# In The Supreme Court of the United States

#### BILLY RAYMOND COUNTERMAN,

Petitioner,

V

THE PEOPLE OF THE STATE OF COLORADO,

Respondent.

On Writ Of Certiorari To The Colorado Court Of Appeals, Division II

#### JOINT APPENDIX VOLUME II

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#### DISTRICT COURT, ARAPAHOE COUNTY, COLORADO

Court Address: Arapahoe District Court

7325 South Potomac Street Centennial, Colorado 80112

#### JURY TRIAL

April 26, 2017

PEOPLE OF THE STATE OF COLORADO, Plaintiff,

vs.

**COURT USE ONLY** 

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. Registration No. 43542 Laura Robilotta, Esq. Registration No. 40087

Elsa Archambault, Esq. Registration No. 44065 For the Defendant:

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#### [4] PROCEEDINGS

THE COURT: We'll go back on the record in People versus Counterman, 16CR2633. The record should reflect that counsel are present, as is Mr. Counterman. The jury is not yet in the courtroom.

Anything we need to address from the People before we bring the jurors in?

MS. JARAMILLO: Nothing, Your Honor.

THE COURT: From defense?

MS. ARCHAMBAULT: No, thank you.

THE COURT: All right. I did receive the email from Ms. Archambault last night with the revised defense jury instructions. So I've printed those out and taken a look at them. How long do the parties think you're going to need for closings?

MS. JARAMILLO: Your Honor, I'd ask for 30 minutes.

MS. ARCHAMBAULT: I think 30 would be fine. 25, 30, 20, 30.

THE COURT: Why would we need 30 for one count?

MS. ARCHAMBAULT: There are – just going through the messages themselves, there's kind of a bulk of evidence to show the jury. So that's what I was [5] thinking when I was looking through.

MS. JARAMILLO: And that's what I was going to say. There's a bulk of messages, but also there's a video that's going to be played of the defendant's interview that's about 40 minutes long. So there's certain portions we would want to play for the jury in closing. That would obviously take up some of the time.

THE COURT: It seems excessive, but I'll give you up to 30 minutes each.

All right. Are we ready for the jury, then?

MS. JARAMILLO: The People are ready.

MS. ARCHAMBAULT: Yes.

THE COURT: All right. Bring them in.

(The jury returned to the courtroom.)

THE COURT: All right thank you all. Please be seated. We are still on the record in People versus Counterman, 16CR2633. The record should reflect that counsel are present, as is Mr. Counterman, and that the jurors have just reentered the courtroom. Do we have [C.W.] here?

MS. JARAMILLO: Yes, Your Honor. If I can get her?

THE COURT: Ladies and gentlemen, good morning.

[6] JURORS: Good morning.

THE COURT: Before we broke yesterday, we were in the middle of [C.W.]'s direct examination. So

we'll have her recalled to the stand and we'll take it up from there.

(A pause occurred in the proceedings.)

THE COURT: Ladies and gentlemen, I apologize for the delay and inconvenience.

Do you understand, ma'am, that you're still under oath?

THE WITNESS: Yes.

THE COURT: All right. Please be seated.

[C.W.] (Continued),

being previously duly sworn in the above cause, was examined and testified as follows:

#### **DIRECT EXAMINATION**

#### BY MS. JARAMILLO:

- Q We ended yesterday by talking a little bit about these messages that you received up until the point that you blocked Mr. Counterman when he sent you the picture of his leg. Once he sent you the picture of the leg, he continues to contact you through Kim and through your website. How did that affect how you were feeling at that point?
- [7] A Well, I think that blocking someone from Facebook is very much like asking them to stop contacting you. I'd say it's the strongest way on Facebook that you can send that message. So it felt like he was definitely violating that request and continuing to contact me.

- Q Before that point, had he ever tried to contact you or your friend that you know of on any other medium?
  - A I don't know.
  - Q So none that you're aware of, at least?
  - A No.
- Q Had there ever been a time prior to that that he had, that you know of, attempted to contact you using your website?
  - A No, not that I know of.
- Q We ended a little bit on talking about the fact that there were still more messages that followed. So at some point, did he begin to message you again on Facebook?
  - A Yes.
  - Q How was he able to do that if you blocked him?
- A Through a personal page, you can create a new account, send a friend request from a new [8] account and continue to message at the time. Now I believe that you can message regardless of whether or not you're actually connected to someone by an accepted friend request.
- Q Why did you accept this new account as a friend?
- A I was automatically accepting everyone that sent me friend requests at that time.

- Q Do you remember specifically looking at a friend request and thinking, "It's Billy Counterman"
  - A No.
  - Q "I'm going to accept"?
  - A No.
- Q Then how I guess explain to the jury kind of what your normal practice was when you were getting friend requests.
- A There's a feature on Facebook that you can automatically request all the friends that add you, which I had on my account for many years. So I never even saw them. They were automatically accepted. Eventually we were accepting manually. Sometimes it was myself. Sometimes it was Kim. And we were just hitting accept for everybody that requested.
- [9] Q Were you necessarily looking at the friends of the people that were requesting at that point?
- A I mean, I can't recall looking at a specific name. So unlikely.
- Q Would you remember if you had seen Billy Counterman and you had accepted that?
  - A I'm sure that I would.
- Q Would you have accepted Billy Counterman as a friend?
  - A No.

MS. JARAMILLO: Permission to approach, Your Honor, with People's Exhibit 2?

THE COURT: Granted.

- Q (By Ms. Jaramillo) What is People's Exhibit 2? If I could, in fact, have you flip through the pages.
  - A These are more messages, Facebook messages.
- Q Okay. Were these the Facebook messages that you received from this person who's known as Bill Counterman between December 24 of 2015 and April 24 of 2016?
  - A Yes.
- Q Okay. Do you remember what date it was [10] that, in fact, the defendant stopped messaging you?
  - A April 10 is the last message.
- Q So these are all of those messages, then, between that time period up until that last message; is that right?
  - A Yes.
- Q Is it a fair and accurate representation of the messages that you received back on those dates?
  - A Yes.

MS. JARAMILLO: Your Honor, the People move to admit People's Exhibit 2.

MS. ARCHAMBAULT: No objection.

THE COURT: Exhibit 2 will be admitted.

(People's Exhibit 2 was admitted into evidence.)

MS. JARAMILLO: Move to publish for the jury.

THE COURT: Granted.

Q (By Ms. Jaramillo) I want to start with Page 1. That first page, that first message, was there anything about that that concerned you?

A I think the fact that he references my mother and I is very concerning.

[11] Q Okay.

A I have no idea if I posted on that day something about her. I would imagine nobody would remember that.

Q You remember telling your friend, Kim O'Hara, back on that day that that concerned you because you had actually seen your mother that day?

A It's likely. Christmas Eve is when our family gets together, and it's – it's possible and very likely that I said something like, "What an amazing family. I'm so grateful to be with all of them."

Q What – I guess specifically why were you concerned about him talking about your mother? Why did that matter?

A I think, again – and we talked about this yesterday. I think that the inappropriateness of how intimate

that seems, it just – it begins to sound like he is in a different reality than everybody else is in, which is very concerning.

- Q Okay. Now, you said "I think that it sounds like this." Did you actually believe, though is that what you believed? Did you [12] believe that it sounded like he was trying to get really intimate with you, this stranger?
- A I believed at this point that he thought that there was something going on between he and I that was not going on.
- Q Okay. I want to go to the next page. This one's kind of long. And I know it may be a little hard for the jury to see, because it's a little small. If I can get you to read this message.
- A "I have a need to address this. During the time of knowing of you and asking for your interest in a production of non-for-profit like some other friends I've meant along the way, my prior family establishment has been embarked. My history has been exsumed and all of that being what I didn't have a feel of substaining my existence. I left that, don't you know? I am out for a life without them. Would that be a 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 and some don't make it. Signed, Not Normal of Tradition."
- Q The first half of the messages that go [13] to "I have a need," did you have any idea what he was referencing?

- A I don't have any idea what he was meaning.
- Q It didn't have any meaning to you? Maybe lyrics of a song you wrote?
  - A It has no meaning to me.
- Q Okay. That second part of that, I guess what did you think about that? What did you think that this meant?
- A It's clear in this next paragraph that my worries were validated. Obviously he thinks that I'm interested in him. That we're having a relationship. And I don't know how to say any more that that's just not true. We don't even know each other.
- Q At this point, had you ever had you seen a picture of him?
  - A No.
  - Q Did you know if he was young or old?
- A I didn't know what he looked like, where he lived, where he was, what he does for a living. I don't know anything about him.
- Q Let's go to the next page. So what are you feeling when he sends these texts or these [14] Facebook messages?
- A At this point they're obviously becoming much more angry. Very aggressive. Although I haven't changed my behavior at all, I'm still not engaging at him, he is getting more angry, swearing at me and saying

some things that, frankly, are – are very scary. Like, "Ya cannot come true." And, "I won't say the rest."

I don't – I don't know how to say. It was just getting more and more scary for me to read these, especially with such frequency. In addition to that, these messages caused me to believe that the person who is writing them is mentally ill. And when somebody's mentally unhinged, they're just unpredictable. You don't know what the next thing that he says is going to be or does.

- Q In this message, he says, "Fuck off permanently." Had he ever said anything like this to you before?
  - A Not that aggressively. This is the first time.
- Q I know the jury's not going to see obviously all the messages that you deleted. We don't have those. So I want them to understand [15] whether or not this was kind of the first time that he turned angry or whether there were some angry messages back in the beginning of those messages, back in 2013 and 2014.

A This is the first time that I saw a message that was this angry and that concerned me this much. There's no way to know what was in the messages that I deleted, so it's possible that there were messages that were this aggressive.

Q Okay. Go to the next page. What about this string of messages caused you concern, if you had concern?

A All of the things that I said previously obviously still apply here. Somebody who's mentally ill appears to be messaging me. In this one, he says, "Die. Don't need you." And that is the first time that I saw a message that included the word "die." That was about life and death. And it was – it was definitely the scariest one that I had seen up to that point.

Q At the end of these messages, he says, "Talking to others about me isn't pro-life substaining for my benefit. Cut me a break already." What did you take that to mean?

A I thought that that meant that he was [16] not – that he was mentally ill. I'm not – I don't even know what that means. I wasn't talking to anybody about anything related to this, except for to Kim. And there's absolutely no way that anybody could know that.

So, again, I just – these make me believe that somebody who is mentally unhinged is continuing to contact me and saying more and more aggressive things.

Q During that answer and kind of yesterday when we were talking, you kind of laughed at the end. Is that because there's something in here that you think is funny?

A No. I just saw myself doing that again. I just think that – I mean, I know that it's very difficult for me to sit here and talk to all of you about this. It is – it's impossible for me to describe or show you how terrifying it is. And what I do in those situations a lot of times is

laugh, because that's just how I behave when I'm nervous.

I didn't – this is one of the worst situations that I can imagine myself ever having to come to, being involved in this, sitting here describing all of these things to you. So I - I [17] don't know how to – to say with words how terrifying it is, but I do know that it can seem that I'm up here seeming all put together, but it's the only way that I can stay together enough to have a trial and talk to all of you.

So, no, the laughing is not because it's funny. It's just because I'm very nervous.

Q Going to the next messages. I'll give you a chance to read through those for a second and then let the jury know if there's anything about those that stood out.

A So, again, these messages don't make a lot of sense. They don't read like a typical message would. Like somebody who is conversationally literate would write them. So I think that's concerning of itself.

And then, "Unbelievable, you've not stop your Chase and you have my" – "you do not talk and you have my phone hacked." So I don't -these are just accusations that are not – first of all, I don't know what that means.

Second of all, I don't know this person. I've never met him. I don't even know how that – it's obvious he's having delusions. Clearly he's having delusions about something that [18] I'm doing or something someone else is doing and they're all targeted at me.

This is incredibly concerning, because it just means that obviously he's crossed so many social boundaries here, there's no way to know how many other boundaries he could cross, especially if he's living in a delusion that's not in a reality that everyone else is living in.

- Q Are you an expert or have a degree in anything computer related?
  - A Me?
  - Q Yeah.
  - A No. My degree is in music and business.
- Q Do you have any sort of advance classes that you've taken on computers? Technology?
- A No. I do some basic website design and SEO, which is social Search Engine Optimizations. But nothing like advanced coding.
- Q Do you have any knowledge of how to hack somebody's phone?
  - A No.
  - Q Have you ever hacked someone's phone before?
  - A No, I have never hacked a phone.
- [19] Q Let's go to the next page. I'll have you look through those and let me know if there's anything here that stood out to you.
- A Again, this is more of the same. Lots of messages. Lots of texts that don't make a whole lot of sense.

More swearing, which is always alarming. "I may not be right for you." Again, on the same – along the same lines. Alternate realities that are terrifying.

Q Move on to the next page and let me know if there's anything from that page.

A I think having my name in these messages is – is – is really – is unnerving. It just seems so direct. Directed straight towards me. And the intensity with which he's trying to say something, whatever that intimate something is, it just continues to happen. Page after page, message after message, and it just doesn't – it just doesn't make any sense to me.

Q There's one thing here that I wanted to talk to you about. Towards the middle of that page, it says, "Sarcastic bad bitches is only one side." What does that mean to you?

A Nothing. The same as everything else.

Q Have you ever been to or followed a [20] Facebook page called Sarcastic Bad Bitches?

A No.

Q Had you ever posted anything on Sarcastic Bad Bitches?

A No, I don't know what that is.

Q Had you ever created a different profile in order to post something on Sarcastic Bad Bitches?

A No.

- Q Has anybody ever mentioned those words to you before, other than this?
  - A Which words?
  - Q "Sarcastic bad bitches," together.
  - A No, just in this message.
  - Q You seem confused.
- A I'm just wondering if there is a Facebook page called Sarcastic Bad Bitches.
- Q That's what I was wondering too. Okay. We'll talk about that a little bit later. So I'm going to go onto the next page. Look at that page. Anything that stood out to you, upset you, concerned you?
- A Yeah. So, "Staying in cyber life is going to kill you," to me, was threat to my life.
- Q Explain to the jury what you meant by [21] that. What do you mean you thought that was a threat? How did that seem threatening?
- A It seems like he is saying staying in cyber life means you're going to die. It's going to kill you. So I know that it doesn't say here, "I'm going to kill you," but that's how that reads to me.
- Q When you were reading this, did you believe, based on this message, that I guess that there would be something that you could do in order not to be killed? Was it like, "If you do this, I'll kill you. If you don't, I'll

do this"? Do you know what I mean? Was there anything from that message that you got from that?

A It seems that staying in cyber life means – to me, means only being a cyber personality in return to all these messages. I think all of the messages up to and including this one were just trying to antagonize a response from me. Any kind of engagement.

And – and – and especially since the next sentence is "Come out for coffee," it makes me believe that he's saying, "If you continue to act the way that you have been acting, staying in cyber life is going to kill you. Why don't you [22] come out for coffee and then the threat won't be there any longer."

#### Q Okay.

A Also, this is the first time that I can remember that he ever referenced a relationship that I was in.

#### Q What do you mean by that?

A He says, "A fine display with your partner and content you seem. Wheather beung a bit traditional, well educated shown of the established of Wall Street type or could be product of blissful show. You can now stop trying for my attention and stop dissecting into my life. Only one thing, dig into his life the same as mine and tell me his reaction."

So I don't post about my relationships in general very often, because I have a lot of people that I don't know who are connected with me via social media. I tend to be very private. Occasionally I'll post about the people

that I'm in a relationship with. It seems obvious to me that this message was directed toward something like that.

- Q On this he says you're dissecting into his life. "Dig into his life the same as mine and [23] tell me his reaction." Were you trying to dig up who Bill Counterman was?
- A No. My only hope was that all of this would stop. I never did any research. I never tried to figure out anything about him. It's almost impossible on social media anyway. I was trying to have as little engagement as possible. So, no, I wasn't digging around doing anything.
- Q What about Facebook messaging or talking to his ex-wife?
  - A No. I wasn't even aware that he has an ex-wife.
- Q Was that the first time here today that you kind of heard that?
  - A Yes.
  - Q What about his daughter?
- A No, I've never talked to anybody who knows him.
- Q Let's go on to the next one. This first message, "He may be right for you. I am good." What did that mean to you?
- A I have no idea. I feel like I'm repeating myself and saying the same things, but this makes me think that

this individual is living in an alternate reality, which is terrifying.

[24] MS. ARCHAMBAULT: Judge, I'm going to object at this point to cumulative and inflammatory under 403.

#### THE COURT: Overruled.

A Because he continues to reference things that there's no way that he could know anything about. I'm just – somebody who is living in a reality that is not the same as the rest of us is totally unpredictable.

- Q (By Ms. Jaramillo) Okay.
- A It's scary.
- Q It says, "Okay. Then please stop the phone calls." Were you calling him?
  - A No.
  - Q Were you texting him?
  - A No, there was no engagement.
- Q Let's go to the next page. This first message, "Your response is nothing attractive. Tell your friend get lost." Do you know what that meant?

A I don't know what that means. Again, there were no responses from me. And I think what's scary about that is there's just no way of knowing if he saw me out with somebody or if this is just through something that I posted. I have no idea.

- [25] Q Did you have concerns that he maybe had seen you in person? That this wasn't just him being online?
- A Yes, of course. There were messages that specifically reference physical sightings and things that I do out and about. Yes, of course. There's no way to know if he actually is following me. If he sees me every day. Where he sees me. How much he knows about me. I didn't even know what he looks like. I had no idea what to look for. So, yes, I was very fearful that he was following me in person.
- Q In there, he says, "Are you there? Straight. You have my address. I am all here." Did you know where he lived?
  - A No. No.
- Q While we were looking at those messages, the one that you talked about, about you thinking that he wanted you to die, it said something with the word "die" in it. Did you call the police or tell anybody after that comment?
- A Yeah. Yes, eventually I decided that I should get some advice.
- Q Okay. If you can look back through the pages, tell me what day it was that he made that [26] comment about "die."
  - A February 6 and February 19.
  - Q Why didn't you report this in February?

A It's hard for me to remember what was going on in my life in February. It's likely I was very busy. I'm always very busy with jobs. But I also just was trying to figure out whether or not it was serious enough for me to have to get an authority involved.

I think that I knew, and most people know, that once you get an authority involved, there's a chance that something like this could happen where you have to spend many months of your life being vulnerable to questioning, sitting in a courtroom just a few feet away from somebody who's been antagonizing you for years. And I was -hesitant doesn't even describe how I was feeling about telling somebody about this. The fact that it would then become undeniably real, and it just makes all of the terror a little bit more tangible.

- Q Were there things or steps that you took before you decided to call the police?
- A Yes. I blocked him multiple times. I believe that that is even a stronger way than [27] saying, "Please stop contacting me." It's intended to make it impossible for somebody to continue to contact you.
- Q Before you reported to police, were there things that you were doing in your every day life that were, I guess in no other terms, safety planning?
- A Yes. I ended up getting a self defense, like, pepper spray gun that I carried with me all the time. And I would say in general, I just had to become more aware, especially at shows where it was likely that that's where he was seeing me.

So we just – "we" being Kim and I -we were just aware. We were looking around. I wouldn't walk anywhere by myself. I wouldn't carry too many things in my hand so I could have a hand free. We just got some advice about what is safe and how to be safe and having to start integrating some of those things into our lives.

Q At some point, you said that you decided you needed to get somebody else involved. So who was the first person that you told in that process of getting people involved?

A I called my aunt.

[28] Q Why?

A She is a lawyer and – she was a lawyer. Now she does mediation. But she knows -I felt like she would know the right people to ask for help if indeed I needed it.

#### Q Okay. Did you need it?

A And I also felt like I could trust her opinion as to whether or not I did need it. If it was a serious enough concern to get more worried about. More worried than I was. And it turns out yes, I did need help. It was serious.

Q What do you mean by "I didn't know if it was serious." I mean, what do you mean by that?

A What I mean is that I was terribly concerned. I was worried. I was fearful. But in general, as a person, I try not to overreact to fear. That's just not the way that I am in life. And so I think having some validation is what I needed in order to be able to understand that this was,

yes, it was serious enough to talk about. It was serious enough to bother somebody else about. It was serious enough to tell an authority about. And everything that, yes, I had been feeling all of this time, indeed it was valid. I was right. [29] It's scary. It's terrifying.

- Q You said you didn't really want to bother anybody else, but she's your aunt. If it's really your safety, why would you think it would bother her?
- A Because, first of all, it's scary to she's my aunt. She loves me. I didn't want to have to put that burden on her also of being scared for my life. And second of all, it had the potential, I knew, to become something like this; a long-term invasive process that she would have to walk through with me. And I felt bad about bringing somebody into that.
  - Q Eventually did you talk to police about this?
  - A Yes.
- Q Okay. Who else before you talked to police did you talk to?
  - A A federal investigator.
  - Q Did you talk to any other attorneys?
- A Yes. My Aunt Katy has a partner at her firm whose name is Chris who specializes in stalking. And he was there when I when I returned to the law office to also had looked through these and was giving me his opinion about [30] them. About what he what he thought they meant.

Q Did you ask Chris about what you could do to protect yourself?

A Yes.

Q Did he give you certain things that you could do in order to make yourself more safe?

A Yes, he suggested that I get a restraining order, which I did do. And he suggested that I put a copy in all of the places that I visit most frequently. So I had one in my car, one at work, and one at my parents's houses and all the other places where I spend time.

Q I want to talk a little bit about the other ways that this affected you in a minute, but I want to first back up a little bit. I want to back up, because something that you said early on in your testimony yesterday was that you, at some point, messaged Mr. Counterman back and you didn't remember that. Do you remember saying that yesterday?

A Yes.

Q So I want to talk to you about that. Who made you aware of the fact that you had actually responded to Mr. Counterman a while ago?

[31] A The police. It was in the messages, I think, that they were able to recover.

Q Okay.

MS. JARAMILLO: Your Honor, permission to approach with People's Exhibit 5?

#### THE COURT: Granted.

- Q (By Ms. Jaramillo) Take your time. If I could get you to look through those and then we'll talk about them more. Did you have a chance to look through those?
  - A Yeah.
- ${
  m Q}~{
  m Are}$  those messages between you and Mr. Counterman back in 2010?
  - A Yes, it appears that they are.
- Q Are they a fair and accurate representation of what you remember about that -those communications from back in 2010?

#### A Yes.

MS. JARAMILLO: Your Honor, the People move to admit People's Exhibit 5.

MS. ARCHAMBAULT: I would object on foundation.

THE COURT: Why don't you lay a bit more foundation.

- Q (By Ms. Jaramillo) How do you know [32] that those are messages between you and Mr. Counterman?
- A Well, clearly it's me. It's in my Facebook account because it has my name at the top. And then there's some phone numbers in here. I would imagine that they match up. I'm trying to see if his name is in here. Okay. So, "Hi, my name is Bill."

- Q Okay. Do you remember receiving those messages?
- A Yeah, I do have a vague recollection of this, which I also told the police.
- Q Do you remember sending a couple of those messages?

A Yes.

MS. JARAMILLO: The People move to admit People's Exhibit 5.

MS. ARCHAMBAULT: Same objection.

THE COURT: Overruled.

(People's Exhibit 5 was admitted into evidence.)

MS. JARAMILLO: So, Your Honor, at this point are they admitted?

THE COURT: Yes.

MS. JARAMILLO: Okay. Thank you.

- [33] Q (By Ms. Jaramillo) I'm not going to put them up on the screen, but if you can give -the jury will have a chance to look at them. If you can give the jury a brief overview of what these messages are about.
- A "My name is Bill. I'm organizing a a show with comedy and music to benefit the victims of an earthquake."
- Q These messages, I know you talked about the fact that the newer messages, Exhibits 1 and 2 that

we've went over, a lot of those didn't make sense to you. That they were nonsensical. These messages, did these make sense?

A Yeah. In hindsight, I probably should have recognized some of the – some of the things that weren't written exactly the way that I -that most people write them. I didn't have any other information at the time so, yes, they appeared to make sense about an opportunity that he has to get national and international exposure. "Can you help me get some more artists? I don't want another big city to get this show before we do." It seems pretty normal.

Q And you responded to these, did you not?

[34] A Yes, I did.

Q How many times did you respond to these messages?

A Two.

Q Why respond to these ones?

A Because that was my career. Is my career. And I was trying to take as many opportunities as I could at the time, especially a charitable show for an earthquake victim. I think that's something that I would have loved to have been involved in.

Q Did you have any concerns that the person sending you these was a crazy person?

A At the time, no, I did not.

Q In 2014, I guess, up until – from this point on, from 2010 after you sent these messages to him all the way until today, have you ever returned another Facebook message?

A No.

Q When you reported this in 2016, did you remember specifically about responding to messages back in 2010?

A No, I didn't. They asked me that, as well, and I didn't. I was under the impression that I had never responded to him.

[35] Q Did you have these messages saved on your Facebook?

A No.

Q Before you received these messages in 2010, did you believe that you had met the person sending you those 2010 messages?

A Can you say that again?

Q So before receiving these messages, the ones in front of you in People's Exhibit 5, did you believe you had met that person that was asking you to do that show?

A No.

Q All right. Now, I'm going to ask you some questions about different Facebook pages or websites. And I

want you to let me know whether or not you're familiar with them, okay?

- A Okay.
- Q One of them is Bad Ass Vine.
- A Vine?
- Q Um-hum.
- A No, I'm not familiar.
- Q What about a person by the name of Chris Strongum?
  - A No, that doesn't ring a bell.
- ${\bf Q}$  Okay. What about the website [36] Womens-Working.com?
  - A WomensWorking.com? No.
  - Q Worldrelief.com?
  - A No.
- Q Have you ever posted on either of those websites?
  - A No, I didn't wasn't aware that they existed.
- Q Do you know whether or not there's the capability for you to post on those websites?
- A I mean, if there's an open forum on the website, I'm sure I can make a comment. I haven't visited them, so I'm not sure.

