

287

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT
NO. 2282-CR-00117

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| _____ | |) |
| COMMONWEALTH OF | |) |
| MASSACHUSETTS, | |) |
| Plaintiff | |) |
| | |) |
| V. | |) |
| | |) |
| KAREN READ, | |) |
| Defendant | |) |
| _____ | |) |

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CLERK OF THE COURT
NORFOLK COUNTY

DEFENDANT KAREN READ'S MOTION IN LIMINE FOR VIEW

Now comes the defendant, Karen Read ("Ms. Read") and respectfully moves this Honorable Court, pursuant to M.G.L. 234A §69A, to order that the jury be taken on a view of the alleged crime scene, and the route thereto. *See* G.L. c. 234A § 69A; Berlandi v. Commonwealth, 314 Mass. 424 (1943) ("At common law, power to inform itself by a view is inherent in a court"). Ms. Read specifically requests that the Court order a view of (1) the Waterfall Bar and Grill at 643 Washington St., in Canton, Massachusetts, (2) the route from the Waterfall Bar and Grill to 34 Fairview Road in Canton, Massachusetts, and (3) 34 Fairview Road in Canton, Massachusetts. Ms. Read further requests that — though not Constitutionally *entitled* to be present — this Honorable Court permits her to attend the view, subject to any reasonable restrictions the Court deems necessary. *See e.g.* Commonwealth v. Gordon, 422 Mass. 816, 849, 666 N.E.2d 122 (1996); Commonwealth v. Corliss, 470 Mass. 443, 448 (2015).

G.L. c. 234A § 69A, following the repeal of c. 234 § 35 (a statute which governed views prior to 2016), states: "The court may, upon motion, allow the jury in a civil case to view the premises or place in question or any property, matter or thing relative to the case if the party making the motion advances an amount sufficient to defray the expenses

of the jury and the officers who attend them in taking the view, which shall be taxed as costs, if the party who advanced them prevails. **The court may order a view by a jury impanelled to try a criminal case.**” Ms. Read states that permitting the jury to view the Waterfall Bar and Grill, the route traveled from there to 34 Fairview Road, and 34 Fairview road itself would assist the jurors in reaching a verdict — especially with respect to the 34 Fairview Residence and its lawn, which appears more expansive in photos than in person. In addition, the ability of the jurors to view Fairview Road itself will assist them in assessing whether the accident reconstruction analysis performed by the Commonwealth is feasible, given the curve of the road outside of the residence. *See e.g. Commonwealth v. Curry*, 368 Mass. 195 (1975), citing *Dascalakis, infra* (“chief purpose [of a view] is to enable the jury to understand better the testimony which has or may be introduced.”)

“Although what is seen on the view may be used by the jury in reaching their verdict, in a ‘strict and narrow sense a view may be thought not to be evidence.’” *Commonwealth v. Curry*, 368 Mass. 195, 198 (1975), quoting *Commonwealth v. Dascalakis*,¹ 246 Mass. 12, 30, 140 N.E. 470 (1923). Properly speaking, “[n]o evidence should be taken or testimonial comments made during the taking of a view.” M.S. Brodin & M. Avery, *Massachusetts Evidence* § 4.2.5, at 123 (8th ed. 2007). *See Commonwealth v. Dascalakis, supra* at 29–30. During a view ‘the essential features [of the crime scene] may be pointed out by counsel...., it being permissible ... merely to point out to the jury ‘marks, matters, and things,’ but not otherwise to speak to the jury.’” *Com. v. Gomes*, 459 Mass. 194, 199 (2011).

¹ *Dascalakis* was abrogated on other grounds by *Com v. Bly*, 444 Mass. 640 (2005), specifically with respect to the doctrine of “resurrection” in the context of a motion for new trial.


As with the decision whether to hold a view, the decision to allow a defendant to be present is within the trial judge's discretion. Dascalakis, 246 Mass. at 29, Commonwealth v. Lamoureux, 348 Mass. 390, 392 (1965); Commonwealth v. Nassar, 351 Mass. 37, 47 (1966). Ms. Read respectfully requests that the Court allow her to be present for the view, subject to any reasonable restrictions the Court deems necessary. *See e.g.* Commonwealth v. Gordon, 422 Mass. 816, 849, 666 N.E.2d 122 (1996); Commonwealth v. Corliss, 470 Mass. 443, 448 (2015).

For the above reasons, Ms. Read respectfully requests that this Honorable Court allow this motion for a view.

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



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Dated: April 9, 2024

CERTIFICATE OF SERVICE

I, Attorney David R. Yannetti, do hereby certify that I served the "Defendant's Motion *In Limine* for View" upon the Commonwealth by emailing a copy on April 9, 2024 to Norfolk County Assistant District Attorney Adam Lally at adam.lally@mass.gov.

April 9, 2024

Date



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