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COMMONWEALTH OF MASSACHUSETTS

NORFOLK SS. OF THE COURTS  
NORFOLK COUNTY

SUPERIOR COURT DEPARTMENT  
NO. 2282-CR-00117

COMMONWEALTH OF  
MASSACHUSETTS,  
Plaintiff

V.

KAREN READ,  
Defendant

**DEFENDANT'S MOTION IN LIMINE TO EXCLUDE SERUM/PLASMA ETHANOL  
CONCENTRATION, BLOOD ETHANOL CONCENTRATION CONVERSION, AND  
CORRESPONDING RETROGRADE EXTRAPOLATION ANALYSIS**

Now comes the defendant, Karen Read ("Ms. Read"), and respectfully moves this Honorable Court *in limine* to exclude evidence of a serum/plasma ethanol concentration test performed by Good Samaritan Hospital at 9:08AM on January 29, 2022. By extension, Ms. Read also moves to exclude the blood ethanol concentration conversion performed by the Massachusetts State Police ("MSP"), as well as the corresponding retrograde extrapolation analysis.

As grounds for this motion, Ms. Read states that, as acknowledged by MSP Forensic Scientist Nicholas C. Roberts ("Mr. Roberts") in his report, "[t]he ethanol result used in [the reports] was provided by an external party. The testing to obtain the ethanol result was not performed at the Massachusetts State Police Crime Laboratory and therefore [the reports do] not fall under the laboratory's scope of accreditation". See May 4, 2022 "Serum/Plasma Conversion Report"; see also June 6, 2022 "Retrograde Extrapolation Report".

Since the Commonwealth cannot establish that the blood test result that was administered is reliable for the purposes of a criminal prosecution, the serum/plasma ethanol concentration result and the corresponding blood ethanol conversion and retrograde extrapolation that flow from the initial result should be excluded as unreliable and not the product of reliable principle and methods. See Mass. G. Evid. § 702.

## FACTUAL BACKGROUND

On January 29, 2022, around 8:41AM, Ms. Read was admitted to Good Samaritan Medical Center as a result of the acute grief reaction she experienced after learning that her then-boyfriend, Officer John O'Keefe, had passed away. In addition to evaluating her, the hospital performed blood work and a urine drug test, which included tests for the presence of drugs and alcohol. Ms. Read tested negative for any drugs for which the hospital screened. The hospital, however, recorded an alcohol level in Ms. Read's blood of "93 mg/dl". *See* attached portion of Good Samaritan Medical Center Records.

Using the value from the test conducted by the hospital, and without ever having applied for a warrant to themselves test Ms. Read's blood (as would be the normal course in a prosecution involving any aggravated form of operating under the influence), Massachusetts State Police performed a conversion of the reported 93/ng/dL result to a blood ethanol concentration ranging from .078 g% to .083 g%, based on three different conversion factors on May 4, 2022. Using *that* conversion, Mr. Roberts then conducted a retrograde extrapolation on June 6, 2022. In both reports, Mr. Roberts explicitly notes that the serum/plasma ethanol concentration obtained from Good Samaritan Medical Center "was not performed at the Massachusetts State Police Crime Laboratory and therefore this report does not fall under the laboratory's scope of accreditation". *See* attached May 4, 2022 "Serum/Plasma Conversion Report"; *see also* June 6, 2022 "Retrograde Extrapolation Report".

Moreover, in his report, Mr. Roberts uses a time interval of 8.5 hours, with an additional two hour allowance from the time of 12:45AM (the time of the alleged incident in an attempt to "account for the uncertainties associated with the drinking history of the subject prior to the time interval". Mr. Roberts calculations determined that Ms. Read's BAC "could" have been between ".13 g% and .29 g% at 0045 hours on 1/29/22". This calculation "assumes that the subject's BAC had peaked at or prior to the start of the time interval (0045 hours) indicating that the subject had consumed no ethanol .5 to 1.5 hours prior to the time interval".

## ARGUMENT

**I. BECAUSE BOTH THE INITIAL SERUM/PLASMA CONVERSION REPORT AND THE SUBSEQUENT RETROGRADE EXTRAPOLATION ANALYSIS ARE BASED ON A BLOOD TEST ABOUT WHICH THE PARTIES LACK ESSENTIAL INFORMATION (INCLUDING TESTING PROCEDURES AND TYPE OF TESTING), THE BLOOD TEST RESULTS SHOULD BE EXCLUDED**

Retrograde extrapolation is “a mathematical calculation used to estimate a person's blood alcohol level at a particular point in time by working backward from the time the blood alcohol test was taken, taking into consideration rates of both absorption and excretion.” Commonwealth v. Senior, 433 Mass. 453, 459 (2001). The SJC has held that, generally speaking, retrograde extrapolation analysis meets the *Daubert-Lanigan* standard for admissibility. *Id.*

