

Read Tells Mass. Justices Verdict Slip Not Needed To Acquit

By **Brian Dowling**

Law360 (September 25, 2024, 4:58 PM EDT) -- Lawyers for Karen Read, the Massachusetts woman whose high-profile murder case garnered national attention before it ended in a mistrial, told the state's highest court that a retrial is barred by double jeopardy because some jurors revealed afterward that the panel had agreed to acquit — even if no formal verdict was announced.

The opening brief was filed Tuesday with the Massachusetts Supreme Judicial Court as prosecutors prepare to retry Read in January on charges that she intentionally hit her boyfriend, Boston police officer John O'Keefe, with her black SUV in January 2022 after a night of drinking. Read has claimed that she was framed, and that O'Keefe was killed by other people that night.

Read's defense team has said that five jurors came forward after the mistrial and reported that the panel had unanimously agreed to acquit her on a murder charge and a related charge of leaving the scene of a death. A lesser charge of manslaughter while under the influence was the sole count that the jury could not resolve, the jurors purportedly said.

Superior Court Justice Beverly J. Cannone declined to dismiss the charges on the basis that there wasn't an "open and public verdict affirmed in open court." But Tuesday's brief argued that the jurors' communications were sufficient to trigger double jeopardy because the jury had, in fact, reached a final decision on the two counts.

"Neither the commonwealth nor the trial court has cited any case in which a defendant was forced to stand trial a second time for an offense a previous jury had found her not guilty of simply because such final, unanimous agreement was not announced in open court," Read argued.

"The instant case squarely presents that issue," the brief continued, "and the defense respectfully submits that this court should hold that any lack of formality does not supersede the defendant's fundamental constitutional protections. This issue is one of existential importance — not merely to Ms. Read, but to the very foundation of the constitutional safeguards that protect her."

Experts watching the Read appeal have said the appellate fight for acquittal will be an uphill battle due to the deference given to juries and the formality that courts require in adjudicating criminal cases.

Taking aim at that reasoning, Read's appeal argued that hyper-formalism has been "consistently rejected" by the U.S. Supreme Court and the Supreme Judicial Court in rulings spanning more than 100 years.

Read said the lower court's reasoning would also find it insufficient under double jeopardy if she provided affidavits from all 12 jurors attesting to their findings on the two criminal counts.

"Surely, that cannot be the law," Read said. "Indeed, it must not be the law. And, in the context of this highly publicized case, it strains credulity to suggest that, if the unequivocal statements of five jurors quoted above did not, in fact, represent the unanimous view of all 12, the remaining jurors would allow the inaccuracy to go uncorrected."

Read said the trial judge was wrong to find that her lawyers consented to the mistrial because they failed to object.

The court mistakenly viewed Read's request for a Tvey-Rodriguez instruction — meant to encourage the jurors to return to deliberations to reach a verdict — as consent to a mistrial, the brief said, noting that no cases support such a connection.

If the justices don't find dismissal is warranted, the high court should allow the jury to be called back so that jurors can answer whether there was an "unannounced verdict."

"Here, the defense has learned posttrial that the jury reached a verdict that was not so announced," the brief said. "It was at least entitled to the opportunity to substantiate that fact in order to ensure Ms. Read is not unconstitutionally forced to stand trial for criminal offenses of which she has already been acquitted."

Read's attorney Martin G. Weinberg of Martin Weinberg PC told Law360 on Wednesday that "we are looking forward to advancing the legal and constitutional issues to a highly respected court that result from an unprecedented demonstration that the jury itself believed they had fully acquitted Ms. Read of two of the three charges, including the most serious charge of murder."

Weinberg added that courts have also "approved the reconvening of jurors for post-verdict voir dieres in other contexts, and we contend strongly that, when five jurors report a unanimous acquittal, that proves a principled basis for further voir dire."

A spokesperson for the Norfolk County District Attorney's Office declined to comment on the brief when reached Wednesday.

The Commonwealth of Massachusetts is represented by Adam Lally, Pamela Alford and Laura McLaughlin of the Norfolk County District Attorney's Office.

Read is represented by **Martin G. Weinberg of Martin Weinberg PC**, David Yannetti of Yannetti Criminal Defense Law Firm, Michael Pabian of Michael Pabian Law and Alan Jackson of Werksman Jackson & Quinn LLP.

The case is Commonwealth v. Read, case number SJC-13663, in the Supreme Judicial Court of Massachusetts.

--Editing by Melissa Treolo.
