

No. _____

**In The
Supreme Court of the United States**

KAREN READ,

Petitioner,

v.

NORFOLK COUNTY SUPERIOR COURT; ANDREA J. CAMPBELL, Massachusetts Attorney
General,

Respondents.

On Application for Stay of State Court Proceedings Pending Disposition of Petition
for a Writ of Certiorari

**APPLICATION FOR STAY OF STATE COURT PROCEEDINGS PENDING
DISPOSITION OF PETITION FOR A WRIT OF CERTIORARI**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
INTRODUCTION	1
STATEMENT	1
ARGUMENT	7

TABLE OF AUTHORITIES

Cases

Abney v. United States, 431 U.S. 651 (1977) 7-9

Ball v. United States, 163 U.S. 662 (1896) 5

Blueford v. Arkansas, 566 U.S. 599 (2012) 5-6

Green v. United States, 355 U.S. 185 (1957) 7, 9

Harpster v. Ohio, 128 F.3d 322 (6th Cir. 1997) 8

Justices of Bos. Mun. Court v. Lydon, 466 U.S. 294 (1984) 6, 9

Karcher v. Daggett, 455 U.S. 1303 (1982) 9

Martinez v. Illinois, 572 U.S. 833 (2014) 5

McElrath v. Georgia, 601 U.S. 87 (2024) 5

Teva Pharm. USA, Inc. v. Sandoz, Inc., 572 U.S. 1301 (2014) 8-9

United States v. Martin Linen Supply Co., 430 U.S. 564 (1977) 5

United States v. Ramirez, 884 F.2d 1524 (1st Cir. 1989) 8

Statutes

28 U.S.C. § 2241 6

28 U.S.C. § 2251 8

INTRODUCTION

Now comes the petitioner Karen Read and respectfully moves the Honorable Justice Ketanji Brown Jackson for a stay of her trial, scheduled to commence with jury selection on April 1, 2025 in Massachusetts Superior Court with the jury expected to be sworn at least two weeks thereafter,¹ pending this Court's resolution of her Petition for a Writ of Certiorari, filed contemporaneously herewith. Read's Petition contends that her scheduled retrial on two of the three counts pending against her, including a charge of second-degree murder, will violate the Double Jeopardy Clause because the jury in her first trial reached a final and unanimous, but unannounced, decision that she is not guilty of those charges.

STATEMENT

On June 9, 2022, Read was charged in three separate indictments with second-degree murder in violation of Mass. Gen. Laws c. 265, § 1 (Count 1); manslaughter while operating under the influence of alcohol in violation of Mass. Gen. Laws c. 265, § 13½ (Count 2); and leaving the scene of a collision resulting in death in violation of Mass. Gen. Laws c. 90, § 24(2)(a½)(2) (Count 3). COA Joint App. 186-91. A jury trial began on April 16, 2024 in Massachusetts Superior Court. The trial court declared a mistrial on July 1, 2024, after a series of three jury notes reporting an impasse, but not specifying how many of the three counts were the subject of the deadlock.

The day after the mistrial, on July 2, 2024, unsolicited by any party, one of the jurors ("Juror A") contacted one of the attorneys for Read, Alan Jackson. Juror A

¹ See, e.g., Sean Cotter, *Last Year, jury selection in the Read case took two weeks. This time it might be much longer* (Boston Globe Mar. 27, 2025).

stated that s/he “wish[ed] to inform [Attorney Jackson] of the true *results*” of the jury’s deliberations. COA Joint App. 333. According to Juror A, “the jury unanimously agreed that Karen Read is NOT GUILTY of Count 1 (second degree murder). Juror A was emphatic that Count 1 (second degree murder) was ‘off the table,’ and that all 12 of the jurors were in agreement that she was NOT GUILTY of such crime.” COA Joint App. 334. “[T]he jury also unanimously agreed that Karen Read is NOT GUILTY of Count 3 (leaving the scene with injury/death).” COA Joint App. 334.

