

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.
DEPARTMENT

SUPERIOR COURT

NO. 2482-SW-0004

COMMONWEALTH OF
MASSACHUSETTS,
Plaintiff

V.

AIDAN TIMOTHY KEARNEY,
Defendant

**MS. READ'S MEMORANDUM IN OPPOSITION TO
COMMONWEALTH'S MOTION FOR EXAMINATION
OF DIGITAL MATERIAL SEIZED FROM KAREN READ
PURSUANT TO SEARCH WARRANT ISSUED ON JANUARY 22, 2024**

Now comes Karen Read ("Ms. Read"), a third party to this matter, and respectfully requests that this Honorable Court **DENY** the Commonwealth's Motion for Examination of Digital Material Seized from Karen Read Pursuant to Search Warrant Issued on January 22, 2024. The Commonwealth has no probable cause whatsoever to believe there is any new evidence of criminal activity contained within Ms. Read's cell phones because any information that the Commonwealth might hope to glean from the requested records is duplicative of the information already contained in Mr. Kearney's cellular telephone records, which have been in the Commonwealth's possession since the start of this case. The Commonwealth has failed to allege particularized facts that *any* information contained in Ms. Read's cellular records—beyond information that is already in the Commonwealth's possession—is relevant in any way. This Court should return Ms. Read's personal property **immediately**.

FACTUAL BACKGROUND

Ms. Read's phone was searched by the Massachusetts State Police pursuant to a search warrant issued on February 2, 2022. Four months later, on June 9, 2022, Ms. Read was arrested a second time for the same incident. On January 24, 2024, Lieutenant John Fanning seized two more of Ms. Read's cell phones pursuant to a seizure warrant issued on the basis of "witness intimidation" allegedly perpetrated by Ms. Read. On March 27, 2024, unbeknownst to Ms. Read, the Commonwealth convened a grand jury to determine whether a true bill should issue requiring Ms. Read to stand trial for numerous counts of conspiring with Mr. Kearney to engage in witness intimidation and/or harassment against Brian Albert, Colin Albert, Chris Albert, Jennifer McCabe, Matthew McCabe, and Former Trooper Michael Proctor. On the very same day, March 27, 2024, the grand jury concluded that there was *insufficient evidence* to find probable cause that Ms. Read committed the acts of intimidating or harassing the witnesses, officially *rejecting* the Commonwealth's allegations.

On July 1, 2024, a mistrial was declared after the jury deadlocked. Ms. Read did not learn about the grand jury's rejection of her alleged involvement in witness intimidation until a notice of discovery produced by the Commonwealth on October 10, 2024, approximately six months later.

On April 22, 2025, one year after the start of her first murder trial, Ms. Read was retried for second degree murder, manslaughter, and leaving the scene. On June 18, 2025, the three-and-a-half-year saga came to a just end when the jury acquitted Ms. Read of all charges related to John O'Keefe's death. After her acquittal, the Commonwealth remained in possession of Ms. Read's personal property. On July 28, 2025, Ms. Read

filed two motions for the return of her property: one for her Lexus SUV and cell phone seized on January 29, 2022, and a second for the two cell phones seized on January 24, 2024. Ms. Read's motion to return her vehicle and cell phone that was seized on January 29, 2022, was granted without objection on August 11, 2025. Rather than complying with Ms. Read's motion to return her two cell phones that were seized on January 24, 2024, however, the Commonwealth submitted the instant motion for examination of Ms. Read's latter two cell phones.

ARGUMENT

I. LEGAL LANDSCAPE AND EVIDENTIARY STANDARD

In Massachusetts, like many other states, Prosecutors may, in certain circumstances, present identical evidence to a second grand jury after failing to obtain an indictment from a first grand jury. See Commonwealth v. McCravy, 430 Mass. 758, 763 (2000). However, this power is not absolute. [T]he purpose of indictment by a grand jury is to shield the innocent against hasty, malicious and oppressive public prosecutions. *Id.* (internal quotation omitted). Repeated submissions of identical evidence to successive grand juries, especially in light of harassing, malicious, and biased prosecution, poses a limitation on the Prosecution's ability to resubmit evidence to a new grand jury. See *Id.* For example, when a governmental body has no legitimate or reasonable purpose for pursuing an indictment by grand jury after repeated attempts, the court may inquire into the Prosecution's stated purpose and prevent resubmission. See In re United States of America., 441 F.3d 44, 63 (1st Cir. 2006); see also State v. Shaw, 455 N.J.Super. 471 (N.J.Super.A.D., 2018) ("Some courts have indicated that, even in the absence of statutory limitations, the power to resubmit is not boundless nor immune from judicial control.")

