

SUPPLEMENTAL APPENDIX A

DISTRICT COURT, ARAPAHOE COUNTY,
COLORADO

THE PEOPLE OF THE STATE OF COLORADO,

Plaintiff,

v.

BILLY RAYMOND COUNTERMAN,

Defendant.

Case No. 16CR2633

REPORTER'S TRANSCRIPT

WHEREUPON, the hearing in this matter commenced April 25, 2017, in Division 408, before the Honorable Judge F. Stephen Collins, District Court Judge in the County of Arapahoe, State of Colorado.

A P P E A R A N C E S

FOR THE PEOPLE: Danielle Jaramillo, Esq.
 Registration No. 43542

 Laura Robilotta, Esq.
 Registration No. 40087

FOR THE DEFENDANT: Elsa Archambault, Esq.
Registration No. 44065

* * *

[260] Q (By Ms. Jaramillo) * * *

[270] Q Turn to this next page. Anything on this page that stood out to you?

A I think this one, the reference to the white Jeep. And then the fact that I, whoever it was, it seems like this person saw them, thought they were sophisticated, but they left. And, you know, he wishes there was more direct communication. This is a reference to the kind of car that I drove, and so these kind of intimate details become -- make the situation seem a lot more real.

Q You said this was the kind of car you drove. So I'm guessing at some point, you had a white Jeep?

A A white Jeep Cherokee.

Q Did you drive a white Jeep Cherokee during this time period in October of 2015?

A No.

Q When did you own that white Jeep?

A I think I got the Element four years ago, so it was my car prior to that. So that would be 2013. 2012. 2013.

Q The white Jeep that you had, were there any photographs on your personal or professional page that showed this white Jeep that he could [271] have easily seen?

A I don't know.

Q This next page. He keeps doing these two frogs. Did that mean anything to you at all? Does that mean anything to you?

A No idea. No.

Q Do you have any particular interest in frogs?

3a

A Me?

Q Yeah.

A I do not have any particular interest in frogs.

Q So this wasn't something that he knew or something about you?

A I don't think so.

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SUPPLEMENTAL APPENDIX B

DISTRICT COURT, ARAPAHOE COUNTY,
COLORADO

THE PEOPLE OF THE STATE OF COLORADO,

Plaintiff,

v.

BILLY RAYMOND COUNTERMAN,

Defendant.

Case No. 16CR2633

COURT REPORTER'S TRANSCRIPT OF
PROCEEDINGS

WHEREUPON, the hearing in this matter commenced April 26, 2017, in Division 408, before the Honorable Judge F. Stephen Collins, District Court Judge in the County of Arapahoe, State of Colorado.

APPEARANCES

FOR THE PEOPLE: Danielle Jaramillo, Esq.
Reg. No. 43542

Laura Robilotta, Esq.
Reg. No. 40087

FOR THE DEFENDANT: Elsa Archambault, Esq.
Reg. No. 44065

* * *

[71] Q (By Ms. Archambault) * * *

[72] * * *

Q Would you agree with me that this is a Facebook website?

A It looks that way, yes.

Q If I type in to find friends, your name, it will populate with some options. So if I click on [C.W.], this is your -- this is what we were referring to as your professional Facebook page?

A Yes.

Q And this is sort of the main page, would you agree with that?

A Of -- the main page?

Q Yeah. This is what we see as your main Facebook page?

A This is what will display, yeah, if you type in my name.

Q It's called a wall?

A A wall.

Q Yeah, okay. And on the left here, I [73] can click on photos and it will give me your photos?

A Yes.

Q So I could click on different albums and then there's additional photos within those clicks?

6a

A Yes.

Q And then if I go over here to the left again, I can click on videos and I'll see different videos that you have?

A Yes.

Q Now, you and I aren't friends, right?

A No.

Q I should say Facebook friends.

A I don't believe so.

Q Or friends otherwise. We've just met, right?

A Not unless you've liked this page or something through a friend request.

Q So my point is this is kind of open to whoever, because it's your professional page?

A Yes.

Q And then if I click on events, I can also see that you have a concert coming up May 7?

A Yes.

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SUPPLEMENTAL APPENDIX C

DISTRICT COURT, ARAPAHOE COUNTY,
COLORADO

THE PEOPLE OF THE STATE OF COLORADO,

Plaintiff,

v.

BILLY RAYMOND COUNTERMAN,

Defendant.

