

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

COMMONWEALTH

v.

KAREN READ

VERDICT SLIP

2282CR117 - Offense 001 – Murder in the Second Degree

In the above-entitled case, we the Jury say that the Defendant is:

1. **Not Guilty**

2. **Guilty of Offense as Charged**
Murder in the Second Degree

And this is the unanimous decision of all twelve members.

Date: _____, 2024

Foreperson

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

COMMONWEALTH

v.

KAREN READ

VERDICT SLIP

2282CR117 - Offense 002 – Manslaughter while Operating a Motor Vehicle under the influence.

In the above-entitled case, we the Jury say that the Defendant is:

1. Not Guilty

2. Guilty of Offense as Charged
Manslaughter while Operating a Motor Vehicle under the Influence
(check one or both of the following):
 - Manslaughter while Operating a Motor Vehicle under the Influence of Alcohol
 - and/or
 - Manslaughter while Operating a Motor Vehicle With a Blood Alcohol Level of .08% or greater

3. Guilty of lesser included offense:
Involuntary Manslaughter

4. Guilty of Lessor Included charge of:
Motor Vehicle Homicide (Felony-OUI Liquor and Negligence)
(check one or both of the following):
 - Motor Vehicle Homicide by Operating a Motor Vehicle under the influence of Alcohol
 - and/or
 - Motor Vehicle Homicide by Operating a Motor Vehicle With a Blood Alcohol Level of .08% or greater

And this is the unanimous decision of all twelve members.

Date: _____, 2024

Foreperson

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

COMMONWEALTH

v.

KAREN READ

VERDICT SLIP

2282CR117 - Offense 003 – Leaving the Scene of an Accident Resulting in Death

In the above-entitled case, we the Jury say that the Defendant is:

1. **Not Guilty**

2. **Guilty of Offense as Charged**
Leaving the Scene of an Accident Resulting in Death

And this is the unanimous decision of all twelve members.

Date: _____, 2024

Foreperson

FINAL INSTRUCTIONS
COMMONWEALTH V. KAREN READ
HON. BEVERLY J. CANNONE

June 25, 2024

Thank you, Jurors for serving on this jury and for being so attentive. You will soon deliberate for the purposes of reaching a verdict in this case. Before you do that, it is my responsibility to give you instructions concerning the law. The instructions are divided into three parts:

General instructions that are provided in every criminal case;

Specific instructions concerning the crimes alleged in this case; and

Guidelines for your deliberations.

Please listen carefully to all of the instructions. Do not ignore any instruction or give special attention to any other instruction.

To make sure that I give you the instructions accurately, I will read them to you. You will also get a written copy so that you may refer to it in the jury room during your deliberations. I will try to make sure my oral instructions match the written instructions. If there is any difference between what I say aloud and what the written instructions say, please follow what I say aloud.

You must take the law as I give it to you. You may not quarrel with it. You can't do that regardless of any opinion you may have as to what you think the law ought to be. What the

lawyers or witnesses may say or suggest about the law is not necessarily the law. That's because it's my responsibility as the judge, and mine alone, to instruct you what the law is.

I. GENERAL INSTRUCTIONS

I now turn to Part I of these instructions, which are general instructions that apply to all criminal cases.

PRESUMPTION OF INNOCENCE

As I explained to you at the beginning of the trial, there is a fundamental rule that applies in all criminal cases, including this case. Every person who is accused of a crime is presumed to be innocent of that crime. Ms. Read is presumed innocent of the charges in this case. That means you must consider Ms. Read to be innocent unless the prosecution has proved beyond a reasonable doubt—through evidence presented during the trial—that Ms. Read committed the crimes charged. I will explain what I mean by “reasonable doubt” in just a moment.

Ms. Read does not have to do anything to convince you she is innocent. She does not have to explain anything. Ms. Read does not have to testify, call or question witnesses, or provide any evidence at all—because you must presume she is innocent. Instead, it is up to the Commonwealth to prove the charges against Ms. Read beyond a reasonable doubt. This burden of proof never shifts to the defendant.

After you have considered all the evidence carefully and fairly, if you have a reasonable doubt about Ms. Read's guilt on a particular charge then your verdict must be not guilty on that charge. You may find Ms. Read guilty of a charge only if all twelve deliberating jurors agree that the Commonwealth has proved the charge beyond a reasonable doubt.

BEYOND A REASONABLE DOUBT

What is proof beyond a reasonable doubt? The term is often used and probably pretty well understood, though it is not easily defined. Proof beyond a reasonable doubt does not mean proof beyond all possible doubt, for everything in the lives of human beings is open to some possible or imaginary doubt. A charge is proved beyond a reasonable doubt if, after you have compared and considered all of the evidence, you have in your minds an abiding conviction, to a moral certainty, that the charge is true. When we refer to moral certainty, we mean the highest degree of certainty possible in matters relating to human affairs -- based solely on the evidence that has been put before you in this case.

I have told you that every person is presumed to be innocent unless and until he or she is proved guilty, and that the burden of proof is on the Commonwealth. If you evaluate all the evidence and you still have a reasonable doubt remaining, the defendant is entitled to the benefit of that doubt and must be acquitted.

It is not enough for the Commonwealth to establish a probability, even a strong probability, that the defendant is more likely to be guilty than not guilty. That is not enough. Instead, the evidence must convince you of the defendant's guilt to a reasonable and moral certainty; a certainty that convinces your understanding and satisfies your reason and judgment as jurors who are sworn to act conscientiously on the evidence.

This is what we mean by proof beyond a reasonable doubt.

How do you decide whether the Commonwealth has proven that each element of the indictment is true beyond a reasonable doubt? Let's talk about the roles we all have.

