IN THE SUPREME COURT OF THE UNITED STATES

SEAN M. DONAHUE

v.

COMMONWEALTH OF PENNSYLVANIA

SUPREME COURT OF PENNSYLVANIA DOCKET: 45 MAL 2019

SUPERIOR COURT OF PENNSYLVANIA DOCKET: 1329 MDA 2018

COMMON PLEAS COURT OF DAUPHIN COUNTY PENNSYLVANIA DOCKET: CP-22-CR-3716-2015

REQUEST FOR EXTENSION OF TIME OF 60 DAYS TO PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY PENNSYLVANIA

TO THE HONORABLE JUSTICE ALITO:

The *pro se* Petitioner, Sean M. Donahue RESPECTFULLY REQUESTS aN EXTENSION OF TIME OF 60 DAYS to JANUARY 8, 2020 to Petition to the Supreme Court of the United States for a *writ of certiorari* regarding PA state Supreme Court case 45 MAL 2019 (PA Superior Court case 1329 MDA 2019), which

is an appeal that originated from a Pennsylvania trial court order issued by the county trial court of Dauphin County, Pennsylvania at Docket No. CP-22-CR-3716-2015 of the Court of Common Pleas of Dauphin County. (APPENDICES A, B & C)

Petitioner is actively involved in numerous cases in both federal and state courts, which have occupied much of his time. Petitioner has recently had many filings due in several active cases before the Superior Court of Pennsylvania and has more filings due in the coming days and weeks at 1179 MDA 2019, 1582 MDA 2019, 1607 MDA 2019, 1608 MDA 2019, 1640 MDA 2019 thru 1647 MDA 2019. The Petitioner has also had a filing due in the US Third Circuit at 17-2810 and has one due at 17-3841. The Petitioner also has a petitions due in the Supreme Court of the United States at 19-5808 and November 8, 2019 deadlines for Petitions for Certiorari at two separate PA state cases 45 MAL 2019 (1329 MDA 2019) and 47 MAL 2019 (1417 MDA 2019).

The Petitioner will then also have a *pro se* response to an Anders Brief due at 364 MDA 2019 in the PA Superior Court. The time burden of that particular case is compounded by the Superior Court of Pennsylvania seeking ways to administratively quash the case to evade having to hear the merits of a difficult issue that raises fundamental flaws in their own previously established precedents. The time burden is further compounded by trial court appointed attorneys who just don't want to pursue politically sensitive and controversial issues, such as gun rights, on appeal. *(See attached letter from state trial judge* APPENDIX D*)*

In all his state cases, the Petitioner has been unduly burdened by court appointed counsel (and previously paid counsel) who have been fearful of calling out the courts on blatant flaws in their reasoning, as well as blatant errors, regarding which counsel have often told the Petitioner (and the trial courts) that there is no supporting case law that addresses the circumstances. Yet, with research, the Petitioner often finds lots of well developed case law that makes many of his complaints slam dunk arguments. The state court impede the Petitioner's ability to advance those arguments by ruling that they arise from interlocutory orders which cannot be appealed, regardless of their merit. This practice evades finality when it suits the courts desire to evade ruling on important issues of legitimate merit. It prevents issues complained of from ever rising on their merits, even when the courts recognizes the existence or likely existence of those merits. This problem appears to be a systemic problem in the Pennsylvania appellate system that enables the advancement of injustice.

In the instant case for which the Petitioner seeks certiorari, the Superior Court of Pennsylvania, on December 7, 2018, quashed an appeal.[1] (APPENDIX C) The Pennsylvania Supreme Court denied an appeal of that order on July 9, 2019 and further denied reconsideration on August 8, 2019.[2] (APPENDIX B) The Petitioner argues that the issues he raised in his initial appeal of the trial court order are valid issues. He challenges the Pennsylvania harassment statute under

[1] Commonwealth of Pennsylvania v. Sean M. Donahue, Docket No. 1329 MDA 2018 in the Superior Court of Pennsylvania

[2] Commonwealth of Pennsylvania v. Sean M. Donahue, Docket No. 45 MAL 2011 in the Supreme Court of Pennsylvania

which he was charged (18 PA Cons Stat § 2709 (2014), APPENDIX E.1, E.2, E.3) and the Pennsylvania Post Conviction Relief Act (PCRA) (APPENDIX F) as being constitutionally infirm.

