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SUPERIOR COURT DEPARTMENT
NORFOLK SUPERIOR COURT
DOCKET NO. 2282CR0117

COMMONWEALTH

v.

KAREN READ

COMMONWEALTH'S MOTION IN LIMINE REGARDING THE USE OF LEADING QUESTIONS

Now comes the Commonwealth and respectfully requests of this Honorable Court that, if necessary, the Commonwealth be allowed to use leading questions of the child witnesses, K.F. (age 16) and P.F. (age 13).

Evidence may be elicited by leading questions when the witness is a child. Commonwealth v. Melchionno, 29 Mass. App. Ct. 939, 940 (1990); Commonwealth v. Lender, 47 Mass. App. Ct. 164, 167 (1999) (no abuse of discretion when trial judge allowed prosecutor to ask minor victim a question which is assumed, but not decided, leading by asking "Did he place one of his body parts inside you?"); Commonwealth v. Lamontagne, 42 Mass. App. Ct. 213, 218 (1997) (prosecutor's use of leading questions to a four year old witness upheld). The use of leading questions for child witnesses dates to the 1800's. "The Court have no doubt, that it is within the discretion of a judge at trial, under particular circumstances, to permit a leading question to be put to one's own witness, as ... where the witness is a child of tender years, whose attention can be called to the matter required, only by a pointed or leading question." Commonwealth v. Baran, 21 Mass. App. Ct. 989, 991 (1986) quoting Moody v. Rowell, 17 Pick. 490, 498 (1835).

A great leeway for leading questions is allowed with child witnesses. Commonwealth v. Sanchez, 423 Mass. 591, 597 (1996). Judges have considerable latitude in devising procedures and modifying the usual rules of trial to accommodate child witnesses, so long as the defendant's fair trial rights are not violated. Opinion of the Justices to the Senate, 406 Mass. 1201, 1218 (1989)

Respectfully submitted,
For the Commonwealth,

/s/ Adam Lally
Adam Lally
Assistant District Attorney