FUNCTION OF THE JURY

You are the most important people in the room. It all begins and ends with your function. You will determine the facts in this case and that is your job and yours alone. You are the sole and exclusive judges of the facts. If there are any conflicts in the testimony, it is your job to resolve those conflicts, if you can do so. Once you determine the facts, it is your duty to apply those facts to the law as I explain it to you and to determine whether the Commonwealth has proven its case beyond a reasonable doubt. You must determine the facts solely and entirely on the evidence as you have heard it and seen it in this courtroom and on nothing else. No prejudice, no bias, no fear, no favor. You must not be swayed by personal likes or dislikes. Your deliberations are no place for emotion or sympathy, passion or prejudice. The Commonwealth and Karen Read have a right to have the case judged by fair and impartial jurors.

All parties who come before the Court stand as equals before you. Therefore, your verdicts must be based on the law as I've given it to you, and on the evidence and the facts that you find, and nothing else.

You cannot allow yourselves to be influenced by any personal feelings you may have about the nature of the crimes with which Ms. Read has been charged or the consequences of your verdict. Just the cool, reflective and impartial sifting of the evidence so that here in this courtroom justice may be done.

FUNCTION OF THE JUDGE

Your focus is on the evidence. I am the judge of the law. My job is to teach you the law that you must follow in the case. However, I have no opinion about how you should decide this case. You should not consider anything I have said or done during this trial as reflecting any opinion by me

about how you should decide this case. If you believe I have an opinion about the facts of this case, you must disregard it. You must decide this case based solely on your evaluation of the evidence.

FUNCTION OF THE LAWYERS

The arguments of the lawyers are not evidence; they are not witnesses. If a lawyer, during argument, made a mistake in summarizing the evidence or argued something not supported by the evidence, you must disregard it. It is the jury's collective memory of the evidence that controls the matter.

Lawyers' objections are a proper part of the court's procedure and are not part of the evidence. So don't hold it against the lawyers or their client if they made objections, motions or other requests. They are simply doing their job during a trial.

There was testimony at trial that the lawyers interviewed witnesses when preparing for and during the course of the trial. You may not draw any unfavorable inferences solely from that fact. There is nothing improper about conducting such interviews. On the contrary, the lawyers are obliged to prepare their case as thoroughly as possible and may interview witnesses.

VERDICT MUST BE BASED ON THE EVIDENCE

The verdict must be based only on the evidence and the jury's collective reasoning applied to the evidence in a fair, impartial manner. The extent to which you believe or disbelieve a witness or what an exhibit purports to show, and importance to give any testimony or other evidence is entirely up to your own good judgment. The evidence consists of the testimony of the witnesses, and the exhibits in the case.

There are some things you have heard about that have not been introduced into evidence, such as written statements by witnesses, police reports, autopsy and accident reconstruction reports. Occasionally during the trial, you have heard references to such documents, and you may naturally wonder why neither side introduced any of them into evidence. The answer is that under our rules of evidence, such reports usually may not be admitted, although the parties may refer to them for certain limited purposes while questioning witnesses. So, you should not hold it against any party that you do not have them, and neither should you speculate on what they may or may not contain. Similarly, as you review the exhibits, you may find that some information has been removed because it is not relevant. Please ignore that and don't try to guess what may have been removed or why.

Any information that you may have read, heard or seen about the case outside of the courtroom is not evidence. My instructions to you and any other comments I made, the lawyers' opening and closing statements and any comments they may have made are not evidence. Answers that I struck from the record and told you to disregard are not evidence. Only the testimony of the witnesses, that is, their answers to questions and the exhibits are evidence.

It is important to remind you folks that the verdict cannot be based on emotional reaction or sympathy for any person or side of the case. Certain of the testimony and exhibits may have provoked an emotional reaction in all of us. You may feel sympathy for the family of Mr. O'Keefe, and you may feel sympathy for the defendant as she sits here in the court room. But your job is to decide the case without bias, fear, sympathy or favor, to view the evidence with a certain clinical detachment, and to decide the case based solely on the evidence and the application of the law to that evidence.

I have allowed you to take notes during the trial, and you may refer to those notes during your deliberations, but remember they are not evidence, or a substitute for the evidence and your recollection. They are for your personal use; please do not share them with the other jurors.

Consider the evidence as a whole. Do not make up your mind about what the verdicts should be until after you have gone to the jury room to decide the case, and you and your fellow jurors have discussed the evidence. Keep an open mind until then.

VIEW

You'll remember that we took a view in this case. The purpose of the view was to help you better understand the evidence that you heard during the trial, and to help you appreciate the locations and their surroundings. Your responsibility on the view was to see the places, observe them carefully, and remember what you saw. The view is part of this case. You may use and consider the observations that you made while on the view in your deliberations in reaching a verdict. The same is true about the demonstration we saw from the witness stand. The demonstration was done simply to help you understand the evidence and you may consider it in your deliberations.

CREDIBILITY OF WITNESSES

It is the jury's job to earnestly seek the truth of the matter. In doing that, the jury must decide questions of credibility and reliability. The jury must decide how truthful or reliable or convincing any part of the evidence is.

In deciding questions of credibility and reliability you may rely on your common sense and reasoning powers and your life experiences; consider a witness's testimony in the context of

all the other evidence, not in isolation; you may consider the demeanor, candor and appearance of the witness in testifying; who was the witness? What relationship did they have to the case or to other witnesses or parties? Did the witness have any bias, reason or motive to give false or shaded testimony? If so, you may consider that bias or motive in your deliberations and ultimately as to whether or not it impacts the credibility of the witnesses and the assessment of the evidence presented. Is the witness someone likely to give an honest and impartial account? Consider not just whether the witness was honest, but also whether the witness's testimony was accurate and reliable or honestly mistaken.

