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NORFOLK COUNTY
NORFOLK COUNTY

SUPERIOR COURT DEPARTMENT
NORFOLK SUPERIOR COURT
DOCKET NO. 2282CR0117

COMMONWEALTH

v.

KAREN READ

COMMONWEALTH'S MOTION IN LIMINE TO ADMIT 911 CALL

The Commonwealth moves this Honorable Court allow into evidence the 911 call made by Jennifer McCabe on January 29, 2022, immediately following the discovery of John O'Keefe. In this call, the defendant can be heard yelling and making statements.

An extrajudicial statement made by a party opponent is an exception to the rule against the introduction of hearsay and is admissible. See Commonwealth v. Allison, 434 Mass. 670, 676 n. 5 (2001); Mass. G. Evid. § 801(d)(2)(A) (2012). Although often referred to as the rule on "admissions" by a party opponent, it encompasses any extrajudicial statement made by a party opponent regardless whether it is inculpatory or against the party's interest. See Commonwealth v. Cutts, 444 Mass. 821, 834 (2005) citing P.J. Liacos, M.S. Brodin, & M. Avery, Massachusetts Evidence § 8.8.1, at 496 (7th ed. 1999); see also Commonwealth v. Spencer, 465 Mass. 32, 46 (2013).

The defendant's statements on the 911 call are non-testimonial. Crawford v. Washington, 541 U.S. 36, 53-54 (2004). In addressing 911 calls in particular, the United States Supreme Court noted that "[a] 911 call... and at least the initial interrogation conducted in connection with a 911 call, is ordinarily not designed primarily to 'establis[h] or prov[e]' some past fact, but to describe current circumstances requiring police assistance". Davis v. Washington, 547 U.S.

813, 827 (2006); Michigan v. Bryant, 131 S. Ct. 1143 (2011). When viewed objectively, the nature of a 911 call are statements which are elicited and “necessary to be able to resolve the present emergency, rather than simply to learn what had happened in the past.” Id. The 911 call was recorded and preserved. The Commonwealth seeks to authenticate the call through Mrs. Jennifer McCabe as well as the dispatcher and play it for the jury at trial.

Respectfully Submitted,
For the Commonwealth

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