Case No. 16CR2633

**COURT REPORTER'S TRANSCRIPT OF
PROCEEDINGS**

The trial in this matter commenced on Tuesday, April 25, 2017, before the HONORABLE F. STEPHEN COLLINS, District Court Judge in and for the County of Arapahoe, State of Colorado, Division 408, and a Jury of Twelve Plus One.

This transcript covers the proceedings held in this matter specifically on Thursday, April 27, 2017, in its entirety.

APPEARANCES

FOR THE PEOPLE:

Ms. Laura A. Robilotta, Esq.
Registration No. 40087
Deputy District Attorney

Ms. Danielle D. Jaramillo, Esq.
Registration No. 43542
Deputy District Attorney

FOR THE DEFENDANT:

Ms. Elsa A. Archambault, Esq.
Registration No. 44065
Deputy State Public Defender

* * *

[6] * * *

THE COURT: Ladies and gentlemen, those are the instructions on the law that you are to apply in connection with your deliberations in this case.

Now that I've instructed you on the law, we move to the final stage of the trial, which is the presentation of closing arguments. Because the People have the burden of proof, they have the opportunity to present closing argument first.

Once they've presented closing argument, Defense has an opportunity to present closing argument if they wish to do so. They're under no obligation to do so. If Defense does present closing argument, then the People, because they have the burden of proof, are given an opportunity to briefly respond to the defense's closing argument.

With that, do the People wish to present a closing argument?

MS. ROBILOTTA: Yes, please, Your Honor.

And would the Court please let me know when I have 15 minutes remaining? [7]

THE COURT: Yes.

MS. ROBILOTTA: Thank you.

For years the defendant was obsessed with [C.W.]. He stalked her for years, sending her hundreds upon hundreds upon hundreds, even a thousand messages, instilling terror in her.

Ms. Jaramillo spoke with you during jury selection; what do you think of when you think of stalking? Some mentioned maybe an ex trying to get back together, a perversion, creepy. Ms. Jaramillo spoke with you about what if the definition, the legal definition of “stalking,” is different than what you think of with your every day idea of stalking? And the judge discussed that with you; would you be able to follow the law? Each one of you took an oath and said that you would be willing and you would follow the law.

And the Judge talked about the A, B, Cs of stalking and if in your mind it’s A, B, C, D, but the legal definition is only A, B, C. So let’s talk about the A, B, Cs of stalking. What are the elements that I need to prove to you beyond a reasonable doubt in order for you to return a guilty verdict?

It’s this simple; these five elements are what I need to prove to you: That Billy Counterman; in the state of Colorado; at or about the date and place charged; [8] knowingly repeatedly followed, approached, contacted, placed under surveillance, or made any form of communication with another person, [C.W.]; either

directly or indirectly through a third person, Kimberly O'Hara; in a manner that would cause a reasonable person to suffer serious emotional distress; and which did cause that person to suffer serious emotional distress. Those five things are what I need to prove to you.

So let's break it down even further. That Billy Counterman; how have Ms. Jaramillo and I proven to you that it was the defendant that did this? The Facebook account says Bill Counterman, Billy Counterman; the e-mail was B. Ray, for Billy Ray Counterman; the phone number, you heard Officer Tolman testify that he compared that and it was a number known to belong to Mr. Counterman; and lastly, he confesses to Agent Tolman. He sent these messages to Kimberly O'Hara, he sent these messages to [C.W.], simple as that.

In the state of Colorado, at or about the date and place charged. All this happened in the state of Colorado. How have we proven that to you? It's where [C.W.] lived, it's where [C.W.] received these messages. It is where [C.W.] experienced this serious emotional distress.

It is where Billy Counterman lived during this [9] time period. He lived in Denver, Colorado, during the entire time period, you heard testimony he did not leave there. The place charged is Colorado, and at the beginning of this case, the judge told you that the charged dates were April 1st, 2014, through April 30th, 2016; talking about a two-year time period here. You heard testimony about when these messages were sent.

Knowingly repeatedly followed, approached, contacted, placed under surveillance, or made any form of communication with another person, [C.W.], either directly or indirectly through a third person, Kimberly O'Hara. I underlined those in red for a particular reason, because it's an "or," he doesn't have to do each and every

single one of those things. He just has to repeatedly follow her or repeatedly approach her or repeatedly contact her or repeatedly place her under surveillance or repeatedly make any form of communication with her or through someone else. Not all of them, just one.

I want to talk about the definition of “knowingly,” and you have that in the jury instructions and you’ll have that when you go back to deliberate.