The trial court order and trial court opinion addressed Petitioner's requests to strike all or portions of both statutes with a denial. (APPENDIX A.1, A.2) Petitioner also made requests for workable remedies around the circumstantial infirmity of the two statutes that were also denied in the same trial court order but were made readily available to the former Pennsylvania Attorney General, Kathleen Kane (by a different judge and court), so that she could pursue relief from her criminal conviction.[3]

The wording of the Pennsylvania harassment statute under which the Petitioner was charged is identical to the wording of the former New York state harassment statute, which was struck as being constitutionally infirm. (APPENDIX E.1, E.2, & APPENDIX H.1, H.2) The striking of the New York statute occurred at the urging of several US Second Circuit judges who themselves had ruled in different cases that the New York harassment statute was constitutionally infirm. *(People v Golb, 23 N.Y.3d 455, PART III, Court of Appeals of New York 2014,* APPENDIX H.2; *COMM V BELL Com. v. Bell, 516 A.2d 1172 (Pa. 1986),* the Pennsylvania Statutory Construction Act of 1972, 1 Pa.C.S.A. §1921(b) (APPENDIX E.4, E.5) and *Scales v. United States, 367 U.S. 203 (1961)* The identical wording in a harassment statute cannot be violative to the US Constitution in New York but

[3] Comm v. Kane, Docket Number: CP-46-CR-0006239-2015, Montgomery County Pennsylvania; Comm v. Kane, Docket Number: CP-46-MD-0002457-2015, Montgomery County Pennsylvania; Comm v. Kane, Docket Number: CP-46-CR-0008423-2015, Montgomery County Pennsylvania

not violative to the US Constitution in Pennsylvania. State sovereignty does not allow for 50 different interpretations and applications of the US Constitution.

The Pennsylvania PCRA contains language that subsumes all historical and ancient forms of post conviction relief [4] but imposes short time limit constraints that render those writs inaccessible.[5] Those limiting constraints include sentencing bars that do not allow for post conviction appeal after one has completely served a sentence. Therefore, facts that would otherwise force a dismissal or reversal of conviction go willfully ignored by the courts. The courts hide behind statutory technicalities to evade their difficult and controversial constitutional duties in a state where judges are elected and retained by the voters.

The PA PCRA bars to appeals do not aid in implementing ancient writs but instead eliminate their availability. The ancient writs evolved to satisfy a need to resolve injustice. The many filing constraints imposed by Pennsylvania PCRA codifies the tolerance of the very injustices that the ancient writs evolved to provide a remedy for. *COMM V BELL Com. v. Bell, 516 A.2d 1172 (Pa. 1986),* the Pennsylvania Statutory Construction Act of 1972, 1 Pa.C.S.A. §1921(b) (APPENDIX E.4, E.5) and *Scales v. United States, 367 U.S. 203 (1961),* when taken in harmony with *Commonwealth v. Holmes, 79 A.3d 562 (Pa. 2013) & Commonwealth v. Delgros 183 A.3d 352 (Pa. 2018),* REQUIRE that the Court strike PCRA sentencing bars, time bars and the PCRA's subsuming of all forms of post conviction appeal. The above cited case law CANNOT coexist. Each opinion contradicts the other.

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[4] 42 Pa. C.S. §9542

[5] 42 Pa. C.S. §9543(a) et. seq.; 42 Pa. C.S. §9545 (a); 42 Pa. C.S. §9545 (b) et. seq.

At the federal level, a parallel circumstance arises with the unavailability of access to relief through *habeas corpus* after one's sentence has been served. This is sadly true even if one can prove a wrongful prosecution. In such circumstances, petitioners are often guided to pursue federal pardon from the President of the United States. However, in Pennsylvania, it is the political policy of the state Pardon Board that pardon's are not granted for wrongful convictions and that complaints of wrongful conviction must be pursued through the courts. (APPENDIX I) Yet, the path of the courts is unavailable because the courts use administrative rules to not reach the merits of such appeals for fear that they may have to rule in favor of the convicted, which risks acknowledging flaws in their own administration (or misadministration) of justice.