A prior statement by a witness, if inconsistent with his or her trial testimony in any way, may be considered on the witness' credibility and reliability, and only for this purpose.

OMMISSIONS IN THE POLICE INVESTIGATION

You have heard some evidence suggesting that the Commonwealth did not conduct certain scientific tests or otherwise follow standard procedure during the police investigation. This is a factor you may consider in evaluating the evidence presented in this case. With respect to this factor, you should consider three questions:

First: Whether the omitted tests or other actions were standard procedure or steps that would otherwise normally be taken under the circumstances;

Second: Whether the omitted tests or actions could reasonably have been expected to lead to significant evidence of the defendant's guilt or innocence; and

Third: Whether the evidence provides a reasonable and adequate explanation for the omission of the tests or other actions.

If you find that any omissions in the investigation were significant and not adequately explained, you may consider whether the omissions tend to affect the quality, reliability or credibility of the evidence presented by the Commonwealth.

All of these considerations involve factual determinations that are entirely up to you, and you are free to give this matter whatever weight, if any, you deem appropriate based on all the circumstances.

LIMITING INSTRUCTIONS

During the trial, I gave you some instructions on how you are to consider some of the evidence you heard and importantly, how you are not to consider the evidence. I am going to summarize those limiting instructions here.

OTHER ACTS EVIDENCE

Ms. Read is not charged with committing any crime other than the charges contained in the indictments. You have heard evidence about interactions that Ms. Read had with Mr. O'Keefe and other witnesses in Aruba. This evidence was admitted solely for your consideration as evidence of the nature of the defendant's relationship with Mr. O'Keefe and whether it goes to her knowledge or intent or motive on January 29, 2022. You may not consider that evidence as proof that she has a criminal personality or bad character. You may not take the defendant's prior acts as a substitute for proof that the defendant committed the crimes charged here or to conclude that if she committed the acts in Aruba, she must also have committed the offences with which she is charged here. You can only use the evidence for the limited purpose of how it goes to the defendant's state or mind, motive and the nature of her relationship with John O'Keefe.

ELECTRONIC COMMUNICATIONS

Before you consider any electronic communication in your deliberations, you must first find that it is more likely true than not that the persons who authored them were, in fact, John O'Keefe, the defendant, or the witnesses who testified about their communication with John O'Keefe and/or the defendant. If you do not find it is more likely true than not that John O'Keefe, Karen Read, or the witnesses who testified here before you, were the persons who authored or transmitted the electronic communications, then you may not consider the electronic communications in deciding the case.

TESTIMONY AND PHOTOGRAPHS WITH AN EMOTIONAL IMPACT

The Commonwealth has introduced photographs into evidence. The photographs may be graphic and unpleasant. As I told you when you first saw them, your verdict must not in any way be influenced by the fact that these photographs may be graphic or unpleasant. The defendant is entitled to a verdict based solely on the evidence and not one based on pity or sympathy. Consider a photograph only as it may show a medical condition, the nature of the injuries, or the details of the incident itself.

STATE OF MIND OF JOHN O'KEEFE

You heard evidence of statements made by John O'Keefe. These statements WERE admitted only for a limited purpose of establishing John O'Keefe's state of mind. You are not to consider this testimony as proof that the defendant has bad character or propensity to commit crimes.

The testimony of witnesses recounting conversations with Mr. O'Keefe or messages the defendant's phone received from him can only be used as they go to the defendant's motive or intent on January 29th and only if you find that the defendant was aware of John O'Keefe's state of mind at the time of the crime and would be likely to respond to it.

There need not be direct evidence that the defendant learned of Mr. O'Keefe's state of mind so long as you reasonably can infer from the evidence that she did learn of it.

HUMANE PRACTICE

You have heard testimony about statements allegedly made by Ms. Read. Before you may consider any such statement, you are going to have to make a preliminary determination whether it can be considered as evidence or not and for what purpose it may be used. You may not consider any such statement in your deliberations for the truth of any such statement unless, from all the evidence in the case, the Commonwealth has proven beyond a reasonable doubt that the defendant made the statement that she is alleged to have made, and that she made it voluntarily, freely and rationally.

In determining whether or not any statement made by the defendant was voluntary, you may consider all of the surrounding circumstances. You may consider any evidence you have heard about the defendant's physical and mental condition, her intelligence, age, education, and experience. Your decision does not turn on any one factor; you must consider the totality of the circumstances.

OPINION TESTIMONY

Some testimony came from witnesses who saw or heard something. Some witnesses also told you about opinions or conclusions they reached based on some special training or experience. But special training or experience does not necessarily make the witness's testimony any more believable or important than other evidence. So, you should consider the same questions about witness testimony that I mentioned earlier, including any bias or motive these opinion witnesses may have had to testify in a certain way. You may also consider the witness' level of experience and training and whether they based their opinions on the facts that you find to be true.

There were hypothetical questions asked of some of these witnesses. You may give whatever weight you deem appropriate to the opinion based on the hypothetical but only if, after careful consideration, you find that all the assumed facts were true.

Remember that witnesses, even those with special training or experience, do not decide cases; juries do. It is up to you whether to accept or reject, in whole or in part, any opinion or conclusion that a witness offered during the trial.

EVALUATION OF EXHIBITS

You have the same powers with respect to exhibits that you have with respect to the testimony of the witnesses. Look them over and decide the weight – that is the value – that they deserve to receive in helping you resolve the case as you make your ultimate judgment about whether the Commonwealth has proved its case beyond a reasonable doubt. You do not have to believe something simply because it is written on a piece of paper or appears in a photograph. You are not, of course, required to disbelieve it because it appears there. You decide whether to believe what an exhibit purports to show and how much weight, if any, to give each exhibit.