“A person acts knowingly or willfully with respect to conduct or to a circumstance described by a [10] statute defining an offense when he is aware that his conduct is of such a nature or that such circumstance exist. A person acts knowingly or willfully with respect to a result of his conduct when he is aware that his conduct is practically certain to cause that result.”

And if you look, “knowingly” applies to Element 3 only. He had to know that he was repeatedly contacting her. He had to know he was repeatedly following her. “Knowingly” only applies to that. So when he was sending those messages and he hit “send” on Facebook, was it practically certain that that message was going to be sent? Yes, he knew this.

What this does not apply to is the serious emotional distress. He did not need to know that a reasonable person would suffer serious emotional distress, and he did not need to know that [C.W.] suffered serious emotional distress.

And if you look at the further -- in the further elements, you will notice it doesn’t say “knowingly” right there in No. 4. It doesn’t say, knowingly a matter that would cause a reasonable person, and it does not say knowingly, which did cause a person to suffer serious emotional distress. All he had to know was that he was

sending these messages and that these messages were practically certain to be sent. [11]

What it also does not say is, except if he's delusional; and ladies and gentlemen, that's not part of the consideration here. He knew he sent the messages. It doesn't matter whether he knew the effect it was going to have on her.

So knowingly. It's not an accident. He didn't butt-dial a thousand messages. This wasn't an auto-correct situation. It's not a mistake. He didn't mean to send a thousand messages to his friend, Coles Smith, and accidentally it was sent to [C.W.]. He knew he was sending these messages repeatedly. He told Agent Tolman he sent the messages to [C.W.], and he told Agent Tolman he sent the messages to Kimberly O'Hara.

In a manner that would cause a reasonable person to suffer serious emotional distress. The term "reasonable"; it's not what you would do. It's not what you think your friend would do. It's what a reasonable person would do in this situation.

Crazy people do crazy things, and I want you to keep that in mind when you are determining whether a reasonable person would suffer serious emotional distress in this situation. "Was that you in the white Jeep?" When [C.W.] owned a white Jeep.

"Knock, knock" -- the same -- the same day, 50 minutes later, "Knock, knock.... five years on Facebook. [12] I miss you, only a couple physical sightings, you've been a picker upper for me more times than I can count." Would that cause a reasonable person to suffer serious emotional distress?

I picked February because that's when [C.W.] said it really started to increase, and so I wanted to give a little bit of a snippet of the messages just from February.

February 3d when he hadn't messaged her for about a week and out of the blue, he messages, "Ok dot dot dot. Most."

Then nothing until three days later. "I have a need to address this. During the time of knowing of you and asking for your interest in a production for nonprofit, like some other friends I've met along the way. My prior family establishment has been embarked. My history has been exhumed, and all of that being what I didn't have a feel of sustaining my existence.

"I left that, don't you know? I'm out for a life without them. Would that be any trouble? Anyhow, how can I take your interest in me seriously if you keep going back to my rejected existence. Some crawl out of where I am at," some crawl -- "and some don't make it," signed, "Not normal of tradition." Nonsense.

33 minutes later it's another message, "Where are you at, is the National" -- "is the National Inquire? [13] Fuck off permanently." 6:32 that same day, "Your arrogance offends existence of anyone in my position." He's getting aggressive. He's offended by her arrogance. I hate to say it -- "I'd hate to say this but some have said, the underhanded enjoys the thrill." "Not happening, guarantors trapping. Get with life." This is scary.

"Ya cannot come true. I won't say the rest. Wishing the best for you." 52 minutes later, another message, "Difficult. Say something." 25 minutes later, "Friend are you? You have my number. Say. I am not avoiding you." "That was opt. Your not being good for human relations." "Die, don't need you."

5 hours and 57 minutes later, at 1:46 in the morning, "Talking to others about me isn't pro-life substaining {sic} for my benefit. Cut me a break already." "Are you in the desire of having a crippling affect on me, be honest."

This causes a reasonable person to suffer serious emotional distress.

Then February 13th, nearly a week later, “Somehow the pages you’ve inflected has brought, I do know this and how you are involved. Are you a solution or a problem. Difficult to see. Be real.”

Hour and 5 minutes later he sends, “Avoiding, be real. Not here for entertainment.” “Play a song.” “Come on out of there, talking to others isn’t going to be [14] a success to your desires. Never. Something positive would be productive. Not chasing.” 16 minutes later, “Unbelievable, you’ve not stop your chase. But, you do not talk and you have my phone hacked.” Again, crazy people do crazy things. This is scary.