In the case in question, the Petitioner requested that his appellate counsel pursue unitary review of direct appeal and PCRA issues. Although he did not use the term "unitary review", he explicitly instructed his attorney as to what issues he wanted raised during direct appeal but his attorney called them PCRA issues and refused to raise them together with direct appeal issues. This Court has stated that when a counsel completely abandons a defendant on a matter for which he was entitled representation, relief lies in *coram nobis. (United States v. Morgan, 346 U.S. 502, 505, 98 L. Ed. 248, 253 (1954))* Pennsylvania, the Third Circuit and this Court have said that the ineffectiveness of counsel on a matter is effectively the same as a denial of counsel on that matter and relief should be granted. (*Commonwealth v. Sheehan, 446 Pa. 35, (1971); Ross v. David Varano; PA State*

Attorney General PA State Attorney General, Appellant, No. 12–2083, 712 F.3d 784 (2013); Strickland v. Washington, 466 U.S. 668 (1984); United States v. Cronic, 466 U.S. 648 (1984); Commonwealth v. Pierce, 515 Pa. 153, 527 A.2d 973, 975 (1987); Peyton v. Rowe, 391 U.S. 54 (1968); Maleng v. Cook, 490 U.S. 488 (1989); All Writs Act of 1789; Hager v. United States, 993 F.2d 4, 5 (1st Cir. 1993); Nicks v. United States, 955 F.2d 161, 167 (2d Cir. 1992); United States v. Osser, 864 F.2d 1056, 1059–60 (3d Cir. 1988); United States v. Drobny, 955 F.2d 990, 996 (5th Cir. 1992); Steward v. United States, 446 F.2d 42, 43–44 (8th Cir. 1971)).

The Petitioner later discovered that a wealth of case law exists on the subject of unitary review and that his circumstance indisputably qualified for unitary review. (*Commonwealth v. Holmes, 79 A.3d 562 (Pa. 2013) & Commonwealth v. Delgros 183 A.3d 352 (Pa. 2018))* The Petitioner also requested Appeal Bail and/or a stay of his sentence, which would have provided a temporary fix that would have availed a PCRA appeal.

Had the Petitioner been granted unitary review or not administratively impeded in the case in question, the lead argument he instructed his court appointed counsel to make would have guaranteed the reversal of the Petitioner's harassment conviction at Dauphin County, Pennsylvania Docket No. CP-22-CR-3716-2015 and would also have guaranteed an acquittal from the trial bench.*United States v. Julio Hernandez, 176 F.3d 719, (3rd Cir. 1999), 3rd Cir Docket No. 98-5266; Hernandez supra Sloviter, Circuit Judge, Dissenting; United States v. Menichino, 497 F.2d 935, 945 (5th Cir. 1974); Francis v. Franklin, 471 U.S.*

307, 322 (1985); Coffin v. United States, 156 U.S. 432 (1895); Guam v. Ignacio, 852 F.2d 459 (9th Cir. 1987); McKenzie v. Montana, 443 U.S. 903 (1979); McKenzie v. Montana, 433 U.S. 905 (1977); Sandstrom v. Montana, 442 U.S. 510 (1979); United States v. Olano, 507 U. S. 725 (1993) It is for this reason that the Pennsylvania courts have maneuvered to evade any appeal in which they would have to address the merits.

The lead issue the Petitioner would raise is that the trial judge removed the presumption of innocence prior to opening arguments and that newly discovered evidence reveals that the judge's doing so was conscious, malicious and intentional. Because both the prosecution and the defense counsel failed to object to the removal of the presumption of innocence, *stare decisis* requires the trial court's adherence to the precedent established by this court in *Coffin supra p457,* which requires an increase by default in the prosecutor's burden of proof from proof "beyond a reasonable doubt" *(United States v. Haymond, 588 U. S. ____ (2019))* to proof "beyond doubt".

