

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT
CRIMINAL ACTION
NO. 2382CR00091

COMMONWEALTH

vs.

BRIAN WALSH

**MEMORANDUM OF DECISION AND ORDER ON
DEFENDANT'S MOTION TO DISMISS**

On March 30, 2023, a Norfolk County grand jury indicted the defendant, Brian Walsh (‘‘Brian’’ or ‘‘the defendant’’) on charges of murder (G.L. c. 265, § 1), misleading a police officer (G.L. c. 268, § 13B), and unlawful conveyance of a human body (G.L. c. 272, § 71). The grand jury heard twelve days of testimony from twenty-three witnesses and received over two hundred exhibits. The Commonwealth’s theory is that the defendant killed his wife, Ana Walsh, in their home during the early morning hours of January 1, 2023, and subsequently covered up his crime by dismembering and disposing of the body and misleading the police investigation.

The defendant now moves to dismiss Indictment 001 charging murder in the first degree on the ground that the grand jury heard insufficient evidence to sustain the indictment. The Court conducted a non-evidentiary hearing on the motion on July 24, 2025. After careful consideration, the Court concludes that the evidence presented to the grand jury sufficed to establish probable cause to warrant issuance of the indictment. The defendant’s motion to dismiss is therefore **DENIED**.

DISCUSSION

‘‘Generally a court will not inquire into the competency or sufficiency of the evidence before the grand jury.’’ *Commonwealth v. Coonan*, 428 Mass. 823, 825 (1999). However, under

the limited exception recognized in *Commonwealth v. McCarthy*, 385 Mass. 160, 163-164 (1982), “a court must dismiss an indictment” where the grand jury fails to hear “enough evidence . . . to support a finding of probable cause to arrest the accused for the offense charged.” *Commonwealth v. Rex*, 469 Mass. 36, 40 (2014). “Probable cause to sustain an indictment is a decidedly low standard.” *Commonwealth v. Hanright*, 466 Mass. 303, 311 (2013), citing *Commonwealth v. Moran*, 453 Mass. 880, 883-884 (2009). It “requires only evidence ‘sufficient to warrant a reasonably prudent [person] in believing that the [accused] had committed’ the offense.” *Commonwealth v. Rakes*, 478 Mass. 22, 29 (2017), quoting *McCarthy*, 385 Mass. at 163. “This standard . . . has been employed primarily to strike down indictments in cases where a grand jury has heard . . . no evidence whatever that would support an inference of the defendant’s” guilt (citation omitted). *Commonwealth v. Truong Vo Tam*, 49 Mass. App. Ct. 31, 37 (2000).

The defendant here challenges the sufficiency of evidence presented as to the charge of first-degree murder. To support a murder indictment, the Commonwealth was required to present the grand jury with sufficient evidence to support a finding of probable cause that the defendant committed murder “with deliberately premeditated malice aforethought, or with extreme atrocity or cruelty, or in the commission or attempted commission of a crime punishable with death or imprisonment for life.” See G.L. c. 265, § 1.

At the hearing on the motion, the defendant argued that the Commonwealth was required to present sufficient evidence for a finding of probable cause as to each theory of murder it intends to pursue at trial, in this case, deliberate premeditation and extreme atrocity and cruelty. According to the defendant, the Court must consider whether there was sufficient evidence for each aggravating circumstance individually, and if the Commonwealth’s presentation of

evidence was deficient as to one theory, the Court should dismiss so much of the indictment that pertains to that theory.

The defendant's argument relies on an incorrect statement of the law. The very case on which he relies, *Commonwealth v. Riley*, contradicts his argument:

"Because the evidence suffices to establish probable cause for one or more of the aggravating circumstances that amount to murder in the first degree, the Commonwealth is free at trial to prove murder in the first degree under any of the aggravating circumstances set forth in the statute."

See 73 Mass. App. Ct. 721, 730 n.8 (2009), citing *Commonwealth v. Clayton*, 63 Mass. App. Ct. 608, 612 (2005). See also *Commonwealth v. Johnson*, 92 Mass. App. Ct. 1130, 2018 WL 1122151 at *1 (2018) (Rule 1:28 Decision). Thus, contrary to the defendant's contention, if the evidence before the grand jury was sufficient under one of the aggravating circumstances under G.L. c. 265, § 1, the entire indictment for murder stands.