DIRECT AND INDIRECT OR CIRCUMSTANTIAL EVIDENCE

You have heard me talk about the sources of evidence in this case. Those are the tools that you have to decide the case. Now, with that evidence in mind, what can you do with it? As jurors, you may bring to bear all your knowledge and experience. You don't check your common sense at the door to the jury room. Just the reverse. I instruct you to use your common sense. Give the evidence a reasonable and fair construction in the light of your common knowledge and experience. In determining the facts in this case, you may draw reasonable inferences from the

evidence that you believe because you are entitled to rely upon both direct and indirect or circumstantial evidence.

Direct evidence is evidence of what a witness claims to have seen or heard or touched or somehow perceived with their own senses.

Circumstantial evidence exists where a witness does not testify directly to the fact that is sought to be proven, but you are provided with evidence of other facts and then asked to draw reasonable inferences from them about the fact that is sought to be proved. Such inferences may be considered with all of the other evidence in reaching your verdict. Circumstantial evidence is competent to establish guilt beyond a reasonable doubt.

Now, what do I mean by an inference? An inference is a logical deduction or conclusion that you may, but are not required, to draw from evidence that you have accepted as believable. Inferences are little steps in reasoning, steps in which you take some known information, apply your experience in life to it, and then draw a conclusion. Sometimes you can draw more than one inference. You have to decide which inferences are reasonable and decide which seems more reasonable to you.

Remember, when you are dealing with inferences, you never have to infer anything. You may, but do not have to, draw any inferences whatsoever. An inference drawn from circumstantial evidence need not be necessary or inescapable, but any inference which you do draw must be reasonable and possible. It must be logical. It must be a natural one, which is not too remote in the ordinary course of events. You may not guess. You may not speculate. You may not engage in surmise. You should not pile inference upon inference until the pile gets so high that it tips over logically, or the chain gets so weak that it doesn't hold together anymore. When you run through your inferences, check the starting point and the ending point to make

sure they're still reasonable. Further, when the evidence tends equally to give rise to either of two inconsistent propositions, the Commonwealth has established neither proposition. In order to convict the defendant, you must find that all of the evidence and the reasonable inferences that you have drawn, taken together, prove that she is guilty beyond a reasonable doubt.

Let me give you an example of an inference: Suppose that the issue you must decide is whether the US Postal Service delivered the mail today. If you go home and someone in your household, a child, roommate, or spouse, hands you the mail and states that he or she observed the letter carrier deliver the mail and retrieved it from the mail box- this would be direct evidence that the US Postal Service delivered the mail. The "witness" perceived the event with his or her own senses and told you what he or she observed. The issue you would have to decide is whether the witness is credible.

On the other hand, if you go home from court and find mail in the mail box you may infer that it was delivered by the US Postal Service today. You draw this reasonable inference based on the following known facts: the mailbox was emptied yesterday, you know that the mail is delivered by the US Postal Service Monday through Saturday, the letters in the box are postmarked.

You have exactly the same power in this case; not the power to speculate or to guess, but the power to draw reasonable inferences warranted by the evidence in the fashion I have just described.

DEFENDANT DID NOT TESTIFY

You may have noticed that the defendant did not testify at this trial. The defendant has an absolute right not to testify, since the entire burden of proof in this case is on the Commonwealth to prove that the defendant is guilty. It is not up to the defendant to prove that she is innocent.

The fact that the defendant did not testify has nothing to do with the question of whether she is guilty or not guilty. You are not to draw any adverse inference against the defendant because she did not testify. You are not to consider it in any way, or even discuss it in your deliberations. You must determine whether the Commonwealth has proved its case against the defendant based solely on the testimony of the witnesses and the exhibits. That completes the first part of my instructions.

II. ELEMENTS OF THE CHARGES

Now I am going to turn to the elements of the charges against Ms. Read.

The Commonwealth has alleged that on January 29, 2022, Ms. Read did assault and beat John O'Keefe, with intent to murder him, and by such assault and battery did kill and murder John O'Keefe. Ms. Read is charged with second degree murder.

MURDER IN THE SECOND DEGREE

G. L. c. 265, §1

In order to prove murder in the second degree, the Commonwealth must prove the following elements:

1. The defendant caused the death of John O'Keefe.
2. The defendant:
 - a. intended to kill John O'Keefe; or
 - b. intended to cause grievous bodily harm to John O'Keefe; or
 - c. intended to do an act which, in the circumstances known to the defendant, a reasonable person would have known created a plain and strong likelihood that death would result.

I will now discuss each of these requirements in more detail.

The first element is that the defendant caused the death of John O'Keefe. A defendant's act is the cause of death where the act, in a natural and continuous sequence, results in death, and without which death would not have occurred.

The second element is that the defendant:

- a. intended to kill John O'Keefe; or
- b. intended to cause grievous bodily harm to John O'Keefe; or
- c. intended to do an act which, in the circumstances known to the defendant, a reasonable person would have known created a plain and strong likelihood that death would result.

As you can see, this second element has three sub-elements, which I shall call prongs, and the Commonwealth satisfies its burden of proof if it proves any one of the three prongs beyond a reasonable doubt.

The first prong is that the defendant intended to kill John O'Keefe. This means that the defendant consciously and purposefully intended to cause John O'Keefe's death.

The second prong is that the defendant intended to cause grievous bodily harm to John O'Keefe. Grievous bodily harm means severe injury to the body.