- Q What about the Facebook page Liam the Leprechaun?
  - A That's not funny. No, I don't know that page.
  - Q Never been to it?
  - A No.
- Q What about Radio One Lebanon? What does Radio One Lebanon what would that Facebook group, if you know, what do they stand for?
- A I don't know the Facebook group, but it seems like it's a radio station in Lebanon.
  - Q Have you ever been to that Facebook [37] page?
  - A No.
- Q Had you ever posted on any of those Facebook pages different things that you wanted Mr. Counterman to see?
  - A The ones that you just mentioned?
  - Q Um-hum.
- A First of all, I didn't know that those Facebook pages existed. Second of all, I have never tried to engage Mr. Counterman in any way. And, no, that means that I have not posted anything on any Facebook page or the ones that you mentioned.
- Q Back in 2010, did you ever play any music at a library?
  - A No.

- Q If Mr. Counterman saw you at a library, would that have been a professional event?
- A I don't remember playing any shows at a library, so it's really unlikely that he would have seen a professional event of mine there.
- $\,{\rm Q}\,\,$  Did you ever leave Mr. Counterman a message back in 2010 at a library?
- A No, I never left him a message anywhere in any year at any place.
- [38] Q Based off this People's Exhibit 5, the text messages that were sent, did you guys agree to meet up at a library?
  - A No, of course not.
- Q Was there any other follow-up that you can remember after being asked if you'd be interested in playing this show that Mr. Counterman or anybody did with you regarding that show?
  - A No.
- Q When you finally decided to tell your aunt first of all, what's your aunt's name?
  - A Katy.
  - Q What's her last name?
  - A Katy Miller.
- Q When you told her about what was going on, do you remember where you were at?

- A Yes, at her law office.
- Q Okay. Why did you go specifically to meet with her at her law office rather than at her house or your house or over coffee?
- A Because I was concerned enough about this that I wanted to make it a professional appointment.
- Q When you were telling her about this, [39] how were you feeling?
- A I was feeling extremely scared. Extremely upset. I was crying and I was worried.
  - Q What specifically were you scared of?
- A I think that the fact that so many boundaries were crossed in these messages made me believe that other boundaries were likely to be crossed. Physical boundaries. Legal boundaries. And there was no telling what was going to happen next.
- Q You said you were worried that physical boundaries were going to be crossed. What do you mean by that? Tell the jury what you thought might happen.
- A I think sorry. This is really difficult for me to sit here so close to him and tell you guys my deepest fears about what I thought might happen. Because if this goes badly, I feel like that's the worst ammunition that this man could possibly have.

But if he showed up somewhere near me, I was afraid I would get hurt. I was afraid my friends might get hurt. And beyond physical harm, I mean, who

knows? There's a lot of reference in these messages to dying. And I didn't know this [40] man. I didn't know what he was capable of. I had no idea what his history was, if there was physical violence, if he was trained, if he wasn't trained, what he looked like. So I was scared for the worst. Of course I was.

- Q Were you afraid about whether or not he knew places that you went, your home, your work?
- A Yeah, I was afraid that he was following me in general, so I was most concerned about the places where I spent the most time. My home, my work, my parents and other family members' houses.
- Q Was there a way that he would know where you were going to be at a certain time?
- A I don't think that he could have known where I was going to be at a certain time unless I posted about a professional event. Then obviously he knows exactly where I'm going to be at what time.
- Q Okay. What about your anxiety? Was there anything that changed about your anxiety between when you first started receiving these messages until today due to these messages?
- A Yeah. I mean, when I first started receiving the messages, my anxiety was about mid [41] level. As they got more aggressive and more dangerous, my anxiety climbed quite a bit. When I finally was worried enough that I told somebody else about the messages, their reaction to these messages just I mean, it really just validated my own fears, which makes them much more real,

which yes, of course made me more anxious. More scared.

- Q When we say "anxiety," what does that mean to you? What is that feeling of anxiety?
- A Anxiety feels like looking behind you all the time. Watching where you're going. Not trusting people. Never being alone. Never going anywhere alone. Worried in more in more ways than not worried about what's happening around you in your space.
- Q Were all of those things beginning to manifest? Meaning was that how anxiety was manifesting based on these messages that you were receiving? Were you doing all of those things?
- A Yes, I was. And some other things. Sleeping with the lights on and making sure that I parked my car where I could see it. Yeah, I was.
- Q We talked a little bit about things that you were doing because of the anxiety, but I [42] want you to talk to the jury about what it felt like inside.
- A It felt like being scared feels a little bit paralyzing, as you can probably imagine. I mean, you don't you go through your life in a certain way, then you get terrified about a thing and you change all of your patterns.

So you have a – I mean, the physical symptoms I would describe are tightening of the chest, sweaty palms, shaking a lot. The things that manifest on the exterior are looking around, a little shifty in the eyes.

Trying to keep a good idea of who is around you at what time. Yeah, I think it felt – I know that it felt stressful. And stress just makes you shaky and unnatural.

Q Okay. You said when you get scared of something – I want to talk a little bit, focus on that. Are there other things that you – other times you've been scared? Spiders? Snakes? Scary movie?

### A Of course.

Q How was being scared of those things or was it different from how you felt here?

A Yes, it was different because being [43] scared of those things, like you mentioned in the past, is something that you can rationally talk yourself down from and you know what it is, where it is and how to handle it. If I went to a scary movie and I was very scared when I came home, I'd turn on the lights for a couple of nights. I'm not afraid to admit. And the feeling goes away. You're sure the scary movie is not going to jump out of the wall and you feel confident and move on.

This was different, because you're not sure where the next – what the next thing that's going to happen is. Where it's going to happen. How bad it could be. And I think not – the unknowing part of it is what makes it twice as terrifying. There's no way to protect yourself from something that you can't be sure of.

Q After you see a scary movie, one that really scares you, months down the line, are you still thinking of that scary movie every day?

## A No.

- Q How is that different from this? Is this something that you think about every day or is it like the scary movie? Turn on the lights for a couple of nights and then it goes away?
- [44] A As I told you guys, I'm fairly good at reining in fear. It's something that I do, I think, as a part of my personality. So it's possible that I did not think about this every day, but I thought about it a lot. And it certainly has affected my life for a long time.
  - Q Is it something that still causes you fear now?
- A Yes. Just being in this room is one of the most terrifying things I've ever done.
- Q And is that because you have to do public speaking?
- A No. I'm pretty comfortable behind a microphone. I think I think what I mentioned, being up on the stand and having to describe in detail some of my worst fears in front of somebody who's been terrorizing me for years is a very scary thing.
- Q At the time when you reported this to police officers, if you had to rank your paranoia on a scale of 1 to 10, what would it have been at that point?
  - A An 8 or 9.
- Q Was that paranoia because of Billy Counterman?

[45] A Yes.

Q Normally, before Billy Counterman in your every day life, what would your paranoia level be?

A 2.1.

Q You talked about the time when you were telling your aunt that you were – you said you were crying during that time. Is there ever any other time, besides that time, that these messages that Billy Counterman, this, made you cry?

A Yes.

Q How many times? Tell the jury.

A I don't know specifically how many times, but I do remember that every time – I mean, most of the times that I talked to Kim about it – which if you guys remember is one of my friends. She also plays in my band. She was familiar with the messages – I was crying. I don't cry in front of most people easily, but Kim is just a good friend and she was so familiar with the situation that I think I was able to. And so, yes, I was crying a lot.

Q Who else did you feel like you had to tell about what was going on with this situation?

A Right now, I live with my grandmother [46] and also my cousin and my little sister. So I had to tell them. I gave them a restraining order, each of them, and I told them what was going on, because I was worried about their safety and I wanted them to be more aware.

- Q Were you I guess how did you feel about the fact that you had to tell them?
- A I felt terrible. I felt like I was putting them in jeopardy also. I also told the people who worked in my office building at my previous job. Workplace violence is on the rise, and here I come in with a threat attached to me already and I felt horrible about it. So it was not pleasant.
  - Q How did these messages affect your social life?
- A My social life? I, as a musician, usually frequent music venues. I like to see my friends' bands play. They like come to see me play. I stopped visiting a lot of those places, because it seemed more likely that it would cause a physical interaction which I really did not want to happen. I also stopped visiting a lot of places. I really didn't go anywhere alone. It just didn't feel like a safe decision.
- [47] Q You talked a little bit about the fact that you now live with your with your grandma and sister. Before that, where did you live or who did you live with? What sort of place was it? Who lived with you?
- A I was in a relationship and we lived in Colorado Springs in a house.
- Q Was that going on during a portion of the time when you were receiving these messages?
  - A Yes.
- Q Was there anything related to these messages and you can say no if there wasn't -about the move? Why

you moved? Was it a must when you moved? Something that you considered when you moved?

- A Did he mention anything in his messages to me?
- Q No, no, no. Looking back on the effect that the messages had on you, was there anything about that move that made you think about those messages? Does that make sense? Is there any consideration you gave to the move, where you were going to move, who you moved in with, those sort of things based on the messages?

A Oh, I see what you mean. Yeah, I think [48] it was helpful in the beginning to be living with other people. It's a really good way to make sure that there's someone else always around. Until I had to tell them about all of this, and then it turned into a really difficult situation for me.

Also not having a lease in my name provides a little bit more anonymity and a little bit more safety. Unless it's a public record, then in some cases you can find out where somebody lives pretty easily.

- Q Is that something you thought about during the move?
- A No, not during the move, but I definitely thought about it when I was living in my new house as I was getting more of these messages.
- Q What about drug or alcohol use? Did that play any effect based on these messages?
- A I was having a lot of trouble sleeping. Especially as these became more aggressive. So, yes, I started

having to have some drinks before I went to sleep so that I could sleep through the night. And then I decided that I didn't want to be drinking every night, so I got a pot pen, which is legal here, and that helped a lot.

[49] Q Before ever knowing who Billy Counterman was, before ever hearing that name, did you used to drink yourself to sleep?

A No.

Q Before ever hearing that name, Billy Counterman, before receiving these messages, had you ever used marijuana?

A Yes, but not to sleep.

Q Did your marijuana use or your alcohol use increase based on Mr. Counterman?

A Yes, in that specific situation. I don't think I was drinking more when I was out or anything like that. But, yeah, I definitely needed the help to sleep.

Q I want to talk about your – the effect that this had on your professional life, if it had one. Where do you – I think you talked at the beginning of yesterday about normally playing most shows in Colorado. So I want to focus on that. Did this affect at all your ability to play or perform in Colorado?

A Yes. Unfortunately I had a couple of shows booked already here in Colorado when I went to my aunt about this, but I didn't take any shows in Colorado – very few slows in Colorado after [50] that, because I was

feeling a lot more scared about showing up at a place at a specific time at a specific place.

- Q Why now? Why then? Why at that point? Why didn't you cancel shows previous to that? Why did it affect you at the point of telling someone?
- A I had my feelings corroborated by a professional, which must have been what I had needed to make them feel more real and more threatening. And I-I mean, I should have been looking after my safety all of this time, but then I knew that I needed to. So I did.
- Q Did you only become concerned and think it was serious because people were telling you it was?
- A No, I don't think I mean, I wouldn't have gone to see my aunt had I not already thought that it was very serious. Just getting myself to a legal office to seek advice is a definitely shows that I was concerned. So I was very worried before, but I do know that having a professional tell me, "Yes, you're right to be worried," made it even more scary.
  - Q Did you cancel any shows in Colorado?
  - A I canceled a few shows, yes.
- [51] Q Each of the shows that you canceled or that you didn't accept, would you have made money at those shows?
  - A Yes.
- Q So how did that affect you being able to afford things in your every day life?

- A I had to be careful. It supplements my income, I'd say about 30 percent. And I didn't have any of that for the past several months.
  - Q Is that a big deal to you?
- A Yes, of course. I'm single. I have to make my living all by myself. So it made a big difference. I definitely felt it.
- Q Before the time period when you started hearing from Billy Counterman, did you routinely cancel shows or not accept shows?
  - A No. No, I no, I don't cancel shows.
- Q What effect does canceling a show or not accepting a show have on your professional reputation? What affect did it have?
- A In the music business, at my level, locally and nationally, it's important to stay out in the spotlight. That's how you maintain popularity. That's how you guarantee that you can get a bunch of fans to the show. That's how you [52] get popular. That's why people hire you. So being undercover for the past several months has taken me out of all of those things. And, unfortunately, I'm certain that it's made me a much less valuable performer. And it's you know, I mean, it's going to make it a little bit difficult for me to restart my career.
- Q You talked about the fact that you carried a protection order around and gave them to others. At some point did you also get a photo of Mr. Counterman?

A Yes. I got a photo from records right before one of the bigger shows that I couldn't cancel. That I didn't want to cancel.

Q Why did you get that photo?

A I felt like it would be helpful for me to know what he looked like in case he showed up, so I could recognize him.

Q Did you keep that photo for yourself or did you give it to anybody else?

A I kept a copy in my car. Kim and I took a copy to the show and we gave a copy to a bouncer. There was two shows that I had. One was in a public space, so there was no bouncer, and the second one had a doorman, so I gave him a copy [53] of the photo.

Q Did you ever hire or ask bodyguards to come to your shows after this point?

A The show that I had, the public show, is about 2,500 people in this big open area in a park and there's no policing in or out. Anybody can come and go. It's pretty impossible for somebody that's not trained to find somebody in 2,500 people so, yes, I asked my friend JJ, who's in private security, to come with me to that show to help me protect myself.

Q You talked a little bit about the fact that the anxiety made you kind of always look over your shoulder. Tell the jury a little bit about that.

A Walking, even if you're with someone else, you don't have to – if you're not under constant anxiety, you

just walk. You don't even have to think about it. If anybody's looking, any noise, every sound. You're trying to stay very aware. The protection that I carry with me. If I was worried at all, I usually just had it in my pocket. You try keep to it in close range. So . . .

- Q What were you worried that he would do?
- [54] A It's impossible to know, which is part of why it was so scary. I, first of all, was worried that he would be near me. Near enough to me to do something. And after that, I don't know. Hurt me. Hurt somebody I was with.
- Q But you had never seen him before. He hadn't ever approached you in the past. Why were you worried about that?
- A Because these messages, as I've said, make me think that he's living in some kind of alternate reality, and it's unpredictable what somebody in that kind of alternate reality might do. Might think they can do. There's just you know, legality just becomes no protection at all. There's not a way to say, "You can't do that."
- Q Before having heard of Billy Counterman, did you like to be alone at all? Go out alone? Do things alone?
  - A Yes, I enjoy being alone.
  - Q How did these messages affect that?
- A As I said, I rarely went anywhere alone after that. So my little sister's social calendar got a lot busier. She had to come with me everywhere.

- Q We talked about the fact that you got, [55] you said, a mace to carry with you?
  - A A pepper spray gun.
- Q A pepper spray gun. At what point during these messages did you get that, if you can remember?
- A I don't remember exactly, but it was around February. Right before I went to see my aunt.
- Q Is there anything else that you got in order to better protect yourself as a result of Billy Counterman?
- A I put a flashlight on my key chain and I got an actual mace, not a pepper spray, that I kept in my car.
  - Q What about a concealed carry permit?
- A Yeah, I just recently took the concealed carry class. So I haven't been able to buy the permit yet. It's expensive. But I intend to.
- Q Was that based on these messages? Based on Billy Counterman?
  - A Yes.
- Q When you were receiving these messages, was there any point that you received or saw or had emotional distress occur while you were in [56] Arapahoe county?
- A Yes. Yes, my parents live in Arapahoe county, and the law office where I eventually reported this is also in Arapahoe county.

Q These may seem like some silly and non relevant questions, but they will be for the jury. So when you were feeling the fear from these messages, were you in the state of Colorado?

#### A Yes.

- Q Where did you live when you were receiving these messages, as far as state, when you were receiving these messages and when you were feeling the fear?
  - A In Colorado.
- Q As far as state, where were you working when you would receive these messages?
  - A In Colorado.
- Q You talked a little bit about how it would affect your ability or wanting to perform in Colorado. How would it actually affect your performance?
- A Made my performances a lot less enjoyable. Just scanning the crowd, always aware of possible threat. I think I mean, I know that being artistic, part of what I love about [57] being artistic is just being able to get lost and really emote. And that's just impossible when you're always thinking about who could be out there.
- Q Lastly, what affect did this have on your ability to what affect does it still have, if any, on your ability to make new friends, meet new people?
- A It's actually sad for me to answer that question, because part of what I love so much about being in music

is being able to connect with people. But it's just not something that I can do very easily any more.

I think – I mean, I know that this has caused me to just be more cautious is a mild way of putting it. And I'm sure that I would more freely be able to connect to new people, new fans, new friends if this had not happened to me. But I just don't do it anymore.

MS. JARAMILLO: Your Honor, I have no further questions.

THE COURT: All right. Do we have any cross examination?

### **CROSS EXAMINATION**

## BY MS. ARCHAMBAULT:

[58] Q Good morning, [C.W.]

A Good morning.

Q Okay. So back in April, you went to your aunt, correct?

A Yes.

Q And that's sort of the first person you reached out to, it sounds like, who wasn't Kim?

A Yes.

Q Now, was she – was she your lawyer in any other capacity or was this like an aunt who was also a lawyer? Do you know what I mean?

- A No, I don't.
- Q Did she represent you in a legal matter in any other way?
  - A No.
  - Q So you went to her because she's your aunt?
- A I went to her because she's my aunt and also because I thought that she had the experience to be able to shed some light on what was going on.
  - Q Because she was your aunt who was a lawyer?
  - A Yes.
- Q And was it at her law office that you [59] guys called the police together?
  - A We did not call the police together.
- ${\bf Q}$   $\,$  Okay. Did she call the police alone or did you call the police?
  - A I did not call the police.
- Q Now, at one point you e-mailed her the messages, right?
  - A Yes.
- Q Was that before or after you met with her at her office?
  - A It was during the meeting.
- Q Oh, okay. So you were in her office on the computer?

A Yes. It might have been her partner's office. We were at their offices.

Q And so at some point after you had left or when you weren't with her is when she notified the police?

A Yes. I believe it was the FBI.

Q Okay. Law enforcement?

A Yes, yes.

Q Now, in one of those messages pretty early on, there's a phone number, right?

A Yes.

Q You said that you never – you never [60] called that number?

A I did not.

Q And it was not a number that you had recognized as receiving any calls from previously?

A No.

Q And did you communicate that you had gotten that number when you did eventually talk to the police?

A No.

Q No? Did you put it together that maybe that would be a way that they could track who this person was?

A No.

- Q So I think you said yesterday that you, at the time of reporting this, had been receiving messages for two to three years. Does that sound accurate?
  - A Yes. I think I said three to four.
- Q Three to four. And so you also said you got messages over multiple profiles?
  - A Yes.
- Q Do you remember the names of any of the other profiles that we don't have?
  - A Bill or Billy Counterman is what I remember.
- [61] Q But they were they're variations of Bill Counterman?
  - A Yes.
- Q So it's like you can obviously tie the two together as being from the same person?
  - A Yes.
- Q You described these messages as sort of a conversation, but you weren't responding?
  - A Yes.
- MS. ARCHAMBAULT: Sorry, Judge. I just need to hook my computer up real quick.

THE COURT: That's fine.

Q (By Ms. Archambault) So I'm going to show Exhibit 1.

MS. ARCHAMBAULT: Can you turn the TV on.

MS. JARAMILLO: Oh, sorry.

MS. ARCHAMBAULT: This is People's Exhibit 1. Judge, can I approach?

THE COURT: Please.

- Q (By Ms. Archambault) So on this first page let me try to get this thing to get off. But this phone number, we already went over, you didn't call that?
  - A That's correct.
- Q And on Page 20 of Exhibit 1, you never [62] indicated that you wanted tomatoes?
  - A What was that?
  - Q On Page 20 of Exhibit 1 -
  - A Okay, yeah.
  - Q you never said you wanted tomatoes?
  - A Correct.
- Q And you hadn't had any conversations with Billy Counterman previously about gardening or fruit or vegetables or anything?
  - A No.
- Q This one, this is Page 19, can you even see the screen at all?

A No, but I've got it here, so I'll just flip backwards.

Q So Page 19, this is sort of a good example of what you were talking about as a conversation, but you're not responding. So there's a message here that says, "Yes." Just to be clear, you hadn't asked a question before and then deleted it?

A Correct.

Q That hadn't happened?

A No.

Q And then a couple down, there's a "K." Like "okay." That wasn't in response to anything?

[63] A Right.

 $\,{\rm Q}\,\,$  Page 22, this tan line, this was October of 2015, right?

A Yes.

Q And that's when you blocked this profile that was Billy Counterman?

A Yes.

Q And then sorry to jump all over for you, but Page 8, the reference to that Jeep. Do you remember that message?

A Yes.

Q So your testimony was that you maybe had this Jeep three years ago?

- A Yes. Yes.
- Q So do you remember speaking to Agent Tolman, this fellow?
  - A Hi.

# AGENT TOLMAN: Hi.

- Q (By Ms. Archambault) Do you remember talking to him back in April of last year?
  - A Yes. Yes, I do.
- Q And at that time, you told him that you had a Jeep about five years prior to that?
  - A Three to five.
- Q So it's somewhere in that range, three [64] to five?
  - A Um-hum. I definitely owned a white Jeep.
  - Q At some point?
  - A Um-hum.
  - Q But definitely not in October of 2015?
  - A No.
  - Q Several years prior to that?
  - A Um-hum. Yes.
  - Q Now, you had a couple of Facebook accounts?
  - A Yes.

- Q One was your professional account; is that fair to say?
  - A Um-hum. Yes.
  - Q Like your band account?
  - A Yes.
  - Q And one was your personal account?
  - A Yes, that's correct.
- Q These messages that we've been looking at, I'm unclear as to which account they came to.
  - A Me too. I'd have to go back and check.
  - Q Okay. So you're not sure which one?
  - A (Shook head.)
  - Q Will you answer out loud?
  - [65] A Yes, I'm not sure.
- Q Sometimes you have been saying that you and Kim would do things. That seemed like you and Kim would do things in response to these messages or take action in reference to the messages?
- A We never engaged as a part of any of these messages.
- Q I mean, like, together, you would maybe block them or flag them or things like that?
  - A I blocked his account personally.

- Q Okay.
- A Each time that I did it.
- Q Did Kim have access to your professional account on Facebook?
  - A Yes, yes.
- ${
  m Q}~{
  m So}$  that's where I thought I was confused that if Kim was on your account, on you guys' account looking at these messages or not.
  - A Yes.
- Q So would that be fair to think they were going to your professional account?
- A I know that some of these came to my professional account and some came to my personal account. I can't say for sure right here which ones of those were which.
  - [66] Q Okay. Okay.
- MS. ARCHAMBAULT: Judge, can we approach?
- THE COURT: You may. Excuse us for a moment.
  - (A bench conference was commenced.)
- MS. ARCHAMBAULT: Your Honor, this is sort of strange. I'm going to get on the Internet on Facebook just as a demonstrative so the jury can kind of see how Facebook looks and what her page looks like.

I have screen shots of what I'm going to show the jury. I'm not going to ask to introduce those to go back to the jury or anything like that, but I wanted the record to reflect what I'm showing them. I just didn't know how to label them and how the Court -if the Court cared what procedure I used for that.

THE COURT: I think a starting point is you need to show demonstratives to the other side, to

Ms. Jaramillo, just so she can look before they're shown to the jury to see if she has any sort of objection to them that we can resolve outside of the presence of the jury, if there is one. Then what I would be inclined to do is mark them as Defendant's A-D, B-D. And D being demonstrative. They won't go back to the jury room.

It's about 10:00. I'm wondering since you [67] need to do this and set up, I can tell the jury that we need to take a break so you can do a couple technical things. Make sure we can have access and you can review the demonstratives with Ms. Jaramillo. How long do you think I should give them for a break.

MS. ARCHAMBAULT: It's just her website, so maybe 10 minutes. I think 10 minutes would be plenty of time.

THE COURT: Okay. Well, I'll take the normal break. So if I give them a break until 10:20, that would be about 20 minutes. That gives you time to do this with Ms. Jaramillo and then you each still have a chance to stretch your legs and have a little break, as well. Does that work?

MS. ARCHAMBAULT: That works, yes.

MS. JARAMILLO: Yes, Judge.

THE COURT: Okay. That's what we'll do.

(The bench conference was concluded.)

THE COURT: Ladies and gentlemen, we're going to try to access the Internet on something and it's going to take a minute to set that up. So rather than have you just sit there and watch us mess around with computer stuff when we really could use an 8th grader, what we're going to do is go ahead and take our morning break.

[68] I'm going to break for about five minutes longer than usual, just because I have no confidence in my ability to access the Internet. So what we're going to do is break until 10:20. We're going to – before we go – ma'am, you may step down while we do this -it's important that you obey the following instructions with reference to the recesses of the Court:

You are not to discuss the case amongst yourselves except when the entire jury is together in the jury room for deliberations. You should also not discuss this case with anyone else.

In fairness to the parties of the lawsuit, you should keep an open mind throughout the trial and you should reach your decisions only during your final deliberations. You may not permit any third person to discuss the case in your presence. If anyone attempts to do so, report that back to the court staff immediately.

Do not talk with any witness or with any party or with any of the lawyers in this case. Do not attempt to gather any information on your own. Do not engage in any outside reading or Internet searches on anything regarding this case. Do not attempt to visit any places mentioned in this case.

[69] Finally, do not attempt in any other way to try to learn about the case outside the courtroom. Do not read about the case in the newspapers or listen to radio or television broadcasts about the trial. You must base your verdict solely on the evidence and the law presented at trial.

With that, I hope you have a pleasant break and hopefully we'll be ready at 10:20. Thank you.