39 minutes later, “God damn, I may not be right for you. I’m sure you’ll hear what isn’t right for me.” “Talk is simple” -- same day, “Talk is simple, not of your programmed ideals. Can’t help that. I can only wish you a great life. Truly. Go on for your greatest.”

The next day, “Unbelievable as it may seem, truly, I am sorry for the interventions into your space. Having said that also, my existence isn’t my fault. So if I’ve offended you, please accept my apologies.”

February 19th, “Coles, it would be a productive feature of you to come out with your real personality, just saying. Sarcastic bad bitch is only one side. Generalized personality is what I can handle. Still can’t talk straight on. Closet. Why?” Irrational.

“No words can explain how I feel, and not even to have 28 pages could ever cover it. So there, smoke that.” February 19th he messaged her, “Staying in a cyber life is going to kill you. Come out for coffee. You have my number.” Irrational, scary, a reasonable person would suffer serious emotional distress. [15]

26th of February, “Clearly, a fine display with your partner, and content you seem. Wheather {sic} beung {sic} of a traditional well educated shown of the established of wall street type or could be product of blissful show.

“You can” stop -- “You can now stop trying for my attention and stop disecting {sic} into my life. Only one thing, dig into his life the same as mine, tell me his reaction. Peace. Wishing you the best.” That same day, “He may be right for you. I am good.” Three days later, “Can’t talk right now, text me. Okay, then, please stop the phone calls.” No phone calls ever took place.

Ladies and gentlemen, these right here are one month, a one-month window into a two-year terrifying experience.

Next element, “which did cause that person to suffer serious emotional distress.” Serious emotional distress. There’s not an instruction number that says what it is. There’s not an instruction number that says what I have to prove to show serious emotional distress. But what there is is an instruction that says what I don’t have to prove to show the jury serious emotional distress. I don’t have to show that [C.W.] received professional treatment or counseling.

So since there’s not a definition, you use your [16] reason and your common sense. What is serious emotional distress? Use your life experiences. And I’m gonna ask you to take a look at the words themselves. Serious emotional distress; that someone was distressed emotionally, it wasn’t minor, it was serious.

Last week I was driving to work, I had a flat tire, it sucked. I got upset, I was distressed emotionally. It was minor, lasted two hours, I got over it. This was not that. This was serious.

How do you know what someone is thinking? Ms. Jaramillo spoke with you about this in jury selection.

THE COURT: You have 15 minutes left.

MS. ROBILOTTA: Thank you, Your Honor.

You look at the way they're acting. And one of you mentioned that, When I'm upset, I don't show emotions outwardly, but my wife knows how I'm -- knows that I'm upset. I may be feeling it, but I may not be showing it. What would you expect to see, and what did you see?

Ladies and gentlemen, over the last few days you had [C.W.] testify, and we had people that know [C.W.] testify about the affect that this has had on her life. She's not a crier. She's a private person. She's not dramatic. She is bubbly, friendly, strong, independent, competent, poised; those are the words that were used to describe her before all of this began. [17]

How did this affect her? She would take her rings on and off her hand. She would shake, she would cry, she would talk about this more and more as it went on as it became more and more of a burden on her. She would look around when she was out, looking over her shoulder nervously.

When she was on stage, when she actually did perform, it wasn't enjoyable for her anymore. She didn't want to interact with the crowd or share as much as she had. She canceled shows. She didn't accept new shows. This was not only a passion of hers, it was her career. It's the way she puts food on the table. It was her job that was affected by this.

She testified that the anxiety felt like a tightness in her chest, that she would cry. She didn't want to go out alone as she had done before. She would sleep with the lights on. She would use marijuana to help herself fall asleep, and she would drink herself to sleep.

She shared less on stage, and she didn't enjoy singing. She didn't want to be a burden to her family members, because she was scared for their safety. She said that she was terrorized. She said that she wondered, Why is this happening to me? Ladies and gentlemen, that's serious emotional distress.

Reasonable doubt, the instruction, talks about [18] reasonable doubt with regard to the elements only. Credibility. You have an instruction about credibility, what each person would have to gain, look at their motive, things like that. What testimony to believe, knowledge, motive, state of mind, affected by the verdict.

So let's talk about why [C.W.] didn't report this right away. What would happen if she reported it? She would have to come to court. She said she knew all of this would happen. She would have to come in to testify, be vulnerable, be subject to questions, sit a few feet away from the man that terrorized her for years, tell him her deepest, darkest fears that could be used as ammunition against her. She said that she didn't report it because it would make it undeniably real. It makes all of the terror tangible.