The third prong is that the defendant intended to do an act which, in the circumstances known to the defendant, a reasonable person would have known created a plain and strong likelihood that death would result. Let me help you understand how to analyze this third prong. You must first determine whether the defendant intended to perform the act that caused the victim's death. If you find that she intended to perform the act, you must then determine what the defendant herself actually knew about the relevant circumstances at the time she acted. Then you must determine whether, under the circumstances known to the defendant, a

reasonable person would have known that the act intended by the defendant created a plain and strong likelihood that death would result.

If you have a reasonable doubt as to whether John O'Keefe's death was accidental, because the death was caused by a negligent, careless, or mistaken act of the defendant, or resulted from a cause separate from the defendant's conduct, you may not find that the Commonwealth has proved that the defendant intended to kill, intended to cause grievous bodily harm, or intended to do an act which, in the circumstances known to the defendant, a reasonable person would have known created a plain and strong likelihood that death would result.

In deciding whether the defendant intended to kill, intended to cause grievous bodily harm, or intended to do an act which, in the circumstances known to the defendant, a reasonable person would have known created a plain and strong likelihood that death would result, you may consider any credible evidence that the defendant was affected by her consumption of alcohol.

If the Commonwealth has proven both elements beyond a reasonable doubt, you should return a verdict of guilty. If the Commonwealth has failed to prove one or more of these elements beyond a reasonable doubt, you must return a verdict of not guilty.

**MANSLAUGHTER WHILE OPERATING A MOTOR VEHICLE UNDER THE
INFLUENCE OF LIQUOR**

G. L. c. 265, §13 ½

In order to prove manslaughter while operating a motor vehicle, the Commonwealth must prove the following five elements:

- 1) First: That the defendant operated a motor vehicle;
- 2) Second: That she operated the motor vehicle upon a public way or in a place in which the public has a right of access;

- 3) Third¹: That while the defendant was operating the motor vehicle, she was under the influence of intoxicating liquor; and/or the percent of alcohol in the defendant's blood was .08 or greater;
- 4) Fourth: That the defendant operated the vehicle wantonly or recklessly so as to create a high degree of likelihood that substantial harm will result to another;
- 5) Fifth: That by such operation of the motor vehicle the defendant caused the death of John O'Keefe.

To prove the first element, the Commonwealth must prove beyond a reasonable doubt that the defendant was operating a motor vehicle. A person "operates" a motor vehicle while doing all of the well-known things that drivers do as they travel on a street or highway, and also when doing any act which directly tends to set the vehicle in motion. A person is "operating" a motor vehicle whenever they are in the vehicle and intentionally manipulate some mechanical or electrical part of the vehicle — like the gear shift or the ignition — which, alone or in sequence, will set the vehicle in motion.

To prove the second element, the Commonwealth must prove beyond a reasonable doubt that the defendant operated a motor vehicle on a public way. Any street or highway that is open to the public and is controlled and maintained by some level of government is a "public way." This would include, for example, interstate and state highways as well as municipal streets and roads. In determining whether any particular street or road is a public way, you may consider evidence, if any, about whether it has some of the usual indications of a public way — for example, whether it is paved, whether it has streetlights, street signs, curbing and fire hydrants, whether there are buildings along the street, whether it has any crossroads intersecting it, and whether it is publicly maintained.

To prove the third element, the Commonwealth must prove beyond a reasonable doubt that while operating a motor vehicle, the defendant was under the influence of intoxicating liquor, that is alcohol, and/or the percent of alcohol in the defendant's blood was .08 or greater. I will now instruct you on both theories:

What does it mean to be "under the influence" of alcohol? It is not illegal to drive after consuming alcohol as long as the operator is not under the influence of alcohol. However, neither does someone have to be drunk to be under the influence of alcohol. A person is under the influence of alcohol if they have consumed enough alcohol to reduce their ability to operate a motor vehicle safely, by decreasing their judgment, alertness, and ability to respond promptly and effectively to unexpected emergencies. The amount of alcohol necessary to do this may vary from person to person. The Commonwealth is not required to prove that the defendant actually drove in an unsafe or erratic manner, but it is required to prove that their ability to drive safely was diminished by alcohol. You may rely on your experience and common sense about the effects of alcohol. You should consider any believable evidence about the defendant's alleged consumption of alcohol, as well as the defendant's appearance, condition, and behavior.

In deciding this first theory of whether the defendant operated a motor vehicle under the influence of alcohol, you may also consider whether a blood test showed that the defendant had consumed any alcohol. However, no matter what the reading is, the blood test is not sufficient by itself to prove that the defendant was under the influence of alcohol.

Under the second theory, the Commonwealth must prove beyond a reasonable doubt that at the time of operation the percent of alcohol in the defendant's blood was .08 or greater. The Commonwealth may prove a person's blood alcohol level by a chemical test or analysis of their breath or blood. In deciding whether the Commonwealth has proved the defendant's blood

alcohol level beyond a reasonable doubt, you may consider evidence, if any, about: whether the test was administered within a reasonable time of operation of the motor vehicle; whether the person who administered the test was properly certified; whether and how the pre-test procedures were followed and employed; whether the testing device was working properly at the time the test was administered; and whether the test was administered properly. You may also consider any other evidence pertaining to the test or the test results.

The fourth element that the Commonwealth must prove beyond a reasonable doubt is that the defendant operated the vehicle wantonly or recklessly. A person drives recklessly when they ignore the fact that their manner of driving is very likely to result in death or serious injury to someone, or they are indifferent to whether someone is killed or seriously injured. It is not enough for the Commonwealth to prove that the defendant acted negligently — that is, acted in a way that a reasonably careful person would not. It must be shown that the defendant's actions went beyond mere negligence and amounted to recklessness. The defendant was reckless if she knew, or should have known, that such actions would pose a grave danger of death or serious injury to others, but chose, nevertheless, to run the risk and go ahead. Whenever I refer to the defendant's state of mind or her intent you may consider any credible evidence that the defendant was affected by her consumption of alcohol. A defendant may have the requisite state of mind or intent even if she consumed alcohol, but you may consider such evidence in determining whether the Commonwealth has proved this element.