Because the trial court *sua sponte* removed the presumption of innocence before opening arguments in a case in which the Petitioner pleaded "not guilty", the court had no choice but to also *sua sponte* raise the standard of proof to "beyond doubt". Because no prosecutor could ever succeed in proving a case "beyond doubt", the court had no choice other than to *sua sponte* grant an acquittal. Beyond that, the trial court also *sua sponte* found the case to rise from a labor dispute and the plain language of the Pennsylvania harassment statute that existed at the time

charges were filed rendered the Plaintiff non prosecutable for any charge of harassment that arose from a labor dispute. (APPENDIX E.1 thru E.5)

WHEREFORE the Petitioner needs more time to write his Petition for Writ of Certiorari regarding PA state cases 45 MAL 2019 (1329 MDA 2019) and 47 MAL 2019 (1417 MDA 2019), the Petitioner RESPECTFULLY REQUESTS an extension of time of 60 days to January 8, 2020 or to March 1, 2020, if the Court will allow. If the Court does not grant the request to extend time, then the Petitioner asks that the filing date of this motion be preserved and that this motion be considered the Petition for Writ of Certiorari, with the Petitioner being allowed to supplement this filing with the appropriate table of contents, table of authorities and table of appendices.

The forgoing document is true in fact and belief and submitted under penalty of perjury.

Respectfully Submitted,

Oct 29, 2019
Date

Sean M. Donahue
Sean M. Donahue

Received 5/7/2018 1:29:09 PM Superior Court Middle District

Filed 5/7/2018 1:29:00 PM Superior Court Middle District
39 MDM 2018

COMMONWEALTH OF PENNSYLVANIA	**: IN THE COURT OF COMMON PLEAS,**
	: DAUPHIN COUNTY, PENNSYLVANIA
	:
v.	**: NO. 3716 CR 2015**
	:
SEAN DONAHUE	**: CRIMINAL MATTER**

ORDER OF COURT

AND NOW, this 24th day of April, 2018, upon consideration of Petitioner's Motion for Nominal Appeal Bail, Request for Production of Full Transcripts of Trial and All Pre-Trial Hearings and Request for Complete Records on Jury filed on or about April 3, 2018, his Amended from Motion Submitted on April 3, 2018, and his Application for Relief it is HEREBY ORDERED as follows:

1) The Motion for Nominal Appeal Bail or Stay of the Sentence is DENIED.

2) The Request for Production of Full Transcripts of Trial and All Pretrial Hearings is DENIED. Petitioner must follow the Request for Transcripts procedure. See Pa.St.J.Admin. Rule 4007 and D.C.J.A. 4007.

3) The request for Complete Records on Jury is DENIED.

4) The request for Stay of Sentence to Preserve PCRA is DENIED.

5) The Motion for the Instatement/Reinstatement of STATE Coram Nobis Procedure or Similar Procedure to Allow for the Post Conviction Correction of State Court Errors when State Post Conviction Relief is NOT Available is DENIED.

6) The Motion to Quash the portion of Pennsylvania PCRA requiring Petitioners to still be serving a sentence is DENIED.

7) The Motion to Quash the portion of Pennsylvania PCRA requiring petitions to be filed within one year of entry of final judgment is DENIED.

8) The Motion to Quash the portion of Pennsylvania PCRA preventing courts from entertaining a PCRA request in anticipation of the filing of a petition is DENIED.

9) The Application for Relief is DENIED.

BY THE COURT:

Deborah E. Curcillo

Deborah E. Curcillo, J.

Distribution:
Hon. Deborah E. Curcillo
Katie Adam, Esq., Dauphin County District Attorney's Office
Sean Donahue, 625 Cleveland St., Hazleton, PA 18201

2018 APR 24 PM 12:57

APPENDIX A.1 Order Being Appealed or Trial Court

COMMONWEALTH OF PENNSYLVANIA	**: IN THE COURT OF COMMON PLEAS**
	: DAUPHIN COUNTY, PENNSYLVANIA
	:
v.	:
	: 1168 MDA 2018
SEAN DONAHUE	**: 3716 CR 2015**
	:

TRIAL COURT MEMORANDUM OPINION PURSUANT TO PENNSYLVANIA RULE OF APPELLATE PROCEDURE 1925(A)

Appellant, Sean Donahue ("Appellant" or "Mr. Donahue") appeals from this Court's Order dated April 18, 2018 which denied the Appellant permission to attend a potential job interview at the Pennsylvania Department of Labor and Industry. This opinion is written pursuant to Pa.R.A.P. 1925(a).

