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SUPERIOR COURT DEPARTMENT
NORFOLK SUPERIOR COURT
DOCKET NO. 2282CR0117

COMMONWEALTH
v.
KAREN READ

COMMONWEALTH'S MOTION IN LIMINE TO ALLOW IN-COURT
IDENTIFICATION

The Commonwealth moves in limine to allow an in-court identification of the defendant in accordance with the rule announced on December 17, 2014, in Commonwealth v. Crayton, 470 Mass. 228, 241-242 (2014), and Commonwealth v. Collins, 470 Mass. 255, 265 (2014), for cases tried after that date.

In Crayton, 470 Mass. at 241, the Court ruled that where an eyewitness did not participate before trial in an identification procedure, "good reason" for an in-court identification must first be shown.¹ In Collins, 470 Mass. at 265, the Court ruled that this rule also applies where an eyewitness to a crime has not made an unequivocal positive identification of the defendant before trial. While the Court did not categorically circumscribe when "good reason" might exist, the Court provided the following two examples of "good reason": (1) the eyewitness was already familiar with the defendant before the commission of the crime; and (2) the witness is an arresting officer who was an eyewitness to the crime and the identification would merely confirm that the defendant is the person who was arrested for the charged crime. Crayton, 470 Mass. at 242. The Court explained that in these circumstances, the witness would not be identifying the

¹ The Court based the new rule on common law principles of fairness and did not address the subject under state constitutional principles.

defendant based solely on his or her memory of witnessing the defendant at the time of the crime. Id. While there are no eyewitnesses to the crime itself, witnesses observed the defendant close in time to the crime and in the subsequent aftermath and recovery of the victim's body.

The circumstances here meet the "good reason" standard.

As in Crayton, there was no out-of-court identification procedure conducted prior to the trial. The Commonwealth intends to lay a foundation that the witnesses were familiar with the defendant prior to January 29, 2022, the date the defendant is alleged to have murdered John O'Keefe. The Commonwealth's witnesses include individuals who were friendly with the defendant and knew her through her relationship with the victim; this is not a case where a particular witness is identifying the defendant based solely upon his or her memory of witnessing the defendant around the time of the crime. As the S.J.C stated in Crayton, under these circumstances where witnesses knew the defendant prior to the crime, there is little risk of misidentification arising from the in-court showup. 470 Mass. at 242-43. Further, the facts support that there is good reason for the police officers and first responders who interacted with the defendant on scene, at the hospital, and at subsequent interviews to be permitted to make an in-court identification of the defendant.

For these reasons, the Commonwealth's motion in limine to admit in-court identification should be allowed.

Respectfully Submitted,
For the Commonwealth

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