Here, the defendant must have intended her acts, in the sense that they were not accidental. But it is not necessary that the defendant intended or foresaw the consequences of those acts, as long as a reasonable person would know that they were so dangerous that death or serious injury would probably result. As such the Commonwealth does not need to prove that the

defendant intended to kill John O'Keefe. Rather, this is in that category of cases where public safety requires each driver, once they know what the situation is, to determine and to adhere to an objective standard of behavior.

In determining whether the defendant drove recklessly, you should take into account all the facts of the situation: the defendant's rate of speed and manner of operation, the defendant's physical condition and how well the defendant could see and could control their vehicle, the condition of the defendant's vehicle, what kind of a road it was and who else was on the road, what the time of day, the weather and the condition of the road were, what any other vehicles or pedestrians were doing, and any other factors, including the defendant's consumption of alcohol, that you think are relevant.

The fifth element that the Commonwealth must prove beyond a reasonable doubt is that the defendant by her actions caused the death of John O'Keefe. The defendant caused the death if her actions directly and substantially set in motion the entire chain of events that produced the death. A defendant's act is the cause of death where the act, in a natural and continuous sequence, results in death, and without which death would not have occurred.

If the Commonwealth has proven all five elements beyond a reasonable doubt, you should return a verdict of guilty. If the Commonwealth has failed to prove one or more of these elements beyond a reasonable doubt, you must return a verdict of not guilty.

LESSER INCLUDED OFFENSE OF INVOLUNTARY MANSLAUGHTER

The offense of Manslaughter while Operating a Motor Vehicle Under the Influence of Liquor (G. L. c. 265, §13 ½) includes the lesser offense of Involuntary Manslaughter (G. L. c. 265, §13). As a matter of law, the indictment that is before you which charges the defendant

with Manslaughter while Operating a Motor Vehicle Under the Influence of Liquor also charges her with that lesser included offense. The Commonwealth may prove the lesser included charge of Involuntary Manslaughter even if it fails to prove the greater charge of Manslaughter while Operating a Motor Vehicle Under the Influence of Liquor.

INVOLUNTARY MANSLAUGHTER

G. L. c. 265, §13

To prove that the defendant is guilty of involuntary manslaughter because of wanton or reckless conduct, the Commonwealth must prove the following elements beyond a reasonable doubt:

First: That the defendant caused John O'Keefe's death;

Second: That the defendant intended the conduct that caused John O'Keefe's death;

Third: The defendant's conduct was wanton or reckless

I will now discuss each element in more detail. The first element is that the defendant caused the death of John O'Keefe. Remember, Ms. Read caused John O'Keefe's death if her actions directly and substantially set in motion the entire chain of events that produced the death. A defendant's act is the cause of death where the act, in a natural and continuous sequence, results in death, and without which death would not have occurred.

The second element is that the defendant intended the conduct that caused the death. The Commonwealth is not required to prove that the defendant intended to cause the death. You may consider any credible evidence that the defendant was affected by her consumption of alcohol.

The third element is that the defendant's conduct was wanton or reckless. Wanton or reckless conduct is conduct that creates a high degree of likelihood that substantial harm will

result to another. It is conduct involving a grave risk of harm to another that a person undertakes with indifference to or disregard of the consequences of such conduct. Whether conduct is wanton or reckless depends either on what the defendant knew or how a reasonable person would have acted knowing what the defendant knew. If the defendant realized the grave risk created by her conduct, her subsequent act amounts to wanton or reckless conduct whether or not a reasonable person would have realized the risk of grave danger. Even if the defendant herself did not realize the grave risk of harm to another, the act would constitute wanton or reckless conduct if a reasonable person, knowing what the defendant knew, would have realized the act posed a risk of grave danger to another.

It is not enough for the Commonwealth to prove the defendant acted negligently, that is, in a manner that a reasonably careful person would not have acted. The Commonwealth must prove that the defendant's actions went beyond negligence and amounted to wanton or reckless conduct as I have defined that term.

In deciding whether the defendant knew, or should have known, her conduct created a high degree of likelihood that substantial harm would result to another, you may consider any credible evidence that the defendant was affected by her consumption of alcohol. A defendant may have the requisite knowledge even if she consumed alcohol, but you may consider such evidence in determining whether the Commonwealth has proved this element.

LESSER INCLUDED OFFENSE OF MOTOR VEHICLE HOMICIDE (FELONY – OUI LIQUOR AND NEGLIGENCE)

The offense of Manslaughter while Operating a Motor Vehicle Under the Influence of Liquor (G. L. c. 265, §13 ½) also includes the lesser offense of Motor Vehicle Homicide – Felony OUI Liquor and Negligence (G.L. c. 90, § 24G(a)). As a matter of law, the indictment

that is before you which charges the defendant with Manslaughter while Operating a Motor Vehicle Under the Influence of Liquor also charges her with that lesser included offense. The Commonwealth may prove the lesser included charge of Motor Vehicle Homicide even if it fails to prove the greater charge of Manslaughter while Operating a Motor Vehicle Under the Influence of Liquor.

You may find the defendant guilty of Motor Vehicle Homicide only if you are not convinced beyond a reasonable doubt that the defendant is guilty of Manslaughter, and you are convinced beyond a reasonable doubt that the defendant is guilty of Motor Vehicle Homicide.