One day later, on July 3, 2024, another attorney for Read, David Yannetti, was contacted by “two different individuals (hereinafter, ‘Informant B’ and ‘Informant C’) who had received information from two distinct jurors (hereinafter ‘Juror B’ and ‘Juror C’) both of whom were part of the deliberating jury in this case.” COA Joint App. 330.

Informant B sent Attorney Yannetti “a screenshot he/she had received from someone (hereinafter, ‘Intermediary B’) of text messages that Intermediary B had received from Juror B. In that screenshot, Juror B texted the following to Intermediary B: ‘It was not guilty on second degree. And split in half for the second charge. . . . I thought the prosecution didn’t prove the case. No one thought she hit him on purpose or even thought she hit him on purpose [sic].” COA Joint App. 330. Juror B later placed an unsolicited phone call to Attorney Yannetti, confirming that the foregoing information, which had been publicly filed in an affidavit, was accurate. COA Joint App. 377. “Juror B clarified, however, that he/she meant to write, ‘No one

thought she hit him on purpose or even knew that she had hit him.” COA Joint App. 377-78. Juror B further told Attorney Yannetti s/he “believe[d] that every member of the jury, if asked, w[ould] confirm that the jury reached Not-Guilty verdicts on indictments (1) and (3).” COA Joint App. 378.

Informant C had been in contact with another individual (“Intermediary C”) who is a co-worker and friend of Juror C and joined a Zoom meeting during which Juror C discussed the trial. Informant C sent Attorney Yannetti the below screenshots of his/her text messages with Intermediary C regarding what Juror C revealed in the Zoom meeting:

Intermediary C: “no consideration for murder 2. manslaughter started polling at 6/6 then ended deadlock @ 4no8yes.”

....

Informant C: “interesting. if it was no consideration for murder two, shouldn’t she have been acquitted on that count. and hung on the remaining chargers [sic] goes back to the jury verdict slip that was all confusing”

Intermediary C: “she should’ve been acquitted I agree. Yes, the remaining charges were what they were hung on. and that instruction paper was very confusing.”

COA Joint App. 331-32.

After the filing of Read’s initial motion to dismiss, but before the superior court hearing on that motion, Attorney Jackson was contacted by two other deliberating jurors. The first, “Juror D,” stated “that the jury reached NOT GUILTY verdicts on Count 1 and Count 3, and that the disagreement was solely as to Count 2 and its lesser offenses.” COA Joint App. 340. S/he recounted that, “after the jury was excused and aboard the bus, many of the jurors appeared uncomfortable with how

things ended, wondering, *Is anyone going to know that we acquitted [Karen Read] on Count 1 and 3?* COA Joint App. 340. Juror D unequivocally told counsel, “*Every one of us will agree and acknowledge that we found [Karen Read] NOT GUILTY of Counts 1 and 3. Because that’s what happened.*” COA Joint App. 340. “Juror E” similarly stated “that the jury was ‘unanimous on 1 and 3’ that Karen Read was NOT GUILTY of those charges.” COA Joint App. 370.

The Commonwealth filed a post-trial notice of disclosure informing the court that, “[o]n Sunday July 21, 2024, [an] Assistant District Attorney [‘ADA’] . . . received an unsolicited voicemail on his office’s phonenumber from an individual, who identified their self as a juror by full name and seat number.” COA Joint App. 372. The message stated, “it is true what has come out recently about the jury being unanimous on charges 1 and 3.” COA Joint App. 372. The ADA received a subsequent message from the same individual stating s/he could “confirm unanimous on charges one and three, as not guilty and as of last vote 9-3 guilty on the manslaughter charges” COA Joint App. 372. The Commonwealth additionally “received emails from three individuals who identified themselves as jurors” and “indicated they wished to speak anonymously.” COA Joint App. 372. The Commonwealth declined to substantively respond to the voice messages or emails, instead claiming in responsive emails that it was ethically prohibited from discussing such matters. COA Joint App. 372.