(The jury exited the room.)

THE COURT: All right. Please be seated. The record can reflect the jurors have left the courtroom. We'll break until 10:15 to give you a chance to talk and see if you can get the technology sorted out. Before we take our break, anything we need to address from the People?

MS. JARAMILLO: No, Your Honor.

THE COURT: From defense?

MS. ARCHAMBAULT: No, thank you.

THE COURT: All right. Then we'll be back at 10:15 and we'll see where we are then.

(A break was taken in the within matter to allow the Court to hear another matter.)

THE COURT: Okay. Do we have [C.W.]?

MS. JARAMILLO: Let me go check and make sure she's out here.

[70] THE COURT: Why don't you go ahead and bring her in if she is.

MS. JARAMILLO: I wonder if she's struggling with panic today. I just e-mailed our advocate, like, two minutes ago.

(A break was taken.)

THE COURT: All right. We'll go back on the record in People versus Counterman, 16CR2633. The record should reflect that counsel are present, as is Mr. Counterman, and [C.W.] has retaken the witness stand. Anything we need to address before we bring the jurors in?

MS. JARAMILLO: No, Judge.

THE COURT: From defense?

MS. ARCHAMBAULT: No, thank you.

(The jury returned to the courtroom.)

THE COURT: All right. Please be seated.

We are still on the record in People versus Counterman, 16CR2633. The record should reflect that counsel are present, as is Mr. Counterman; that [C.W.]'s on the witness stand, and the jurors have reentered the courtroom.

So, ladies and gentlemen, I hope you had a good break. I am cautiously optimistic that our technical skills have succeeded. So with that, [71] [C.W.], do you understand that you're still under oath?

THE WITNESS: Yes.

THE COURT: Ms. Archambault, you may proceed.

MS. ARCHAMBAULT: Thank you. Your Honor, may I approach [C.W.]?

THE COURT: Please.

Q (By Ms. Archambault) [C.W.] I'm going to hand you what I've marked (D)A, (D)B, (D)C, (D)D and (D)E. Would you just flip through those for me. Do you recognize what those are screen shots of?

A Yes.

Q Yesterday I was thinking that we should maybe treat it like my dad is on the jury who doesn't know anything about anything. What is a screen shot?

A It's an image of a – typically a computer screen.

Q It's like you can take a photo of what's on the screen?

- A Yes.
- Q And are those pictures that you've looked at kind of capturing what your Facebook [72] pages look like?
  - A Yes.
- Q I'm going to do, like, a tutorial. Well, you are. Are you able to see that from where you are well enough?
  - A Yeah, I think so.
- 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?
  - 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.

[74] Q And it will also list your past concerts that you've done?

A Yes.

Q Now, we were talking about friending and how to friend. If I wanted to like you, I would hit this Like button right here?

A Yes.

Q And were you saying earlier that because this is a professional page, you have likes instead of friends; is that right?

A Yes.

Q You were also saying that there's a messaging function. So I can send you a message directly that won't appear on this main page that everyone can see?

A Correct.

Q And if I do that, I just type into the message "blah, blah, blah"?

A Yes.

Q Now, you were also saying that – let me go to a different page that has – if I go to another page that's also listed [C.W.], this is what you've been referring to as your personal page?

A Yes.

[75] Q So then you can see on this personal page that I can add you as a friend?

A Yes.

Q And then you would get a request and you would accept it?

A Yes.

Q Maybe?

A Maybe.

Q If I was lucky. You were saying earlier – or previously you just had a feature that just automatically accepted any request?

A At one time, yes.

Q And you've changed that now?

A Yes.

Q And so going back to the messaging, I can message you whatever I want right now?

A Yes.

Q You were saying that prior to this, though – maybe like this is a new feature on Facebook. And prior to that, we had to be friends for me to message you directly?

A I said I thought that that was true, yes.

Q And so from your understanding, you and Mr. Counterman, during the time that you were [76] receiving messages from him, were friends?

A Yes.

Q Or he had liked your page and was able to communicate with you?

A Yes.

Q What is – you had mentioned that you were able to block Billy Counterman, and then it turned into Bill Counterman, right?

A Yes.

Q How do go about blocking someone?

A You – I'm not sure that I remember the steps exactly, but I believe you click on their profile and then there's an option to block.

Q Okay. Does it have to be approved by Facebook or anything like that?

A No.

Q Is there an option on Facebook if you wanted to make things more private?

A Yes.

Q So because you were a singer and kind of promoting yourself, everything is available to everyone?

A Yes. I don't believe that there's an option to make a public page more private. But a personal page, yes.

[77] Q That seems kind of silly.

A Yes.

Q Was there ever a time period that you made your public page – did you ever take it down for a time period?

A No.

Q Did you ever block or make your personal page more private?

A Yes.

Q When did you do that?

A I don't know the exact date, but, yes, I did. I took it down.

Q Do you know, like, month or year?

A February of this year, I think.

Q Okay. So just recently?

A I believe so. It's –

Q Did you put it back up?

A It's back up. That's what I was just about to say.

 ${\bf Q} \quad {\bf I}$  was wondering if what we were looking at was the –

- A Current.
- ${\bf Q}$   $\;\;$  But it's the one that's now back open to the public?
- A One of the ones that you just showed [78] was my public page and one of them is my personal page. They're both available to view like that.
- Q Got it. But for a period of time back in February of this year, had you changed your personal page to be more private?
- A I'm not sure if it was February, as I said. I took it down entirely and then I reposted it.
- Q But you think that was 2017 that we're talking about?
  - A Yes.
- Q Now, as we were saying before, you never responded to any of these messages?
  - A Except for the ones -
  - Q In 2010?
  - A Yes.
- $\,\,{\rm Q}\,\,$   $\,$  You, from 2014 on, never engaged in a conversation?
  - A No.
  - Q The messages that we're able to see?
  - A No.

- Q Because you didn't want to encourage them to keep coming?
  - A Correct.
- Q And for that reason, you never flat out [79] said, "Stop messaging me"?
  - A That's correct.
- Q Yesterday, I think you testified that you had blocked previous profiles anywhere from four to eight times?
  - A Yes.
- Q Do you remember when you were talking to Agent Tolman back in April of 2016, so April 25 of last year, that you told him you thought you blocked at least three profiles?
  - A No, I don't.
- Q It's your testimony today that you think it's up to eight?
  - A Between four and eight.
- Q You are now living you live with your grand-mother currently?
  - A Yes.
  - Q When did you move to that location?
  - A In July of 2015.

Q Okay. And you said at that time, your move wasn't based on these messages?

A That's correct.

Q But you realized later, it's maybe a good idea not to have my name on a lease?

A Yes.

[80] Q Have these messages prevented you from moving again or is it just that this is a convenient place for you to live right now?

A These messages have not prevented me from moving.

Q In the course of this pending case, you've spoken to a few different – you've spoken to Agent Tolman, right?

A Yes.

Q Do you remember talking to him?

A I do. Yes, I do.

Q And you've also talked to an investigator at the DA's office?

A Yes.

Q Mr. Incampo?

A Yes.

- Q Do you remember Mr. Incampo kind of asked you for witnesses that you can think of who knew what you were experiencing?
  - A Yes.
- ${f Q}$  And you let him know that a person named Vanessa Menke
  - A Menke (pronouncing).
  - Q Menke would be a person to talk to?
  - A Yes.
- [81]  ${\bf Q}$  And that was because she walked you to your car one night?
  - A Yes.
  - Q She is a bar owner?
  - A Yes.
  - Q When was that?
- $\boldsymbol{A}$   $\;$  That was April that was the day I spoke to my aunt.
  - Q So that night?
  - A That night.
  - Q April 5 April 15?
  - A I don't know the exact date.
- ${\bf Q}$   $\,$  The e-mail was sent on April 13, if that would help. Does that sound right?

- A The e-mail to her?
- Q Okay. So it would have been that same day?
- A Yes. That does help. Thank you.
- Q When you talked to well, let me talk to you about the changes that you experienced.
  - A Okay.
- Q You had mentioned that you started to sleep with the lights on.
  - A (Nodded head.)
  - Q When did that happen? When did that [82] start?
- A I don't know an exact date, but sometime around when the messages became more aggressive.
- ${\bf Q}$   $\,$  And when is that to you? Do you want to look at the
  - A I could probably yeah, I could probably look.
- MS. ARCHAMBAULT: Judge, can I approach?

THE COURT: You may.

- $\mathbf{Q}$   $\,$  (By Ms. Archambault) I'm going to hand you Exhibits 1 and 2.
  - A I don't know exactly. I would imagine in 2015.
- Q Okay. And when do you think you started drinking before going to bed?

- A Recently. The end of 2015. Oh, that's not that recently. The end of 2016.
  - Q So you went to your aunt's in April of 2016?
  - A Yes.
  - Q So after that?
  - A Yes.
- Q When you said the end of 2016, are we talking December or fall or?
  - [83] A Vaguely last quarter. I don't –
- Q Okay. I know it's hard to be exact. And the shows that you canceled, what were those, if you remember?
- A Shows typical to what I normally would have been asked to play. I couldn't recall the exact opportunity, but along the lines of what you've seen that I've played in the past.
  - Q Do you remember what month those were in?
  - A No. Throughout the year.
  - Q Which year?
- A Throughout 2016. After April and on into up to now.
  - Q Okay. So after April up until now?
  - A Yeah.
  - Q Have you canceled a show recently?

- A No, I haven't been asked to play one recently.
- Q Now, when you talked to Agent Tolman in April of last year, he asked you at that time what you had changed about your lifestyle. And at that time, you didn't mention sleeping with the lights on or that sort of thing. Why not?
  - A Because it's private.
- [84] Q You did say you stopped requesting friend requests automatically?
  - A Yes.
- Q And that you were going to cancel your shows in Colorado?
  - A Yes. Most of them.
  - Q So not all of them?
  - A (Shook head.)
- Q How did you decide which shows to cancel and which not to?
- A There were a couple of shows that were really monumental with large scale promoters.
- MS. ARCHAMBAULT: Your Honor, may I approach?

THE COURT: You may.

Q (By Ms. Archambault) [C.W.], I'm going to hand you what I've marked as Defense Exhibits A through E.

- A Okay.
- Q Do you recognize what those are?
- A Yes.
- Q Are those screen shots -
- A These are –
- Q of your website?
- A Yes.
- [85] Q Are those a fair and accurate capturing of what various pages of your website look like?
  - A Yes, they are.
- MS. ARCHAMBAULT: Your Honor, I would move to admit Defense's A through E.
  - MS. JARAMILLO: No objection.
- THE COURT: Exhibits A through E will be admitted.
- MS. ARCHAMBAULT: And, Judge, can I publish those to the jury?
  - THE COURT: You may.
- (Defense Exhibits A through E were admitted into evidence.)
- ${\bf Q}$  (By Ms. Archambault) So this is Exhibit A. If you'll look at they're labeled on the back of that. Sorry. That's not very convenient for you.

- A Okay.
- Q Now, just to be specific, this is a website, not Facebook?
  - A Yes, that's correct.
- Q So this is like your professional website that people can get to if they don't want to go see what's up with you via Facebook; is that fair?
  - [86] A Yeah, they can see this website.
  - Q Exhibit A lists your upcoming shows now?
  - A Yes.
- Q If we go to Exhibit B, there's an option to click on your previous events and see what events you have done?
  - A Yes.
- Q Now so this goes back through 2016. If we go to Exhibit C, this is more of the summer of 2016?
  - A Yep. Yes.
  - Q So did you actually play all of these events?
  - A Yes.
- Q Was the pool party at the Jewell in Denver like a big event?
  - A No, it was a private event.
  - Q Okay. What about Food and Flick Fridays?
  - A Yeah, that was the event I was talking about.

- Q Okay. Is that the event or what's the event that you had your friend, JJ, come to?
  - A He actually didn't end up.

[87] Q Oh.

- A I hired him, but he didn't end up having to come.
- Q What a flake.
- A Yeah.
- Q What did you want him to come to?
- A I wanted I hired him to come to that show.
- Q Do this one?
- A Yes.
- Q So this one was on June 3 of 2016?
- A Yes.
- Q And then it looks like there were some events in Seattle in April; is that right?
  - A Seattle?
  - Q On April 23 and 22.
  - A Oh, yes. Yep. Um-hum.
- Q What about the Home Vibe 10th anniversary concert at The Walnut Room? That was June 10.
  - A It was.
  - Q Was that a monumental event?

- A Yeah.
- Q Okay. What's The Walnut Room? What is that?
- [88] A It's a venue in north downtown.
- Q And what's the capacity?
- A 150.
- Q And is this the Pride Festival in Fort Collins?
- A Yes.
- Q And the county fair in Douglas County?
- A Yes.
- Q Was that a monumental event?
- A Financially. The fair was somewhat of a bust.
- Q But you made some money?
- A Yes.
- $\rm Q$  And just to show the jury what D kind of goes further back through 2016, and then E goes further back through 2015. Now, when you had said that you had gone in hiding for a couple of years, what did you mean by that?
- A I'm not sure those are the exact words that I used, but I did say that I stopped booking as many shows.
  - Q Okay. So you had canceled two shows?
  - A I canceled I canceled a few shows.
  - Q Okay. A few?

- A A few shows. And I did not accept [89] invitations to play several shows as well.
  - Q How many do you think that you did not accept?
  - A That's hard to say. 20.
- Q 20? So would this year as compared I shouldn't say this year. Would and just to be clear, you stopped accepting shows after April?
  - A Yes. Most shows.
- Q Most shows. Which shows did you not accept after or before that?
  - A Which ones did I not accept before?
  - Q Right.
- A Well, I've gotten to the point in my career that I can say no to some of the shows. Like the four hours ones that don't pay.
- Q I see. So before April, it wasn't like you weren't accepting those shows because of these messages?
  - A Right.
- Q It's just that you didn't have to do that kind of work any more?
  - A Right.
- Q So the shows that you canceled because of these messages, those ones were after April?
  - A Yes.

[90] Q And you're not sure exactly when?

- A When they were?
- Q Right.
- A Would have been? No.
- Q And the ones that you didn't accept, those were also the ones that you didn't accept because of these messages were after April?
  - A Yes.
- Q Hopefully that all made sense. Now, when you spoke to Investigator Incampo from the DA's office, that was in September of 2016; is that right?
  - A Sounds right.
- Q And at that time, you did tell him about sleeping with the lights on, correct?
  - A Yes.
  - Q When did you perform with Joan Jett?
  - A I performed with Joan Jett in 2000.

And you would think I would remember that exact date.

- Q I would think.
- A It was so cool. 2012. I would have to look it up to be exactly sure.
  - Q But maybe then? A little while ago?

- A Um-hum.
- [91] Q  $\,$  And as far as bigger events more recently, it sounds like the one in Firestone -
  - A Um-hum.
  - Q was the big one?
  - A It's one of the bigger ones I've played recently.
- Q And that's the one that because it was bigger, you were wanting JJ there?
  - A Yes. Bigger and there's no border.
  - Q Got it.
- A There's not one place where people come in and out.
- Q When he let you know that he wasn't going to come, you did play that show though?
  - A I did.
- Q We've established that apart from the messages in 2010, you did not respond to any of these messages?
  - A That's correct.
- Q And apart from just responding online, you and Bill Counterman didn't have any other kind of relationship?
  - A No.

- Q And that goes for when the messages were being received and any time prior to the [92] messages being sent?
  - A Yes.
  - Q You had literally never met this person?
  - A Not to my knowledge.
- Q Or, yeah, if you did meet him, you have no recollection of it?
  - A Right.
- Q It's nothing that would stand out or does stand out in your mind?
  - A Right.
- Q So it's not like you guys were friends and had a falling out and these messages were a reaction to that?
  - A No.
- Q And I know when you spoke to the police, you let them know that you wouldn't be able to pick him out of a lineup even if they gave it to you?
  - A That's correct.
- Q And then after this case was filed, you did get a photograph?
  - A I got it myself, yes. I had to pay \$7 for it.
- Q That seems like a lot. So once you saw [93] the photograph, that didn't jog any memory that you had?

- A No.
- Q This wasn't a guy who you recognized as being, like, at all of your shows?
  - A No.
- Q Or, you know, like running into him at the grocery store?
  - A No.
  - Q Or seeing him at your gym?
  - A No.
- Q You, again, like, even seeing his face, literally had never seen him before, to your knowledge?
  - A That's correct.
- Q We talked a lot about that phone number and how you never got any phone calls as you sit here knowing, from that number?
  - A Not to my knowledge, yes.
- Q Were you receiving any number any calls from another number that seemed weird?
  - A Nothing that stands out.
  - Q Or from, like, a blocked number?
  - A No.
- Q And so, like, not being able to pick [94] him out of a lineup, it's not like you would recognize his voice either?

- A No.
- Q You talked a lot about what you were scared of happening, right? Did Mr. Counterman ever show up at any of your shows ever, to your knowledge?
  - A I don't know.
- Q He never made himself known to you at any of your shows?
  - A No.
  - Q Did he ever show up at your work?
  - A Not to my knowledge.
- Q Did you ever see him in a parking lot of your apartment or home or work?
  - A No.
- Q You had mentioned that you had given a copy of the protection order to people at your old job.
  - A Yes.
  - Q Do you have a current, like, side job now?
  - A No.
  - Q So you're just performing?
  - A Yes.
- [95] Q  $\,$  And just to be clear, the messages that are listed on Exhibit 2 on the very last page, the ones from April 10 –

- A Okay.
- Q that is the last messages that you received?
- A Yes.
- Q And that's the last message that you received from Bill Counterman, is the name of the profile?
  - A Yes.
- Q And you haven't received a message from Billy Counterman since then?
  - A No, I haven't.
  - Q Or William Counterman?
  - A No.
  - Q Or Billy Bob Counterman?
  - A No, I haven't.
- Q To your knowledge, you haven't received any more messages from anybody by that associated name?
  - A That's correct.

MS. ARCHAMBAULT: Thank you, [C.W.] I don't have anything further.

THE COURT: Any redirect?

# [96] REDIRECT EXAMINATION

## BY MS. JARAMILLO:

Q Defense counsel asked you whether or not you had told Agent Tolman about not being able to sleep. Do you remember whether or not during your conversation with Agent Tolman he went into detail with you about how this was affecting you?

## A I don't remember.

- Q When is the first time that you can remember that someone either some sort of law enforcement officer, whether it's a DA investigator or a police officer, really, really went into detail with you about how it affected you or even asked you those questions?
- A It was the DA investigator in some of my first conversations.
- Q Do you remember telling the DA investigator also that you had started drinking in order to go to bed?
  - A Yes.
- Q And do you remember when that conversation was with him?
- A It was the first conversation that we had ever had during his investigation; in-person conversation in an office.
- [97] Q If I said September 2016, does that seem correct?
  - A Seems about correct.

- Q Okay. So defense counsel just asked you if you knew when you started doing the drinking, and I think you said maybe even December 2016.
  - A I think I said the last quarter.
  - Q The last quarter?
  - A It was difficult for me to remember an exact date.
- Q That's totally fine. When you talked to the DA investigator in September of 2016 and told him that, how much how much time had passed since you had started drinking in order to fall asleep?
  - A Through the summer.
  - Q So a couple months before that?
  - A (Nodded.)
- Q Do you think that your memory, back before you spoke to the DA investigator back in September of 2016, that it was more fresh as to the starting point for you beginning to drink than today is?
  - A Yes.
- [98] Q Do you think what you told the DA investigator back then is more accurate?
  - A It was accurate.
- Q I know you told defense counsel that there had been about 20 shows since you reported this in April 2016 that you have declined to play at this point. How many of

those shows were shows that otherwise, other than Bill Counterman, you would have actually played?

- A A majority. Probably all of them.
- Q Okay. Now, you have played some shows since that time period. How have you differentiated between "I'm going to play this one" or "I am too nervous. I'm not going to play this one"?
- A Some of the venues, like The Walnut Room that I mentioned is a secure room. There's only one way in and one way out that the public can go through. There's also a performance entrance, but it's extremely secure and it's a venue that I really cherish and love to play at.

And, again, as I said, you're out of the scene for a while, you don't get hired. And I really did not want to completely demolish my relationship with that venue. And I felt [99] relatively secure in being able to look around and see who was there and who was admitted. So I played.

- Q Why did you start canceling shows? Why did you wait to start canceling shows until you reported this?
- A It has to do with the fear becoming greater once it was validated by somebody who I held in high regard as a professional with knowledge about situations like this. I said that I wished I had been protecting myself better this entire time, but once that became a reality, I was more proactive about it.
- Q Okay. Did you have any fear on how reporting this or telling people would have, as far as an effect on the

conversations that – or I guess the reaction by Bill Counterman? Does that make sense?

At that time when you're reporting this in April of 2016, are you concerned at all about the effects your reporting will have on your communications with him?

A Yes. I think – I mean, one of reasons that I believe that I waited so long to report this is because any contact, any engagement, any [100] response, I thought would just enrage the situation. Specifically something that directly involved myself and Mr. Counterman.

And so having to expose the situation and make it real, any reasonable person I think can imagine how it could devolve into something like this. And I really would have loved to avoid that at all costs.

Q Before April of 2016, did you know whether or not there was actually a person by the name of Bill Counterman?

A No.

Q When someone's setting up a Facebook, is there an identity check? Like you have to show your ID in order to get that name?

A No.

Q Could anybody have created a Facebook for Bill or Billy Counterman?

A It could have been anybody.

- Q After 2016 when you reported, April of 2016, did you become aware of whether or not there was actually a person named Billy Counterman?
  - A Yes.
  - Q Did that have any affect on your fear level?
- [101] A No. I even previous to reporting it, as I said, I never knew when, who, how, what. It was all very, I think, part I know part of what was really scary about it is there was no way to put a finger or a face to the threat.
- Q Defense counsel asked you about the show that where you were going to ask your friend or you asked your friend, JJ, to do security and he didn't end up coming. Why did you decide to play?
  - A I don't know if I can answer that question.
  - Q Okay.

MS. JARAMILLO: Your Honor, permission to approach?

THE COURT: You may.

(A bench conference was commenced.)

MS. JARAMILLO: Your Honor, based on the fact that defense counsel has asked her – or gone towards her credibility, "but you still decided to play even without a bodyguard," I would ask that she be allowed to answer this question.

Her telling me that means that either it's because he was in jail or because there was an ankle monitor on, so

she knew he was being monitored. So I'm [102] asking at this point, based on the cross, that I be allowed to ask.

MS. ARCHAMBAULT: There definitely wasn't an ankle monitor on, because that wasn't requested until September or October. I would like to check to see if he was indeed in jail before I respond.

THE COURT: Why don't you check.

MS. ARCHAMBAULT: Just two or three seconds.

THE COURT: Okay.

(The bench conference was paused.)

THE COURT: Ladies and gentlemen, we just need to check something. I appreciate your patience.

(A bench conference was resumed.)

MS. ARCHAMBAULT: Judge, he was in jail. Sorry. I wasn't able to see my view because the case was dismissed. The misdemeanor. I would – I would still object to that based on Mr. Counterman's right to due process and a fair trial.

MS. JARAMILLO: Your Honor, I think at this point, based on the fact that defense counsel obviously asked her those questions insinuating that she wasn't scared enough not to play that show still, that I should be allowed to ask.

The jury knows that Mr. Counterman has been charged in this case, and I think that it's easy to [103]

assume that because he was charged, he would have been in jail for a period of time.

THE COURT: All right. I tend to agree with the People on that. I think you have opened the door by setting up this question in the jury's mind of the bodyguard didn't come, yet she still went on. Does that mean she wasn't afraid? Why?

I do have some concern that if you just ask her generally, she may get dates confused and I don't want her go into detail or, you know, ankle monitor or something like that. And I'm wondering if it would be better to just rephrase it, "As of that date, had you learned that he was being detained?"

MS. JARAMILLO: That's fine with the People.

MS. ARCHAMBAULT: May I have the opportunity to cross on this topic?

THE COURT: Yes. Although, again, the concern I have is where's it going to go. So give me a hint.

MS. ARCHAMBAULT: Well, he got back out of custody soon after that, on the 6th. And there were shows that were played after that.

THE COURT: That's fine. You can recross on that. But, again, try to be careful in your phrasing, because my concern is a loose question could result in [104] additional information.

MS. ARCHAMBAULT: Sure.

(The bench conference was concluded.)

THE COURT: Ladies and gentlemen, thank you for your patience. What I'm going to do is ask the People to rephrase their question.

Q (By Ms. Jaramillo) [C.W.], were you comfortable playing at that show even without a bodyguard because you knew that Mr. Counterman was detained at that time?

#### A Yes.

- Q The shows that you ended up playing after that, when he was not detained, why didn't you hire a bodyguard for those shows?
- A It was expensive. And in those cases, I played the ones where I felt like I could control the situation and I was at the least risk.
- Q And is that kind of because, like you said before, they were facilities that were more secure?
- A Facilities that were more secure. I told the people who I thought would be appropriate to alert somebody if there was a situation. I had a restraining order. I was told law enforcement would respond much more quickly because there was [105] a restraining order in place. I felt I had the tools at my disposal to play a couple of the shows that were in place for me to completely not lose my career.
- Q At this point, it's been a year since you initially reported this. Based on the fact that there hasn't been further communication, was that when would you say your anxiety was at the highest? Is it now? Is it back in April of

2016? When was the time that you had the highest anxiety of what was going on?

A Between February and April of 2016, right before I reported it, and several times throughout this year-long process. As I said at the beginning, I think it would be impossible to function at a 9 on a scale every day like that, to continue like that. So I have tried to keep the anxiety at bay. But this has been a very long and very invasive process for me, and there's been a lot of times when the anxiety has been pretty disabling.

MS. JARAMILLO: Nothing further, Your Honor.

THE COURT: Do you wish limited recross.