MOTOR VEHICLE HOMICIDE (FELONY – OUI LIQUOR and NEGLIGENCE)
G.L. c. 90, § 24G(a)

In order to prove the defendant guilty of motor vehicle homicide, the Commonwealth must prove the following five elements beyond a reasonable doubt:

First: That the defendant operated a motor vehicle;

Second: That she operated the motor vehicle upon a public way or in a place in which the public has a right of access;

Third: That while the defendant was operating the motor vehicle, she was under the influence of intoxicating liquor; and/or the percent of alcohol in the defendant's blood was .08 or greater;

Fourth: That while operating a motor vehicle, the defendant did so in a negligent manner so that the lives or safety of the public might be endangered;

Fifth: That by such operation of the motor vehicle the defendant caused the death of John O'Keefe.

Elements 1, 2, 3, and 5 are the same as manslaughter while under the influence of alcohol, as previously instructed moments ago. The difference between manslaughter while operating under the influence and motor vehicle homicide is the fourth element.

To prove the fourth element of motor vehicle homicide, the Commonwealth must prove beyond a reasonable doubt that the defendant drove negligently in a manner that might have endangered the lives or safety of other people. A person acts negligently when she fails to use due care, that is, when they act in a way that a reasonable person would not act. This can happen either by *doing* something that a reasonable person would not do under the circumstances, or by *failing to do something* that a reasonable person would do. The defendant acted negligently if she drove in a way that a reasonable person would not have, and by doing so created an unnecessary danger to other people, a danger that she could have avoided by driving more carefully.

The defendant's intent does not matter, so do not consider it in determining whether or not the defendant was negligent. There is no requirement that the Commonwealth show that the defendant intended to act negligently or unlawfully. Under our laws, public safety requires each driver to determine and to adhere to an objective standard of reasonable behavior. Therefore, what the defendant may or may not have intended to result from her actions is irrelevant; the issue is whether or not she drove as a reasonable person would have under the circumstances.

In determining whether the defendant drove negligently in a manner that might have endangered the lives or safety of other people, you should take into account evidence, if any, about: the defendant's rate of speed and manner of operation; the defendant's physical condition and how well she could see and control her vehicle; the condition of the defendant's vehicle; the kind of a road it was and who else was on the road; the time of day, the weather, and the road conditions; what any other vehicles or pedestrians were doing; and any other factors, including the defendant's consumption of alcohol that you think are relevant.

LEAVING THE SCENE OF AN ACCIDENT RESULTING IN DEATH

G. L. c. 90, § 24 (2)(a ½)(2).

In order to prove the defendant guilty of leaving the scene of an accident resulting in death, the Commonwealth must prove six things beyond a reasonable doubt:

First: That the defendant operated a motor vehicle;

Second: That she operated on a public way or in a place in which the public has a right of access;

Third: That the defendant knowingly collided with John O'Keefe;

Fourth: That the collision caused injury to John O'Keefe resulting in his death;

Fifth: That after causing such injury the defendant failed to stop and provide name, home address and registration number of motor vehicle; and

Sixth: That the defendant failed to do so for the purpose of avoiding prosecution or apprehension.

Jurors, I have already instructed on the first and second elements. The other four elements should be given their plain meaning and the parties agree that I do not need to define these any further.

USE OF DANGEROUS WEAPON (MOTOR VEHICLE)

As a general rule, you are permitted (but not required) to infer that a person who intentionally uses a dangerous weapon on another person intends to kill that person, or cause him grievous bodily harm, or intends to do an act which, in the circumstances known to him, a reasonable person would know creates a plain and strong likelihood that death would result. An item that is normally used for innocent purposes can become a dangerous weapon if it is used in a dangerous or potentially dangerous fashion. The law considers an item, in this case a motor vehicle, to be used in a dangerous fashion if it is used in a way that it reasonably appears to be capable of causing serious injury or death to another person. In deciding whether an item was

used as a dangerous weapon, you may consider the circumstances surrounding the alleged crime, the nature, size, and shape of the item, and the manner in which it was handled or controlled.

That completes the second part of my instructions. I will now turn to the final instructions.

III. FINAL INSTRUCTIONS

In order for a jury to return a verdict – that is, to reach a decision in a criminal case – the law provides that there may only be 12 persons on the deliberating jury, and you will note that there are 14 of you.

To avoid the need for a new trial if one or more of the jurors becomes ill or has to be excused for some good reason, we customarily impanel extra jurors at the beginning of a trial, as we did in this case. However, when you begin your deliberations, the law of Massachusetts is that there can only be 12 jurors.

Therefore, at the conclusion of my instructions, the clerk will reduce your number to 12 on a random basis. The jurors not selected to serve on the jury will become the alternate jurors.

If you are selected as an alternate juror, please do not feel that your efforts in this case have been wasted because, as I have indicated, it is important that we have extra jurors in case of emergency. If we did not impanel extra jurors and a juror became ill, or, for some other reason, had to be excused, we would have to try the case all over again with a new jury.

In the event that a juror has to be excused once the jury starts deliberating, then an alternate juror will be chosen to take that juror's position, and the jury will be required to start deliberations from the beginning.

Therefore, it is important that the alternates not discuss the case with anyone else, including each other, for if an alternate becomes a member of the jury for deliberations, the alternate's views should be his or her own and not be influenced by anyone else.

Different states and jurisdictions use different means to select a foreperson of the jury. In some jurisdictions, the jurors select their own foreperson. In Massachusetts, the judge is responsible for selecting the foreperson. A foreperson of a jury has been described as the "first among equals." He or she is responsible for organizing the deliberations, communicating with the Court if necessary, during deliberations, and presenting the verdict following your deliberations. The foreperson has no greater say or vote in the jury's deliberations, however, and in that sense is exactly equal with all other jurors.