In Commonwealth v. McCravy, the Massachusetts Supreme Judicial Court stated it “would bear consideration” whether “submission of the same evidence to multiple grand juries would be inconsistent” with the purpose of grand juries “to shield ‘the innocent against hasty, malicious and oppressive public prosecutions.’” 430 Mass. 758, 723 N.E.2d 517, 522 (2000) (quoting Jones v. Robbins, 74 Mass. 329, 344 (1857)). While “[i]t is the general rule that a court should not inquire into the adequacy or competency of the evidence upon which an indictment is based... when it appears that the integrity of the grand jury process has been impaired, a defendant may attack the validity of the indictment by way of a motion to dismiss. See Commonwealth v. St. Pierre, 377 Mass. 650, 654–657, 387 N.E.2d 1135 (1979).” Commonwealth v. Salman, 387 Mass. 160, 167 (1982). Although no indictment has been secured in this case, the process of seeking same bears on the analysis similarly. Improperly seeking “evidence” under the guise of later seeking an indictment impairs the process from the outset, which the courts are loathe to sanction.

The pertinent Witness Intimidation statute reads as follows (M.G.L. 268 § 13B):

Whoever willfully, either directly or indirectly:

- (i) threatens, attempts or causes physical, emotional or economic injury or property damage to;
- (ii) conveys a gift, offer or promise of anything of value to; or
- (iii) misleads, intimidates or harasses another person who is a:
 - a. witness or potential witness;
 - b. person who is or was aware of information, records, documents or objects that relate to a violation of a criminal

law or a violation of conditions of probation, parole, bail or other court order;

- c. judge, juror, grand juror, attorney, victim witness advocate, police officer, correction officer, federal agent, investigator, clerk, court officer, court reporter, court interpreter, probation officer or parole officer;
- d. person who is or was attending or a person who had made known an intention to attend a proceeding described in this section; or
- e. family member of a person described in this section, with the intent to or with reckless disregard for the fact that it may;
 - i. impede, obstruct, delay, prevent or otherwise interfere with: a criminal investigation at any stage, a grand jury proceeding, a dangerousness hearing, a motion hearing, a trial or other criminal proceeding of any type or a parole hearing, parole violation proceeding or probation violation proceeding; or an administrative hearing or a probate or family court proceeding, juvenile proceeding, housing proceeding, land proceeding, clerk's hearing, court-ordered mediation or any other civil proceeding of any type; or

- ii. punish, harm or otherwise retaliate against any such person described in this section for such person or such person's family member's participation in any of the proceedings described in this section, shall be punished...

Article 14 of the Massachusetts Constitution "require[s] that all searches and seizures be reasonable." Commonwealth v. Alexis, 481 Mass. 91, 97, 112 N.E.3d 796 (2018). "Searches and seizures conducted outside the scope of a valid warrant are presumed to be unreasonable," and therefore unconstitutional. Commonwealth v. Balicki, 436 Mass. 1, 8, 762 N.E.2d 290 (2002). "To be reasonable in the constitutional sense," a search conducted pursuant to a warrant must be supported by probable cause. Commonwealth v. Neilson, 423 Mass. 75, 77, 666 N.E.2d 984 (1996). To comport with constitutional protections, an affidavit in support of a search warrant must demonstrate probable cause to believe [1] that a particularly described offense has been, is being, or is about to be committed, and [2] that the search will produce evidence of such offense or will aid in the apprehension of a person who the applicant has probable cause to believe has committed, is committing, or is about to commit such offense. See Commonwealth v. Estabrook, 472 Mass. 852, 870 (2015), quoting Commonwealth v. Augustine, 467 Mass. 230, 256 (2014). In addition, a cell phone search must be timely; the state must act within a reasonable period after seizure, else the seized material must be excluded. Commonwealth v. Diaz, No. 23-P-1462 Mass. App. Ct. (August 29, 2025).