Procedural History

On April 2, 2018 Appellant filed a Motion requesting permission to attend a potential job interview. Thereafter on April 18, 2018, this Court issued an order denying the motion. On May 5, 2018, this Court received a timely Notice of Appeal filed with the Superior Court of Pennsylvania. This Court ordered Appellant on July 20, 2018, to file a concise statement of matters complained of on appeal pursuant to Pa.R.A.P. 1925(b). Appellant complied with said Order on July 23, 2018.

Factual Background

On January 12, 2015, Appellant was charged with one count of first degree misdemeanor (terroristic threats)[1] and two counts of third degree misdemeanor (harassment)[2] for allegedly emailing threats to various Commonwealth employees and the media.

[1] 18 Pa.C.S.A. § 2706
[2] 18 Pa.C.S.A. § 2709(a)(4)

In July 2015, bail was set following the preliminary hearing. Shortly thereafter, a Petition for Habeas Corpus and a Petition for Release Pursuant to Rule 600 or, in the alternative, Petition for Bail Reduction were filed. They were both denied, with the denial of the Bail Reduction being reviewed by the Superior Court who denied the request.[3]

On April 18, 2016, a jury trial commenced. At trial, the jury was hung as to the terroristic threats charge, but found guilty on the two harassment charges. The district attorney immediately chose to nolle pros the terroristic threats charge.

The Commonwealth limited itself to using only 4 emails in its case in chief. Those four emails were each sent to roughly 50 individuals. Lisa Sauder and Mary Jane McMillan were both courtesy copy recipients of the emails. Mary Jane McMillan was in the "to" filed on one email.

The first email reads, in part:

> I now advise you that if you follow through and even entertain the slightest bit of a notion that you and the rest of the Commission have the jurisdiction necessary to pass judgment over my use of federal and state courts, I will pursue punishment of you, the remaining Commission members and the senior employees of the Commission for your even attempting to control access to the courts. By doing so, you will face the very same court actions that PA L&I now claims its employees faced and fear that they still face from me.
>
> That is a threat and I make that threat with the full confidence of Democracy and no fear whatsoever of the federal and state courts. Print this explicit unapologetic threat out and take it to your nearest FBI office or US Attorneys Office. You may take it to your local state Attorney Generals office and Magistrate as well, for I will show no respect for state level immunity for you in this matter.

The second email reads in part:

> Congratulations. You've one. The amount of money I spent on paper copies trying to fight your agency in the courts over the past decade has been more than enough to by a quality assault rifle and an ample supply of ammunition or explosive materials, all of which your staff, your employees and your affiliates accused me of

[3] See 63 MDA 2015

> doing and all of which they repeatedly told police they feared. It was all bullshit and you knew it...And you won't even have the balls to walk into a courtroom and file a private criminal charge because you can't push the Court around like you can the civil service commission. You won't have to explain to a judge how you rectify my having spent so much money on civil court actions instead of just buying a $200 gun and $20 box of ammunition and killing your employees, like they accuse me of having been accusing me of having a propensity towards for about a decade...be grateful that your memory of me is associates with reams of paper and email complaints so that you don't have to remember me every time you walk past the hunting section of a department store, like your employees have accused me of for so long, when they should have been focused on getting me a job making enough money to repay those student loans that are going to be paid off by your law firm's income tax instead of my paycheck because I don't have a paycheck.

The third email read exactly as the second, with a nearly identical recipient list, in a different order.

The fourth email reads in part:

> If L&I and the Civil Service Commission do not start obeying the law that grant me veterans preference for numerous employment related benefits, I am going to find a LEGAL way to pound the shit out of your government agencies and I am going to that method, whatever it is in whatever context makes it LEGAL, to pound your employees into submission until they stop denying me my benefits.
>
> I hope all of you suffer terrible tragedies as you leave office and I hope you suffer to a much greater degree than you arw actively causing in my life very day. I hope that all of you who are involved in manipulating the civil service laws to prevent me from being employed die in a terrible tragedy of your own doing. I hope each of you feels the regular daily pain that you have intentionally caused in my life for years and still cause today. As you move aggressively to cement that misery into my life before you leave office in January, think of Ferguson, think of the anger and frustration that government oppression is causing in our society...
>
> I can't accomplish anything with a weapon. I need a unit. I need a militia of equally as frustrated Pennsylvanians and Americans who are fed up with being ignored by government...