I am going to ask Juror in seat number 1, juror number 400, to serve as the foreperson of the jury. When you return to the jury room to deliberate, the court officers will deliver to you all of the exhibits in this case, as well as the verdict slips that you will use in returning your verdict.

Your foreperson will be given verdict slips setting forth the charges against the defendant. Twelve jurors must agree before you have a decision as to any charge. That means that, to find the defendant "guilty," all twelve must agree. To find the defendant "not guilty," all twelve must agree. You should continue deliberating until you have reached a final verdict on each charge.

You should not begin deliberating until all 12 jurors are together in the jury room, and should cease deliberating if any one juror is not present in the room. It is important that you not communicate with anyone outside the jury room about the deliberations or about anything concerning this case.

Further, I instruct you that no juror is better qualified to determine the truth of the facts in dispute or to deliberate on a verdict solely because of education, background, or experience. The parties and I have chosen each of you as fair and impartial jurors, and your voices have equal weight.

To reach a unanimous verdict, each juror must agree. Jurors have a duty to consult with one another and to deliberate with a view to reaching an agreement, if it can be done without violence to individual judgment. At the same time, each juror must decide the case for himself or herself, but only after impartially considering the evidence with his or her fellow jurors. Don't hesitate to reexamine your views and change your opinion, if convinced it is wrong. But no juror should surrender an honest conviction to the opinion of fellow jurors simply for the purpose of returning a verdict.

Although how you conduct your deliberations is up to you, I urge you not to begin by conducting an immediate straw vote. Rather, I encourage you not to take any votes before you have completed a careful and thorough collective review of all of the evidence.

At this point, I want to remind you of an important issue that I raised with you at the beginning of this trial. I told you that our system of justice depends on judges like me and jurors like you being able and willing to make careful and fair decisions. All people deserve fair and equal treatment in our system of justice, regardless of their race, national origin, religion, age, ability, gender, sexual orientation, education, income level, or any other personal characteristic. I also pointed out that we all have our own built-in expectations and assumptions, even if we are not consciously aware of them, and I talked about some of the ways we can try to deal with them.

First, slow down; do not rush to a decision. Hasty decisions are the most likely to reflect stereotypes or hidden biases. Take time to consider all the evidence.

Second, as you start to draw conclusions, consider what evidence, if any, supports the conclusions you are drawing and whether any evidence casts doubt on those conclusions. Double check whether you are actually using unsupported assumptions instead of the evidence.

Third, as you think about the people involved in this case, consider them as individuals, rather than as members of a particular group.

Fourth, I might ask myself: Would I view the evidence differently if the people were from different groups, such as different racial, ethnic, or gender identity groups?

Fifth, listen to your fellow jurors. They may have different points of view. If so, they may help you determine whether you are focusing on the facts or making assumptions, perhaps based on stereotypes. Of course, your fellow jurors could be influenced by their own unstated assumptions, so don't be shy or hesitate to speak up. You should participate actively, particularly if you think the other jurors are overlooking or undervaluing evidence you find important. In fact, when you explain your thoughts out loud to other jurors, you are also helping yourself to focus on the evidence, instead of assumptions.

If you use these strategies, then you will do your part to reach a decision that is as fair as humanly possible. That is your responsibility as jurors.

Now, during the course of your deliberations, you might have a question concerning the law in this case. Perhaps I said something you did not understand. If you have any questions,

please feel free to bring them to my attention by writing a note dated and signed by the foreperson and sending it to me by way of the court officer.

Because your role as the jury is to determine the facts of the case, I cannot answer any questions you have concerning the facts of the case. I have no role in this case when it comes to deciding what the facts are. Neither is it possible for me to provide you with a transcript of the testimony.

If you send a question to me, I will respond after consulting with the lawyers. Please do not ask a court officer or anyone else to answer any questions concerning anything material to the case. We will not answer a question or take a verdict from 1-2. You will have lunch brought into you and you decide whether you want to stop your deliberations during lunch or continue to deliberate.

At the end of the day, if you are still deliberating, I will send in a note asking if you want to continue deliberating or break for the day and return tomorrow morning. Don't tell anyone, including me, how the jury stands numerically or otherwise on the questions before you until such time as you have reached a unanimous verdict.

You are going to notice shortly that the court officers are going to take an oath, and you will hear from that that they, too, as well as all other persons, are forbidden to communicate in any way or manner with any member of this jury on any subject touching on the merits of this case.

Remember that the decision of the jury must be unanimous, and the foreperson should be certain that each member of the jury is in complete agreement with the verdict.

After the final vote of the jury, the foreperson should check the appropriate boxes as to each charge, then sign and date the verdict forms and notify the court officer that you have reached a unanimous verdict. You will then be brought back into the courtroom where the foreperson will deliver the verdicts to the court.

Let me see counsel at sidebar, please.

Mr. Clerk, will you please choose the alternates?

Ladies and gentlemen, we need to swear in our court officers. They are going to be in charge of you during your deliberations. I suggest that you listen to the oath that they are taking so that you can be aware of their responsibilities.

Members of the Jury, I need not remind you that you have an important responsibility, but I believe that you will bring to bear all the wisdom, and the judgment, and conscience that you possess in reaching your verdict in this case. All that we can expect from you is that you decide the case with integrity and with principle. We all expect you to reach an impartial verdict, dictated by your logic, without bias, without prejudice or sympathy, and not prompted by any facts except those that you've heard here in court during the trial. We are looking for impartial judgment dictated by your reasoning in the fullest discharge of your oaths as jurors. You may retire and deliberate your verdict.