

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT

NO. 2282-CR-00117

COMMONWEALTH OF
MASSACHUSETTS,
Plaintiff

V.

KAREN READ,
Defendant

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CLERK OF THE COURT
NORFOLK COUNTY

**DEFENDANT'S OPPOSITION TO THE COMMONWEALTH'S REQUEST FOR USE
OF INDEPENDENT READERS**

Here comes the Defendant, Karen Read ("Ms. Read") in response to this Court's request for her written objection in response to the Commonwealth's request to use independent reader(s) with regard to purported text messages exchanged between John O'Keefe and Karen Read. The Commonwealth has not filed a specific motion nor provided any legal authority related to this request, but recently expressed its intention to use independent reader(s) to present electronic communications between Ms. Read and John O'Keefe ("Mr. O'Keefe").

BACKGROUND

On April 14, 2025, for the first time and less than ten days before the start of trial, the Commonwealth first introduced the idea of utilizing an independent reader, stating that it "moves to provide notice that it intends to introduce the Defendant's own statements, without a witness or in some circumstances, through a non-percipient witness reader." (Commonwealth's Notice of Intention to Introduce Extrajudicial Statements of the Defendant, at 2.) The Commonwealth's request was limited to a single vague sentence without any supporting legal authority, and was not

made until long after this Court's deadline for the filing of *Motions in Limine*. Attorney Brennan again discussed the idea of using independent readers during the April 16 motion hearing, more specifically detailing the Commonwealth's desire to use independent readers to present various electronic communications between Ms. Read and Mr. O'Keefe. The defense quickly objected to this inappropriate "theater" especially given the high probability that such a staged delivery could be unduly prejudicial against Ms. Read.¹ Notably, at no point in its writings or oral arguments has the Commonwealth provided any legal authority or basis for its desired use of independent readers in this context, namely for the reading of text messages.

ARGUMENT

I. ELECTRONIC COMMUNICATIONS SHOULD BE INTRODUCED IN ACCORDANCE WITH STANDARD PROCEDURE

In June 2024, during the first trial of the above captioned matter, electronic communications between Ms. Read and Mr. O'Keefe were introduced as evidence through the testimony of Massachusetts State Police Trooper Nick Guarino ("Trooper Guarino"). During his testimony, Trooper Guarino authenticated the messages between Ms. Read and Mr. O'Keefe and read them into the record. This method of introducing electronic communications is entirely consistent with standard procedure in Massachusetts. *See* Mass. R. Evid. § 901(11) (detailing requirements for authenticating electronic communications); *Commonwealth v. Welch*, 487 Mass. 425, 440 (2021) (detailing testimony of authenticating State Trooper "read[ing] aloud messages" between defendant and victim).²

¹ Although Attorney Brennan stated that "there would be no inflection that would be inappropriate" the defense does feel it is prudent to take that risk. If a jury were to hear these messages read inaccurately, no sustained objection or striking from the record would successfully undo that damage.

² Furthermore, Massachusetts courts have emphasized the importance of authenticating text messages before admitting them into evidence. *See Commonwealth v. Alden*, 93 Mass. App. Ct.

Conversely, the Commonwealth has not provided any statutory authority, case law, procedural rules, or evidentiary rules that would support its suggested use of independent readers for the purposes of performing the electronic communications between a defendant and a deceased party.³ The Defendant strongly opposes the use of independent readers and favors the standard evidentiary and procedural methods for introducing this evidence.

II. INDEPENDENT READERS ARE AN INAPPROPRIATE WAY TO CONVEY ELETRONIC COMMUNICATIONS

Use of independent readers to introduce electronic communications, such as text messages, is per se improper. Text messages are not verbal conversations. They are written communications which speak for themselves. The theater of utilizing multiple individuals to perform a text message conversation is not an accurate reflection of a text message conversation, even under the best circumstances and putting aside concerns regarding tone, tenor, and timing.

The Commonwealth's proposed use of independent readers seeks to create evidence that never existed. With regard to text message exchanges, such as those between Ms. Read and Mr. O'Keefe, there was never a live conversation, yet the Commonwealth seeks to create one through its use of independent readers. This is manifestly prejudicial and a due process violation. Traditionally, "readers" are used to reenact prior **testimony** that is unavailable to the jury, such as **prior testimony** of a deceased witness. *Commonwealth v. DiPietro*, 373 Mass. 369, 392 (prior testimony of an unavailable witness may be introduced by means other than an official transcript).

438 (2018). It is unclear how the timing of the Commonwealth's proposed use of independent readers would comport with this requirement.

³ Even though the Commonwealth failed to provide any supportive authority for its position, defense counsel made its best efforts to find any examples of this scenario in Massachusetts case law, but to date has not identified any examples that would support the proposition that communications between a defendant and a deceased party should be introduced by way of independent readers.