The defendant also argues that the evidence was insufficient to support probable cause that he committed premeditated murder with malice aforethought.¹ To prove deliberate premeditation, the Commonwealth must establish probable cause that Brian intended to kill Ana and that he decided to kill after a period of reflection. See *Commonwealth v. Whitaker*, 460 Mass. 409, 418 (2011). Intent may be inferred from the facts and circumstances presented. See *Riley*, 73 Mass. App. Ct. at 730-731. No particular length of reflection is required to find deliberate premeditation. See *Commonwealth v. Johnson*, 435 Mass. 113, 119 (2001).

The Court concludes that the Commonwealth's presentation of evidence established probable cause of premeditated murder. The Commonwealth presented evidence that on the

¹ For the purposes of this motion, the defendant does not appear to challenge that there was sufficient evidence before the grand jury to establish probable cause that Ana died inside the family home or that the defendant caused her death. Even if the defendant did mount such challenges, they would be unsuccessful given the evidence before the grand jury.

night before Ana went missing, she and Brian had a New Year's Eve dinner at their house with Ana's former boss Gem Mutlu. While there was testimony from Ana's friends (Mutlu, Alissa Kirby, and William Fastow) that Ana and Brian were experiencing ongoing problems with their marriage including financial problems, infidelity, and legal issues, Mutlu noted that the atmosphere on New Year's Eve was jovial, and Brian and Ana appeared happy. Mutlu described Brian as very attentive that night. Brian, Ana, and Mutlu consumed wine and champagne, and they all signed the champagne box of the bottle that they had that night. Brian wrote, "Gem Ana Brian NYE 2023! To the Best Triumvirate Ever! Love Brian." Grand Jury Transcript, Mar. 7, 2023, Exh. 9. Mutlu left the Walshes' residence around 1:00 a.m. or 1:30 a.m. on January 1, 2023. When Brian later told Mutlu that Ana went missing on January 1, 2023, Mutlu asked Brian if he and Ana had an argument and if something happened. Brian responded, "[D]id it look like we had an argument that night? You saw us. You know, you know you saw what she wrote on the—' or something to that effect." Grand Jury Transcript, Mar. 7, 2023, at 66. The grand jury could infer from such an interaction that Brian had used the New Year's Eve dinner with Mutlu as a façade so that Mutlu would deflect any suspicion away from Brian when Ana went missing.

Notably, on New Year's Eve night, Brian told Mutlu that he had lost his phone. He later told Mutlu he found it on January 2, 2023. Brian told police the same thing during an interview on January 5, 2023, and that once he found his phone on January 2, 2023, he tried calling and texting Ana and her friends about her disappearance. The grand jury heard evidence that the device events on Brian's phone showed that the phone was unlocked four times on January 1, 2023, at 7:57 a.m., 11:23 a.m., 12:38 a.m., and 12:45 p.m. and was plugged into a charger at 8:09 a.m. and unplugged at 1:42 p.m.—all times where Brian was the only adult in the house. The grand jury could infer that Brian lied to Mutlu about losing his phone on the night *before* he

killed Ana, so Mutlu would corroborate that story to others including the police to explain why Brian had not been trying to contact Ana on January 1, 2023 and why he had not told others she was missing. See *Commonwealth v. DeMarco*, 444 Mass. 678, 680 (2005) (“jury could consider the defendant’s actions after the killing as evidence of consciousness of guilt from which they could infer premeditation” where Commonwealth proved “that the defendant made plans prior to the death of [the victim] to engage in such conduct after her death”).

The grand jury also heard evidence that on the weekend of Christmas or the weekend before, Brian had asked the Walshes’ nanny, Robin Howe, to babysit the children on January 1, 2023 at 2:00 p.m., so he and Ana could go to brunch. On New Year’s Eve day, Ana had gone to the nail salon for a pedicure and struck up a conversation with another customer, Janet Cotter. Ana told Cotter that on New Year’s Day, she had plans to go to an elaborate dinner with many courses in Marblehead without her children. Given evidence before the grand jury that Brian had told multiple lies about his and Ana’s whereabouts on January 1, 2023, it was reasonable for the grand jury to infer that Brian had also lied to Ana and Howe about New Year’s Day plans, and that he had done so to ensure Ana did not make other plans and their children were occupied to allow himself time to further conceal his crime.