MS. ARCHAMBAULT: No, thank you.

THE COURT: Ladies and gentlemen, do we have [106] any questions from any of the jurors for this witness? Seeing none, ma'am, you may step down. Thank you for coming.

THE WITNESS: Do I leave these?

THE COURT: Yes, go ahead and leave them. I'll ask counsel to retrieve the exhibits.

MS. JARAMILLO: May I approach?

THE COURT: Then the People's next witness.

MS. ROBILOTTA: Yes, Your Honor. The People call Christopher Forrest.

# CHRISTOPHER FORREST,

being first duly sworn in the above cause, was examined and testified as follows:

MS. ARCHAMBAULT: Judge, can we approach real briefly?

THE COURT: You may.

(A bench conference was commenced.)

MS. ARCHAMBAULT: Your Honor, I didn't know that Mr. Forrest was an expert in stalking as [C.W.] suggested. I would ask that he – that foundation be laid that he is an attorney and leave it at that. I don't want the jury thinking that he is some kind of expert when he isn't an expert and he hasn't been qualified as an expert.

THE COURT: It's my understanding he hasn't [107] been designated as an expert in this case; is that correct?

MS. ARCHAMBAULT: Right.

MS. ROBILOTTA: Yes, Your Honor. And the People will not be asking him any questions – due to some scheduling changes that occurred this morning, I have not had the opportunity to caution him yet. May we take a brief break so I can caution him on the Court's instructions just so there's no confusion with the testimony?

THE COURT: You mean the instruction of the motion in limine yesterday?

MS. ROBILOTTA: Yes, Your Honor. We switched some scheduling around, and he was not going to be testifying right now. I thought I would have time over the lunch hour to finish doing that, but there is some witness unavailability so we had to switch our order.

THE COURT: All right. Well, that's unfortunate. Jurors get very disappointed when they have to shuffle in and shuffle out. But I will excuse them for just a moment. I mean, this is something you could have left the courtroom and taken care of before this. But I will excuse them for about five minutes and then they can come back in. I don't want this [108] happening with any other witness.

# MS. ROBILOTTA: Yes, Your Honor.

(The bench conference was concluded.)

THE COURT: Ladies and gentlemen, I need to check one thing, and it's going to take me a minute to do that. So what I'm going to do is rather than have you sit there and watch me try to find something on the Internet and read it, I'll excuse you for – it should take just five minutes.

But before you go, it's important that you obey the following instruction s with respect to the recesses of the Court:

You are not to discuss the case amongst yourselves except when the entire jury is together in the jury room for deliberations. You should also not discuss this case with anyone else.

In fairness to the parties of the lawsuit, you should keep an open mind throughout the trial and you should reach your decisions only during your final deliberations.

You may not permit any third person to discuss the case in your presence. If anyone attempts to do so, report that back to the court staff immediately.

Do not talk with any witness or with any [109] party or with any of the lawyers in this case. Do not attempt to gather any information on your own. Do not engage in any outside reading or Internet searches on anything regarding this case. Do not attempt to visit any places mentioned in this case.

Finally, do not attempt in any other way to try to learn about the case outside the courtroom. Do not read about the case in the newspapers or listen to radio or television broadcasts about the trial. You must base your verdict solely on the evidence and the law presented at trial.

With that, I anticipate this is going to be about a fiveminute break. We'll get you back in here as soon as we can. Thank you for your patience.

(The jury exited the room.)

THE COURT: All right. The record can reflect that the jurors have left the courtroom. Please be seated.

Mr. Forrest, we had some pretrial rulings that the People were supposed to discuss with you prior to you being called to the stand. It's my understanding that they have not yet done that.

THE WITNESS: That's correct.

THE COURT: So rather than put you in the awkward position of not knowing what everyone else here [110] knows, we thought it was wise to give them a chance to talk to you. So I'm going to have you step down for a minute. The People will advise you of the rulings and we'll see if there are any questions that need to be addressed.

THE WITNESS: Thank you, Your Honor.

MS. ROBILOTTA: Thank you.

(A break was taken.)

THE COURT: We'll go back on the record in People versus Counterman, 16CR2633. The record should reflect that counsel is present, as is Mr. Counterman, that Mr. Forrest is on the stand and the jury is not yet back in the courtroom.

It's my understanding that you've discussed with Mr. Forrest the rulings that we made previously?

MS. ROBILOTTA: Yes, Your Honor, I have.

THE COURT: And, Mr. Forrest, do you have any questions about that?

THE WITNESS: I do not. I believe I understand the scope of my testimony.

THE COURT: All right. Anything else we need to address from the People before we bring the jurors back?

MS. ROBILOTTA: No, Your Honor.

THE COURT: From defense?

[111] MS. ARCHAMBAULT: No, thank you.

THE COURT: All right. Please bring the jurors back in.

(The jury returned to the courtroom.)

THE COURT: Thank you all. Please be seated. We are still on the record in People versus Counterman, 16CR2633. The record should reflect that counsel are present, as is Mr. Counterman, that Mr. Forrest is still on the stand and the jurors have reentered the courtroom.

So, ladies and gentlemen, I took care of what I needed to look at. Thank you for your understanding. We have already sworn Mr. Forrest in. So, sir, do you understand that you're still under oath?

THE WITNESS: Yes, I do.

THE COURT: You may proceed.

## **DIRECT EXAMINATION**

## BY MS. ROBILOTTA:

- Q Can you please state your name and spell your first and last name.
- A Christopher James Forrest, C-h-r-i-s-t-o-p-h-e-r, F o r r e s t.
  - Q What do you do for work, Mr. Forrest?
  - A I'm an attorney.
  - [112] Q How long have you been an attorney?

- A 24 years.
- Q And are you a solo practitioner or do you practice with somebody else?
- A I'm a shareholder in the law firm of Miller and Steiert in Littleton, Colorado.
  - Q And who is the other attorney in your practice?
- A There are twelve lawyers in my practice, including my partner, Katy Miller.
  - Q And how long have you been with this firm?
  - A Five years.
- Q I want to speak to you about [C.W.] Do you know an individual named [C.W.]?
  - A I do.
  - Q When did you meet with her?
- A The first time I met with [C.W.] was on April 15 of 2016.
  - Q Roughly what was the purpose of this meeting?
- A My partner, Katy Miller, had gotten me earlier in the day and said that her niece, [C.W.], had been receiving some bizarre social media [113] Facebook texts from an individual. That it may have been going on for a while. That she was concerned. And she asked me to take a look at the social media postings and to get my impression and perhaps to have me give some advice to [C.W.] about how to proceed with this type of situation.

So I did take a look at them and explained my concerns or agreed with the concerns that had been expressed to me and –

- Q Okay. I'm going to stop you right there.
- A I'm sorry. I apologize.
- Q Where did this meeting take place?
- A In our law offices in Littleton.
- ${\bf Q}$   $\,$  So how long did you speak with [C.W.] during that meeting?
- A [C.W.] came in after lunch, and I sat and met with her for probably a couple of hours.
  - Q How did she appear during this conversation?
- A She was concerned. She was worried about her personal safety. Because of the nature of the communications on social media, she was concerned that she was being surveilled, that her personal safety was potentially being compromised. [114] And she was tearful and shaking and she really had sort of a sense of disbelief that something like this could be happening to her.
- Q Did she seem interested in receiving any information about safety planning?
  - A Absolutely.
- $\mathbf{Q}$   $\,$  And what kind of safety planning did you discuss with her?

A I discussed with her the classic techniques and things that people who are at risk – and frankly –

MS. ARCHAMBAULT: Objection under 403.

THE COURT: Well, I don't think we need to go into the details of what he discussed with her. Just that he advised her of safety planning is sufficient.

Q (By Ms. Robilotta) Sir, when you were describing her as being tearful and shaking, through how much of the portion of your two hours in meeting with her was she shaking and crying?

A It sort of emotionally comes in waves. And when you talk about the specifics of some of the threats and the sort of irrational comments, it would well up and she would be upset and she would be worrying about her next concert and the [115] fact that because she is a prominent person online, she's very easily accessible as far as what her future schedule is.

And she would go, "What am I going to do?" And she would, in common terms, freak out and then sort of calm down a little bit. And we'd say, "Okay. Let's walk through this. Let's talk about safety precautions. Let's talk about next steps and things we can be doing." But it was never like it got better. This was part of a deep emotional concern that she had that had been caused by the communications.

Q And did you at some point verify that the name Bill or Billy Counterman that was associated with sending the messages was, in fact, a real person?

A Yes, I did.

MS. ROBILOTTA: If I may have just one moment?

THE COURT: You may.

MS. ROBILOTTA: Your Honor, I have no further questions.

THE COURT: Any cross examination?

MS. ARCHAMBAULT: No, thank you.

THE COURT: Do we have any questions from [116] any of the jurors for this witness? Seeing none, sir, you may step down. Thank you for coming in.

THE WITNESS: Thank you, Your Honor.

MS. ROBILOTTA: The People call Katy Miller.

THE COURT: Ma'am, please approach up here. Please raise your right hand.

# KATY MILLER,

Being first duly sworn in the above cause, was examined and testified as follows:

THE COURT: Please be seated. Then once you get settled in there, I want you to twist that microphone, slide it around. I know it's a little awkward, but please keep it close to you. I want to make sure everyone can hear you.

THE WITNESS: Thank you. Can I get some water?

THE COURT: There should be, yes. Help yourself.

THE WITNESS: Okay.

# **DIRECT EXAMINATION**

# BY MS. ROBILOTTA:

- Q Good morning, Ms. Miller.
- A Good morning.
- Q Could you please state your full name [117] and spell your last first and last name.
  - A Kathryn, K-a-t-h-r-y-n, Miller, M-i-l-l-e-r.
  - Q Where do you work, Ms. Miller?
  - A Miller and Steiert. It's a law firm.
  - Q Where is that located?
  - A Littleton.
  - Q Do you know someone by the name of [C.W.]?
  - A Yes.
  - Q And how do you know [C.W.]?
  - A She's my niece.
  - Q How long have you known her?
  - A Pretty much since she was born.
- Q When you say she's your niece, how is she related?

- A She's my sister's daughter.
- Q How close are the two of you?
- A Pretty close. I see her quite often.
- Q And can you describe for the jury sort of what kind of person emotionally [C.W.] is?
- A She's very strong. Very independent. She makes her own way. She's worked very hard to establish a career. Actually two careers. She's a singer/songwriter and she performs frequently. [118] She's also I think she was I'm not sure the title marketing director for a tiny homes company.
- ${
  m Q}$  And the way that you describe her as being strong and making her own way, is that the way she's sort of been since she was a little –
- MS. ARCHAMBAULT: I'm going to object to relevance.
- MS. ROBILOTTA: Your Honor, for the severe emotional distress.
- THE COURT: I'll allow a little leeway. So I'll overrule that for now.
- Q (By Ms. Robilotta) The way that you describe her as being strong, making her own way, is that the way she's been for a long time or is this all of a sudden she was strong and making her own way?
  - A For a long time.

- Q I want to talk about when you first became aware of a situation with her receiving unwanted messages.
  - A Okay.
  - Q Were you made aware of the situation?
  - A I was.
  - Q And how were you made aware of that?
- [119] A The first first I was made aware of it on two occasions that I remember. The first time was more of an offhand comment. I think it was 2014 or '15. I mean, I didn't write it down, the date. We were at a family event and [C.W.] mentioned to me that she was getting a lot of contact from someone she didn't know and she just wanted me to know.

I didn't really give her any advice. She didn't ask for advice. I just said, "Let's see if it goes away."

- Q And how did she appear when she was telling you this?
- A The first time, it was pretty offhand. Not extreme distress the first time.
- Q And when she brought it up the first time, was it unusual was it unusual for her to tell you something like this?
- A It was, yes. She doesn't really complain much. She doesn't usually ask for a lot of help. She was just mentioning it. We were at a party, I think, and she mentioned it.

- Q When was the next time that you were made aware of the situation?
- A The next time I remember the date was [120] in April of 2016.
  - Q And who brought it up?
  - A She did. [C.W.] did.
- Q Where were the two of you when this was brought up?
- A Again, we were at a family get-together. I don't remember the location.
- Q You mentioned the last time that it was pretty offhand. Was her demeanor similar when she mentioned it to you the second time?
  - A No.
- Q What can you tell the jury about how her demeanor was different this time?
- A So the second time, last year, she was much more concerned. She expressed more upset or fear, I think. It got my attention and I started asking some questions.
- Q Now, you had mentioned fear. In the time that you've known [C.W.], did she appear to you to be somebody who spooks easily?
  - A Absolutely not.
- Q Would you describe her as dramatic or over reactant?

- A No.
- Q Were there any physical signs that you [121] could see that led you to believe that this was something that was causing her stress?
- A Physically she manifests with wringing of hands. She has a tendency when she gets upset to take her rings on and off. Somewhat tearful. Not crying, but you could see tears maybe like I am right now, in her eyes.
- Q And is this something that you would frequently see of your niece, [C.W.]? Did she normally act like this?
  - A No.
- Q How in depth not getting into what was said, but how in-depth was the conversation with [C.W.] at this family gathering about what was going on?
  - A So this is the one last year?
  - Q Yes.
- A She gave me maybe we talked, I don't know, five or seven minutes about it. I didn't keep track of the time. But she told me that -do you want me to tell you what she said?
- Q I don't want to get into the specifics of it, but how in-depth did she get at that time?
- A It wasn't in-depth. I hadn't seen any of the contacts that she was concerned about and [122] she wasn't telling me really the content as much as the amount of it.

And that she had never responded to this individual and she didn't know how to make it stop. She had blocked him on her Facebook page many times. And she had contacted Facebook, I believe she told me and –

MS. ARCHAMBAULT: Objection. Hearsay.

THE COURT: Sustained.

- A So-
- Q (By Ms. Robilotta) That's okay, Ms. Miller. I want to focus not on what she said, but the level of detail.
- A That's I mean, we didn't get into the content, but she did tell me about her efforts to make it stop.
- Q Okay. So did the two of you discuss a next step? What to do about this?
  - A Yes.
  - Q And what was decided would be the next step?
- A The next step was for her to send me the contacts. The content of the contacts.
  - Q Did she send you those messages?
  - A Yes, some of them.
  - Q What did you do with them?
- [123] A I read them. And because of my concern, I showed them to my law partner, Chris Forrest, who has experience dealing with –

MS. ARCHAMBAULT: Objection.

THE COURT: Sustained.

- Q (By Ms. Robilotta) So after you received these messages and had a chance to review them, you showed them to your partner. What was the next step?
- A We had [C.W.] come to the office with more of the con sending us more of the content.
- Q And what was the what was her overall demeanor like during this meeting?
  - A She was very upset.
- Q Could you elaborate a little bit for the jury how you knew she was upset?
- A It was some of the similar manifestations. The tears in the eyes, sort of breathing quickly, wringing hands, shaking hands. That kind of thing.
- Q And was that a normal way for her to be, based off your time in knowing her?
  - A No, not at all. It was very different.

MS. ROBILOTTA: If I may have a moment, Your Honor?

[124] THE COURT: You may.

MS. ROBILOTTA: Nothing further, Your Honor.

THE COURT: Any cross examination?

### CROSS EXAMINATION

### BY MS. ARCHAMBAULT:

- Q Good after morning.
- A Good morning.
- Q So the first time you heard about this was at just a family function; is that right?
  - A It was at a family function.
  - Q And you said 2014 or 2015?
- A That's my recollection. I didn't write it down. I'm not sure. It was probably at least a year before the time when we started getting into the content.
- Q So if you got the content in April of 2016, April of 2015
  - A I can't tell you exactly.
  - Q But around that time?
- A I don't have another answer for you. I just don't know. It may have been 2014. I'm not sure.
  - Q Could it have been closer to 2016 or probably not?
  - A I don't think so. I think it was a [125] while before.
- Q And at that time, it was just an offhand comment that you didn't pay much attention to?
- A I wouldn't say that. I would say she didn't make it she didn't make a point of going into any detail. I think she just wanted me to know.

- Q But you didn't take any action based on that conversation?
  - A That is correct.
- Q And then in the more recent family function that you guys were at, when was that?
  - A April.
  - Q In April?
  - A Of 2016.
- Q So how long after that conversation did it take for [C.W.] to send you the messages?
- A That's a good question. I'm not sure. I mean, our family event might have even been in March. The end of March. But I think it was April. And probably a couple days.
- Q Okay. If the e-mail that you got was April 13, does that make it seem like it was definitely in April, the previous conversation?
  - [126] A Yes, it does.
  - Q Do you want to look at the e-mail?
  - A I'll believe you.
- Q Okay. Now, when you did you get the messages it sounds like you got the messages e-mailed to you before you guys actually met at your office?
  - A I think that's right.

- Q And then she brought additional messages physically to your office?
- A She no, I think she may have mailed them. I think it was electronic at first.
- Q And so there was, like, two waves of messages; is that fair?
  - A At least.
  - Q I mean, to you.
- A At least. There may have been more. I don't remember how many. I was trying to get as many as she could send to me.
- Q And once you got the messages, you talked to your partner, Mr. Forrest?
  - A Yes.
- Q And subsequent to that, are you the person who actually called who reported this to law enforcement or was that Mr. Forrest?
- [127] A I think Chris did that. Our offices are next door. We may have been together. I was very concerned and I wanted him to do something, so that's what he did.
- MS. ARCHAMBAULT: Thank you. I don't have anything further.

THE COURT: Any redirect?

MS. ROBILOTTA: Nothing further, Your Honor. Thank you.

THE COURT: Do we have any questions from any of the jurors for this witness?

Seeing none, ma'am, you may step down.

Thank you for coming in.

From the People?

MS. JARAMILLO: Your Honor, the People call Kimberly O'Hara.

# KIMBERLY O'HARA,

being first duly sworn in the above cause, was examined and testified as follows:

THE COURT: Please be seated.

# **DIRECT EXAMINATION**

## BY MS. JARAMILLO:

Q I'm going to have you introduce yourself by saying your first and last name and spell both for the court reporter.

[128] A My name is Kimberly O'Hara, K-i-m-b-e-r-l-y, O, apostrophe, H-a-r-a.

- Q Tell the jury what you do for a living.
- A I play music.
- Q And who do you play with?

- A I play with [C.W.] and a couple of other people around Denver.
- Q On top of being someone that you work with, what's your relationship with [C.W.]?
- A Probably one of my best friends in the world. Yeah.
  - Q How long have you known her?
- A I believe that we met in 2008. Could have been even 2007. I think I started playing with her in 2008.
- Q Okay. That was going to be my next question. When you started playing with her back then, were you also I guess were you working as closely with her then as you were between 2014 and 2016?
- A No. It was definitely I started as a hired player in the band. So basically I'd show up for the shows, know the songs, do a good job and get paid. And it progressed into a closer -you know, a friendship where we started working [129] basically as business partners.

So at some point I became involved in the booking and the, you know, the back side. The website, the social media, all of that.

- Q Do you remember when [C.W.].com actually started up? Were you playing with her at that point or was it prior to you playing with her?
- A She owned [C.W.].com way before I existed in that world. There's been a lot of versions of that website. Does that answer that question?

- Q It does. Between 2014 and 2016, did you also help kind of monitor [C.W.].com?
  - A Yes.
- Q About how much of the time was [C.W.] monitoring and how much of the time were you monitoring the website?
  - A All the e-mails from the website come to me.
  - Q Okay.
- A So that way if someone says, you know, something very simple, "I bought the song and the website didn't download," I can fix it. And if it's something more important, I can send it to [130] her.
- Q Why would you do the things that were easier and she would do the things that were kind of more important?
- A A lot of it, I think, is just because it's time-consuming and just splitting up duties. And then in a way, I'm kind of like a screen, you know, so that things that are only really important go to her. Does that answer –
- ${\bf Q}$   $\,$  It does. You talked a little bit about the fact that people could e-mail or message
  - A Yes.
- Q using the website. Can you explain to the jury how that worked?
- A There's a contact form on the website so anyone can get to it and put in their name and message, and

basically it comes to – it just comes to us saying "Contact Form" on the website.

- Q And would it come directly to your e-mail or was it an e-mail that was specifically set up for [C.W.].com?
- A It does go to the e-mail that's specifically set up for that. But that e-mail is forwarded to me, so it comes straight to me.
- ${\bf Q}$  I want to talk also, then, about the [131] [C.W.] Facebook page.
  - A Yes.
- Q Now, are you familiar with [C.W.'s], both her personal as well as her professional Facebook pages?
  - A Yes.
  - Q Who's the one monitoring those?
- A So she does her personal one. I have nothing to do with that. But the Facebook page, you can have multiple admins for it or administrators for it and so, yeah, any of those messages or if someone tags us in a post or sends a message, then I get those also.
- Q I want to talk to you now a little bit about when you first became aware of somebody named Billy Counterman who was beginning to contact [C.W.] When was the first time, if you can remember, the first time when you became aware that somebody was sending her messages? Somebody named Billy Counterman.

- A I don't remember what the very initial messages were, but a lot of years back were -it's been a while there were a lot of messages that started consecutively.
- Q Do you know whether or not those first [132] contacts made by Billy Counterman were to either her professional or to her personal Facebook page?
  - A I don't know what the very first e-mail was.
  - Q At some point during -
  - A Message.
- Q Mr. Counterman's communication with [C.W.], did he, in fact, message her professional page?
- A I don't remember, myself, ever reading what the very I don't know what the very first message was.
- Q At any point though during the years of the encounter.
  - A The professional page?
  - Q Yes.
  - A Yes, absolutely.
- Q During the years that he messaged her, were they also communicating with her personal page?
  - A Yes.
- Q Do you know or do you have personal knowledge of whether or not [C.W.] attempted to block Billy Counterman?

- A I know for sure that she attempted to [133] block.
- Q How do you know that for sure?

A I believe that I was with her. And – so there was multiple struggles. One is that from a phone, even a couple years ago, in the settings, it was much harder to find and block something than it is now.

So now on Facebook, you can go – right there on somebody's page, you can hit Name and you can just hit Block. But that was not an option before. So we fumbled around, you know, on the phones for a while trying to do that. Yeah.

- Q How many times do you remember [C.W.] trying to block Billy Counterman?
- A I think that she was successful from her personal page and then it took us a lot longer it was a lot more complicated from the music page.
- Q Okay. Are you aware of whether or not Mr. Counterman attempted to contact her using multiple different profiles?
  - A Yes.
- Q Okay. From what you're aware of, how many different profiles was he trying to contact her from during the two-year time period?
  - [134] A I think that I knew of two for sure.
  - ${\bf Q} \quad {\bf Do}$  you remember the names on those by chance?

A I think one was Bill Counterman. I think the other one was Billy Counterman. I don't know. It seems familiar to me a B.C. thing, but I don't remember that one specifically.

Q Both of these different names, both Bill, as well as Billy Counterman, did both of these names try to contact her on her personal Facebook?

A Yes.

Q What about did both of these names also try to contact her on her professional Facebook?

A Yes.

Q At some point during the contacts with her, did he begin to try to communicate with you?

A Yes.

Q Tell the jury how that happened.

A I don't know the exact month, but the first message that I ever received said, "I'm trying to get ahold" – "I'm trying to get ahold of [C.W.]" And I didn't respond. And the next message said, "WTF?" Which means, "What the fuck?" "She's not responding" or something.

[135] Q Would it help you to look at those messages?

A Yeah, it would.

MS. JARAMILLO: Your Honor, permission to approach with People's Exhibit 4?

THE COURT: Granted.

A We'll see how my memory is.

MS. JARAMILLO: I'm going to approach actually with People's Exhibits 1 through 4.

- Q (By Ms. Jaramillo) I'm going to have you start with 4.
  - A Thank you. Do you want me to just read these?
- Q Are they the Facebook messages that were sent to you that you remember?
  - A Yes.
- Q Do you know why he reached out to you rather than or what brought about the fact that he's reaching out to you rather than staying and only reaching [C.W.]?
- A I mean, I suppose because I'm someone close to her and if yeah, I don't know why he was reaching out to me.
- Q Do you know whether or not [C.W.] had blocked Mr. Counterman at this point?
  - [136] A I believe she had.
  - Q Do you remember why?
  - A Because of a massive amount of creepy messages.
- Q Okay. Do you remember if there was a specific message or anything that really made her push the block?
- A There was a picture sent at one point, and it was really hard to tell exactly what it was, but I believe he referred to it as his leg. And that picture, I think, was what

was the kind of turning point. He may have even been blocked before that.

- Q Looking at People's Exhibit 4, does it say the date that Mr. Counterman tried to contact you?
  - A This was 10-16 of 2015.
- Q Back on that date when he starts to message you, what is [C.W.'s] reaction, as far as her demeanor?
  - A She's not happy.
  - Q How do you know that?
- A I know I believe that this was well, we talk often and we see each other often. And at one point in time, we were on tour all the [137] time. And, yeah, she I think it was more concerning to her that this was now, you know, affecting me as well.
- Q How did you what made you realize that she was being affected, as far as demeanor? Things that she was doing differently?
- A Just just the way that she would talk about this. At first in the beginning, it was more of Why? And then at some point it became, "This is creepy." And then at some point it became, "This is really uncomfortable," you know. So, yeah, her demeanor it definitely became an issue. An issue that was talked about often. An issue that she was that was on her mind a lot.
- Q Are you aware of any steps that she took at this point that was kind of a change in her behavior based on messages?