Breathalyzer test results are generally admissible (without the need for retrograde extrapolation) without the need for expert testimony when taken within a “reasonable time” (defined by the SJC as three hours) after operation of a vehicle. Com v. Colturi, 448 Mass. 809 (2007). Colturi lays out a narrow exception in which expert testimony *is* required: where the Commonwealth is proceeding under an “impaired ability” theory (as opposed to a *per se* theory), and a test is administered outside of the three-hour window — necessitating retrograde extrapolation — expert testimony is required. *Id.*

The Supreme Judicial Court recently addressed the issue of a defendant's consent to a blood test in a prosecution for simple and aggravated forms of OUI, in companion cases Commonwealth v. Cappelucci, SJC 13458 (2024) and Commonwealth v. Zucchini, SJC 13384 (2024). The Court held that the consent requirement of M.G.L. c. 90 § 24(1)(e) only applies in prosecutions for simple OUI under G.L. c. 90 § 24(1)(a), rather than to any of the aggravated forms of OUI. *Id.* Accordingly, whether Ms. Read consented to the alcohol blood test or not is not at issue here.

What is at issue, however, is that the parties lack essential information about how Good Samaritan Medical Center drew and tested Ms. Read's blood. Oftentimes, in prosecutions for OUI and its aggravated forms, police will be granted a warrant to themselves test a defendant's blood through a certified analyst, in line with the provisions of 501 CMR 2.00 *et seq.* While these requirements apply only to analysts working for the State Police, and not to hospital

personnel, *see Com v. Dyer*, 77 Mass. App. Ct. 850 (2010), they ensure that blood testing for ethanol undergoes a standardized, reliable, repeatable procedure. The Massachusetts State Police utilize gas chromatography testing, rather than enzymatic immunoassay testing (which presumably was used by the hospital here).

In the medical records provided, under the “chemistry” section, there is an annotation regarding the drug testing which states “[t]his report is intended for use in clinical monitoring and management of patients. It is not intended for use in employment related drug testing or court related proceedings. Samples are not routinely tested for adulteration and are assumed to be within the normal physiological pH range of 5-8”. *See* attached page of Good Samaritan Medical records. The alcohol result is beneath this annotation. It is not clear whether this annotation applies only to the urine drug screen, or to the alcohol result as well.

The defense should not have to guess. The Commonwealth should have provided documentation from the hospital regarding how the alcohol test result was obtained, through what procedure, by whom, and what manner of testing was used (i.e. gas chromatography or enzymatic testing, the latter of which would yield a higher result). Absent this information, the Commonwealth is unable to establish the reliability of this initial result.

Without this foundational information about the initial serum/plasma result, the serum/plasma conversion to blood ethanol concentration, and the retrograde extrapolation from the converted number, is not reliable. More precisely, the Commonwealth has not provided any information about the initial result from the hospital that would indicate that the subsequent analyses by the Mr. Roberts are accurate. Accordingly, the serum/plasma conversion, and retrograde extrapolation result, should be excluded.

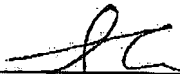
Should the Court find that any issues with the initial blood draw and analyses by Mr. Roberts go to the weight of that evidence, rather than its admissibility, the defense suggests that the Commonwealth will need testimony both about how the blood was drawn and what methodology was used by the hospital *and* expert testimony regarding the serum/plasma conversion and subsequent retrograde extrapolation, as Ms. Read’s blood was not drawn within a “reasonable time” after her operation of a vehicle, as required by *Com v. Colturi*, 448 Mass. 809 (2007). The defense requests a voir dire of any witness called from Good Samaritan Medical Center and Mr. Roberts prior to the admission of any such evidence.

CONCLUSION

For the above reasons, Ms. Read respectfully requests that the blood test result from Good Samaritan medical center, the serum/plasma conversion, and retrograde extrapolation evidence be excluded.

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

  
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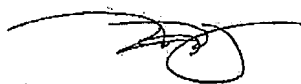
Dated: April 9, 2024

**CERTIFICATE OF SERVICE**

I, Attorney David R. Yannetti, do hereby certify that I served the “Defendant’s Motion *in limine* to Exclude Serum/Plasma Ethanol Concentration, Blood Ethanol Concentration Conversion, and Corresponding Retrograde Extrapolation Analysis” upon the Commonwealth by emailing a copy on April 9, 2024 to Norfolk County Assistant District Attorney Adam Lally at [adam.lally@mass.gov](mailto:adam.lally@mass.gov).

April 9, 2024

Date



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