**II. THE COMMONWEALTH HAS NO LEGITIMATE PURPOSE FOR ITS
MOTION AND IS SIMPLY ATTEMPTING TO CONTINUE ITS
PERSECUTION OF KAREN READ**

The Commonwealth lacks the necessary probable cause to support their requested search warrant because the requested search will not produce evidence of the alleged offense, nor will it aid in the apprehension of an alleged perpetrator. See Estabrook, 472 Mass. at 870. The basis of the Commonwealth's inquiry into Ms. Read for the offense of witness intimidation is a groundless allegation of indirect witness intimidation. This is evidenced by Trooper Tully's supporting affidavit, which only describes conclusory allegations of witness intimidation as occurring through Ms. Read's communications with Mr. Kearney. It is murky whether he believes those communications were direct or indirect, and he has no stated foundation that any communications actually are in furtherance of witness intimidation. Rather, Tully spends nearly the entire affidavit describing Kearney's alleged conduct, not Ms. Read's. The communications presented by Trooper Tully between Mr. Kearney and Ms. Read actually show the opposite of witness intimidation. She is clear that information should *not* be used or disclosed or disseminated. There is absolutely *no* evidence of Ms. Read *ever* urging or even suggesting to Mr. Kearney that any witness be contacted, approached, or even discussed in Mr. Kearney's reporting.

Further, the Commonwealth lacks probable cause to search Ms. Read's cell phones in accordance with either of the standards in the second prong of the Estabrook test because they are already in possession of all information pertinent to the prospective allegations. Paragraphs 7 through 41 of Trooper Tully's affidavit have nothing whatsoever to do with Ms. Read and only concern Mr. Kearney. Paragraph 44 of Trooper Tully's affidavit perfectly encapsulates the reason why the search warrant is unnecessary and why the Commonwealth lacks probable cause to search Ms. Read's phones.

Paragraph 44 reads:

“Natalie described the arrangement as follows: Karen would send Natalie a message on Signal intended for Kearney, Natalie would copy and paste the message/photo/video/document into a text message to Kearney. On several occasions, Natalie would take a screen shot of the Signal messages from Karen and send Kearney the screen shot. Natalie stated she would send information to two phone numbers used by Kearney.”

Because the Commonwealth’s groundless allegation seeks to suggest that Ms. Read communicated some unknown things to Mr. Kearney, and he thereafter engaged in witness intimidation, the only relevant communications would be those actually *received* by Mr. Kearney. For example, if a hypothetical communication was written by Ms. Read on her phone, but not passed along to Mr. Kearney, that cannot possibly be an example of witness intimidation, as the Commonwealth has not and does not allege that Ms. Read actually carried out any intimidation herself. Therefore, as all relevant communications would be those received by Mr. Kearney, and the Commonwealth is already in possession of all communications received by Mr. Kearney (the Commonwealth has searched the entirety of his phone), it is impossible that a search of Ms. Read’s phone would produce any evidence (communication) that is not already in the Commonwealth’s possession.¹ The Commonwealth has the other side of the handshake, if such exists. Therefore, the Commonwealth lacks probable cause to search Ms. Read’s phones and the Commonwealth’s motion should be denied.

The final paragraphs of Trooper Tully’s affidavit expose what this motion and the

¹ The same reasoning applies to the following paragraphs of Trooper Tully’s affidavit as the Commonwealth is already in possession of Mr. Kearney’s cell phone messages: 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 63, 65, 66, 67, 68, 69, 70, 71, 77, 78, 79, 80, 81, 85, 86, and 91.

Commonwealth's overall plan truly is: an overbroad and persecutory fishing expedition intended to punish and harass Ms. Read. In Paragraphs 96, 97, and 100, Trooper Tully states as a reason for searching Ms. Read's cell phones that the MSP needs to examine Ms. Read's location data and application usage (which is literally everything on the phone) to determine *whether the phones actually belong to her*. That thinly veiled excuse to rifle through the entirety of two of Ms. Read's cell phones, including all her personal information, is absurd. Trooper Tully argued, expecting this court to take him seriously, that the police and district attorney need to review the entire contents of Ms. Read's phones, including whatever personal, private, confidential information lies within, to prove that the cell phones seized from Ms. Read's possession in Ms. Read's own home are in fact hers. The same cell phones that Ms. Read's counsel have demanded be returned to her as the rightful possessor. That the Commonwealth would actually present such an argument as justification to root through her personal data speaks volumes about the true intentions of the prosecutor and investigator behind its motion.