- A Steps taken towards anything?
- Q Anything.
- A Yeah. There's well, for one, she started to talk about this. And [C.W.] is a very private person. She doesn't talk about everything to everyone. But she did start to talk to her family about this, to me, to a couple of her [138] friends. And, I mean, it's around this time where it kind of became more serious. Thus, you know, causing causing us to be a little bit more careful. So, you know, being a little bit more careful at shows. Is this yeah, starting to take action, I guess.
- Q I want to talk a little bit about that action. You said a little more careful when we were out. And then we'll talk about the shows. But a little more careful when we were out, what's that mean? What were you or she doing differently?
- A We did not have a picture or any face to put to Bill Counterman, so there were some messages that said specific things that were, like, reference of her white Jeep and things like that that were that made it real. So to not have a face to put to him, it was kind of -there's I mean, we were aware of it. We were just aware that there could be someone out there. Aware that he was targeting her with all of these messages and saying all these things. So, yeah, tried to be aware.
- Q Okay. Did [C.W.] express concern to you [139] that he was following her?
- A She never she never thought she never called and said, "Oh, my God, I think there's someone behind

me," but it was definitely a concern, yes. Does this person know where I live? What is – what is the extent of what is going on here?

Q You said you were also more careful at shows. What sort of things would you or she do differently at shows based on Bill Counterman?

A So we had a couple definite times over a period of time different people that we kind of brought in and said, "Hey, this is what's going on and this is, you know, people that are always at shows. Can you keep an eye out? Can you just be here? You know, I know you're here, but instead of just watching and participating in that way, can you just be aware of the room and what's going on? And if – you know, if I'm in the bathroom and you see someone talking to [C.W.] by the merch table and buying a CD, can you just be there?"

Q Before these messages by Billy Counterman, have you ever known [C.W.] to ask people to do this?

#### A No.

[140] Q All right. We kind of talked about up until this 2015 point, December of 2015. [C.W.] eventually reports this in April of 2016. Did you notice anything in how these messages were affecting her in the months right before she decided to report this to police?

A I think it was just an escalation, you know. Enough messages in a row. And especially something that we talked about was the times. One could be at 1:15 p.m. Another at 3:30. 7:20. All of a sudden it's 3:30 in the

morning. 5:00 a.m. or whatever time. They were – it was very constant. And so this was all just weighing on her.

- Q You said it was an escalation. Could you also see an escalation in the amount that it was affecting [C.W.]?
  - A Yes.
- Q Was she more anxious in April of 2015 than she had been a year prior?
  - A Yes.
- Q What did you notice about her demeanor or her anxiety level in the months after she reported this?
- A I mean, it just continued to just [141] something that's weighing on her. Something that has been weighing on her. Her general feel and vibe was that she felt less safe.
- Q At any point during this time period, has she cried about this?
  - A Yes.
- Q Okay. Can you tell the jury kind of when that first time was that you saw her cry about this, when she was explaining or talking to you about it?
  - A I don't know what the first time was.
- Q You probably don't know this either, but do you know how many times she's cried to you about this?
  - A A lot of times.
  - Q Has she cried to you about other things?

- A In the ten years that I've known her, yes.
- Q In general, do you believe that she -was it your perception that she cried more about this event than she has about other things?
  - A Yes.
- Q Based on your experience and knowledge of her over the past ten years, was she more upset [142] about this than other things?
  - A Yes.
  - Q Has this affected her more than other things?
  - A Yes.
- MS. JARAMILLO: If I may have a moment, Your Honor?

THE COURT: You may.

- Q (By Ms. Jaramillo) Have you seen the messages that [C.W.] has saved at this point? The Facebook messages between her and Billy Counterman that were saved?
  - A Yes.
- Q Based on your knowledge, were there other Facebook messages that were deleted?
  - A Yes.
- Q And did you have an opportunity to view some of those messages?

A Yes.

Q Do you recall the messages that you were able to review, were they similar in nature to the messages that she did save?

A Yes.

Q Was there anything different about those messages in the early years that kind of [143] changed between those and the later years?

A I don't remember what the very first message ever was, but I mean – I guess I don't remember that very first – whatever the very first contact was. I don't know what that was. And the messages were very similar. Very scattered, but not so agitated. Not so aggressive.

So there was definitely a change – it wasn't like there was a year of messages that were, like, a picture or cussing or things that were – that eventually started happening.

Q So in the earlier years, I guess, were they more the general rambling conversation of him thinking she's in a relationship with him? I don't want to put words in your mouth. But in the later time period, they began to get aggressive, cussing, a picture of himself?

A Yes, yeah.

Q Before this time period with Mr. Counterman, based on your knowledge and experience with [C.W.], is she normally a fearful person?

A No.

Q Is she normally a dramatic person?

[144] A No.

- Q Would you characterize her as somebody who normally overreacts?
  - A No.
- Q During this time period where Mr. Counterman has been messaging her, is she a more fearful person?
  - A Yes.
  - Q Do you notice more anxiety?
  - A Yes.

 $\ensuremath{\mathsf{MS}}.$  JARAMILLO: Your Honor, I have no further questions.

THE COURT: Is there any cross examination?

MS. ARCHAMBAULT: Yes.

THE COURT: And how long do you think your cross examination will take?

 $\label{eq:MSARCHAMBAULT:} MS.\,ARCHAMBAULT: \,\,\,I\,\,think\,\,it\,\,will\,\,be\,\,pretty$  quick.

THE COURT: All right. Then we'll go ahead and see if we can complete this witness before our lunch break.

### **CROSS EXAMINATION**

## BY MS. ARCHAMBAULT:

Q Hi.

A Hi.

 $[145]\,\mathrm{Q}$  So because you were an administrator on the – we've been calling it the professional Facebook. You were calling it the music Facebook.

A Um-hum.

Q That one, you're sort of able to see all the same things that [C.W.] would be able to see?

A Yes.

Q So the messages that you had seen, those are in realtime; is that right?

A Right.

Q So when you say that you were able to see the messages, it's not that you were shown them later? Like, you were also receiving them? Does that make sense?

A Yes.

Q Now, you didn't have any personal knowledge of who Bill Counterman was?

A In person?

Q Right.

A No.

- Q And at one point, you did did you get a copy of his photo?
  - A Yes.
- Q When you saw the photo, did that jog [146] any memory for you?
  - A No.
- Q He wasn't someone that you had seen at all of your shows or anything like that?
  - A No.
- Q After April of 2016, so after [C.W.] reported this, how did that or how how did your schedule look? Did that change at all, as far as performing?
  - A Yes.
  - Q How?
  - A Fewer shows that were in big open public places.
  - Q Did you guys cancel any shows?
  - A I believe we canceled one or two.
- Q And do you know if you you said bigger shows, you would not do?
- A It was just it was a point that we talked about that something that was, like, a big like, we played 4th of July out at a huge park where they show a movie afterwards. So that was something like that is something that we did not want to do.

- Q How many of those types of shows do you think that you did not do because of this [147] situation?
- A I don't know if I could say an exact number. Bookings come often and so I don't know how many booking e-mails came to [C.W.] during that time to do that. A lot of times, I don't know how many I know how many we play. I don't know how many we could have played.
- Q Right. Right. In comparison to past years, was it significant?
  - A That we played less?
  - Q Right.
  - A Yes.
- Q Now, in the course of you receiving these messages and by you, I mean, on the band website.
  - A Um-hum.
- ${
  m Q}$  Or Facebook. As far as a period of time, were those up till April of 2016? Let me back up. So the photo with the leg
  - A Um-hum.
  - Q did that come to the band website?
  - A I believe it did.
- Q And then do you remember the last message that was received in April? Like, do you have knowledge of that kind of happening?

- [148] A I don't remember what the very last message was. These came very often.
- Q And not the content, but just do you remember whether that last sort of correspondence went to the messages that you were receiving on the band website?
- A So if it I believe that he had been blocked from her profile already and from my profile already. And so the very last messages that were ever received would have gone to the band Facebook page.
- Q Okay. And as far as blocking goes, you said it was, in the olden times, harder to do it from a phone?
  - A It was harder.
- Q And so it was easier, I guess, if you got on an actual computer?
  - A Um-hum.
  - Q Easier to navigate?
  - A Yes.
- Q And then more recently, I guess last year, was that true of last year as well? Or are we talking, like, three years ago? Do you remember?
- A I think what I remember about this [149] specifically is that we would be out of town and touring and driving for all these hours without a computer. And the point was that we were trying to make this happen without finding an easy way to do it.

So as far as other times go, from the pages, I remember that even once he was blocked, there were still messages coming through. So I don't know if that was a different profile, but they continued.

Q Were you there for the blocking in April of just last year?

 $\,A\,$   $\,$  I don't believe we were there in person. I think we talked on the phone.

MS. ARCHAMBAULT: I don't have anything further. Thank you.

THE COURT: Any redirect?

### REDIRECT EXAMINATION

#### BY MS. JARAMILLO:

Q How frequently would you talk about this ongoing communication with [C.W.]? How frequently would she bring it up?

A Probably a couple times a week. When we weren't hanging out, we'd have phone calls or texts and talk about it. And then the times when [150] we would see each other, we would talk often about whatever it was that was happening or our feelings about it.

MS. JARAMILLO: I have nothing further, Your Honor.

THE COURT: Do we have any questions from any of the jurors for this witness? Seeing none, ma'am, you may step down. Thank you.

Ladies and gentlemen, we're going to go ahead and take our lunch break now. So we'll break until 1:35. But before you go, it's important that you obey the following instructions with reference to the recesses of the Court:

You are not to discuss the case amongst yourselves except when the entire jury is together in the jury room for deliberations. You should also not discuss this case with anyone else.

In fairness to the parties of the lawsuit, you should keep an open mind throughout the trial and you should reach your decisions only during your final deliberations.

You may not permit any third person to discuss the case in your presence. If anyone attempts to do so, report that back to the court staff immediately.

[151] Do not talk with any witness or with any party or with any of the lawyers in this case. Do not attempt to gather any information on your own. Do not engage in any outside reading or Internet searches on anything regarding this case. Do not attempt to visit any places mentioned in this case.

Finally, do not attempt in any other way to try to learn about the case outside the courtroom. Do not read about the case in the newspapers or listen to radio or television broadcasts about the trial. You must base your verdict solely on the evidence and the law presented at trial.

With that, we'll break until 1:35. I hope you have a very pleasant lunch.

(The jury exited the room.)

THE COURT: All right. The record can reflect that the jurors have left the courtroom.

Please be seated. Anything we need to address from the People?

MS. JARAMILLO: Your Honor, we had one question on that. There was a jury instruction that we had submitted regarding the venue and location. We're asking the Court to make a ruling on that at this point. The reason being is that in order to establish that there is proper venue – based on the jury [152] instruction and the case that the People sent to the Court, we believe that that is enough.

However, if the Court is not finding that that jury instruction is proper, then the People intend to call one additional witness, which is Ms. Griffin, to talk about where the defendant was living at the time period that these messages were being sent.

THE COURT: It seems to me that's already been covered by her testimony. But from defense?

MS. ARCHAMBAULT: Mr. Tolman went to his house and contacted him at his home, so I don't know why Agent Tolman couldn't testify to that without putting in the fact that Ms. Griffin is a parole officer.

THE COURT: I'm sorry. Maybe I misunder-stood. I thought you were saying where she was living. Did you say where Mr. Counterman was living?

MS. JARAMILLO: Yes, Your Honor. Because she was living a lot of the time in Colorado Springs, but

some of the distress obviously was here. And some of the messages were received here, but not all of them. So it would establish that Mr. Counterman lived in Arapahoe county the entirety of the two years.

If the Court's not going to give this instruction, we would be concerned that the jurors [153] would think that they could not consider any of the events outside of what she experienced outside of Arapahoe county.

MS. ARCHAMBAULT: He lived in Denver.

MS. JARAMILLO: In the state, Your Honor. I'm sorry. That's what I meant.

THE COURT: In the state of Colorado?

MS. JARAMILLO: In the state of Colorado.

THE COURT: Will Agent Tolman testify?

MS. JARAMILLO: Agent Tolman will testify. And he did contact the defendant at his home, but that was in April of 2016. And he wouldn't be able to testify, unless defense is not going to object that we could say he was living in Colorado the entire time. That was never asked.

THE COURT: Is defense questioning where he was living? That he was in Colorado?

MS. ARCHAMBAULT: That's not an argument that I was planning on making.

THE COURT: I don't think it's necessary. And, frankly, I don't think the instruction that you submitted is necessary. I don't think there's any real dispute in

this case. So I'm not inclined to give the instruction, because I think it's more likely to muddle or confuse them. And what I'm hearing is no one's [154] going to suggest to them that there isn't venue or being in Colorado's a problem.

MS. JARAMILLO: Your Honor, my concern, based on the times that I've spoken to jurors is jurors, although they are told not to, sometimes will – I guess even though there's not an argument, they will make that argument themselves if something is not beared out in the evidence.

And the People obviously must prove "in the state of Colorado," which is the second element of the stalking count. It says, "The defendant, in the state of Colorado." So that is the People's biggest concern, that they may look at that and think that.

So I am okay not giving that instruction if defense will stipulate that "the state of Colorado" has been met.

MS. ARCHAMBAULT: Well, the case that was cited to support this had an actual contested issue.

THE COURT: Right. I read the case.

MS. ARCHAMBAULT: And it was determined not to be appropriate or not necessary to give to the jury. And that's what the Court of Appeals held. So I do think it's superfluous. I don't think we would be required to stipulate to this instruction in order to not get it.

[155] THE COURT: I'm not giving the instruction. I did review the case. The case involved – I think they referred to it as the unique circumstances or special

circumstances of that case where people have been traveling extensively. I don't think there's an issue here, and I'm not inclined to muddy the water.

Now if the jury asks a question as they did in that case – and in that case, the Court of Appeals said it was appropriate not to essentially answer the question other than by restating the law. I would take a look at it again if the jury asks the question, but I'm not giving the instruction. Whether you want to call a witness or not is up to you, but I'm not going to give the instruction, because I think it would be more likely to confuse than clarify at this point.

All right. Anything else from the People?

MS. JARAMILLO: Nothing.

THE COURT: From defense?

MS. ARCHAMBAULT: Your Honor, I guess I would like to know if the prosecution is intending to call Ms. Griffin, so we can talk about limiting her testimony.

MS. JARAMILLO: Your Honor, I was going to talk to defense on the break to give her an alternative on that. Otherwise I can agree.

[156] THE COURT: That's fine. It sounds like if we do call her, it would just be that she was familiar with him over this time period and here's where he lived.

MS. JARAMILLO: Exactly.

THE COURT: It would take about three minutes. But, again, that's something for you all to work out. And if you have a stipulation that he lived in Denver

during that period of time, that might be able to avoid the need for that. But, again, that's up to you all. So where are we in terms of schedule right now?

MS. JARAMILLO: Your Honor, we do have – we anticipate, depending on Ms. Griffin, two other lay witnesses and then Agent Tolman. The two other lay witnesses will probably be even shorter than – about the same as Mr. Forrest. So I would think they're 20 minutes tops, and then we'll get to Agent Tolman.

I do expect us to finish today. Probably between 3:30 and 4:00 is my guess.

THE COURT: So it sounds like we'll be taking a break before we finish, which is unfortunate. But I guess we'll just see where we go on that.

MS. ARCHAMBAULT: No, thank you.

THE COURT: I want the People to see – [157] tighten things up where you can, but cover what you think you need to cover. But I think it would be easier for the jury if we can get the case done before the afternoon break. We'll see how things play out.

All right. So why don't you all be back here at 1:30 with the goal of starting up again at 1:35.

(The proceedings adjourned at 12:14 p.m., to be reconvened at 1:35 p.m.)

### AFTERNOON SESSION 1:32 p.m.

THE COURT: All right. We'll go back on the record in People versus Counterman, 16CR2633. The record should reflect that counsel are present, as is Mr. Counterman. Anything we need to address from the People before we bring the jurors back in?

MS. JARAMILLO: Just one brief thing, Your Honor. Like I told the Court, we're going to have Agent Tolman testify third. I'm asking the Court to preclude any questioning of Agent Tolman about why he chose only to charge at that point the defendant with harassment, as it's not relevant at all.

I also anticipate if that is asked and I get [158] up and ask him whether he believes this would cause a reasonable person fear or emotional distress, the answer would be yes. I don't think it's relevant and I believe any rebuttal would persuade the jury.

MS. ARCHAMBAULT: Judge, I do think it's relevant, because he was the investigating officer. He spoke with [C.W.] And having the messages and speaking to her in person, he chose to charge harassment.

THE COURT: But his determination – people often charge a large variety of thing. The mere fact that somebody has been charged with something doesn't carry any weight other than an accusation has been made. He doesn't make the final decision on how the district attorney will proceed.

It just seems to me that it opens an incredible can of worms that, okay, he felt originally that. Then they can start down, "Well, have you seen other things since then that make you change your mind?" I don't see the relevance, and I think it would confuse the issue for the jurors and send us down a rabbit hole that is going to have him and potentially other people testifying about what they think the appropriate charge is depending on which point in time and what information that you are considering.

[159] So I'm going to find that it is not relevant. And even if there were some relevance, I would find that under 403, the substantial risk of unfair prejudice and confusion would outweigh any potential probative value. So I will exclude that question and that testimony from him.

MS. JARAMILLO: And, you know, just in candor to the Court, he let me know that he actually submitted it for stalking. Our office in-take initially wanted it for harassment, so they had him resubmit it for harassment. So I also think defense would not want to ask it, because he did initially think it should be stalking. So just to be candid with the Court.

THE COURT: Okay. Anything else from the People?

MS. JARAMILLO: No, Your Honor.

THE COURT: Anything from defense?

MS. ARCHAMBAULT: No.

THE COURT: All right. Then let's proceed. Bring the jurors in, please.

(The jury returned to the courtroom.)

THE COURT: All right. Please be seated. We are still on the record in People versus Counterman, 16CR2633. The record should reflect that counsel are [160] present, as is Mr. Counterman, and the jurors have returned to the courtroom.

So, ladies and gentlemen, welcome back. I hope had you a good lunch. We were in the midst of the People's case in chief. Are the People prepared to call your next witness?

MS. ROBILOTTA: Yes, Your Honor. The People call Vanessa Menke.

THE COURT: Please approach up here, ma'am.

### VANESSA MENKE,

being first duly sworn in the above cause, was examined and testified as follows:

THE COURT: Please be seated.

### **DIRECT EXAMINATION**

### BY MS. ROBILOTTA:

- Q Good afternoon, Ms. Menke.
- A Hi.
- Q Can you please tell us your name and spell your name so the court reporter can write it down.
  - A My name is Vanessa Menke, M-e-n-k-e.
  - Q Where do you work, Ms. Menke?

- A At a bar in downtown Littleton, Jake's Brew Bar.
- Q How long have you worked there?
- [161] A I've owned it since 2012.
- Q Do you know someone by the name of [C.W.]?
- A Yes.
- Q How do you know [C.W.]?
- A I've known her for many years. A friend of friend. Used to go to her shows. So probably 14 years.
- Q Did you have an opportunity to speak with [C.W.] about the situation that was occurring with her receiving Facebook messages?
  - A Yes.
  - Q When did you discuss that with her?
- A Probably about a year and a half ago. She came into the bar with a friend and just started talking and discussing what was going on with her.
- Q When she was telling you this, how did she appear?
  - A Just uneasy. A little fidgety. A little nervous.
  - Q Is that how you had normally seen [C.W.] act?
  - A No, very opposite of that.
  - Q How had you seen her act before that?

- [162] A Just more calm, collected, confident.
- Q In the years that you've known her, have you seen her in social situations?
  - A Yes.
- Q And how would you describe how she acts in social situations?
- A Very sweet, very talkative, always wanting to talk to a lot of people.
- Q Did you see a change between what you had known or how you had known her to react around, say, between April 2014 and April of 2016?
- A Yeah. She again, when she came into the bar, she just seemed more offset, more cautious, more worried, looking over her shoulder. Sitting watching the door. Uneasy talking to people.
- Q And when you had this discussion with her about what was going on, do you remember roughly when that was?
  - A It was probably about a year ago.
  - Q So it would be safe to say it was April of 2016?
  - A Pretty close to that.
- Q And do you recall on that night [C.W.] going to her car?
- $[163]\,A$   $\,$  Yes, she told me a little bit of what was going on. And, again, she seemed a little uneasy. And I offered

to walk her to her car and just make sure she got there okay and drove off okay.

Q And was she okay with you walking her to her car?

A Yes.

MS. ROBILOTTA: If I may have just a moment.

THE COURT: You may.

Q (By Ms. Robilotta) When you're saying that she seemed uneasy, can you describe physically what she was doing that led you to believe she was uneasy?

A Just a little bit of everything. When you own a bar, you can pick up a lot of people's feelings, how they act. Do they talk to people around them; men, women. Do they look you in the eye when they order. What they order. If their back's turned to the door or not. It's just your demeanor. Your feelings within a bar.

Q Sure. And so those are the things that you're looking for. One of those or more were present that led you to believe that [C.W.] was nervous around April of 2016 when you [164] discussed this?

A Just she decided not to talk to a lot of random people. Strangers. She sat at the end of bar so she could watch who was coming over her. You know, a little fidgety. Just a little uncomfortable.

MS. ROBILOTTA: Nothing further, Your Honor.

THE COURT: Any cross examination?

### **CROSS EXAMINATION**

### BY MS. ARCHAMBAULT:

- Q Hi, Ms. Menke. So it sounds like you knew [C.W.] even before you were the owner of this bar?
  - A Yes.
- Q When you began to own this bar, did you see her at the bar mostly or other places, or how did that work?
- A No, other places. Yeah, never at the bar. Not until about a year and a half ago.
- Q So about a year and a half ago is when [C.W.] started coming to the bar?
  - A Yes.
- Q And you said you noticed a difference in her, I guess, demeanor?
  - A Yes.
- [165] Q  $\,$  I wasn't clear on when you started to notice that.
  - A It was, again, about a year ago. April 2016.
- Q So was the change in her demeanor during the same time that you guys had that conversation?
  - A Yes.
- Q Prior to having that conversation, how many times do you think that she came in, was it Jake's, you said?
  - A Just a couple.

- Q Just a couple. Okay. And have you ever walked her to her car before or was that the first time?
  - A That was the first time.
- Q The friend that she was with, did that person go with her to the car as well?
  - A Yes. Yes.

MS. ARCHAMBAULT: I don't have anything further. Thank you.

THE COURT: Any redirect?

MS. ROBILOTTA: Yes, Your Honor.

# REDIRECT EXAMINATION

### BY MS. ROBILOTTA:

- [166] Q  $\,$  Ms. Menke, you were asked about noticing this difference in April of 2016
  - A Um-hum.
- ${f Q}~$  as being the first time. Did she tell you she was nervous or anything like that?
- A She told me what was going on in her life. That she had to move and just, yeah, just some of the things that were going on.
- Q But what I'm asking is were there any did she put a word to any of the emotions or was it just based off what you observed that you knew that?

A No, she said she was scared. Yeah, she moved to where she was so she wouldn't have to have her name registered at an address. And she was very scared of what was going on.

MS. ROBILOTTA: Thank you. Nothing further.

THE COURT: Do we have any questions from any of the jurors for this witness?

Seeing none, you may step down. From the People?

MS. ROBILOTTA: The People call Aja Ottero.

THE COURT: Please approach up here. Please raise your right hand.

# [167] AJA OTTERO,

being first duly sworn in the above cause, was examined and testified as follows:

THE COURT: Yes?

THE WITNESS: Yes.

THE COURT: All right. Please be seated. And once you get settled in there, I want you to twist that microphone around, slide it around if you need to to keep it nice and close to you. I know it's a little awkward, but I want to make sure everyone can hear you.

### **DIRECT EXAMINATION**

### BY MS. ROBILOTTA:

Q Good afternoon, ma'am.

A Hi.

- Q Can you please state your name and spell your first and last name for the court reporter.
  - A Aja Ottero, A-j-a, O-t-t-e-r-o.
  - Q Good afternoon. What do you do for work?
  - A I'm a hair dresser.
  - Q Do you know somebody by the name of [C.W.]?
  - A I do.
  - Q How long have you known [C.W.]?
  - [168] A A little over two years.
  - Q How do you know her?
  - A She's a she plays music with my girlfriend.
  - Q Who's your girlfriend?
  - A Kim O'Hara.
  - Q How well do you know [C.W.]?
  - A She's one of our best friends.
  - Q And how frequently do you see her?
  - A A couple times a week.
- Q And is this frequency during the period of April 2014 to the present, has that frequency been about the same during that period?
  - A I would say so.

- Q I want to talk about [C.W.]'s personality. If you were to describe the way she appears in social situations and the way she handles herself, how would you describe that to the jury?
  - A Bright, happy, bubbly, independent, strong.
  - Q Would you describe her as dramatic?
  - A No.
  - Q Would you describe her as an over reactor?
  - [169] A No.
- Q Were you made aware of the situation where [C.W.] was receiving Facebook messages from someone?
  - A Yes.
  - Q When did you become aware of that?
  - A As soon as they started coming in.
  - Q And do you know sort of time of year? What year?
- A I want to say definitely summer of last year is when I-2016 is when I remember seeing them often. I think it started a little quite a bit before that, actually.
- Q Did you actually personally see the messages on Facebook?
  - A Yeah, I read them.
- Q Were you made aware of what was going on because [C.W.] told you and showed you or some other way?
  - A Yeah. [C.W.] told me, and Kim as well.

- Q About how many times have you spoken with [C.W.] about this situation?
- A An exact number? I would say 20 times. Over that. Well over that. It comes up often. Especially as messages were pouring in often.
- [170] Q And when you're saying "often," is this like once a month? Twice a month? If you could give the jury a better estimate.
- A I would say more than twice a month, if not yeah, I would say two to five times a month, depending on –
- Q When you would discuss what was going on with [C.W.], what was her demeanor like? How did she appear?
  - A Scared. Hurt. Frustrated.
  - Q Did she ever tell you that she was scared?
  - A Yes.
- Q How frequently would she tell you she was scared?
  - A In general or per week or just?
- Q Frequently. How frequently, I guess I should say? How many times per month? How many was it regularly?
- A Probably any time we talked about it or any time there was a show she played a show.
- Q That's a good segue into what I want to talk about next. Have you seen [C.W.] perform a show?