Read’s Petition contends that the jury’s decision that she is not guilty of Counts 1 and 3 constitutes an acquittal and precludes re-prosecution on those counts even if

unannounced. Read’s Petition further contends that to the extent the declarations of the jurors cited above are not sufficient by themselves to prove a final, unanimous, un-reconsidered finding of not guilty they more than meet Read’s burden of production requiring at minimum a post-trial *voir dire* such as occurs upon proof of bias or extrinsic contact by a juror or jurors. The Petition contends that the First Circuit’s contrary ruling that, “even if . . . the jury unanimously voted in private that the prosecution had failed to prove its case on Counts One and Three, the jury did not ‘act[] on [that] view,’” and, accordingly, there was no acquittal, Pet. App. 18a (quoting *McElrath v. Georgia*, 601 U.S. 87, 96 (2024)), is inconsistent with this Court’s repeated emphasis that “what constitutes an ‘acquittal’ is not to be controlled by the form” of the action in question, *Martinez v. Illinois*, 572 U.S. 833, 841-42 (2014) (quoting *United States v. Martin Linen Supply Co.*, 430 U.S. 564, 571 (1977)), but instead depends on whether the action “actually represents a resolution, correct or not, of some or all of the factual elements of the offense charged.” *Martin Linen*, 430 U.S. at 571; *see also, e.g., McElrath*, 601 U.S. at 96 (“[I]t is not dispositive whether a factfinder incanted the word acquit; instead, an acquittal has occurred if the factfinder acted on its view that the prosecution had failed to prove its case.” (citation omitted)); *Ball v. United States*, 163 U.S. 662, 671 (1896) (“However it may be in England, in this country a verdict of acquittal, although not followed by any judgment, is a bar to a subsequent prosecution for the same offense.”); *Blueford v. Arkansas*, 566 U.S. 599, 612 (2012) (Sotomayor, J., joined by Ginsburg, J., and Kagan, J., dissenting) (“Jeopardy terminates upon a determination, however characterized,

that the evidence is insufficient to prove a defendant's factual guilt." (citation omitted)).

After unsuccessfully moving to dismiss in Massachusetts Superior Court, Read petitioned for the Massachusetts Supreme Judicial Court ("SJC") to review that decision. The SJC affirmed on February 11, 2025. Pet. App. 57a-87a. On February 18, 2025, just one week later, Read filed a petition for writ of habeas corpus under 28 U.S.C. § 2241 in federal district court. COA Joint App. 5. The district court denied her petition on March 13, 2025. Pet. App. 20a-56a. Before denying the petition on the merits, the district court found that (1) Read, who is on pre-trial release pending her state court trial date, properly brought her petition under 28 U.S.C. § 2241; (2) she satisfied the custody requirement to bring a habeas petition; (3) she exhausted her state-court remedies; and (4) no abstention doctrine barred it from considering the petition, *see Justices of Bos. Mun. Court v. Lydon*, 466 U.S. 294, 303 (1984) ("Because the Clause protects interests wholly unrelated to the propriety of any subsequent conviction, a requirement that a defendant run the entire gamut of state procedures, including retrial, prior to consideration of h[er] claim in federal court, would require h[er] to sacrifice one of the protections of the Double Jeopardy Clause." (citation omitted)). Pet. App. 30a-34a. The district court granted a certificate of appealability, finding that Read made a "substantial showing of the denial of a constitutional right as to all claims." *Read v. Norfolk County Superior Court*, No. 25-CV-10399 (D. Mass.), ECF No. 28 at 2 (citation omitted). Read then appealed to the

First Circuit Court of Appeals, which affirmed the denial of her petition on March 27, 2025. Pet. App. 1a-19a.

When her First Circuit appeal was pending, Read filed an assented-to motion in superior court to continue her trial date to April 28, 2025 to permit resolution of her appeal. The superior court denied the assented-to motion without a written order. The relevant docket entry states that “[i]f a Jury is selected before April 28, 2025, Counsel may renew the Motion prior to the Jury being sworn.” Application App. 1 (Mar. 19, 2025 docket entry highlighted in red box). Read then filed motions to stay in district court and the First Circuit, which were both denied. Application App. 2 (ECF No. 33) (denying motion without explanation); Pet. App. 19a (First Circuit denying motion to stay as moot in opinion affirming denial of habeas relief).