In his interview, Mr. Counterman asks, What is she looking for? Well, what did she tell you over the last few days. All she wants is to be left alone.

I told you in the beginning that this case would be simple. It is these five elements that we have proven to you: That Billy Counterman; in the state of Colorado; at or about the date and place charged; knowingly; repeatedly followed, approached, contacted, placed under surveillance, or made any form of communication with another person, either directly or [19] indirectly through a third person; in a manner that would cause a reasonable

person to suffer serious emotional distress; and which did cause [C.W.] serious emotional distress.

Ladies and gentlemen, she suffered serious emotional distress. She has suffered enough. Please find him guilty. Thank you.

THE COURT: You'll have 10 minutes left.

Does Defense wish to present a closing?

MS. ARCHAMBAULT: Yes, please. Thank you.

Guys, this isn't stalking. I want to go over the time line of how this all progressed and how we got here and what happened in the interim.

[C.W.] testified that she began receiving these messages in 2013 maybe, 2014, but you don't have them because she deleted them. She said that she deleted them without reading them, because she has been living in a state of constant fear for all of 2013, all of 2014.

October 4th, 2015, this message that she was looking at when she was talking about it with you all, she said this was a good example of one that was terrifying in October 2015. October 4th, 2015, this was so terrifying {indicating.} October 14th, 2015, {indicating} there were so many of them. This was very scary.

October 16th, 2015, she receives this message [20] of a weird tan line and she blocks the profile for Billy Counterman {indicating.} Presumably sometime in December of 2015 she accepts a friend request from Bill Counterman after having blocked Billy Counterman a couple months earlier and, well, messages come; December, January, February, she's receiving messages.

February 6th, then, in 2016, she said this was the scariest one {indicating,} this one that said, "Friend are you? You have my number. Say. I am not avoiding you. That was opt. Your not being good for human relations.

Die, don't need you." This was the scariest one, February 2016, is what she said.

When looking at this string from February 13th, she said more of the same. She said that a lot, because there were more of the same, more messages for months that she didn't block; that she didn't do anything about. February 19th, she said that she interpreted this message as a threat to her life {indicating.} She said that she read this as if he was saying, I'm going to kill you. She didn't do anything.

So while she's saying that today, the fact that there was no action taken at the time that she thought that someone was threatening for real to kill her, that doesn't make sense.

February went by, March went by, April went by. [21] April 10th she blocked Bill Counterman and the messages stopped. On April 13th she sent these messages to her aunt. April 15th, the police are involved for the very, very first time, and not because [C.W.] called them, because Christopher Forrest called them or Katy Miller.

There are two elements here for serious emotional distress, and they're separate, but they can be related. So you have to find that these -- this contact, these messages were sent in a manner that would cause a reasonable person to suffer serious emotional distress.

And it's right, it's not what you would feel; maybe, if you're a reasonable person. It's not what your friend would feel, unless they're a reasonable person. It's not what a lawyer tells you to feel. It's what a reasonable person would feel, would experience as a result of these messages.

And separately, it did cause [C.W.] to suffer serious emotional distress. The definition, there -- it's yours. It's yours to determine what the definition of "serious

emotional distress” is, but it’s more than annoyance, all right? It’s more than discomfort. It is more than wondering if this is really serious, and then being told it is, and then feeling like this is really serious.

It’s more than carrying a can of mace and being [22] aware of your surroundings, because guess what? That is 60 percent of young women living in any major city in the country.

[C.W.] is a public figure. So when you are looking at these messages and looking at her reaction and looking at what is reasonable, she’s got her Web site, she’s got her personal Facebook, she’s got her public Facebook, and on each of those she has photos of herself, she has videos of herself performing.

And so when you get messages that comment on your attractiveness, if “5 stars and studying” even meant that; or you get comments on your voice or that you’re a good performer, that’s different. That’s different invasiveness than if it was to someone who is singing alone in their kitchen while making dinner.

But when it’s out there in the world and people are commenting on it, it’s a different thing. And when you have someone saying, “A couple physical sightings,” and you literally post your schedule on a weekly, monthly basis, well, that’s not indicative of being followed; that’s kind of indicative of a moderate fan who’s only seen you twice.

So in judging what a reasonable person would -- would experience as a result of these messages, I want to talk about the actual evidence in this case and what [23] happened and the progression of what happened.