- A Yes.
- [171] Q How frequently?
- A I think I've been at every show that she's played in Colorado in the last two years, give or take two.
  - Q Is that because you're a big [C.W.] fan?
  - A Yeah. Just to support and be there.
- Q Now, when you saw her perform, can you describe for the jury when you would have these conversations with her about the messages that were coming in and her emotions, how that would affect her performances?
- A I think she definitely became less excited for shows and more hesitant as being just more having to pay more attention to what's going on outside of the crowd versus just playing music.
- Q Now, when you were talking about speaking with her and seeing the reaction, has the reaction always been the same or did it change as the messages continued to come in?
- A I think it changed and got a little maybe worse as they became more intense.
- Q And what do you mean by the reaction became worse?
- [172] A I think more scared, less determined to book and play shows. I guess more aware of what's going on and making sure that nothing happens. And I think that's a lot

of stress during a show, so it became more of a lack of wanting to play shows.

- Q Did you see the difference in her performance?
- A Yeah, I would say so.
- Q How did you see that difference?
- A I mean, I know [C.W.] really well, so I know when something's bothering her when she plays, because you can kind of feel the music differently.
- Q When she would perform when she was not being upset about the messages she received, how engaged was she with the crowd?
- A Super engaged. Always really friendly. More story telling too. Just fun and engaging. Connecting with the crowd, I would say.
- Q And did that change as the messages continued to come in?
  - A Yeah.
  - $Q \quad \text{How so?}$
- A I think it became more aware that you [173] less of a will to connect with people that you just a sense of not knowing who's out there anymore. It kind of just became more scary to have that connection with crowds when it leads to something that's kind of creepy.
- Q Did you ever see [C.W.] cry as a result of the messages that were being sent to her?

- A Yeah.
- Q Can you describe that for me.
- A Which part? Sorry.
- Q When you saw her cry.
- A I don't think I've ever seen [C.W.] cry before this, so definitely just really, really upset. Just a fear a fear in her voice. I mean, it's hard to see your friend cry regardless. But, yeah, just like a fear-based choking up.
- Q Was this a one-time cry? She just cried one time over this?
- A No. There were several times talking about it, or I know the time that she picked up an image so that we could be on look-out at shows. There was multiple times.
- Q What's the best estimate you could give the jury for how many times you saw [C.W.] cry as a result of receiving these messages?
  - [174] A Me personally, probably ten times.
- Q What about did you ever overhear her crying while speaking with Kim, your girlfriend?
  - A Yeah.
  - Q And about how many times did you hear that?
- A Probably another ten times on top of that. I know there's several times, too, that Kim left something we were doing to go support and care for [C.W.]

- $\ensuremath{\mathrm{Q}}$   $\ensuremath{\mathrm{How}}$  many times would Kim have to leave to go do that?
- A Of the times that we were together, probably just a handful. But there were other times too that she wasn't leaving us being together.

MS. ROBILOTTA: If I may have just a moment, Your Honor?

THE COURT: You may.

MS. ROBILOTTA: No further questions for this witness.

THE COURT: Any cross examination?

### **CROSS EXAMINATION**

### BY MS. ARCHAMBAULT:

Q Good afternoon, Ms. Ottero.

[175] A Hi.

- Q You mentioned an image just now. Was that a photograph of this person that [C.W.] was concerned about?
  - A Yes.
  - Q Did you have the opportunity to see that photo?
  - A Yeah. Because I'm at every show.
  - Q Did you recognize the person in that photo?

- A I wasn't sure at the time if I had really been aware enough beforehand.
- Q Okay. Did you recognize him at any point after? Did you see that person?
  - A No.
- Q What about just the name alone of the person that was messaging [C.W.], did you recognize that name at all?
  - A No.
- Q When we're talking about you speaking with [C.W.] and seeing her cry, about when in time would that happen?
  - A Can you clarify?
  - Q Yeah. So how long ago were those incidents?
- [176] A Every other week for the last year. Since last summer, for sure.
- Q So when we do if we could do, like, before this image and after this image that you had, this photo, can you put it in regard to that?
  - A I would still say a couple times a month.
- Q Okay. Sorry. Let me be more clear. When you were aware that you had this picture, it sounds like you were kind of tasked with having the picture at shows; is that right?
  - A Yeah. I didn't hold it on me, but . . .

- Q Okay. But you were tasked with being on the lookout?
  - A Yes.
- Q Would you say that the times that you were around [C.W.] when she was upset and crying was before or after you were able to see that image?
  - A I would say after.
- Q And there was a did you go to the concert last summer at Firestone?
  - A Yes.
  - Q And that's like a big park?
  - A Yeah.
- [177] Q At that show, was [C.W.] was actually late because she went back to get the photograph?
- A Yeah. Kind of on the way. They picked it up on the way.
  - Q When you say "they," is that her and Kim?
  - A Yes.
  - Q And do you remember her crying at that show?
  - A Yes. Before.
- Q Before it. Sorry. Did you ever notify the police or authorities having seen these messages?
  - A  $\operatorname{Did} I \operatorname{did} I$  notify them?

Q Right.

A No.

MS. ARCHAMBAULT: Thank you. I don't have anything further.

THE COURT: Any redirect?

MS. ROBILOTTA: One moment, Your Honor.

### REDIRECT EXAMINATION

### BY MS. ROBILOTTA:

- $\,$  Q  $\,$  Ms. Ottero, you were asked about being handed the photo. I want to use sort of an April [178] 2016 as a time marker
  - A Um-hum.
- $\rm Q\,$   $\,$  for when this got reported. Were you aware that it got reported in April of 2016?
  - A Yes.
- Q Before that, did you have conversations with [C.W.] about her fears regarding these messages?
  - A Yes.
  - Q Did you see her cry before it was reported?
  - A I can't recall.
- Q Did you witness physical symptoms of uneasiness or fear before that?
  - A Yes.

MS. ROBILOTTA: No further questions, Your Honor. Thank you.

THE COURT: Do we have any questions from any of the jurors for this witness?

Seeing none, ma'am, you may step down. Thank you for coming in.

THE WITNESS: Thank you.

THE COURT: From the People?

MS. JARAMILLO: Your Honor, the People call Agent Tolman to the stand.

### [179] CARL TOLMAN,

being first duly sworn in the above cause, was examined and testified as follows:

THE COURT: Please be seated.

### **DIRECT EXAMINATION**

# BY MS. JARAMILLO:

- ${\bf Q}$   $\,$   $\,$  If I could get you to state your first and last name and spell both for the reporter.
  - A It's Carl Tolman, C-a-r-l, T-o-l-m-a-n.
  - Q Tell the jury what you do for a living?
- A I'm an agent with the Colorado Bureau of Investigation.

- Q Okay. And how long have you been with law enforcement total?
  - A 19 years.
- Q Tell the jury a little bit about your career. Places that you've been, different departments you've worked for.
- A I started out with Colorado Springs police department. I was on patrol there for a number of year. Then I became a financial crimes detective and eventually I got a job with CBI working with economics crimes, Social Security fraud. And now I work with the FBI Safe Streets Task Force.
  - [180] Q What is the FBI Safe Streets Task Force?
- A Mostly violent crime. Any kind of federal crimes. It's kind of federal investigations is our focus. A lot of bank robberies.
- Q At some point did you become involved in the investigation regarding [C.W.]?
  - A Yes, ma'am. April 2016.
- Q How did you first become notified of this and asked to investigate?
- A My boss at the FBI task force brought it to me and said that this was a complaint that the FBI had received.
  - Q Okay. Who did you contact initially?
  - A Initially initially, I probably can't say.

- Q At some point did you talk to Ms. Miller, Katy Miller?
  - A Yes.
  - Q Do you remember when that was?
  - A That would have been April of 2016.
- Q When you spoke with Ms. Miller, was she able to provide with you copies of messages?
- A Yes, ma'am. She I talked to her [181] over the phone and she e-mailed me the messages that [C.W.] had received over Facebook.
- Q At the time that you spoke to Ms. Miller, had you at that point spoke to [C.W.]?
  - A I had not, no.
- Q Is there a point where you did come to speak with [C.W.]?
- A Yes. I spoke with her briefly over the phone. She was working in Colorado Springs at the time, so I made arrangements to go down and meet her at her office down there.
- Q Do you remember which date that was that you met with her?
- A It would have been maybe the 15th of April. Somewhere in there.

- Q You said you went down and met with her at her office. Do you remember where exactly you met? Was it a private room? Was it in front of everybody?
- A It was her private office. It had mostly glass, so you could see people and people could see us from outside. But it's an office building on Kelly Johnson Boulevard.
- Q When you met with her, was it just you [182] and [C.W.] or were there other people in the room also?
  - A Just her and I in the room.
- Q During that time when you met with her, were you able to observe her demeanor?
  - A Yes.
- Q Tell the jury a little bit about what her demeanor was like.
- A She was calm. She was friendly. She's very professional. She's very articulate. You've seen her testify. She's used to speaking to people, speaking in front of people, and she makes her point very clear. It didn't take very long for her to explain to me what was going on.

As we started going through the messages that she had received, we sat down with her at her computer and she brought me to her Facebook page and kind of showed me some of the messages. The ones that kind of really disturbed her.

And she became a little emotional. I never saw her cry, but I could see the crackling in her voice a little bit and

just her demeanor. I could tell that she was scared. That she didn't like this. She didn't start crying, but...

- [183] Q Did she talk to you about her feelings regarding these messages?
  - A Yes, she did.
  - Q What did she tell you she was feeling?
- A She was canceling shows that she had. She had planned I don't know how many, but several. More than one for sure that she had planned to cancel at that point. She had denied some that she was planning to attend.
- Q When you were asking her about kind of how this was affecting her, do you remember what your question to her was?
  - A Ask that again.
- Q When you were asking about how this had affected her, these messages, do you remember what your question to her was?
- A I don't remember exactly what it was, but I would have asked her questions along the elements of the harassment and stalking. I would have asked her had she changed her lifestyle, that kind of thing.
- Q Do you believe that you probably would have used those words, "Have you changed your lifestyle"?
- A That's probably what I would have used, [184] yes.

- Q Would you or did you specifically ask her about her, I guess, feelings of anxiety at this point?
- A Yes. I don't think I probably used the word "anxiety," but asked was she scared about this? Was she nervous about this? Was this causing problems with her performances? Was this causing problems in her life? Those kinds of questions.
- Q Did you specifically ever ask her about how it may have been affecting her sleep or ability to be alone? Those sorts of things.
  - A I don't remember asking that.
- Q Okay. Now, you've seen these messages before. And on these messages, there is a phone number on there.
  - A Yes.
- Q At any point did you do anything on, like, a search engine or online in order to see if you could figure out who this phone number connected to?
- A Yes, I put it into Google and it came back to Billy Ray Counterman.
- Q When you put it in Google and it came [185] back to Billy Ray Counterman, did it come back with a picture?
- A Yes. There were three different Facebook profile sites that came back to Billy Ray Counterman that I found. I'm not a computer specialist. Just a basic search. One of them was Billy Counterman. One of them was Bill Counterman. And one of them was Bray, as in B-ray,

Counterman. And I don't remember which one of them, but one of them had a picture of Mr. Counterman in a stocking cap.

- Q At some point were you able to talk to someone and verify talk to someone who knew Mr. Counterman and also knew his phone number that was able to tell you, "Yes, that person in the picture belongs to that phone number. And I know, because I have it"?
  - A Yes, ma'am, I was.
- Q Were you also able to locate where Billy Ray Counterman, the one in the picture, where he lived?
  - A Yes, I was.
- Q Were you able to verify that he had, in fact, lived at this place and had not left this place between 2014 and 2016?

[186] A Yes, ma'am.

- Q And what city and state does he live in?
- A City and county of Denver, state of Colorado.
- Q At some point did you go to Mr. Counterman's residence?
- A Yes, I did. I believe that was April 20, 2016. I went there with a Denver detective.
- Q If your report says Monday, May 20, would that be more accurate?
  - A  $\,$  May 20, that would probably be exactly accurate.

- Q When you went there, were you able to speak to Mr. Counterman?
  - A Yes, I was.
- Q Do you see the man that you spoke to here in the courtroom today?
- A Yes, he's sitting at the defense table with the blue shirt on.
- MS. JARAMILLO: Your Honor, if the record could reflect the identification, subject to cross examination.

THE COURT: The record will so reflect.

- [187] Q (By Ms. Jaramillo) Did that man also match the photograph of the person on Facebook that you had seen?
  - A Yes, ma'am.
- Q Were you able to sit down and actually do an interview with Mr. Counterman?
- A Yes, I was. We knocked on his door. He invited us in and we explained he was under arrest. I had written up an arrest warrant for him. And then two Denver police officers, patrol officers, placed him into custody. We got his cell phone. He asked for his cell phone, so we let him take the cell phone.

And then they brought him to a Denver police station, and then Denver Detective Eric Denke and I interviewed him at an interview room at the Denver police department.

- Q In that interview room at the Denver police department, did they have capabilities to record?
  - A Yes, they did.
  - Q Both audio and video?
  - A Audio for sure.
  - Q Okay.
- A I don't remember if there was video or [188] not. But definitely audio.
- Q Did you record at least the audio of that interview between you and Mr. Counterman?
  - A Yes, ma'am, we did.
- MS. JARAMILLO: Your Honor, permission to approach with People's Exhibit 6?

THE COURT: Granted.

- Q (By Ms. Jaramillo) Do you recognize People's Exhibit 6?
  - A Yes, ma'am, I do.
- $\,{\rm Q}\,\,$  Is this the interview that you did with Mr. Counterman back on May 20?
  - A Yes, most of it.
  - Q Is it a fair and accurate copy of that interview?
  - A Yes, ma'am.

MS. JARAMILLO: Your Honor, the People move to admit People's Exhibit 6.

MS. ARCHAMBAULT: No objection.

THE COURT: Exhibit 6 will be admitted.

(People's Exhibit 6 was admitted into evidence.)

MS. JARAMILLO: Permission to publish for the jury?

THE COURT: Granted. And about how long is [189] it?

MS. JARAMILLO: It's between 40 and 45 minutes.

THE COURT: All right. So we'll have the interview played for the jury.

(People's Exhibit 6 was published for the jury.)

Q (By Ms. Jaramillo) I'll stop that at 13 minutes and 20 seconds. I want to ask you a question. He said, "Now this is the one I'm talking about." At this point, was he showing you his phone?

A We got him his phone and then he got into his account, his Facebook account or the Internet, and he was showing me some of the websites.

Q When showing you the websites, did you see anything that said [C.W.]?

- A No, I did not. I tried really hard to get him to show me a message that was from [C.W.], but he was not able to point one out.
- Q While he was flipping through those, did you ever see "[C.]," that word, anywhere on there?
  - A Not on the websites.

[190] Q How about [N.]?

- A No.
- Q What about [W.]?
- A No.
- Q What about Kim O'Hara?
- A No.
- Q What about anyone else that you've come into contact with on this case, other than Mr. Counterman?
  - A Just Mr. Counterman.
- $\,{\rm Q}\,\,$  I'll start playing that again at 13 minutes, 20 seconds.

MS. JARAMILLO: I'm going to pause at 31:01.

Your Honor, permission to approach with People's Exhibit, I believe it's 5.

THE COURT: You may.

Q (By Ms. Jaramillo) Agent Tolman, is People's Exhibit 5 what defendant is showing you right here?

- A These are pictures that I took of Mr. Counterman's phone. He brought up the messages from 2010. Before this, I wasn't aware that there were any messages from 2010. So when I saw those, I took pictures of them.
- Q And were these the messages that he was [191] just talking about on that interview? He was talking about the fact that she had messaged him back a couple times?
  - A Yes, ma'am.
- Q When he was doing this for you, were you able to see the volume of messages that he was scrolling through that had been sent to [C.W.]?
- A Yes. He flipped through them quickly. I don't know that all of those messages were from [C.W.] or not, or from and to. If there was, then there were thousands. If they weren't all to her, then there's no way to tell.
- Q How come you didn't take pictures of all the other ones at that time?
- A I would have needed to get a warrant to go through the phone. Have the technical people do an actual download on the phone. And I didn't have that at the time.
  - Q And you didn't end up doing that in this case?
  - A No, ma'am.
- MS. JARAMILLO: All right. I'm going to keep playing from 31:01.
- (People's Exhibit 6 continued to be [192] published for the jury.)

- Q (By Ms. Jaramillo) One of the last things he said was he's talking about, "See, this is her too." And he says, "See, it says Sarcastic Bad Bitches has a bad run." Did he actually show you something on his phone that said that?
- A Yes, he showed me a website, the Sarcastic Bad Bitches website. He just showed me it looked to me like just an open page.
- Q When you were looking on these websites that he was showing you, what sort of posts did these websites have?
- A I didn't see any posts. They were like advertisements and a lot of hyperlinks to click on. I'm sure there were posts inside of there, but he didn't show me any actual posts.
- Q On these posts, did you see also memes? Do you know what I mean by that?
  - A Yes.
  - Q Explain to the jury what that is. What's a meme?
- A I'm not sure what I guess I don't understand your question.
- $\,\,{\rm Q}\,\,$  Okay. You said there were hyperlinks and stuff that were posted on there. [193] Advertisements.
  - A Yes.
- Q Were there also, like, in People's Exhibits 1 and 2  $\qquad \qquad \text{MS. JARAMILLO:} \quad \text{If I may approach, Your } \\ \text{Honor?}$

# THE COURT: You may.

- Q (By Ms. Jaramillo) Let's start with People's Exhibit 1. There's these different photographs that he sends her.
  - A Yes.
- Q In this one, it says, "What in tarnation?" And there's a picture of a cowboy.
- A There's lots of things like that. If you scroll down those pages, there were lots of things like that.
- Q Were any of them posted by someone named [C.W.]?
  - A Not that I saw.
- Q Was he ever able to point out to you one by [C.W.]?
- A No, he was not. We tried really hard to get him to point to something that said it came from [C.W.]
- Q During this time when he's speaking to [194] you, since we're not able to see it, only hear it, can you explain what Mr. Counterman's demeanor was like?
- A I felt that we had to keep the interview fairly calm. I felt that he was on edge. That this actually he could have turned violent on Detective Denke and I.
- $\operatorname{MS.}$  ARCHAMBAULT: Objection. Speculation.

THE COURT: Sustained. Why don't you just describe what he observed, as opposed to characterize it.

Q (By Ms. Jaramillo) What did you observe about Mr. Counterman while he was talking?

A At times clenched fists, clenched jaw, narrowing of brow.

Q Outside of the 2010 messages that he specifically provided to you, the ones you took pictures of that [C.W.] did respond, did he ever show you any other Facebook either posts or messages on the Messenger of [C.W.] responding?

A No, ma'am. Just one or two that she – maybe three that she had replied back to him.

Q And that was from People's Exhibit 5?

A 5.

Q Those are all included in there?

[195] A Yes, ma'am.

Q Were you able to find any evidence, upon looking on these different Facebook sites that he names, the Sarcastic Bad Bitches, Liam the Leprechaun, Radio One Lebanon or Bad Ass Vines, were you able to find any corroborating evidence, anything that tracked what Mr. Counterman claimed?

A No, ma'am, I didn't. I didn't see any connection with those websites and [C.W.] at all.

- Q After you spoke to Mr. Counterman, did you then speak to [C.W.] again?
  - A Yes, I did.
- Q And did you ask her about some of these things that Mr. Counterman said?
- A Yes, ma'am. I asked her specifically if she had any connection with those websites. I named the websites he had named. She said she did not know of those websites. I asked her about servers. If she had any access to any kind of servers or if she owned a server, things like that. It appeared to me that she did not have any capability of posting anything on those websites or controlling those websites in any way.
- MS. JARAMILLO: If I may have a moment, Your [196] Honor?

THE COURT: You may.

- Q (By Ms. Jaramillo) Did you ask her specifically about the 2010 messages in Exhibit 5?
- A Yes, I did. She initially didn't remember anything about those. They were about the Haiti relief fund that was during the earthquake, the Haiti earthquake, in 2010. And I went through the messages fairly specifically with her and asked her if she remembered. I believe she remembered after we talked about it and I told her what the messages said.
- Q She admitted to you, "Oh, yeah, that sounds like something that I received"?

A Oh, yes. Yes. She didn't remember that it actually came from Mr. Counterman. She just remembers having messages like that back then.

MS. JARAMILLO: Your Honor, I don't have any further questions.

THE COURT: Any cross examination?

### CROSS EXAMINATION

### BY MS. ARCHAMBAULT:

- Q So when you talked to [C.W.] the first time, you did ask her specifically how [197] receiving these messages had affected her lifestyle?
- A Initially we talked on the phone, and I believe the following day or within the next couple of days actually, I think it was after a weekend I drove down there. And that's when I spoke to her then, I asked her about the changes to her lifestyle at that point.
- Q I'm sorry. I forgot about the phone call. So this was actually there was an Officer Seto involved from Littleton police department, correct?
  - A Right.
- Q And he was the one who talked to Ms. Miller initially; is that right?
  - A Initially, yes.
  - Q That was on April 15?
  - A That sounds about right.

- Q And then you got this case on April 21?
- A Probably about then, yes.
- Q And you spoke to Ms. Miller that same day?
- A Yes, over the phone.
- Q And then you went and met [C.W.] in person in Colorado Springs on April 25?

[198] A Yes, I believe so.

- Q Now, when you spoke to Ms. Miller, she also sent you the messages. So you were able to see those on April 21 as well?
- A Yes, that's correct. At least some of them. A lot of the pictures didn't show up on there.
  - Q Like [C.W.] was describing -
  - A Right.
  - Q the copy and paste didn't work?
  - A Right. Exactly. Just the text.
- Q So before your interview with Mr. Counterman on May 20, you weren't aware of these messages existing in 2010?
- A That's correct. I didn't know about the 2010 messages at all until then.
- ${\bf Q}$   $\,$  And it was Mr. Counterman that showed those to you?
  - A That's correct.

- Q And that was in the interview room at the same time?
  - A Yes, ma'am.
- Q Now, you didn't need a warrant to look at those messages?
  - A No, he voluntarily did that.
  - [199] Q Did you ask him to see the other messages?
- A No. I had I asked him just to show me the messages. Mainly I wanted to know if [C.W.] had actually emailed him back or messaged him back. I wanted to see those messages. That's primarily what I asked him about.
- Q But when you were asked about why you didn't take photos of other images, you said you would have needed a warrant. "There were thousands. It would have taken a long time. I don't believe he would have let me take his phone at that point. Take it to the techs and have them download it. It's a fairly long process."

He was under arrest, right?

- A He was under arrest, that's right.
- Q And you didn't ever ask him if he would do that?
- A No, I did not.
- Q And he was showing you his phone throughout the interview with him, it sounds like from the audio?
  - A Yes, that's correct.

Q And we heard in the audio that you were [200] very specific that essentially Mr. Counterman wasn't to contact [C.W.] anymore?

## A Right.

MS. ARCHAMBAULT: Thank you. I don't have anything further.

THE COURT: Any redirect?

## REDIRECT EXAMINATION

## BY MS. JARAMILLO:

- Q Did you spend a lot of time with [C.W.] following up on ways that this had affected her in her life?
- A I wouldn't say a lot. I talked to her on the phone once or twice after the interview. A couple of times, she emailed me just to see the kind of status of what's going on. That kind of thing.

Primarily what I had asked was along the lines of the statute. Just asking about things that – anything that she changed in her life. At the time, I didn't know about a lot of the stuff that she testified to.

- Q Okay. Did you specifically ask her whether or not she started drinking or using drugs?
- A I did not and she didn't tell me that. [201] I didn't ask about it.
- Q Did you ever specifically ask about having a hard time sleeping?

- A No, I did not.
- Q Did you ever specifically ask whether or not she cried more than usual?
  - A No, I did not.
- Q The things that you heard her testify to, did you specifically ask about those things or did you generally let her tell you?
- A Generally, I'd let her tell me. I like to ask the questions and let them talk mostly. That's plain and simple. Mainly what I had asked is like scheduling changes. That's kind of what was going on in my mind. I honestly didn't think about sleeping problems and sleeping with the lights on. That never occurred to me to ask those questions.
- MS. JARAMILLO: I have nothing further, Your Honor.

THE COURT: Do we have any questions from any of the jurors? I see one. Please approach.

(A bench conference was commenced.)

THE COURT: I've marked this Juror Question No. 1.

[202] MS. ARCHAMBAULT: No objection.

MS. JARAMILLO: No objection.

THE COURT: All right. Now, after we complete his testimony, do you have other witnesses?

MS. JARAMILLO: No, Your Honor.

THE COURT: Okay. So we'll complete the testimony. You'll rest. Based on the testimony so far, do you anticipate any witnesses other than Mr. Counterman?

MS. ARCHAMBAULT: No.

THE COURT: Okay. So what – we don't know yet if Mr. Counterman is going to want to testify. So – and we have another question from a juror.

Okay. I've marked this Juror Question No. 2. It has subparts, so basically two questions.

MS. ARCHAMBAULT: No objection.

MS. JARAMILLO: No objection.

THE COURT: All right. So I'll ask that, as well. So that gets me back to we don't know yet if Mr. Counterman is going to testify. I'm trying to figure out – what I hate to do is let them go on a break, bring them back and then if there's no testimony, we'd have to let them go again. But I guess –

MS. ARCHAMBAULT: Judge, I think we [203] determine what Mr. Counterman wants to do. I make a motion. We talk about jury instructions. I don't know that we would have time to read them all and do closings today. And so my thought is to close the case, do the Curtis advisement, bring the jury back in and then maybe let them go for the day if that's the situation. I don't know.

MS. JARAMILLO: That would be my request too, that we would do closings tomorrow.

