, 1201 (1st Cir. 1987).

Rather, the decision to grant such a stay rests in the sound discretion of the presiding judge, requiring “a particularized inquiry into the circumstances of, and the competing interests in, the case.” *Soe*, 466 Mass. at 392. Courts must weigh “any prejudice to the [...] civil litigants which might result from granting a stay, against the potential harm to the party claiming the privilege.” *Herriot*, 20 Mass. App. Ct. at 316.

The rights of the parties to the civil action are to be considered as equal. *Id.* at 317. “Justice is meted out in both civil and criminal litigation. The overall interest of the courts that justice be done may very well require that the compensation and remedy due a civil plaintiff should not be delayed.” *Id.* quoting *Gordon v. Federal Deposit Ins. Corp.*, 427 F.2d 578, 580 (D.C.Cir.1970).

II. SUMMARY OF FACTS AND PROCEDURE

A simplified summary of facts introduced at the criminal trial and the procedural history is as follows:

Defendant Karen Read consumed nine (9) alcoholic drinks over approximately three hours at two Canton bars. Read and her boyfriend, John J. O’Keefe, left the Waterfall bar and Read proceeded to drive drunk. She transported O’Keefe from the bar to a house party in Canton. After dropping off O’Keefe, Read backed up her Lexus and struck O’Keefe, who was knocked down and left to die in blizzard like-conditions.

The lengthy criminal trial ended in a mistrial.

In an affidavit filed by Defendant’s own criminal counsel in Norfolk No. 2282CR00117, eight (8) of the deliberating jurors favored conviction on the same counts that overlap with Plaintiffs’ claims in the civil matter. *See* Affidavit of David R. Yannetti, ¶ 10, July 6, 2024, filed in *Commonwealth v. Read*, Norfolk No. 2282CR00117 (Mass. Super.).

Plaintiffs filed the instant action on or about August 26, 2024.

III. ARGUMENT

The Estate has great reason to pursue civil justice against Karen Read for wrongful death whereas eight (8) of 12 jurors (uninfluenced by the media circus) when tasked with resolving the facts under the higher standard of proof (beyond a reasonable doubt) believed that Read was guilty of OUI Manslaughter. Our civil case only requires 5/6 of the jurors, when tasked with resolving the facts under the lesser standard of proof (more probable than not), to hold Read liable. Any two (2) of those criminal jurors who maintained “no” there, could easily have been persuaded to change to a “yes” vote in the civil case here.

It is not difficult to imagine two (2) of the “no” jurors being persuaded by the deliberating jury that Read’s drunk driving **more likely than not** caused O’Keefe’s wrongful death. Anyone familiar with the OJ Simpson cases understands that there can be disparate outcomes with similar sets of facts not only because the civil standard is lower, but also now the jury gets to assess the credibility of the alleged wrongdoer.

Plaintiffs here are entitled to civil discovery, including the under-oath testimony of Defendant Read, not only to hear her version of events, but also to assess her credibility. Plaintiffs noticed Read’s deposition for December 5, 2024.

Despite her contention that proceeding with civil discovery “could compromise [her] defense in the criminal prosecution,” Read has repeatedly emphasized that she “wants to talk” and is eager to provide her account of the events in question. Indeed, she has addressed the matters publicly on several occasions, making her own narrative a prominent part of the public discourse. Moreover, there is no shortage of reporters, bloggers and persons claiming that Read is actively speaking about the facts. This public engagement raises troubling questions about

Read's true intentions. If Read genuinely has concerns about her statements being used against her, it seems contradictory she would continue to speak out so openly.

By actively participating in public discourse and potentially profiting from media engagements, Read effectively foregoes any claim of fifth amendment protection. Karen Read's choice to speak out starkly contradicts any suggestion that she is concerned with self-incrimination. Now, Read comes here asking this Court to allow her to have it both ways.

Furthermore, the O'Keefe family has compelling reasons to pursue their claims with urgency, as there are legitimate questions in this case regarding witness and jury manipulation.

Further delay not only affects witnesses and jurors, but also the O'Keefe family, who have been dealing with the loss since January 29, 2022. The first criminal trial extended beyond a full calendar month, and the second trial is not set to begin until more than four months from now. See Norfolk Superior Court Docket No. 2282CR00117. Furthermore, there is no assurance that additional delays, another mistrial, a lengthy appeal, or other legal complications will not arise, extending Read's authority to postpone the civil proceedings.

If she chooses to plead the Fifth Amendment in the civil proceeding, she may do so with consequence. However, if she wants to speak under oath as freely as she does for the media and others, Plaintiff welcomes the opportunity to obtain her testimony.

By allowing the civil case to proceed, the Court demonstrates a commitment to transparency and the timely resolution of such serious matters, which is crucial to maintaining public trust in the legal system. A stay would only delay justice and could foster frustration among the public, who are closely watching both proceedings and expect the Court to take decisive action. The public's confidence in the legal process depends on seeing justice served in

a prompt and effective manner. Denying the stay ensures both the civil and criminal matters are addressed on their own merits, without unnecessary postponement that could undermine public faith in courts' ability to handle such high-profile and sensitive cases.