Now, [C.W.] herself waited to block these messages. She waited for months to block the first set. She waited for months to block the second set. She waited to ask for

advice. And when asked, you know, why? If you felt like you are threatened, if your life was threatened, why did you wait to see what was going on? Why did you wait to see, you know, if you could get help with this? She said, I was likely very busy. I had a lot of jobs then.

If I think I'm going to die, I think I'm gonna make some time to figure that out. It's not genuine. The fear wasn't genuine back then. The fact that she even thought that she needed to seek advice, she didn't know. She didn't know if -- if this was serious or not.

Ms. O'Hara, Kim O'Hara, she's getting these exact same messages. They were coming to her as well, because she was the administrator on this Web site and this Facebook profile. She didn't report this. She didn't stop and say, [C.W.], this is really serious. [C.W.], you are in danger. You need to do something. She didn't do anything.

When Ms. Miller got involved, she had to ask for advice about what to do, about whether this was serious. And the police -- the police were called [24] April 15th. Officer Cito from the Littleton Police Department got this call.

Agent Tolman got involved April 21st. He read these messages, he got these messages, he knew the contents of these messages April 21st. He went and talked to [C.W.] the 25th, and then a month later, May 30th, he went and talked to Bill Counterman and arrested him. This incredibly unpredictable, dangerous, who-knows-what-he's-gonna-do-at-any-moment person, a month, a month later. It doesn't seem that imminent to the police, because it's not reasonable.

MS. JARAMILLO: Objection, improper argument.

THE COURT: Overruled. Ladies and gentlemen, you're to use your recollection of the evidence in evaluating the testimony.

MS. ARCHAMBAULT: They waited a month to go get this guy, to go make sure [C.W.] was safe. She said that there was no way to make this stop. Well, except that it did. Mr. Counterman was told, Don't contact her anymore, and it stopped. Ms. Robilotta just said, All she wants is for this to stop. Okay, it stopped a year ago.

Prior to these messaging -- messages stopping, I want to talk about what the evidence shows, what was going on. On April 21st -- I'm sorry, this is wrong -- April 25th, Officer Tolman asked [C.W.] -- and the -- [25] the prosecution made sure to say that, you know, he didn't ask specifically about anxiety. He didn't ask specifically, Are you drinking more? Or, Are you sleeping with the lights on? Those weren't specific questions, no.

But he asked her, he said, whether she was scared or nervous; whether there were problems with her performing; whether this was causing problems in her life; and he told you he asked these questions knowing the elements of this charge, and so that's what he was getting after.

She responded that, Well, now she no longer accepts friend requests automatically, and she's going to cancel all of her Colorado shows. No mention of drinking, no mention of sleeping with the lights on, no mention of being terrified every day and looking in her rearview mirror and not going anywhere alone. No mention of that. And she didn't cancel all of her Colorado shows.

Kim O'Hara testified, this is her best friend, that they became more aware; that she asked people to keep an eye out at their shows. Okay. She described the progression that she saw in [C.W.], as in the beginning her asking, Why is this happening to me? And then saying, This is getting creepy. And then finally at the end, it being really uncomfortable. That's not serious emotional distress. [26]

And [C.W.] said different things today. She said that she slept with the lights on. She said that she carried mace. But she did continue to play her music. She said that she was looking in the rearview mirror. She said that she was terrified for four years, not doing anything.

After these messages stopped, she cancelled a couple of her shows. Aja Ottero told you that she, you know, would cry repeatedly to her after this message -- after this picture was got of Mr. Counterman.

And a lot of people made it a point to say that [C.W.] isn't a dramatic person. [C.W.] told you that this show in Firestone, it was a big show, it couldn't be controlled, she wanted a bodyguard; and when the bodyguard couldn't come, she still felt comfortable playing that show, because Mr. Counterman was in jail.

Aja Ottero told you that on the way to that show, [C.W.] was actually late because she had to stop and get the photo of Mr. Counterman to show to people to keep a lookout, that she cried before the show. He was in jail. That seems dramatic.

[C.W.] told you that she went into hiding. Her Facebook listed her schedule, it listed her videos, it listed her photos. I don't -- that's a dramatic statement, because she didn't go into hiding. [27]

The last quarter she began to drink of 2016. Just recently, this year, a year later, she took action to get a concealed carry permit, a year after these messages had stopped, a year after there has been no contact whatsoever. That seems dramatic.