THE COURT: Well, so what I'm wondering is if I just, after the People rest, excuse the jury for the day.

MS. ARCHAMBAULT: I think that's fine.

THE COURT: Okay. Then that's what we'll do.

(The bench conference was concluded.)

THE COURT: All right. Sir, I have a couple juror questions for you.

THE WITNESS: Okay.

THE COURT: Did you contact Mr. Counterman's wife to see if she knew or heard of [C.W.]?

THE WITNESS: No, I didn't contact the wife. I did contact [C.W.] and asked specifically if she knew anybody from New York and gradually got into naming the ex-wife. There were specific reasons why I [204] didn't want to contact the ex-wife.

THE COURT: So you did not contact her?

THE WITNESS: I did not.

THE COURT: Were the other website servers validated after the fact?

THE WITNESS: I'm not sure what validation of a website server is.

THE COURT: The follow-up question is, "If yes, who did they belong to?"

THE WITNESS: Oh, okay. We didn't look into the website servers themselves to see who belongs to

them. What I did is looked into [C.W.] to see if she had any capability or owned any servers or anything along those lines.

It's a big process for law enforcement to get into an actual server – somebody's server. Especially with something like Facebook. It's very difficult.

THE COURT: Any follow-up from the People?

MS. JARAMILLO: Yes, Judge. Thank you.

## **FURTHER EXAMINATION**

## BY MS. JARAMILLO:

- Q Was there any indication that what Mr. Counterman was saying was based on reality?
- A No. Other than those three maybe [205] messages from 2010 about the Haiti relief fund.
- Q Was he able to show you any sort of messages on those sites that appeared to coincide with messages he was sending to [C.W.]?
  - A No, not at all.
- Q Was there any indication from looking on Facebook that [C.W.] had any association with anybody in the defendant's family?
  - A No, not at all.

MS. JARAMILLO: Nothing further.

THE COURT: Any follow-up from defense?

## **FURTHER EXAMINATION**

## BY MS. ARCHAMBAULT:

- Q Did you look at [C.W.]'s Facebook? Did you check that?
  - A Yes, I did.
  - Q Did you put that in your report?
  - A That I looked into her website?
  - Q Right. And her friends.
- A I don't know if I did or not. I didn't friend it or anything like that. I don't have any way to get inside. So the wall that you showed earlier, that's all I saw.
- Q So from that, you didn't see posts from any family members of Mr. Counterman?

[206] A No. No, ma'am.

MS. ARCHAMBAULT: I don't have anything further. Thank you.

THE COURT: Do we have any further questions for this witness from any members of the jury?

Seeing none, sir, you may step down.

THE WITNESS: Thank you.

THE COURT: From the People?

MS. JARAMILLO: Your Honor, at this point the People of the State of Colorado rest.

THE COURT: Ladies and gentlemen, the People have rested, which means that the People have now completed their presentation of evidence. I know there are some other matters that I need to deal with today, so before we turn to the issue of whether defendant, Mr. Counterman, wishes to present any evidence, what we're going to do is break early today.

I think we're running a little ahead of schedule. I'll ask you to be back tomorrow at 8:30 and that will let me take care of the things that I need to take care of. I'll remind you that defendant is under no obligation to put on any evidence, but we'll postpone that until tomorrow.

But before you go, it's important that you obey the following instructions with reference to the [207] recesses of the Court:

You are not to discuss the case amongst yourselves except when the entire jury is together in the jury room for deliberations. You should also not discuss this case with anyone else.

In fairness to the parties of the lawsuit, you should keep an open mind throughout the trial and you should reach your decisions only during your final deliberations.

You may not permit any third person to discuss the case in your presence. If anyone attempts to do so, report that back to the court staff immediately.

Do not talk with any witness or with any party or with any of the lawyers in this case. Do not attempt to gather any information on your own. Do not engage in any outside reading or Internet searches on anything regarding this case. Do not attempt to visit any places mentioned in this case.

Finally, do not attempt in any other way to try to learn about the case outside the courtroom. Do not read about the case in the newspapers or listen to radio or television broadcasts about the trial. You must base your verdict solely on the evidence and the law presented at trial.

[208] With that, I hope you have a pleasant evening. We'll see you back here tomorrow morning at 8:30.

(The jury exited the room.)

THE COURT: All right. The record can reflect that the jury has left the courtroom. Please be seated. So the People have rested. Any motions from defense?

MS. ARCHAMBAULT: Yes, Judge. At this time, the defense motions for a judgment of acquittal. The issue is whether the relevant evidence, both direct and circumstantial, when viewed as whole in the light most favorable to the prosecution is substantial and sufficient to support a conclusion by a reasonable mind that Mr. Counterman is guilty of the charge beyond a reasonable doubt.

At this time, I would renew my request for dismissal based on First Amendment and free speech grounds under both the U.S. and Colorado constitutions. As far as the evidence presented here today and yesterday, I will rest on that record for the standard motion for judgment of acquittal.

THE COURT: All right. We addressed the First Amendment issues back when we had the motions

hearing in this case. And when I gave my ruling on the [209] motions hearing, at that time I did indicate that I'd need to hear the evidence that came in to make a determination of – based on what I was anticipating the evidence would be, there would not be First Amendment protections. But you never can tell what the evidence actually turns out to be.

I've now had an opportunity to review the evidence, and it basically just confirms the belief I had after the motions hearing that this would not be considered protected speech. And that having considered the totality of the circumstances, a reasonable jury could find that defendant's statements rise to the level of a violation of law and that of a true threat. And, therefore, the charges should be submitted to the jury for them to be making a determination.

I find that submitting the charges to the jury does not impermissibly intrude on or violate defendant's First Amendment rights, and that a reasonable jury, based on this, could find defendant guilty of the charge of stalking.

So I'm going to deny the motion for judgment of acquittal on both the First Amendment grounds and to the extent you rested on the record, I think the evidence is such that a reasonable jury could find [210] Mr. Counterman guilty of stalking. I'm not saying they will. I don't know one way or the other what they are going to do. But certainly there is sufficient evidence for them to make that determination. So motion for judgment of acquittal is denied in its entirety.

Now, at the bench conference, defense had indicated that they did not wish to call any other witnesses, but we haven't made a determination yet of whether Mr. Counterman wishes to testify. Would you like an opportunity to speak with him for a few minutes before we do the Curtis advisement?

MS. ARCHAMBAULT: Can I just see if I need a few minutes?

THE COURT: Sure. That's fine.

MS. ARCHAMBAULT: Your Honor, I don't need a few minutes. The Court can do the Curtis advisement at this time.

THE COURT: Okay. All right. Mr. Counterman –

THE DEFENDANT: Yes?

THE COURT: – you have a right to testify in this case. If you want to testify, then no one can prevent you from doing so. You may take the witness stand and testify even if it is contrary to the advice [211] of your attorney.

If you choose to testify, then the prosecution will be allowed to cross examine you and the jury may be allowed to ask questions. If you have been convicted of a felony, the prosecution will be entitled to ask you about the conviction or convictions and thereby disclose it or them to the jury. Do we have any known felony convictions?

MS. JARAMILLO: Yes, Your Honor, we do for Internet communications with threats, which is a federal count which the defendant was convicted of. I believe that there's two convictions for that.

THE COURT: If the felony convictions are disclosed to the jury, then the jury will be instructed to consider the felony convictions only as they bear upon the issue of your credibility and for no other purpose.

You also have a right not to testify. If you choose not to testify, then the jury will be instructed about that right and that no inference of guilt can be drawn from the fact that you choose not to testify.

The decision whether or not to testify is a decision which must be made by you and by you alone. You've been represented by Ms. Archambault in this [212] case. Have you discussed with her whether you will or will not testify in this trial?

THE DEFENDANT: Yes, we have talked.

THE COURT: Do you need more time to talk to Ms. Archambault about this decision?

THE DEFENDANT: No, I'm good.

THE COURT: Now, I want to remind you even if your attorney has advised you not to testify, you must make the decision whether or not to testify yourself. Have you made your decision?

THE DEFENDANT: I have.

THE COURT: What is your decision?

THE DEFENDANT: I'll decline to testify.

THE COURT: Are you making that decision yourself?

THE DEFENDANT: I am.

THE COURT: Is this a voluntary decision? And by that, I mean it's a decision that is not being made as the result of pressure, influence or coercion?

THE DEFENDANT: No, it's not being influenced.

THE COURT: Do you have any questions about this decision?

THE DEFENDANT: No.

THE COURT: Do you feel you understand your [213] right to testify or your right not to testify in this trial?

THE DEFENDANT: I do.

THE COURT: Are you under the influence of any alcohol, drugs or medications today?

THE DEFENDANT: No.

THE COURT: Are you suffering from any mental disorder or psychological problem which would affect your ability to think clearly today?

THE DEFENDANT: No.

THE COURT: Are you comfortable that you are, in fact, of clear mind today?

THE DEFENDANT: Yes.

THE COURT: And are you comfortable with your decision not to testify?

THE DEFENDANT: Yes.

THE COURT: Based on my colloquy with Mr. Counterman, I find that his decision not to testify is voluntary, knowing and intentional and we will respect that decision.

THE DEFENDANT: Thank you.

THE COURT: All right. So it appears, then, that defense will be resting without presenting any evidence; is that correct?

MS. ARCHAMBAULT: Correct.

[214] THE COURT: Since defense is presenting no evidence, then there would be no rebuttal. So we would then be proceeding to jury instructions. So are the parties prepared for the jury instruction conference or do you want to have a short break?

MS. ARCHAMBAULT: I would really like a short break.

THE COURT: All right. Then why don't we break until 3:35 and then we'll reconvene and do the jury instruction conference.

Before we break, are the parties going to waive the transcription of the reading of the jury instructions?

MS. JARAMILLO: The People will do that.

MS. ARCHAMBAULT: Yes.

THE COURT: All right. Then we'll see you back here at about 3:35.

(A break was taken.)

THE COURT: All right. We'll go back on the record in People versus Counterman, 16CR2633. The record should reflect that counsel are present, as is Mr. Counterman. Are the parties prepared to review the proposed jury instructions?

MS. JARAMILLO: Yes, Judge.

MS. ARCHAMBAULT: Yes.

[215] THE COURT: All right. Let's start with the set – it was a slightly revised set that I had e-mailed, revised from the People's proposed set. Let's go through them one at a time.

So from the People, any objection to Instruction No. 1?

MS. JARAMILLO: No, Your Honor.

THE COURT: From defense?

MS. ARCHAMBAULT: No.

THE COURT: From the People, any objection to Instruction No. 2?

MS. JARAMILLO: No, Your Honor.

THE COURT: From defense?

MS. ARCHAMBAULT: No.

THE COURT: From the People, any objection to Instruction No. 3?

MS. JARAMILLO: No, Your Honor.

THE COURT: From defense?

MS. ARCHAMBAULT: No.

THE COURT: From the People, any objection to Instruction No. 4?

MS. JARAMILLO: No, Your Honor.

THE COURT: From defense?

MS. ARCHAMBAULT: No.

THE COURT: From the People, any objection [216] to Instruction No. 5?

MS. JARAMILLO: No.

THE COURT: From defense?

MS. ARCHAMBAULT: No.

THE COURT: From the People, any objection to Instruction No. 6?

MS. JARAMILLO: No.

THE COURT: From defense?

MS. ARCHAMBAULT: No.

THE COURT: From the People, any objection to Instruction No. 7?

MS. JARAMILLO: No, Your Honor.

THE COURT: And then this is one of the ones where I believe defense had asked for some changes, so I'm assuming defense is objecting?

MS. ARCHAMBAULT: Yes.

THE COURT: When I – I looked at the initial set and it was just the second sentence in Paragraph 2 had been deleted. Then the revised set submitted by defense took out the second sentence in both Paragraph 2 and in Paragraph 3. Those are the changes that I saw; is that correct?

MS. ARCHAMBAULT: Right. Yes.

THE COURT: All right. Let me hear from defense.

[217] MS. ARCHAMBAULT: Judge, I just always object to those extra definitions. I think they're unnecessary and kind of silly.

THE COURT: From the People?

MS. JARAMILLO: I think what direct and circumstantial can mean can be very confusing to go a juror. And I would ask that that be read so that they know they're given the same weight and what that means.

THE COURT: I'm going to leave the language to which defense objected in. I always worry that they don't fully understand the difference between what direct evidence is and what circumstantial evidence is. And I don't recall hearing any confusion on that with respect to this panel in voir dire, but I have heard it in other panels. So we'll leave the language as proposed by the People.

That gets us to Instruction No. 8. Any objection from the People?

MS. JARAMILLO: No, Your Honor.

THE COURT: From defense?

MS. ARCHAMBAULT: No.

THE COURT: That gets us to Instruction No. 9. Any objection from the People?

MS. JARAMILLO: No, Your Honor.

THE COURT: From defense?

[218] MS. ARCHAMBAULT: I think all of the questions were asked, so I don't know if we need to.

MS. JARAMILLO: That's true. The second paragraph.

THE COURT: The first – the first line of the second paragraph, we probably could delete. Let's see. And then actually we could start with the second sentence of the first paragraph, because we did ask all the questions. We can take out that sentence. The next sentence –

MS. JARAMILLO: I think all the rest of that paragraph can be taken out.

THE COURT: All right. Does defense agree that we can take out from the second sentence on of just the first paragraph?

MS. ARCHAMBAULT: Yes.

THE COURT: And then the first sentence of the second paragraph, I think I can take out and make it all just one paragraph. Do the People agree?

MS. JARAMILLO: Yes.

MS. ARCHAMBAULT: I would agree to that, as well.

THE COURT: All right. Let me make that change. So it now reads, "During this trial, you were permitted to submit written questions to witnesses. Do [219] not give greater weight to questions or answers to questions that" – that should be "were submitted." I'll change "are" to "were" – "submitted by yourself or your fellow jurors. In making your decision, you must consider all the evidence that has been admitted." Is that acceptable to the People?

MS. JARAMILLO: Yes.

THE COURT: From defense?

MS. ARCHAMBAULT: Yes.

THE COURT: That gets us to 10. Any objection from the People?

MS. JARAMILLO: No.

THE COURT: From defense?

MS. ARCHAMBAULT: No.

THE COURT: That gets to us Instruction No. 11. Any objection from the People?

MS. JARAMILLO: No.

THE COURT: From defense?

MS. ARCHAMBAULT: Yes.

THE COURT: And the objection is?

MS. ARCHAMBAULT: Sorry, Judge.

THE COURT: That's all right. It's been a long day.

MS. ARCHAMBAULT: I thought we were doing all the objections at the end. I think this is – [220] standing alone, it puts undue weight on this provision. I think it would be more appropriate in the definition section. That was a change that I had requested.

THE COURT: It's not really a definition, so I'm not really inclined to put it with the definitions. I guess we could move it and include it in the elemental instruction after the elements. It wouldn't be a numbered element, but after Element No. 5, we could put it there or we could leave it stand alone.

MS. ARCHAMBAULT: So I had submitted additional definitions that I think would – if granted by the Court, this would make more sense with those. But that – my request is the way that I submitted it.

THE COURT: Right. And I'm not going with that request.

MS. ARCHAMBAULT: Okay. If the Court doesn't do that, I would prefer it – I guess I would prefer it stand alone.

THE COURT: All right. We're going to leave it as it is right now. Once we get to the definitions one, we can revisit and see if that changes my mind. But right now, I'm not inclined to include it. Any other objection to 11 from defense?

## MS. ARCHAMBAULT: No.

THE COURT: All right. That gets us to [221] Instruction No. 12, which is the definition as submitted by the People. It just has the definition of "repeated" or "repeatedly." And defense had added -taking the language from Instruction No. 11 and plugging it in after that definition, and then adding a sentence that "serious emotional distress is more serious than annoyance or alarm." And then definitions of annoy, nettling and alarm. So let me hear from defense.

MS. ARCHAMBAULT: Judge, when you look at stalking, it is a felony charge. It's a higher level charge that includes the same conduct as the Class 3 harassment charge. The Class 3 harassment charge requires an intent to annoy, harass or alarm. And that requires intent as the mental state. This charge requires knowingly. And as we stated, not even knowing that the conduct you're doing is going to happen.

So because this charge is a higher level, I think there needs to be – serious emotional distress is going to be higher or more serious than the result or what is intended

to result from the Class 3 misdemeanor of harassment. So that's the basis of this request. And that would be under equal protection and due process rights under the U.S. and Colorado constitutions.

[222] THE COURT: All right. My recollection is this is not included in COLJI; is that correct?

MS. ARCHAMBAULT: That's right. There's really no definition in COLJI.

THE COURT: Right. And the case law that is out there seems to indicate that at least the Court of Appeals believes that the phrase "serious emotional distress" is just common language that a jury should be able to understand without further instruction.

I'm referring to *People versus Yascavage*, which is Y-a-s-c-a-v-a-g-e, 80 P.3d 899, Colorado Ap 2003, and *People versus Carey*, C-a-r-e-y, 198 P.3d 1223, Colorado Ap 2008. Let me hear from the People.

MS. JARAMILLO: Your Honor, that's what the People were going to argue, that serious emotional distress is something that the jury has to define. They have to decide what they believe serious emotional distress means.

Harassment isn't even a lesser included of stalking. They're completely different. They have different intents and they have different results that have to occur. There's no legal basis that I can find for telling the jury what exactly they have to consider, as far as serious emotional distress.

I think it's very confusing to start adding [223] language from harassment when they're not here to determine if harassment – if there's any sort of harassment charge in this case, because the People have decided not to go forward on that charge. The definitions for annoy and alarm aren't relevant based on that, as well as the fact that nettling isn't even defined in harassment at all.

So I am objecting to those. I think it's confusing. I think it changes the burden for the People and it's not based on the law.

THE COURT: Anything further from defense?

MS. ARCHAMBAULT: No, Judge. Thank you.

THE COURT: All right. I think if the Supreme Court had felt that the additional definition of "serious emotional distress" was necessary or appropriate, they would have included it in the most recent version of COLJI, or the version before that.

There is case law, as I stated before, noting that it is not defined by the statute and seeming to suggest that an ordinary person should be able to understand what this is. So I am not going to muddy the water by adding these additional definitions.

Now, that certainly doesn't prevent you from arguing that serious emotional distress is something more than simply annoying, nettling or alarming [224] someone. But I don't think it's necessary to define those terms.

Now, if the jury asks a question about it, we'll have to take another look at this. And then – you know, then we get into, for example, the *Yascavage* case talks about that it's an objective reasonable person standard to measure whether the emotional distress inflicted upon the victim was, quote, serious, closed quote. And the jury would have to decide what's serious.

So I don't think that it's necessary or appropriate to add additional definitions at this point, but we can revisit if the jury does ask a question. So I'll deny the requested changes by defense.

That gets us to Instruction No. 13. Any objection from the People?

MS. JARAMILLO: No, Your Honor.

THE COURT: From defense?

MS. ARCHAMBAULT: No.

THE COURT: Instruction No. 14, any objection from the People?

MS. JARAMILLO: No, Your Honor.

THE COURT: From defense?

MS. ARCHAMBAULT: No.

[225] THE COURT: Instruction No. 15, any objection from the People?

MS. JARAMILLO: No, Your Honor.

THE COURT: From defense?

## MS. ARCHAMBAULT: No.

THE COURT: And then we've got the verdict form. In the version I got from the People, the heading and caption doesn't come up the way it traditionally does. When I e-mailed this out, I asked the People to fix that.

MS. JARAMILLO: Your Honor, I'll do that right now. Judge Antrim requires the new verdict forms from the new COLJI and that's what these forms are. So that's why I have that. But I can change that based on the Court preferring the other version.

THE COURT: Since she's retired, we'll go back to the more traditional one. Other than the heading and caption issue, any objection from the People?

MS. JARAMILLO: No.

THE COURT: From defense?

MS. ARCHAMBAULT: No.

THE COURT: Then the People had also submitted the instruction on essentially, I'll call that your venue instruction. Have you e-filed that?

[226] MS. JARAMILLO: No, Your Honor. We can do that right now.

THE COURT: Please do e-file it. I had previously indicated that I wasn't inclined to give that instruction. I think it's hard to follow. I think it's hard to follow and would likely cause more confusion than help. Is there any other record that the People wish to make?

MS. JARAMILLO: No, Your Honor.

THE COURT: Anything from defense on that?

MS. ARCHAMBAULT: No, thank you.

THE COURT: All right. I'm not going to give that instruction. All right. Any other proposed changes to the jury instructions from the People?

MS. JARAMILLO: Not from the People.

THE COURT: Any other issues? Is there a theory of defense instruction from defense?

MS. ARCHAMBAULT: No.

THE COURT: Any other instructions from defense?

MS. ARCHAMBAULT: No, thank you.

THE COURT: All right. Then it seems like we have finalized jury instructions if you can fix that heading and caption and e-mail them to me. And what I'd ask you to do is each of you tonight just go [227] through them one more time. No matter how much we do this, it seems like as I'm reading them, there's always something that pops up. And I'd sure like to avoid that.

Also, I think I may increase the font a little bit, because I'm significantly older than the rest of you and it is hard to read. So anything else we need to address today from the People?

MS. JARAMILLO: No, Your Honor.

THE COURT: From defense?

MS. ARCHAMBAULT: No, thank you.

THE COURT: All right. You will each have up to 30 minutes for closing. What we'll do tomorrow is hopefully get going at 8:30 with the jurors. Defense will rest. I'll tell them there is no rebuttal because of that. I'll read them the jury instructions. We'll do the closings and let them start deliberating.

MS. ARCHAMBAULT: Judge, would you mind if I stepped out with Mr. Counterman to talk to him about one issue and then to come back in?

THE COURT: That's fine.

MS. ARCHAMBAULT: I just don't want to bring it up tomorrow morning.

THE COURT: No, I would appreciate addressing anything we can today.

[228] MS. ARCHAMBAULT: Thank you.

(A pause occurred in the proceedings.)

MS. ARCHAMBAULT: Thank you, Judge. I forgot to do that earlier. I don't have any further requests for jury instructions.

THE COURT: All right. Anything else we need to address today from the People?

MS. JARAMILLO: No, Your Honor.

THE COURT: Anything else from defense?

## MS. ARCHAMBAULT: No.

THE COURT: All right. Then we will see you all back here. Why don't you be here no later than 8:25 to-morrow just in case there's something we need to address ahead of time. And if you can send me that corrected jury verdict form.

MS. JARAMILLO: I'll get on that right now. I was having a hard time finding one, but I had Ms. Robilotta send it over.

THE COURT: Well, Page 1 of the jury instructions would be a good place to start.

(The within proceedings were concluded.)

\* \* \*

[229] [Reporter's Certificate Omitted]

DISTRICT COURT, COUNTY OF ARAPAHOE STATE OF COLORADO

Court Address:

Arapahoe County District Court 7325 South Potomac Street Centennial, CO 80112-4030 COURT USE ONLY Case No. 16CR2633 Division No. 408

Plaintiff: PEOPLE OF THE STATE OF COLORADO

Defendant: BILLY RAYMOND COUNTERMAN

## REPORTER'S TRANSCRIPT

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

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# [3] MORNING SESSION, THURSDAY, APRIL 27, 2017

(The court convened in this matter at 8:30 a.m. with all counsel present, the defendant present in person, and the following proceedings were had in open court, out of the presence and hearing of the jury:)

## **PROCEEDINGS**

THE COURT: People versus Counterman, 16 CR 2633. The record should reflect that counsel are present, as is Mr. Counterman.

Is there gonna be anything that we need to address from the People before we bring the jurors in?

MS. JARAMILLO: No, Your Honor.

THE COURT: Anything from defense?

MS. ARCHAMBAULT: No, Judge, thank you.

THE COURT: Are we still on the same plan of defense is gonna rest, no rebuttal, and then we'll proceed to read the jury instructions?

MS. ARCHAMBAULT: Yes.

THE COURT: Okay. All right. Then . . . we just need to wait for Mr. Quick.

(A recess was herein had at 8:34 a.m.)

(The court reconvened at 8:50 a.m. with all counsel present, the defendant present in person, and the following proceedings were resumed within open court, out of the presence and hearing of the jury:)

[4] THE COURT: All right. I'll recall People versus Counterman, which is 16 CR 2633. The record should reflect that counsel are present, as is Mr. Counterman.

Anything else we need to address before we bring the jurors in?

MS. JARAMILLO: Not from the People.

MS. ARCHAMBAULT: No, thank you.

THE COURT: All right. Please bring the jurors in.

(The following proceedings were had within the presence and hearing of the jury:)

THE COURT: Thank you all. Please be seated. We are still on the record in People versus Counterman, 16 CR 2633. The record should reflect that counsel are present, as is Mr. Counterman, and that the jurors have reentered the courtroom.

So, ladies and gentlemen, good morning, welcome back. I want to apologize for keeping you waiting. I know you're a very prompt group and you were here before 8:30 to get going. I had a bond return in a different case this morning that I ended up having to deal with. This is one of those things that just sort of magically appears on my desk overnight, and we weren't expecting it. But I do apologize for keeping you waiting.

Now, when we took a break yesterday, we had [5] completed the People's presentation of evidence. And so at this point, Defense has an opportunity to present evidence if Mr. Counterman wishes to do so. I want to remind you that he's under no obligation to do so. He's presumed to be innocent until and unless the People prove his guilt beyond a reasonable doubt, and he's not obligated to prove his innocence.

Do the People – or, I'm sorry, does Defense wish to present any evidence?

MS. ARCHAMBAULT: No, Judge. The defense rests. Thank you.

THE COURT: All right. Ladies and gentlemen, the defense has rested. Now, because the defense has rested, that means that there will not be any presentation of evidence by the defense and, therefore, there'll be no rebuttal evidence presented by the People.

