

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

BRIGHTON DISTRICT COURT
DOCKET NO.

COMMONWEALTH OF MASSACHUSETTS

v.

MARY ROE

**COMMONWEALTH'S MOTION *IN LIMINE* TO ADMIT LIMITED
TESTIMONY REGARDING THE VICTIM'S BACKGROUND**

Now comes the Commonwealth and respectfully requests that it be allowed to offer testimony regarding the victim's background from her daughter, Jane Doe, and to admit a photograph of the victim.

The defendant is charged with committing an assault and battery on a person over the age of sixty on September 28, 2009. At the time of the incident, the defendant was a Certified Nurse's Aide (CNA) and was working the 3pm to 11pm shift as such at the Baystate Skilled Nursing Center in Boston, MA. It is alleged that while working as a CNA, the defendant slapped the victim's arm and said "when I tell you to stay in bed, you listen to me."

The victim is an 86 year old resident of Baystate Skilled Nursing Center named Elizabeth Doe. Elizabeth Doe has been a resident of the Baystate Skilled Nursing Center for three years and is in advanced stages of Alzheimer's dementia. The victim is not able to care for herself, is essentially non-verbal, and relies completely on the staff at Baystate Skilled Nursing Center to care for her. However, prior to being ill, the

victim had a very full and vibrant life, and worked for many years as an elementary school teacher before retirement.

The Commonwealth now seeks to admit testimony of the victim's daughter for the purpose of eliciting family background information, to tell the jury something about the person who this case centers around, and to introduce a photograph of her mother. Due to her advanced Alzheimer's dementia, Elizabeth Doe is not available to testify at trial and the jury will not be able to hear anything about the victim from the victim herself. *Commonwealth v. Degro*, 432 Mass. 319, 322 – 323 (2000). It is important for the jury to know something about the victim's background in order to humanize the proceedings. *Commonwealth v. Herbin*, 435 Mass. 654, 656 – 657 (2002). The Supreme Judicial Court has held that it is within the judge's discretion to admit brief testimony about the victim's family and personal background and to admit a photograph of the victim where the victim herself is unable to testify. *Commonwealth v. Holliday*, 450 Mass. 794, 816 (2008).

Jane Doe would also testify to the victim's age at the time of the incident, an element of the crime of assault and battery of a person over the age of sixty.

CONCLUSION

For the reasons stated, the Commonwealth respectfully requests that the Court grant this motion and admit testimony of Jane Doe for the purpose of providing some background information of the victim, introducing a photograph of the victim, as well as testifying about the victim's age at the time of the assault.

Respectfully submitted,
For the Commonwealth

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