In those circumstances, readers serve to provide the jury with a facsimile of what they would have heard had the witness(es) been available. That is not the situation at issue here, where the Commonwealth seeks to have independent reader(s) reenact text messages as a verbal conversation that never took place. The best practice would be to present jurors with the texts and allow them to read them themselves, but short of that, the common practice of having the text messages read into the record by way of the authenticating witness, Trooper Guarino, is sufficient. Overall, the Defendant strongly opposes the Commonwealth's proposed use of independent readers to improperly reenact text messages that were never verbal conversations in the first place.

That said, tone, tenor, and timing add another layer of concern. Tone and tenor of written messages is subjective and individualized. As such, presenting a written conversation as a verbal conversation is an inherently problematic way to convey this type of exchange. Presenting text messages by way of the neutral reading of an authenticating witness (often with the visual aid of screenshots of the messages themselves) is the most logical and neutral way to present these communications. With regard to timing, text messages are not always sent in real time. Often – and specifically in the messages at issue here – minutes or hours pass between messages. There is no practical way to present these delays accurately with multiple independent readers, as we assume the Commonwealth does not intend to make the jury sit for multiple hours between the reading of messages.

Most importantly, we do not have to wonder if the authenticating witness of the messages would be capable of delivering these messages appropriately. As discussed by Attorney Jackson at the April 16 motion hearing and reiterated here, Trooper Guarino's delivery in the first trial was perfectly adequate. It stands to reason his delivery in the second trial would, once again, be perfectly adequate.

III. INDEPENDENT READERS PRESENTING TEXT MESSAGES VIOLATES FUNDAMENTAL RULES OF EVIDENCE AND PROCEDURE

a. Use of Independent Readers to Introduce Text Messages Violates the Best Evidence Rule

The Commonwealth's proposed use of independent readers to introduce text messages would also violate the fundamental principles underlying the Best Evidence Rule. The Best Evidence Rule requires that, to prove the contents of a writing, recording, or photograph, the original must be produced or a sufficient excuse for its nonproduction must be provided. *See* Mass. G. Evid. § 1002; *Commonwealth v. Ocasio*, 434 Mass. 1, 6 (2001). Specifically, "oral testimony designed to prove the contents of an electronic records," such as text messages, "is barred for the same reasons as those underlying the best evidence rule." *Id.*

Additionally, for the purposes of authentication, courts often rely on individuals with direct knowledge of the digital evidence, including the police officers who extracted the messages. *See Commonwealth v. Meola*, 95 Mass. App. Ct. 303 (2019). This strongly aligns with the underlying principle of the Best Evidence rule that the proponent of the evidence must provide a foundation sufficient for a reasonable jury to find that the evidence is what it purports to be. *See Commonwealth v. Welch*, 487 Mass. 425, 439 (2021). Here, the Commonwealth proposes that independent readers present text messages instead of the readily available Trooper Guarino, who is the primary proponent and authenticator of the text messages at issue. As such, we oppose this use of independent readers as not only unnecessary and prejudicial, but also as violative of the Best Evidence Rule.

b. "Continuous" Presentation of Text Messages by Independent Readers is Unnecessary and Potentially Procedurally Unsound

Lastly, at the hearing on April 16, Attorney Brennan asserted that "it is not sufficient to simply have a state police officer who is not a witness to those text messages come in and read

them continuously through the trial.” As described in detail throughout this motion, we firmly disagree that it is not sufficient to have an authenticating state police officer present text message communications in a trial. Beyond that, though, Attorney Brennan’s suggestion that these messages come in “continuously throughout the trial” and at “different parts of the trial when they become relevant” does not appear to be practical or procedurally sound.⁴ Given the Commonwealth’s failure to provide any legal foundation for utilizing independent readers, it is difficult to know how they intend to introduce text messages “continuously” and when they “become relevant.”⁵ Regardless of procedural underpinnings, Ms. Read opposes the idea of continuous introduction of messages in general, as it sounds bulky, inefficient, and unduly prejudicial.

CONCLUSION

For the reasons set forth herein, the defendant respectfully requests that this Honorable Court prohibit the use of independent readers in her trial.

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⁴ Additionally, where text messages have been admitted into evidence, there is no need or purpose for their repeated reading to the jury, as they will have ample time to review these communications along with other evidence during deliberations and counsel may reference them by citing to the record.

⁵ Regarding Trooper Guarino specifically, during the April 16, Attorney Brennan suggested that bringing Trooper Guarino back repeatedly would “create the wrong impression.” Given that Trooper Guarino was able to introduce the exact same messages with ease during his continuous days of testimony in the first trial, we remain confused by the Commonwealth’s concerns.


Respectfully Submitted,
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By her attorneys,



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Date: April 18, 2025

CERTIFICATE OF SERVICE

I, Victoria B. George do hereby certify that I served this Opposition upon the Commonwealth on April 18, 2025, by emailing it to Norfolk County Specially Appointed Assistant District Attorney Hank Brennan at hank.brennan@mass.gov.

Date: April 18, 2025

/s/ Victoria B. George
Victoria B. George, Esq.