She told Vanessa Manke that the reason that she moved out, the reason that she moved in with her grandmother, was because of this; no, it wasn't. That's dramatic. And today she says that she can't connect with

people and she has a hard time making friends because of these messages.

She sat up here and told you that she didn't report this because being here, being in this courtroom, was one of the most terrifying things she's ever done, sitting in this courtroom with Mr. Counterman here; and that's -- that's a fair experience, that's a fair feeling, except if that's a real feeling, you know, this is a public courtroom, anyone has a right to be here, but no one has to be. And she's here, she stayed after the testimony. She's here today; which is fine, but it makes that statement seem real dramatic.

And all of this is really dramatic because at no time in 2013 or '14 or '15 or the past year did Mr. Counterman ever call her on the phone, did he ever show up at her work, did he approach her at a show, did he [28] happen to see her at the gym or the grocery store or at her home. She has never seen this man before. This was a bunch of Facebook messages and absolutely nothing else.

When we talk about the burden of proof, the prosecution has to prove every single one of those elements beyond a reasonable doubt to every single one of you. And you each have an individual vote; and, yes, you need to deliberate, you need to talk, you need to hear each other out, but at the end of the day your vote is yours alone.

And this is the definition of "reasonable doubt." It's based on reason and common sense. It's -- it's a doubt that would cause a reasonable person to hesitate to act in matters of importance to themselves.

In jury selection, Ms. Monroe was talking and she was saying, You know, I would have a really hard time returning a guilty verdict if I still had questions. That's okay, because that is the law. If you have a question, if you have a doubt, if you just can't answer the question: Would

a reasonable person suffer serious emotional distress because of these messages? If you just can't answer that, or if you're not sure, or if you're hesitant in saying yes, that is a not guilty verdict.

It's not a crime to be annoying. It is not a crime to be weird. It is not a crime to be mentally ill. [29] And, yes, to [C.W.], being mentally ill is unequivocally equal to being dangerous, and apparently to the prosecution as well. But that is a belief that is based in misinformation and it's unfounded and you know it's unfounded because what you have here as evidence is a whole bunch of really weird Facebook messages and absolutely nothing else. Nothing else.

This isn't a crime, because this isn't stalking. I'm asking you to return the absolutely only just verdict in this case. You don't have to like what happened. You can feel empathy for [C.W.], but this wasn't a crime. It's got to be not guilty. Thank you.

THE COURT: Do the People wish rebuttal?

MS. JARAMILLO: Thank you, Judge.

It really comes down to three things that you really need to look at, three different states of mind. First of all the defendant's; then we're gonna look at [C.W.]'s; then we're going to talk about a reasonable person, because those are the three things you have to think about here.

First, the defendant's state of mind. You could believe that he actually believed in his reality that [C.W.] was talking to him covertly through other Web sites. You could believe that. But you can't consider it as to whether or not that affected his mental [30] state.

Because we don't have to prove that he knew that this would cause her to be distressed. We don't have to prove that he knew that she wasn't talking to him. All we have to prove is that his contacts, he knew he was making them,

he knew he was communicating. Nothing else about his mental health matters. It doesn't, and it's not for you to consider.

You're not to consider your sympathy or prejudice. It's not up to you to determine whether or not he knew right from wrong when he was doing this. The only thing about his state of mind that you are to determine by law that you agreed to follow is that his communications he made knowingly.

Let's talk about the second thing you have to think about now, whether [C.W.] herself experienced serious emotional distress. This standard is not -- you don't have to consider -- let me give you an example. Say we have someone who is ultrasensitive. If you believed that the person that came up here on the stand, she was overdramatic, she was super sensitive, very fragile, but that she still experienced her own state of serious emotional distress, you believe even in her fragile state that that caused her serious emotional distress, that's enough. That's what enough is for this. [31]

We have the next check, though, that says also a reasonable person. But for this element alone, it does not matter if she was ultrasensitive or dramatic. All that matters is that you believe that she actually experienced serious emotional distress.

Ms. Robilotta gave you an example of a car, your car tire causing someone distress when it goes out, when it goes flat; other examples, losing an important, competitive sporting event, upset, you may cry, you may not be a person who cries, but you may hold that internally and think, Oh, I'm so mad. A year later you're not affected by that. You probably can't even bring up or remember exactly that anxiety that you felt during that moment; or that fear, maybe you're at a haunted house, someone's

scaring you and you're feeling that anxiety or that fear; that's emotional distress.

