

NORFOLK, SS.

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NORFOLK SUPERIOR COURT  
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COMMONWEALTH

v.

KAREN READ

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**COMMONWEALTH'S MOTION TO INTRODUCE ADDITIONAL EVIDENCE OF THE  
NATURE OF THE DEFENDANT AND VICTIM'S RELATIONSHIP**

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The Commonwealth moves to admit testimony through percipient witnesses who observed the defendant and victim's volatile and hostile relationship as it existed at the time of the victim's death. Four weeks prior to the murder, the defendant became enraged at the victim for speaking to a female friend who was on their group vacation in Aruba and accused the victim of having an affair. This incident was observed by numerous individuals who will testify to their personal observations of the incident as well as to statements of the defendant in the immediate aftermath. Evidence of a defendant's prior bad acts "may be admissible to prove opportunity, intent, preparation, plan, knowledge, pattern of operation, or common scheme or course of conduct, as long as the probative value of the evidence is not outweighed by the risk of unfair prejudice." Commonwealth v. Silva, 93 Mass. App. Ct. 609, 618 (2018). The determination to admit such evidence, based on timeliness, place, character or probative value is one for the trial judge to make, and will be reversed on review only if "palpably wrong." Commonwealth v. Fordham, 417 Mass. 10, 22-23 (1994); Commonwealth v. McGoghean, 412 Mass. 839, 841 (1992).

Evidence of the “Aruba incident” was proffered by the defendant through a series of text messages between the defendant and Brian Higgins, thus opening the door for the Commonwealth to rebut the defendant’s misleading and inaccurate claims about what had occurred weeks prior in Aruba. This incident in Aruba seems to also be the turning point in the relationship as the defendant told Brian Higgins that her relationship with the victim was a “very f[red] up situation” as she had observed the victim “all over [a] friend’s sister in the lobby of our hotel” and accused the victim of having “hooked up with another girl” while in Aruba. In the January 29, 2022 voicemails, previously entered into evidence, the defendant screams at the victim for apparently “f[red]ing another girl” and repeatedly refers to the victim as a “pervert”. There has also been evidence that prior to arriving at 34 Fairview Road, there was reference to a woman the victim used to date.

The defendant proffered the entirety of the text messages between herself and Brian Higgins, including the defendant’s admissions about her feelings towards the victim and the nature of their relationship. The evidence proffered by the defendant also demonstrated a continuing animosity in the weeks and days prior to the victim’s death. The jury should be permitted to hear from the witnesses of this “Aruba incident” who will rebut the characterizations made by the defendant to Brian Higgins. Such testimony would be offered through Laura Sullivan, Marietta Sullivan, Erin O’Keefe and Juvenile K.F. See Commonwealth v. West, 487 Mass. 794, 806 (2021), quoting Commonwealth v. Carlson, 448 Mass. 501, 508-509 363 (2007) (“Evidence of a hostile relationship ‘that tends to explain the purpose of a crime is relevant to the issue of malice or intent’ ...”); Mass. G. Evid. § 404(b)(2).

In a domestic violence homicide, evidence such as prior disputes are relevant to show the “volatile nature of the relationship between the defendant and the victim in the weeks and months preceding the murder and to explain the defendant's intent and state of mind toward the victim.” Commonwealth v. Da Lin Huang, 489 Mass. 162, 173-174 (2022) (evidence of domestic dispute at defendant's apartment before killing, including physical contact, was relevant to show volatile nature of defendant's relationship with victim and defendant's intent); Commonwealth v. Rintala, 488 Mass. 421, 446-447 (2021) (evidence of defendant's prior arrest for assault and battery of victim, defendant's and victim's restraining orders against each other, and pending divorce proceedings admissible in homicide prosecution to show motive and hostile relationship); Commonwealth v. Almeida, 479 Mass. 562, 567-569 (2018) (evidence of defendant's previous threat to stab his girlfriend to death admissible to show parties' violent relationship); Commonwealth v. Oberle, 476 Mass. 539, 550-552 (2017) (allowing previous domestic violence incident by defendant against victim to be admitted in prosecution for subsequent domestic violence to show nature of relationship between the two, and to show intent, motive, and absence of mistake or accident); Commonwealth v. Miller, 475 Mass. 212, 229-230 (2016) (evidence of domestic violence committed by defendant against his girlfriend, which led to confrontation between defendant and murder victim, properly admitted to show “contentious nature” of relationship between defendant and victim, which provided motive for killing); Commonwealth v. Bonomi, 335 Mass. 327, 355 (1957) (evidence that defendant formed an attachment for another may form the basis of an inference that the defendant entertained feelings of hostility toward spouse prior to killing).

Moreover, “[t]he state of mind exception to the hearsay rule calls for evidence of a murder victim’s state of mind as proof of the defendant’s motive to kill the victim when ... there also is evidence that the defendant was aware of that state of mind at the time of the crime and would be likely to respond to it.” Commonwealth v. Qualls, 425 Mass. 163, 167 (1997)..  
Commonwealth v. Boridine, 371 Mass. 1 (1976).

Evidence of the defendant’s prior conduct is permissible and highly probative to show the defendant’s state of mind; to show the defendant’s motive; to show the defendant’s common pattern of behavior toward the victim, in particular as demonstrated by previously admitted evidence, that the defendant would become enraged and accuse the victim of cheating on her, and the nature of the defendant and victim’s relationship. Massachusetts courts have repeatedly admitted evidence of prior bad acts to demonstrate a hostile relationship between the defendant and the victim because this hostility is relevant to the defendant’s motive to harm or kill the victim. Commonwealth v. Fordham, 417 Mass. 10, 22-23 (1994); see also Commonwealth v. Lowe, 391 Mass. 97 (1984) (A murder victim’s intent to end a romantic relationship is material to the defendant’s motive for killing the victim). The admission of such evidence for the purpose of “illuminating a pattern or course of conduct by the defendant” is proper. Commonwealth v. Chartier, 43 Mass. App. Ct. 758, 760 (1997); Commonwealth v. Maimoni, 41 Mass. App. Ct. 321, 326-328 (1996), Commonwealth v. Scott, 408 Mass. 811, 817-820 (1990).

The Commonwealth is “entitled to present as full a picture as possible of the events surrounding the incident.” Commonwealth v. Hernandez, 473 Mass. 379, 394 (2015), quoting Commonwealth v. Robidoux, 450 Mass. 144, 158 (2007). Where the defendant has opened the door, it is especially significant for the jury to understand that it was the defendant who repeatedly refused to accept the victim’s desire terminate their relationship, the defendant’s made

repeated hostile accusations that the victim was having an affair, and that there was an established pattern of hostility, occurring in the weeks and days preceding the murder.

For all the abovementioned reasons, prior misconduct and evidence of domestic violence should be admissible at trial.

Respectfully Submitted,  
For the Commonwealth

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