III. THE COMMONWEALTH'S REQUEST IS UNTIMELY, AND THEREFORE THE INFORMATION SOUGHT CANNOT BE ADMITTED.

As we learned extremely recently in *Commonwealth v. Diaz*, the Commonwealth may not seize a cell phone and indefinitely deprive its owner of their possessory interest before seeking a search warrant. *Commonwealth v. Diaz*, No. 23-P-1462 Mass. App. Ct. (August 29, 2025). The "Police may retain an item seized without a warrant for 'the relatively short period of time needed . . . to obtain a search warrant,' but must release the item if a warrant is not obtained within that period." *Commonwealth v. White*, 475 Mass. 583, 593 (2016), quoting *Commonwealth v. Gentile*, 437 Mass. 569, 573 (2002). If the police fail to obtain a search warrant within a reasonable time, the seizure, even if it was

“reasonable at its inception because [it was] based upon probable cause, may become unreasonable as a result of its duration.” White, 475 Mass. at 593, quoting Segura v. United States, 468 U.S. 796, 812 (1984). See White, quoting United States v. Burgard, 675 F.3d 1029, 1032 (7th Cir.), cert. denied, 568 U.S. 852 (2012) (“When officers fail to seek a search warrant, at some point the delay becomes unreasonable and is actionable under the Fourth Amendment.”) The Commonwealth bears the burden of demonstrating that the delay was reasonable. White, 475 Mass. at 594. The Diaz Court held that individuals have an critical possessory interest in their cell phones: “[W]e first note that the defendant had a material possessory interest in his cell phone.” Diaz, No. 23-P-1462 at 18. See also, White, 475 Mass. at 591, 593, quoting Riley, 573 U.S. at 395 (many “who own a cell phone [in effect] keep on their person a digital record of nearly every aspect of their lives.”)

The Massachusetts Appeals Court, less than one month ago, held that a delay of 123 days between the seizure of a suspect’s cell phone and the first time the Commonwealth seeks a warrant to search it is unreasonable. Diaz, No. 23-P-1462 at 20. (“The judge ultimately concluded based on these findings that ‘[t]here is no legal precedent for finding a delay of 123 days to be reasonable, even with a compelling governmental interest.’ That conclusion is, to date, correct under Massachusetts law.”) The Court further opined that, “our courts have recognized that some delay in obtaining a search warrant may be reasonable where, as here, the governmental interest in the seized item is critical,” but, “there is no Massachusetts precedent upholding as reasonable **anything remotely approaching the 123-day delay** in the present case.” (emphasis added) Diaz, No. 23-P-1462 at 21.

Here, the Massachusetts State Police seized Ms. Read's phone on January 24, 2024, and did not seek a warrant to search its contents until August 28, 2025. This is a gap of 582 days, nearly *five times* longer than the 123 days that the Diaz Court held to be an unreasonably long time. The law is perfectly clear; the Commonwealth's request is well beyond untimely, and therefore the evidence sought must be suppressed.

CONCLUSION

Ms. Read's phones were seized on January 24, 2024. No action was taken on the allegations of witness intimidation until a year and a half later when the Commonwealth penned this motion. Conveniently, the motion only came to fruition after Ms. Read requested that her personal property be returned. Only then did the special prosecutor indicate an intention to rummage through her cell phones in the first instance. The Commonwealth cannot claim that they were merely waiting for Ms. Read's trial to conclude before pursuing this action, because they attempted to indict her before a grand jury while her first trial was pending.

For the above reasons and for those argued by Defense Counsel at the hearing of this motion, Ms. Read respectfully requests that this Honorable Court **DENY** the Commonwealth's motion and order Ms. Read's personal property to be **RETURNED FORTHWITH**.

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

/s/ Steven C. Boozang

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Dated: September 22, 2025

CERTIFICATE OF SERVICE

I, Attorney Steven C. Boozang, do hereby certify that I served the “Defendant’s Memorandum in Opposition to Commonwealth’s Motion For Examination of Digital Material Seized From Karen Read Pursuant to Search Warrant Issue on January 22, 2024” upon the Commonwealth by emailing a copy on September 22, 2025 to Norfolk County Special Counsel Robert Cosgrove.

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