Lisa Sauder testified that while she had communicated via email with Appellant over a period of years, the tone changed and she became alarmed. (Notes of Testimony, Jury Trial[4], p. 21). While Ms. Sauder's job required that she interact with people with grievances, she had never, in 26 years at her job, received emails like these before, referencing guns, and she was afraid. (N.T. 34-35). She felt the email was extremely angry and expressed a potential to do harm. (N.T. 45).

Mary Jane McMillan was also alarmed after receiving the emails. (N.T. 72). She had never received emails with that sort of language and was concerned enough to notify her supervisor's boss about them. (N.T. 72-73). She actually went above her supervisor's head because she was so concerned; normally she would have told her supervisor first. (N.T. 73).

Corporal Richard Schur was given the emails by state employees and he was assigned to investigate. He located Appellant and he ultimately charged Appellant in this case.

Appellant's Statement of Matters Complained of on Appeal

- The April 18, 2018 order is ineffective because the Appellant's sentence has "maxed out".
- The April 18, 2018 order is ineffective because the Court of Common Pleas of Luzerne County issued an order granting permission to attend a potential job interview on April 9, 2018.
- State agencies, specifically the Pennsylvania Department of Labor & Industry, cannot be victims of harassment; only individuals.
- The harassment statute was applied to the appellant in a manner that was overly broad and unconstitutional. Additionally, appellant asserts that he was subjected to unjust bias.

[4] Hereinafter "N.T."

- The appellant asserts that he was entrapped into sending the threatening emails to the Pennsylvania Department of Labor and Industry.
- Pennsylvania's criminal harassment statute[5] is unconstitutional because a New York statute with identical language was deemed to be unconstitutional by an Appellate Court in New York.[6]
- Appellant was tried under Pennsylvania's criminal harassment statute §2709(a)(3)[7] instead of §2709(a)(4), a crime for which the Appellant had not been formally charged.

Discussion

The April 18, 2018 order is effective despite Appellant's assertion that it is not. As a condition of the Appellant's sentencing, that was held immediately after the conclusion of his trial by jury, he was ordered by this Court to have no communication by any means with the individuals employed by the Department of Labor and Industry listed on the information. (N.T. 107). It is for this reason that this Court denied the Appellant's motion to attend the potential job interview. Additionally, it is for this reason that the April 18, 2018 order is still in effect.

Next, we address the Appellant's argument that the April 18, 2018 order is ineffective because of a conflicting order arising out of Luzerne County. "Judges of coordinate jurisdictions sitting in the same court and in the same case should not overrule the decisions of each other." *Okkerse v. Howe*, 521 Pa. 509 (1989). "The law of the case doctrine refers to a family of rules which embody the concept that a court involved in the later phases of a litigated matter should

[5] 18 Pa. Cons. Stat. Ann. § 2709.
[6] People v. Golb, 23 N.Y.3d 455 (2014)
N.Y. Penal Law § 240.30 (Consol.)
[7] "A person commits the crime of harassment when, with intent to harass, annoy or alarm another, the person: (3) engages in a course of conduct or repeatedly commits acts which serve no legitimate purpose."

APPENDIX A.2 Trial Court Opinion Received

not reopen questions decided by another judge of that same court or by a higher court in the earlier phases of the matter." *City of Phila. v. Pa. PUC*, 720 A.2d 845 (Pa. Commw. Ct. 1998).

In the case at hand, neither the April 18, 2018 order from this Court nor the April 9, 2018 order from the Luzerne County Court of Common Pleas arose from the same case; charges from both counties arose from different incidents. Additionally, neither the Judge of this Court nor the Luzerne County Court are judges of coordinate jurisdictions. Both courts quite obviously are located in different counties and handle different cases. Thus, we believe that the Appellant is incorrect in his assertion that the April 18, 2018 order would be rendered ineffective simply because the Luzerne County Court of Common Pleas granted an identical motion.