IV. CONCLUSION

While Karen Read argues that civil discovery should be stayed to protect her Fifth Amendment rights, her actions say otherwise. By openly discussing the case in various media outlets, Read demonstrates a clear intention to influence public perception and poison the jury pool in both her civil and criminal cases. This selective invocation of her rights undermines the very protections she seeks and raises serious questions about her motives. Under the circumstances, it is reasonable to proceed with civil discovery, allowing both parties to pursue their interests while ensuring the judicial process remains fair and balanced.

Respectfully submitted,
The Plaintiffs
By Their Attorney

/s/ Marc Diller
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Date: 9/30/24

CERTIFICATE OF SERVICE

I, Marc Diller, do certify that on this 30th day of September, 2024, I caused the foregoing document to be served via electronic mail upon the following counsel of record.

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EXHIBIT A

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

**SUPERIOR COURT
NO. 2282-CR-00117**

**COMMONWEALTH OF
MASSACHUSETTS,
Plaintiff**

V.

**KAREN READ,
Defendant**

**AFFIDAVIT OF DAVID R. YANNETTI IN SUPPORT OF
DEFENDANT'S MOTION TO DISMISS**

I, David R. Yannetti, do hereby depose and state that the following is true to the best of my knowledge and belief:

1. I am an attorney licensed in Massachusetts since December 20, 1989. My main office address is 44 School Street, Suite 1000A, Boston, MA 02108. On January 29, 2022, I was retained to represent the defendant, Karen Read, regarding the above captioned matter.
2. On July 3, 2024, I received communications from two different individuals (hereinafter, "Informant B" and "Informant C") who had received information from two distinct jurors (hereinafter "Juror B" and "Juror C") both of whom were part of the deliberating jury in this case.
3. To my knowledge, Informant B and Informant C do not know each other.
4. On July 3, 2024, Informant B sent me a screenshot he/she had received from someone (hereinafter, "Intermediary B") of text messages that Intermediary B had received from Juror B. In that screenshot, Juror B texted the following to Intermediary B: "It was not guilty on second degree. And split in half for the second charge. When the judge sent us back with that Hernandez [sic] thing to look at the other side it turned into a bully match. I thought the prosecution didn't prove the case. No one thought she hit him on purpose or even thought she hit him on purpose [sic]. They gave us free counseling forms when we left."
5. Based upon the first name of Juror B given to me by Informant B, I believe I am able to positively identify which juror he/she was and confirm that he/she was a deliberating juror.

6. On July 3, 2024, Informant C contacted me to say that he/she personally knows Juror C, as they used to work together. Informant C and Juror C also have a mutual friend (hereinafter, "Intermediary C") who is a current co-worker and friend of Juror C.
7. Informant C told me that he/she had posted something about the Karen Read case on Facebook on Monday, July 1, 2024. He/She told me that he/she believes that post led Intermediary C to text him/her and inform him/her that Juror C was a deliberating juror on the case.
8. Informant C told me that he/she thereafter reached out to Juror C via text message and discussed his/her experience as a juror in very general terms. They discussed what an exhausting experience it was and that Juror C was relieved that it was finally over.
9. Intermediary C told Informant C that Juror C would be participating in a Zoom meeting with a number of friends to discuss what happened with the trial.
10. Today, Informant C sent me three screenshots of a text message exchange he/she had with Intermediary C. Informant C told me that Intermediary C was reporting to him/her during this exchange what Juror C had revealed during the Zoom meeting. The text message exchange reads as follows:

Intermediary C: "no consideration for murder 2. manslaughter started polling at 6/6 then ended deadlock @ 4no8yes.

"[he/she] was very consistent in the fact that they could only consider things that were admitted into evidence. Ultimately, [he/she] voted no because the cause of death was twofold of hypothermia and head injury of which [he/she] was convinced that the vehicle did not cause both.

"The whole jury felt very intimidated by Higgins [sic] presence at the end.

"[he's/she's] not sure what [he's/she's] going to do. [He's/She's] going to lay low for a couple of days and see where it takes [him/her]. Hasn't ruled out anything.

"The jurors all have a group text going"

Informant C: "interesting. if it was no consideration for murder two, shouldn't she have been acquitted on that count. and hung on the remaining chargers [sic] goes back to the jury verdict

slip that was all confusing”

Intermediary C: “she should’ve been acquitted I agree.. Yes, the remaining charges were what they were hung on. and that instruction paper was very confusing.”

Informant C: “what a great experience for [him/her]. amazing that they let the alberta [sic] in the last day.”

Intermediary C: “[He/She] felt very honored to be part of it. [He/She] was [redacted physical description of Juror C]. Everybody else was from a professional walk of life. They all got along and never heated. They agreed to disagree and respected each other.”

Informant C: “that’s the way it should be. o [sic] knew it was an intelligent jury.

“they will be studying this case in law programs for years to come. i’e [sic] how not to investigate and try a case.”

“if they all agreed on no for murder two. they should make that clear to the DA. and the court. it’s basically a case of double jeopardy if she is retried on that charge.”

11. Based upon the description of Juror C given to me by Informant C and confirmed by the redacted content of the above text message exchange, I am able to positively identify which juror he/she was and confirm that he/she was a deliberating juror.

Signed under the pains and penalties of perjury this 6th day of July, 2024.

/s/ David R. Yannetti
David R. Yannetti