ARGUMENT

As this Court has observed, “the rights conferred on a criminal accused by the Double Jeopardy Clause would be significantly undermined if appellate review of double jeopardy claims were postponed until after conviction and sentence. . . . It is a guarantee against being twice put to trial for the same offense.” *Abney v. United States*, 431 U.S. 651, 660-61 (1977).

The underlying idea, one that is deeply ingrained in at least the Anglo-American system of jurisprudence, is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting h[er] to embarrassment, expense and ordeal and compelling h[er] to live in a continuing state of anxiety and insecurity, *as well as enhancing the possibility that even though innocent [s]he may be found guilty.*

Green v. United States, 355 U.S. 185, 187-88 (1957) (emphasis added). “Obviously,

these aspects of the guarantee's protections would be lost if the accused were forced to 'run the gauntlet' a second time before an appeal could be taken; even if the accused is acquitted, or, if convicted, has h[er] conviction ultimately reversed on double jeopardy grounds, [s]he has still been forced to endure a trial that the Double Jeopardy Clause was designed to prohibit." *Abney*, 431 U.S. at 662.

Under *Abney*, courts of appeals have held that a defendant facing federal charges is entitled to a stay pending adjudication of her Double Jeopardy claim, unless that claim is found to be frivolous. *See, e.g., United States v. Ramirez*, 884 F.2d 1524, 1532 (1st Cir. 1989) (citing cases). Read respectfully submits that a defendant facing charges in state court is entitled to the same protection. *See Harpster v. Ohio*, 128 F.3d 322, 325 (6th Cir. 1997) (affirming stay of state court proceedings because "petitioner [wa]s entitled to have his double jeopardy claim litigated before being retried").

Federal statute expressly provides that a habeas court "may . . . pending appeal[] stay any proceeding against the person detained in any State court or by or under the authority of any State for any matter involved in the habeas corpus proceeding." 28 U.S.C. § 2251(a)(1). "After the granting of such a stay, any such proceeding in any State court or by or under the authority of any State shall be void." § 2251(b).

In the context of requests for a stay of the mandate pending disposition of a petition for certiorari, this Court considers whether there is "(1) a reasonable probability that th[e] Court will grant certiorari, (2) a fair prospect that the Court

will reverse the decision below, and (3) a likelihood that irreparable harm [will] result from the denial of a stay.” *Teva Pharm. USA, Inc. v. Sandoz, Inc.*, 572 U.S. 1301, 1301 (2014) (Roberts, J.) (citation omitted). Here, Read is facing the imminent prospect of irreparable harm in the form of being forced to undergo a murder trial that she contends violates the Double Jeopardy Clause. *See, e.g., Lydon*, 466 U.S. at 303; *Abney*, 431 U.S. at 660-62; *Green*, 355 U.S. at 187-88. For reasons set forth in Read’s Petition, there is also a reasonable probability that the Court will grant certiorari and at least a fair prospect of reversal. As set forth *supra* pages 5-6, the First Circuit’s opinion is in significant tension with more than a century of this Court’s precedents holding that form is not to be exalted over substance in determining what constitutes an acquittal for Double Jeopardy purposes. This Court has also stated that, “in a close case it may be appropriate to ‘balance the equities’—to explore the relative harms to applicant and respondent, as well as the interests of the public at large.” *Karcher v. Daggett*, 455 U.S. 1303, 1306 (1982) (Brennan, J.) (citation omitted). It is noteworthy in this regard that the Commonwealth assented to Read’s request that the trial court continue jury selection to April 28, 2025, and Respondents failed to oppose Read’s request for a stay in district court or the First Circuit.

In sum, Read respectfully submits that the Double Jeopardy protections at stake in her Petition are simply too important to force Read to stand trial for a murder that she contends a prior jury of her peers already acquitted her of, before having an opportunity to petition this Court for review of her constitutional claim, which the

district court found to be substantial. Petitioner respectfully urges the Court to stay jury selection or, alternatively, the swearing of the jury in this matter until this Court has ruled on Read's Petition.