So what's serious? That just means more. Serious emotional distress is something that's going to affect your life in the future, something that makes you change the way you think about life; and this did change the way she thought about life.

It changed her ability to be able to perform, because she wasn't sure if he was there. And the fact that she didn't know if she had seen him, the fact that she didn't know what he looked like, that made it all the [32] worse, because he could be any one of those 50 people in the crowd. He could be any one of those 2500 people in the crowd. He could be any one of her neighbors. He could be anyone, and she didn't know and that made it worse.

She told you that she would cry. She told you she didn't feel safe where she went, and if you believe that she actually felt that, outside of whether or not you believe a reasonable person would have felt those same things, if you believe she actually felt those things, that she changed the way that she was living, that is [C.W.] feeling serious emotional distress. Now, if you find that, that's the only thing you're to consider for that part of the element.

So let's go to the last one, the reasonable person standard, whether a reasonable person would have experienced serious emotional distress. What'd happen if a reasonable person started receiving these messages? And messages from someone they don't believe they know, and at first they're just kind of odd, because they seem to be a conversation with a reasonable person, a conversation that's not being answered. It seems strange.

Then all of a sudden they start -- it seems to be as if this person believes that they're friends, talking about a mother, Would you like me to pick you up [33] something

from Wal-Mart? I don't know this person, what's going on? Start to seem a little weird, a little mentally unstable, a little unpredictable.

And then all of a sudden they turn to being more intimate, acting like this person, whom you've never met, they're in a relationship with you. That's strange, unpredictable, starts to become a little scary, obsessive.

And not being responded to, in normal societal rules, people know that when you don't respond to 10 messages, you don't want to be talked to; a hundred messages, you don't want to be talked to; another hundred, you don't want to have communication with this person; and the fact that this person doesn't seem to get that, that's a little scary. This person is not grounded in reality.

And whether or not she actually knew anything about Mr. Counterman, it's what a reasonable person would have thought about the individual sending those messages. And then on top of obsessive, they start to become a little jealous, talking about other people she's with, people that she's in a relationship with, using words like "die," "kill," "fuck you," "permanently."

That is a horror movie gone bad. What does a reasonable person think of when they get a stranger who begins to become obsessive, who begins to think that they're in a relationship, who then begins to get jealous [34] and angry? What is a reasonable person going to think at that point? Don't know if you're being followed, you don't know if this guy is at your shows, you don't know if this person knows where you live, where you work, who your friends are.

And he's obviously not based in reality. I'm not asking you to use that against Mr. Counterman; I'm asking you, though, to put a reasonable person in those shoes, a reasonable person doesn't know what to expect from

someone who is unreasonable. And the bounds of what a person is thinking could happen to them is only based on what their imagination could come up with. A reasonable person would have an imagination about what could happen to them.

You don't have to agree with at what moment [C.W.] felt in serious emotional distress. That is irrelevant to your determination of a reasonable person. But if you believe a reasonable person would have felt severe emotional distress at any point during these messages; at the point when he started to become angry, at the point when he started to talk about physical sightings; if you believe that a reasonable person at that point would have started to have their life affected, would have started to cry, not be able to sleep, look over their shoulder, at any point during those messages, then [35] this element is met.

You also don't have to agree with the way that [C.W.] decided to report this, because nothing in this element, what a reasonable person was feeling, has to do with what [C.W.] did. It has to do with looking at those communications and what you believe a reasonable person would have felt; not what they would have done, what they would have felt.

THE COURT: You have one minute.

MS. JARAMILLO: Thank you, Judge.

You also don't have to consider or shouldn't consider for this element how the different way that serious emotional distress was portrayed. Maybe you think a reasonable person would have done things differently, would have felt things differently, would have manifested in a different way. Again, what [C.W.] did does not matter for this element.

Defense counsel said 60 percent of women in big cities carry mace and look over their shoulders. They don't cry all the time. They don't sleep with the lights on. They don't receive hundreds of messages from a stranger who is obsessed and jealous and angry. [C.W.] wasn't in the wrong here. She has the right to be able to have a career and a life. It should not be used against her. [36]

Mr. Counterman made her terrified for years, and it still is affecting her day-to-day life. Mr. Counterman committed the crime. We have proven to you he is guilty, now hold him responsible. Thank you.

THE COURT: Ladies and gentlemen, that completes the closing argument portion of the trial. The next stage of the trial is for the jury to go back and begin their deliberations; however, before you do that, I have to do what is probably my least favorite thing in any trial, and that is I have to identify the alternate.

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