Next, we will address the Appellant's third error complained of. In this case "A person commits the crime of harassment when, with intent to harass, annoy or alarm another, the person communicates to or about such other person any lewd, lascivious, threatening or obscene words, language, drawings or caricatures." 18 Pa.C.S.A. § 2709(a)(4).

"Person" is defined as including:

> A corporation, partnership, limited liability company, business trust, other association, government entity (other than the Commonwealth), estate, trust, foundation or natural person.

1 Pa. C.S.A. § 1991.

The victims of the harassment in this case as alleged by the Appellant are employees of a government entity. It is clear from the definition of "person" that harassment against a "person" can include a government entity. Very clearly, the Department of Labor and Industry is a government agency. Thus, the appellant's contention that harassment cannot be committed against a government agency is incorrect based on the plain language of the statute.

Next, we address Appellant's assertion that the harassment statute was applied to him in an overly broad manner. "Evidence will be deemed sufficient to support the verdict when it

establishes each material element of the crime charged and the commission thereof by the accused, beyond a reasonable doubt. Where the evidence offered to support the verdict is in contradiction to the physical facts, in contravention to human experience and the laws of nature, then the evidence is insufficient as a matter of law. When reviewing a sufficiency claim the court is required to view the evidence in the light most favorable to the verdict winner giving the prosecution the benefit of all reasonable inferences to be drawn from the evidence." *Commonwealth v. Smith*, 2004 PA Super 77, ¶ 24, 853 A.2d 1020, 1028 (2004)

In this case, Appellant wrote three distinct emails each of which could independently fulfill the elements of harassment as charged and defined in the jury instructions. In this case "A person commits the crime of harassment when, with intent to harass, annoy or alarm another, the person communicates to or about such other person any lewd, lascivious, threatening or obscene words, language, drawings or caricatures." 18 Pa.C.S.A. § 2709(a)(4).

Appellant communicated with the victims via email. Over the course of three days, Appellant sent four emails to numerous people. In those emails, Appellant utilized capital letters, which are often commonly read as shouting. He wished "terrible tragedies" upon the recipients, and he referenced guns, armed uprisings, and indicated he was threatening the recipients with legal action.

In *Commonwealth v. Walls*, 144 A.3d 926 (Pa. Super. 2016) the Court found that there was sufficient evidence for a conviction of harassment under 18 Pa.C.S.A. 2709(a)(4) where the defendant approached the victim, spoke with her at length, caused her to back up and request that he leave her alone and then yelled that she caused his grandmother's death and she should be next. The victim suffered no physical contact or harm. That defendant was then escorted from

the store. The Court reasoned that unless you are attempting to harass or annoy an individual, there is no reason to do such a thing.

Similarly, in this case, there is no reason to send four relatively lengthy emails, which must have taken some time to compose, over such a short time period, if one does not intend to harass or annoy the recipients.

In *Walls*, the defendant indicated that the victim *should be* next. He did not indicate an imminent prospect of causing her harm. He wished future harm to happen to her and did not threaten to cause that harm himself.

Appellant in this case, wished future tragedies and harm upon the recipients of the emails. He even took it a step further in discussing how he should have just bought a rifle and ammunition, rather than waste time with the system. He promises the recipients punishment, nominally via the court, however, he then turns to indicate he promises he is making a threat and has no fear of the courts. He says the recipients should be grateful their memory of him is associated with boxes of papers not the hunting section of the store. These statements are inflammatory and clearly intended to alarm the recipients.

Much like the Court in *Walls*, we believe this type of behavior is exactly the type of behavior that the harassment statute is meant to prohibit.

In regards to the Appellant's entrapment argument, this Court cites the Pennsylvania Rules of Criminal Procedure and Appellate Procedure. Under §720(B)(1)(c) of the Rules of Criminal Procedure, "Issues raised before or during trial shall be deemed preserved for appeal whether or not the defendant elects to file a post-sentence motion on those issues". Additionally, under the Pennsylvania Rules of Appellate Procedure 302(a), "Issues not raised in the lower

court are waived and cannot be raised for the first time on appeal". Pa. R. Crim. P. 720(B)(1)(c). Pa. R.A.P. 302(a)

In this case, at no point during trial did the Appellant ever raise the issue of entrapment in regards to the emails he sent to the victims. Therefore, the issue of entrapment was not preserved for appeal, and thus cannot be raised now. (N.T. 1-109).