April 1, 2025

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Respectfully submitted,

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



Counsel for Karen Read

APPENDIX

APPENDIX TABLE OF CONTENTS

Order of Massachusetts Superior Court Denying Assented-to
Motion to Continue Trial App. 1

Order of the United States District Court for the District of
Massachusetts Denying Motion to Stay App. 2

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
03/14/2025	Affidavit of Elizabeth Little in Support of Defendant's Motion to Impound	605	
03/14/2025	Defendant 's Motion in limine to Exclude the Testimony of Commonwealth's Witness Dr. Judson Welcher, M.S., Ph.D., and Request for Voir Dire	606	
03/17/2025	Commonwealth 's Motion in limine to Exclude Expert Testimony of Garrett Wing	607	
03/17/2025	Commonwealth 's Motion in limine to Exclude Defense's Expert Michael Easter's Opinion of the Investigation	608	 Image
03/17/2025	Commonwealth 's Opposition to Defendant's Motion in Limine to Exclude the Testimony of Commonwealth's Witness Dr. Judson Welcher, M.S. Ph.D. and Request for Voir Dire	609	 Image
03/17/2025	Commonwealth 's Opposition to "Defendant's Motion in Limine to Allow Evidence of Lack of Bias"	610	 Image
03/17/2025	Commonwealth 's Motion for Buffer Zone and Order Prohibiting Signs or Clothing in Favor of Either Party or Law Enforcement	611	 Image  Image
03/18/2025	Event Result:: Final Trial Conference scheduled on: 03/18/2025 09:00 AM Has been: Held as Scheduled Hon. Beverly J Cannone, Presiding		
03/18/2025	Event Result:: Final Trial Conference scheduled on: 03/19/2025 09:00 AM Has been: Rescheduled For the following reason: Joint request of parties Hon. Beverly J Cannone, Presiding		
03/18/2025	Other 's Intervenor Aidan Kearney's Motion to Quash Subpoena filed	611.1	
03/19/2025	Defendant 's Karen Read's List of Prospective Witnesses	612	 Image 
03/19/2025	Defendant 's Assented to Motion to Continue Trial Date on or After April 25, 2025 The Motion is denied w/o prejudice. The Trial will begin with empanelment on April 1, 2025 as scheduled. If a Jury is selected before April 28, 2025, Counsel may renew Motion prior to the Jury being sworn.	613	 Image  Image
03/20/2025	Defendant not in court. Intervenor Aiden Kearney present along with his attorney Tim Bradl. Defendant enters while hearing is in progress along with counsel Yanetti, Little, Alessi and Jackson. Event Result:: Hearing RE: Discovery Motion(s) scheduled on: 03/20/2025 09:00 AM Has been: Held as Scheduled in courtroom 25. Hon. Adam Sisitsky, Presiding Applies To: Brennan, Esq., Henry B (Attorney) on behalf of Norfolk County District Attorney (Prosecutor); Lally, Esq., Adam C (Attorney) on behalf of Norfolk County District Attorney (Prosecutor) - T. Bradl, Atty for Intervenor - Sisitsky, J - FTR (D. O'Sullivan) - Attest: Margaret H. Sanel, AC.		
03/20/2025	Commonwealth 's Prospective Witness List (Amended)	614	
03/20/2025	Event Result:: Final Pre-Trial Conference scheduled on: 03/20/2025 09:00 AM Has been: Held as Scheduled Hon. Beverly J Cannone, Presiding		 Image
03/20/2025	MEMORANDUM & ORDER: Commonwealth's Motion for Records from Dockets 2482CR0043 and 2382CR00313 and Special Assistant District Attorney Robert Cosgrove [Dkt. 546] (Parties Notified Including Attorney Bradl and ADA Cosgrove) Judge: Sisitsky, Hon. Adam	615	 Image  Image
03/20/2025	ORDER: for Production of Records Judge: Sisitsky, Hon. Adam	616	
03/21/2025	Commonwealth 's Motion for Protective Order ** ENDORSED: SO ORDERED: (Cannone, J) Dated 3/20/2025 (Parties Notified)	617	 Image  Image
03/21/2025	Commonwealth 's Motion to Compel Communications Between the Defendant and Attorney Yannetti Stored within the Defendant's Cell Phone Data Denied (Cannone,J) att.J.McDermott,ac (3/25/25)	618	 Image  Image
03/21/2025	Affidavit of Special Prosecutor Hank Brennan in Support of Commonwealth 's Motion to Compel Non-Privledged Communications Stored in the Defendant's Cell Phone Data	619	 Image  Image