The defendant objects to the Commonwealth’s reliance on evidence of the defendant’s motive, arguing it is merely speculative and offers little relevance to the theory of deliberate premeditation. The Court does not agree. “Evidence of motive can be relevant and admissible, for example, on the issues of malice and intent.” *Commonwealth v. Brea*, 488 Mass. 150, 165 (2021). See *Commonwealth v. Cormier*, 427 Mass. 446, 450 (1998). Here, the evidence of motive was significant.

The grand jury heard evidence that Ana and Brian were experiencing difficulties in their marriage related in part to financial stresses, physical distance, and Brian's legal troubles. Ana wanted her children to be in Washington, D.C. with her, but the possibility of home confinement for Brian's federal sentence would substantially lessen if he was no longer the primary caregiver for the children. Ana's friends, who did not know her to be emotional, described her as angry, fed up, and increasingly frustrated with the situation. Ana told them she and Brian recently had a big argument where Ana gave Brian an ultimatum and told him he needed to take accountability for his crime. Ana also was having an affair with William Fastow—a man she had previously told Brian she had a crush on. Fastow communicated with Ana through text messages and Instagram. During his interview with police on January 4, 2023, Brian told them that sometimes Ana's text messages would come up on his devices, that he had access to Ana's Instagram account, and that he had seen messages people were leaving for Ana. Brian's mother suspected Ana was having an affair and hired a private investigator whose name she obtained from Brian. Brian had, just days before Ana went missing, searched for William Fastow numerous times on Instagram. He had also searched, "Best state to divorce for a man" on December 27, 2022—a search which revealed Massachusetts as the third worst state in which to divorce. Additionally, the grand jury heard evidence that Ana had multiple life insurance policies for which Brian was the beneficiary. From such evidence, the grand jury could infer that Brian knew about Ana's affair, thought their marriage was likely coming to an end, did not want to go to federal prison, and viewed her death as more beneficial to him than a divorce.

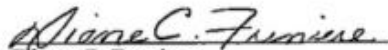
The Court acknowledges that the evidence of the defendant's planning prior to the alleged murder is not overwhelming. Indeed, most of the evidence presented to the grand jury concerned Brian's actions after the time when the Commonwealth contends he killed Ana.

However, it is well established that probable cause may be shown through circumstantial evidence, and inferences drawn from the evidence “need only be reasonable and possible and need not be necessary or inescapable” (citations omitted). *Whitaker*, 460 Mass. at 416. See *Commonwealth v. Humberto H.*, 466 Mass. 562, 566 (2013) (probable cause deals with probabilities, “the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act”). Moreover, “there are situations where evidence of a defendant’s postkilling conduct or consciousness of guilt can properly be used to infer premeditation. If, for example, the evidence demonstrates that plans for flight, concealment, or destruction of evidence were made prior to the actual killing, such evidence is highly probative on the issue of premeditation.” *Commonwealth v. Dagenais*, 437 Mass. 832, 844 n.19 (2002). Where the evidence presented to the grand jury here established Brian took some steps before Ana went missing in furtherance of his later efforts to mislead the police investigation into her disappearance, it was sufficient to meet the probable cause standard to believe that he intended to kill Ana and that he decided to do so after a period of reflection.

Because the Court concludes that the Commonwealth has established probable cause that the defendant committed murder “with deliberately premeditated malice aforethought,” it need not consider whether the Commonwealth also established probable cause that the defendant committed murder with extreme atrocity or cruelty. See *Riley*, 73 Mass. App. Ct. at 730 n.8.

ORDER

For the foregoing reasons, it is hereby **ORDERED** that the defendant’s Motion to Dismiss (Paper No. 97) is **DENIED**.


Diane C. Freniere
Justice of the Superior Court

Date: August 19, 2025