Next, we will address the Appellant's contention of the constitutionality of Pennsylvania's and New York's criminal harassment statutes. Under the Tenth Amendment of The United States Constitution, it provides that: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people". USCS Const. Amend. 10.

In the case at hand, the Appellant asserts that because New York's criminal harassment statute was found to be unconstitutional; Pennsylvania's harassment statute should as well due to the similarities between the language used in both. While the language of the Pennsylvania and New York criminal harassment statutes are similar, states are free to create their own laws and regulations under the Tenth Amendment of the Constitution. Individual states are not required to follow in each other's footsteps, but are instead free to determine the laws followed within its jurisdiction. Therefore, the fact that New York has found its harassment statute to be unconstitutional bears no weight on the constitutionality of Pennsylvania's criminal harassment statute.

Finally, we address the Appellant's argument that he was tried for harassment under § 2709(a)(3)[8] instead of § 2709(a)(4). In making his argument the Appellant cites to many parts of the transcript that reference the phrase "course of conduct". The Appellant asserts that because

[8] "A person commits the crime of harassment when, with intent to harass, annoy or alarm another, the person: (3) engages in a course of conduct or repeatedly commits acts which serve no legitimate purpose."

this particular phrase was used throughout the trial, that he was tried for § 2709(a)(3)[9] instead of §2709(a)(4). In response, we would argue first that there was nothing presented by this Court nor either party that would suggest he was being tried under this alternate part of the harassment statute. Simply using the words "course of conduct" is not enough for the Appellant to make such a leap. The parts of the record to which the Appellant cites, is a conversation that was held outside of the jury's presence between this Judge and counsel regarding a potential double jeopardy issue. It was made clear to this Judge that there were not any double jeopardy issues because the charges arising out of Luzerne County were the result of emails being sent to a Luzerne County District Attorney and not from emails being sent to employees of the Department of Labor and Industry.

The Appellant's other citation to the record was to statements made by the Commonwealth during closing arguments; if the appellant took issue with the phrase "course of conduct" he should have objected to it, in order to preserve the issue on appeal. Pa. R. Crim. P. 720(B)(1)(c). Pa. R.A.P. 302(a)

Additionally, if there is any further confusion as to the offenses Appellant was charged with, the Appellant's docketing statement clearly shows that the Appellant was charged with two offenses under § 2709(a)(4) and not § 2709(a)(3).

For these reasons, we ask the Superior Court to uphold and affirm our judgment of sentence entered by this Court in denying the motion to attend the potential job interview.

[9] "A person commits the crime of harassment when, with intent to harass, annoy or alarm another, the person: (3) engages in a course of conduct or repeatedly commits acts which serve no legitimate purpose."

Respectfully submitted:

Deborah E. Curcillo

Deborah E. Curcillo, Judge

Dated: 9-4-18

Distribution:
The Superior Court of Pennsylvania
Hon. Deborah E. Curcillo
Katie Adams, Esq., Dauphin County District Attorney's Office
James Karl, Dauphin County Public Defender's Office
Sean Donahue, 625 Cleveland St., Hazleton, PA 18201

APPENDIX A.2 Trial Court Opinion Received

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 45 MAL 2019
Respondent	:	Application for Reconsideration
v.	:	
SEAN M. DONAHUE,	:	
Petitioner	:	

ORDER

PER CURIAM

AND NOW, this 8th day of August, 2019, the Application for Reconsideration is denied.

A True Copy Heather Schroeder
As Of 08/08/2019

Attest: _____
Appellate Court Clerk
Supreme Court of Pennsylvania

APPENDIX B.1 Certified Copy - Order Denying

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 45 MAL 2019
Respondent	:	
	:	Petition for Allowance of Appeal from the Order of the Superior Court
v.	:	
SEAN M. DONAHUE,	:	
Petitioner	:	

ORDER

PER CURIAM

AND NOW, this 9th day of July, 2019, the Petition for Allowance of Appeal is **DENIED**.

A True Copy Elizabeth E. Zisk
As Of 07/09/2019

Attest: _____
Chief Clerk
Supreme Court of Pennsylvania

Additional material from this filing is available in the Clerk's Office.