		Information: Valerie OHara at vaohara@gmail.com. Redaction Request due 3/27/2025. Redacted Transcript Deadline set for 4/7/2025. Release of Transcript Restriction set for 6/4/2025. (DRK) (Entered: 03/06/2025)
03/06/2025	<u>26</u>	NOTICE is hereby given that an official transcript of a proceeding has been filed by the court reporter in the above-captioned matter. Counsel are referred to the Court's Transcript Redaction Policy, available on the court website at https://www.mad.uscourts.gov/caseinfo/transcripts.htm (DRK) (Entered: 03/06/2025)
03/13/2025	<u>27</u>	Chief Judge F. Dennis Saylor, IV: ORDER entered. MEMORANDUM AND ORDER ON PETITION FOR HABEAS CORPUS. The Petition for a Writ of Habeas Corpus is DENIED.(MMM) (Entered: 03/13/2025)
03/13/2025	<u>28</u>	Chief Judge F. Dennis Saylor, IV: ORDER entered. MEMORANDUM AND ORDER ON MOTION FOR CERTIFICATE OF APPEALABILITY. A Certificate of Appealability is GRANTED as to all claims.(MMM) (Entered: 03/13/2025)
03/13/2025	<u>29</u>	NOTICE OF APPEAL as to <u>27</u> Memorandum & ORDER by Karen Read. Filing fee: \$ 605, receipt number AMADC-10891203 Fee Status: Not Exempt. NOTICE TO COUNSEL: A Transcript Report/Order Form, which can be downloaded from the First Circuit Court of Appeals web site at http://www.ca1.uscourts.gov MUST be completed and submitted to the Court of Appeals. Counsel shall register for a First Circuit CM/ECF Appellate Filer Account at http://pacer.psc.uscourts.gov/cmecf. Counsel shall also review the First Circuit requirements for electronic filing by visiting the CM/ECF Information section at http://www.ca1.uscourts.gov/cmecf. US District Court Clerk to deliver official record to Court of Appeals by 4/2/2025. (Weinberg, Martin) (Entered: 03/13/2025)
03/13/2025	<u>30</u>	Certified and Transmitted Abbreviated Electronic Record on Appeal to US Court of Appeals re <u>29</u> Notice of Appeal. (MAP) (Entered: 03/13/2025)
03/14/2025	31	USCA Case Number 25-1257 for <u>29</u> Notice of Appeal filed by Karen Read. (MAP) (Entered: 03/14/2025)
03/20/2025	<u>32</u>	MOTION to Stay <i>State Court Proceedings Pending First Circuit Appeal</i> by Karen Read. (Attachments: # <u>1</u> Exhibit A)(Weinberg, Martin) (Entered: 03/20/2025)
03/21/2025	33	Chief Judge F. Dennis Saylor, IV: ELECTRONIC ORDER entered. The Petitioner's Motion for Stay Pending Appeal (D. <u>32</u>) is DENIED. (MMM) Modified on 3/21/2025: corrected docket text to reflect correct filer. (FGD) (Entered: 03/21/2025)
03/27/2025	<u>34</u>	OPINION of USCA as to <u>29</u> Notice of Appeal filed by Karen Read. (MAP) (Entered: 03/28/2025)
03/27/2025	<u>35</u>	USCA Judgment as to <u>29</u> Notice of Appeal filed by Karen Read (MAP) (Entered: 03/28/2025)

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Transaction Receipt			
03/31/2025 10:53:24			
PACER Login:	mgwpc3700	Client Code:	Read
Description:	Docket Report	Search Criteria:	1:25-cv-10399-FDS
Billable Pages:	4	Cost:	0.40