We'll now move to the next stage of the trial, which is me reading to you the jury instructions which contain the law that you're to apply in reaching your verdict. Now, you'll have a copy of these instructions back with you in the jury room, so you'll be able to refer to them as you deem appropriate during your deliberations. So please don't try to take extensive notes while I'm reading those to you. Please don't try to memorize them as we're going through. Just listen carefully as I read [6] the instructions to you.

Instruction No. 1, members of the jury. . . .

(The jury instructions were herein read to the jury by the Court and not reported pursuant to stipulation of the parties.)

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, [C.S.], 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, "[C.W.], 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 Face-book 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 grand-mother, 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.

The reason I say it's my least favorite thing in any trial is I can't imagine how frustrating it would be to be the alternate; you've given us your time and attention up to this point, and now I tell you, well, for you, we were only kidding.

But I do have to do that at this point, and I will tell you – and again, the alternate was randomly selected by seat number about 10 days before the trial began. It had nothing to do with the particular person in that seat. But in this case, the seat number that was selected was Seat No. 7, and the juror in that case is -is No. 47, Mr. Gleason.

So, sir, do you have anything back in the – in the jury room?

JURYMAN GLEASON: Yes, I do. Yes.

[37] THE COURT: Okay. All right. I'm gonna ask Eric to take you back, collect that, and then I'll ask you to come back in here. There are a couple things I need to cover with you.

Now, ladies and gentlemen, in a moment, after we get Mr. Gleason back, we will send you back to the jury room to begin your deliberations. We will send back the set of the jury instructions. We'll also send all exhibits back with you.

One of those exhibits is the DVD of Mr. Counterman's interview. You'll have the DVD, you won't have anything to play it on. The reason for that is that we share one computer with a number of courtrooms here in the courthouse, I'd love to have my own, but I don't.

And so if you decide that you wish to listen to that DVD, you're under no obligation to do so, but you are free to do so if you wish to do so. Just ring the bell, ring the buzzer, let Eric know, we'll track the computer down and we'll bring it to you. We'll then give it to you long enough for you to listen to the DVD, then we need to pull it out again so that if somebody else needs it, we have it available for them. I apologize for any inconvenience, but again, think of the tax money we're saving you.

[38] Now, when Eric takes you back, one of the things I'm gonna ask him to do is collect all of your cell phones. The reason we do that is we can't have you having the ability to communicate while you're deliberating. He will take good care of them, so don't worry about that.

With that, Eric, please raise your right hand.

(Eric Littleton, acting as bailiff, was herein sworn by the Court.)

THE COURT: All right, thank you.

Ladies and gentlemen, I'll excuse you to begin deliberations.

\* \* \*

[70] (The court reconvened at 1:29 p.m. with all counsel present, the defendant present in person, and the following proceedings were resumed within open court, out of the presence and hearing of the jury:)

THE COURT: We're back on the record in People versus Counterman, 16 CR 2633. The record should reflect that counsel are present, as is Mr. Counterman.

We have received word that the jury has a verdict. Anything we need to address from the People [71] before we bring the jurors in?

MS. JARAMILLO: No, Your Honor.

THE COURT: From Defense?

MS. ARCHAMBAULT: No.

THE COURT: All right. Please bring the jurors in.

(The following proceedings were had within the presence and hearing of the jury:)

THE COURT: Thank you. Please be seated. We are still on the record in People versus Counterman, 16 CR 2633. The record should reflect that counsel are present, as is Mr. Counterman, and that the jurors have returned with their verdict.

I've been told you do have a verdict; is that correct?

JURY FOREMAN: Yes, Your Honor, we do.

THE COURT: All right. Would you please give the instructions and verdict form to Eric.

Eric, please approach.

All right. Please rise, Defense.

Jury Verdict, Count One, Stalking, reads, "We, the jury, find the defendant, Billy Counterman, guilty of stalking." You may be seated.

Ladies and gentlemen, you've now completed your service as jurors in this case. I want to start by [72] thanking you very much for your service. I paid pretty close attention to you during the course of the trial, it was clear to me that you were taking your responsibility very seriously, you were paying close attention to the evidence, and frankly, that always gives me the warm feeling in the heart, because you were doing exactly what we hope jurors will do. So thank you very much for your time and attention.

We try to make jury duty as least painful as possible, recognizing the inconvenience that it causes on y'all. One of the things that I always appreciate doing after juries return the verdict is talking to the jurors about things we could do better, your experience as jurors, that sort of thing, and also to answer any questions you might have or try to address anything that you wish to discuss about this case.

If any would you – of you would be willing to stick around now that your service is completed, I have to take care of a couple things here, take me 2 or 3 minutes to do that, but then I'll come back and see if any of you wish to speak or are willing to speak with me; if you would, I'd greatly appreciate it. That being said, if you've had your fill of me, that's okay, you're under no obligation to stick around and talk with me.

Now, that ties into my last point, which is [73] every time I've let you go I've told you you can't talk about this case with anyone, you can't talk about this case with anyone, you can't talk about this case with anyone. Now that your service is completed and you're being discharged, the

question may come up now can you talk with someone about the case, and the answer to that question is yes.

You can talk as much as you like, as little as you like, or not at all. You can talk to some people and not others, talk to everybody, talk to nobody, that's entirely up to you. The only thing that I ask is if at any time anyone approaches you and tries to talk to you about this case when you've told them either you don't want to talk or you want to stop talking, or if anyone comes up to you and is in any way critical of your service as jurors in this case, I ask that you contact me and let me know about that, because that would be improper and I'd want to talk to them about it.

With that, I will formally discharge you with our thanks. Eric will show you back and if, indeed, any of you are willing to stick around for a few minutes to talk to me, I would greatly appreciate it. Thank you all again.

(The following proceedings were had out of the presence and hearing of the jury:)

[74] THE COURT: The record can reflect that the jurors have left the courtroom. Please be seated.

Because of the guilty verdict, we need to set the matter over. I think I need a PSI, and then set a sentencing date. How long do the People think sentencing itself will take?

MS. JARAMILLO: Your Honor, at most I think an hour. I think just the victim will be speaking.

THE COURT: All right. From Defense?

MS. ARCHAMBAULT: I think that's fine.

THE COURT: All right. I could give you from 11:00 to 12:00 on June 29th.

MS. ARCHAMBAULT: Your Honor, I'm in a county court trial, but I think it actually may have been continued, if I can look it up real quick?

THE COURT: That's fine, or I could give you from 1:30 to 2:30 on June 30th.

 $\,$  MS. ARCHAMBAULT: I could accept that date.

MS. JARAMILLO: If I may have just one moment? That works for the People.

THE COURT: All right. We'll set sentencing for – it's the June 30th date that worked better for Defense?

MS. ARCHAMBAULT: Yes please.

THE COURT: All right. June 30, 2017, from [75] 1:30 to 2:30.

Now, I've received a consent of surety. It's got the wrong case number on it, but I'm assuming you can get me one with the correct case number on it?

 $\label{eq:MSARCHAMBAULT: Yes, I'll-I'll e-mail the bondsman back right now.}$ 

THE COURT: All right. So from the People?

MS. ROBILOTTA: Your Honor, pursuant to 16-4-201.5 Subsection 2, the People are asking the Court to not set bail after conviction due to the fact that the

defendant poses a danger to the safety of any person or the community. I would note for the Court the facts of this case in and of themselves, as well as his two prior felony convictions for Internet threats.

THE COURT: From Defense?

MS. ARCHAMBAULT: Judge, Mr. Counterman has been on bond for the vast majority of the pendency of this case. There's been no further communication with [C.W.] There's been no other offenses. He's made every court date. I don't think that that is appropriate.

THE COURT: All right. I don't believe that this falls within the type of case, and I don't have the concerns that I would have in certain cases, that would prevent me from granting bond. It is not a mandatory refusal of bond. So if you can get me the consent of [76] surety, I will continue bond. I need Mr. Counterman to stay in the courtroom here unless and until that happens.

Now, that being said – go ahead?

MS. ROBILOTTA: Your Honor, I was going to ask the Court to add the condition of GPS monitoring since there is now a conviction. There is obviously no longer the presumption of innocence. I note that he had complied with GPS.

I would just state for the Court that when this act was committed, for the two years of this stalking he was being monitored on Federal Post-Release Supervision for those Internet threats. So even when he is closely monitored by the Court there is still that risk.

THE COURT: All right. What happened in the federal case? I mean, did they move to revoke or what?

MS. ROBILOTTA: They – they termed him successfully, Your Honor.

THE COURT: All right. So from Defense?

MS. ARCHAMBAULT: I think that that's inappropriate and unnecessary and the cost alone is incredibly burdensome.

THE COURT: All right. I don't think GPS at this point is necessary given the nature of the stalking that took place, but as I was starting to say, Mr. Counterman, I can't impress upon you how serious I do [77] think this charge is and that it causes real harm, even though you were just making contact through the Internet.

And what I want to make absolutely crystal clear to you is that if there is any sort of contact whatsoever, direct or indirect, between you and [C.W.] through any means whatsoever, I would consider that to be inappropriate and I would consider that a sufficient basis to have your bond revoked and you would then sit in jail pending sentencing.

Do you understand that, sir?

THE DEFENDANT: Yes.

THE COURT: All right. Anything else we need to address from the People?

MS. ROBILOTTA: Your Honor, I appreciate the Court's admonishment that it would be inappropriate for contact. I would ask the Court to just remind Mr.

Counterman that the no-contact order is, in fact, still in place. So it would not only be inappropriate, but also illegal.

THE COURT: Right. I mean, the mandatory protection order remains in place. So I think that's correct.

THE DEFENDANT: Yes.

THE COURT: I just wanted to make sure that you understood that the mere fact that I'm letting you stay [78] out on bond and that I'm not imposing GPS at this point is not in any way to be interpreted as, Oh, he's not taking this seriously; or, Oh, then I guess I'm gonna go ahead and engage in things that you know you should not otherwise be doing.

I wanted to make it clear to you what the consequence would be, and that's in addition to they could file a violation of bail bond charge against you, but I would come down on you very, very hard.

MS. ARCHAMBAULT: Judge, I think I realize what happened with the bond and the case number. The bond that was posted originally was posted in the misdemeanor case and then it was transferred. So based on that, is that sufficient? I did already e-mail the bondsman back.

THE COURT: Why don't you ask him to send one that has both case numbers on here.

MS. ARCHAMBAULT: Okay.

DEPUTY CLERK: It's not posted on here.

THE COURT: It's not posted on this one?

DEPUTY CLERK: No, it's set, but it's not posted.

THE COURT: Then I need them to recognize that the bond that was previously posted applies in this case.

MS. ARCHAMBAULT: Okay.

THE COURT: And that -

[79] MS. ARCHAMBAULT: So if he just sends it with a different case number, is that okay?

THE COURT: Then they are on the hook for the bond, I believe.

MS. ARCHAMBAULT: I mean, it's the same amount. It's the same bond, it was just transferred to a different case number.

THE COURT: Right, but I want to make sure that they understand they're on the hook in this case. So he needs to stay here. I'm gonna go check to see if any of the jurors wanted to stick around, I'll be back. Once you've talked with them, let Barb know –

MS. ARCHAMBAULT: Okay.

THE COURT: So – and she'll check the fax machine.

MS. ARCHAMBAULT: Okay.

(The court adjourned at 1:41 p.m.)

[Reporter's Certificate Omitted]

DISTRICT COURT ARAPAHOE COUNTY, COLORADO Court Address:	DATE FILED: April 27, 2017 3:02 PM
Arapahoe County Justice Center 7325 S. Potomac St., Centennial, CO 80112	Filed in the Division APR 27 2017
THE PEOPLE OF THE STATE OF COLORADO vs.	Arapahoe County Combined Courts
DEFENDANT: BILLY COUNTERMAN	COURT USE ONLY
	Case Number: <b>2016CR2633</b>
	Division/Ctrm: 408
JURY INSTRUCTIONS	

Instruction Nos. 1 through 15 given by the Court this 27th day of April, 2017.

/s/ <u>F. Stephen Collins</u>
F. Stephen Collins
District Court Judge

## **INSTRUCTION NO. 1**

Members of the jury, the evidence in this case has been completed. In a moment, I will read to you jury instructions that contain the rules of law you must apply to reach your verdict. You will have a copy of what I read to take with you to the jury room. But first, I want to mention a few things you need to keep in mind when you are discussing this case in the jury room.

Until you have returned a verdict, you must not do any research about this case or this kind of case using any source, including dictionaries, reference materials, the internet or any other electronic means. You must not communicate in any way with anyone else about this case or this kind of case until you have returned a verdict in court. This includes your family and friends. If you have a cell phone or other electronic device, you must keep it turned off during jury deliberations.

It is my job to decide what rules of law apply to the case. While the attorneys may comment on some of these rules, you must follow the instructions I give you. Even if you disagree with or do not understand the reasons for some of the rules of law, you must follow them. No single instruction describes all the law which must be applied; the instructions must be considered together as a whole.

During the trial, you received all of the evidence that you may properly consider in deciding the case. Your decision must be made by applying the rules of law that I give you to the evidence presented at trial. Remember, you must not be influenced by sympathy, bias or prejudice in reaching your decision.

If you decide that the prosecution has proved beyond a reasonable doubt that Mr. Counterman is guilty, it will be my job to decide what the punishment will be. In making your decision, you must not consider punishment at all.

At times during the trial, attorneys made objections. Do not draw any conclusions from the objections or from my rulings on the objections. These only related to legal questions I had to decide and should not influence your

thinking. If I told you not to consider a particular statement that was made during the trial, you must not consider it in your deliberations.

Finally, you should consider all the evidence in light of your experience in life.

## **INSTRUCTION NO. 2**

The charge against Billy Counterman is not evidence. The charge against Mr. Counterman is just an accusation. The fact that Mr. Counterman has been accused is not evidence that he committed any crime.

Billy Counterman is charged with the crime of Stalking in Arapahoe County, Colorado, between and including April 1, 2014 and April 30, 2016. Mr. Counterman has pleaded not guilty.

## INSTRUCTION NO. 3

Every person charged with a crime is presumed innocent. This presumption of innocence remains with Mr. Counterman throughout the trial and should be given effect by you unless, after considering all of the evidence, you are then convinced that Mr. Counterman is guilty beyond a reasonable doubt.

The burden of proof is upon the prosecution to prove to the satisfaction of the jury beyond a reasonable doubt the existence of all of the elements necessary to constitute the crime charged. Reasonable doubt means a doubt based upon reason and common sense which arises from a fair and rational consideration of all of the evidence, or the lack of evidence, in the case. It is a doubt which is not a vague, speculative or imaginary doubt, but such a doubt as would cause reasonable people to hesitate to act in matters of importance to themselves.

If you find from the evidence that each and every element of a crime has been proven beyond a reasonable doubt, you should find Mr. Counterman guilty of that crime. If you find from the evidence that the prosecution has failed to prove any one or more of the elements of a crime beyond a reasonable doubt, you should find Mr. Counterman not guilty of that crime.

### **INSTRUCTION NO. 4**

The number of witnesses testifying for or against a certain fact does not, by itself, prove or disprove that fact.

### INSTRUCTION NO. 5

You are the sole judges of the credibility of each witness and the weight to be given to the witness's testimony. You should carefully consider all of the testimony given and the circumstances under which each witness has testified.

For each witness, consider that person's knowledge, motive, state of mind, demeanor, and manner while testifying. Consider the witness's ability to observe, the strength of that person's memory, and how that person obtained his or her knowledge. Consider any relationship the witness may have to either side of the case, and how each witness might be affected by the verdict. Consider how the testimony of the witness is supported or contradicted by other evidence in the case. You should consider all facts and circumstances shown by the evidence when you evaluate each witness's testimony.

You may believe all of the testimony of a witness, part of it, or none of it.

# **INSTRUCTION NO. 6**

Every Defendant in a criminal case has a constitutional right not to testify. The decision not to testify cannot be used as an inference of guilt and cannot prejudice Mr. Counterman. It is not evidence, does not prove anything, and must not be considered for any purpose.

## **INSTRUCTION NO. 7**

A fact may be proven by either direct or circumstantial evidence. Under the law, both are acceptable ways to prove something. Neither is necessarily more reliable than the other.

Direct evidence is based on first-hand observation of the fact in question. For example, a witness's testimony that he looked out a window and saw snow falling might be offered as direct evidence that it had snowed.

Circumstantial evidence is indirect. It is based on observations of related facts that may lead you to reach a

conclusion about the fact in question. For example, a witness's testimony that he looked out a window and saw snow covering the ground might be offered as circumstantial evidence that it had snowed.

### INSTRUCTION NO. 8

A crime is committed when a defendant has committed a voluntary act prohibited by law, together with a culpable state of mind.

"Voluntary act" means an act performed consciously as a result of effort or determination.

Proof of the voluntary act alone is insufficient to prove that Mr. Counterman had the required state of mind.

The culpable state of mind is as much an element of the crime as the act itself and must be proven beyond a reasonable doubt, either by direct or circumstantial evidence.

In this case, the applicable state of mind is explained below:

A person acts "knowingly" or "willfully" with respect to conduct or to a circumstance described by a statute defining an offense when he is aware that his conduct is of such nature or that such a circumstance exists. 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 the result.

### INSTRUCTION NO. 9

During this trial you were permitted to submit written questions to witnesses. Do not give greater weight to questions, or answers to questions, that were submitted by yourself or your fellow jurors. In making your decision, you must consider all of the evidence that has been presented.

### **INSTRUCTION NO. 10**

The elements of the crime of stalking are:

- 1. That Billy Counterman,
- 2. in the State of Colorado, at or about the date and place charged,
- 3. knowingly repeatedly followed, approached, contacted, placed under surveillance, or made any form of communication with another person, either directly, or indirectly through a third person,
- 4. in a manner that would cause a reasonable person to suffer serious emotional distress, and
- 5. which did cause that person to suffer serious emotional distress.

After considering all the evidence, if you decide the prosecution has proven each of the elements beyond a reasonable doubt, you should find Mr. Counterman guilty of stalking.

After considering all the evidence, if you decide the prosecution has failed to prove any one or more of the

elements beyond a reasonable doubt, you should find Mr. Counterman not guilty of stalking.

# **INSTRUCTION NO. 11**

For purposes of the crime of stalking the prosecution need not show that a person received professional treatment or counseling to prove that she suffered serious emotional distress.

### **INSTRUCTION NO. 12**

Concerning the charge in this case, certain words and phrases have a particular meaning. The following are the definitions of these words and phrases:

"Repeated" or "repeatedly" means on more than one occasion.

# **INSTRUCTION NO. 13**

Members of the jury, you may discuss this case only when you are all present and you may only deliberate in the jury room. No juror should attempt to discuss this case with other jurors or anyone else at any time except when all twelve jurors are in the jury room.

# **INSTRUCTION NO. 14**

Once you begin your deliberations, if you have a question, your foreperson should write it on a piece of paper, sign it and give it to the bailiff, who will bring it to me.

The Court will then determine the appropriate way to answer the question.

However, there may be some questions that, under the law, the Court is not permitted to answer. Please do not speculate about what the answer to your question might have been or why the Court is not able to answer a particular question.

Finally, please be sure to keep the original question and response. Do not destroy them as they are part of the official record in this case, and must be returned to me when you return the instructions and verdict forms at the end of the case.

#### INSTRUCTION NO. 15

After you have heard closing arguments, the bailiff will escort you to the jury room, where you will select one of your members to be your foreperson. Your foreperson will preside over your deliberations and shall sign any verdict forms and verdict question forms that you may agree on, according to the rules that I am about to explain.

The verdict must represent the considered judgment of each juror, and it must be unanimous. In other words, all of you must agree to all parts of it.

Only one verdict shall be returned signed. The verdict form and these instructions shall remain in the possession of your foreperson until I ask for them in open court. Upon reaching a verdict you will inform the bailiff, who in turn will notify me, and you will remain in the jury room until I call you into the courtroom.

You will be provided with 1 verdict form.

When you have unanimously agreed upon your verdict you will select the option on the form which reflects your verdict, and the foreperson will sign the verdict form as I have stated.

I will now read to you the verdict form. The verdict form you will receive reads as follows:

DISTRICT COURT ARAPAHOE COUNTY, COLORADO Court Address: Arapahoe County Justice Center 7325 S. Potomac St.,	DATE FILED: April 27, 2017 3:05 PM Filed in the Division	
Centennial, CO 80112	APR 27 2017	
THE PEOPLE OF THE STATE OF COLORADO vs.	Arapahoe County Combined Courts	
Defendant:	COURT	
BILLY COUNTERMAN	USE ONLY	
	Case Number: 2016 CR 2633	
	Division/Ctrm: 408	
JURY VERDICT -COUNT 1: STALKING		

I. We, the jury, find the defendant, BILLY COUNTER-MAN, NOT GUILTY of Stalking.

 $\frac{}{\text{FOREPERSON*}}$ 

II. We, the jury, find the defendant, BILLY COUNTER-MAN, GUILTY of Stalking.

/s/ David F. McManus FOREPERSON\*

\* The foreperson may sign only one of the above (I or II). If the verdict is NOT GUILTY, then I. above should be signed. If the verdict is GUILTY, then II. above should be signed.

DISTRICT COURT, COUNTY OF ARAPAHOE, COLORADO Arapahoe County District Court 7325 south Potomac Street Centennial, Colorado 80112-4030

^ COURT USE ONLY ^

# PEOPLE OF THE STATE OF COLORADO,

v.

CASE NO. 2016CR2633

Division 408

BILLY RAYMOND COUNTERMAN,

Defendant.

# REPORTER'S TRANSCRIPT

#### APPEARANCES:

For the People: LAURA ROBILOTA, #40087

DANIELLE JARAMILLO, #43542

For the Defendant: ELSA ARCHAMBAULT, #44065 THE DEFENDANT APPEARS IN PERSON ON BOND.

This matter comes on for hearing before the HONOR-ABLE F. STEPHEN COLLINS, Judge of the District Court, on Friday, June 30, 2017.

This is a complete transcript of the proceedings had in the case on that date and at that time.

[2] WHEREUPON, the following proceedings are had and entered of record on Friday, June 30, 2017:

THE COURT: We'll call People versus Counterman, which is 16CR2633.

MS. ROBILOTTA: Laura Robilotta and Danielle Jaramillo on behalf of the People.

MS. ARCHAMBAULT: Elsa Archambault appearing with Mr. Counterman, who is present out of custody.

THE COURT: All right. We're set for sentencing today. Are the paries prepared to proceed?

MS. ROBILOTA: Yes, Your Honor, the People are ready.

MS. ARCHAMBAULT: Yes, Judge.

THE COURT: All right. Let me start by asking, does defense have any corrections to the PSI?

MS. ARCHAMBAULT: The only correction that I have, Your Honor, is Mr. Counterman was originally arrested on a harassment charge. This was originally charged as a misdemeanor. So he does have credit; it was wasn't under this case number. I have 13 days from May 25th to June 6th.

THE COURT: People agree?

MS. ROBILOTTA: Yes, Your Honor. We believe there's a substantial nexus.

THE COURT: All right. So 13 days PSC. Any other [3] corrections from defense?

MS. ARCHAMBAULT: No.

THE COURT: People, any corrections?

MS. ROBILOTTA: Yes, Your Honor. In he possible penalties, the People believe it is two and a half to eight years, not the two to eight years as listed in the PSI.

MS. ARCHAMBAULT: I agree with that. I didn't see that.

THE COURT: Okay. I'll note that. Any other corrections?

 $\label{eq:MSROBILOTTA:No other corrections, Your Honor.} MS. ROBILOTTA: No other corrections, Your Honor.$ 

THE COURT: All right. I have reviewed the PSI. What we're going to do is I will hear first from the People. If anyone then wishes to speak in support of the People's position, I'd welcome their comments. I'll then give defense counsel an opportunity to speak. If anyone wishes to speak in support of Mr. Counterman welcome their comments. And then I'll give Mr. Counterman any opportunity to speak if he wishes to do so. So, from the People.

MS. ROBILOTTA: If I may approach the court reporter, I have copies of statements so that they can transcribed.

THE COURT: Well, have they been efiled?

- MS. ROBILOTTA: They have not. I just received them. I can certainly.
- [4] THE COURT: I'll need you to efile them. We're not going to transcribe them. We're not going to just type them in.
- MS. ROBILOTTA: Okay. And Your Honor, these people are present and hey are going to be reading from them. I just wanted it was just a courtesy copy and so the court reporter could follow along.
- THE COURT: Okay. They are welcome to speak, if they wish to do so. We are capable of reading, so we can also read them, if they would prefer for us just to read, how ever they wish to proceed on that. So, from the People?
- MS. ROBILOTTA: Yes, Your Honor. Your Honor, I've had an opportunity to review the presentence investigation report. I have been on this case from fairly early stages when it was back in the county court. I have met with multiple witnesses in this case and I have had an opportunity to get to know the listed victim, [C.W.], in the months and year that I have been handling this matter. What I have noticed is that she is an incredibly strong woman. This case has scared her to her core. I know the Court sat through the testimony and heard about the effect it has had on her and about how strong a woman she was and how independent she was before this happened to her.

This case, what the defendant has done caused a loss of independent in her life. It affected her career. [5] It affected her passion, performing in front of others. I think if there had been a physical injury, Your Honor, it would have been easier and quicker to overcome than the constant fear of not knowing what was going to happen next; what was the defendant going to do, when was he going to send another message, who was he, did he live near her. These were fears that she had every single day for years.

Your Honor, in looking at the PSI, his criminal history, to be quite frank, it is abysmal. This is not the first time he has been charged with this. This is not the first time he has been convicted of this. It is not the first time he has struck fear into somebody through his messages. He has one conviction for driving while ability impaired, and I can let the Court know from my time as an assistant district attorney in the state of New York, it's a violation that is akin to a petty offense in the state of Colorado. He has three misdemeanor convictions and the two cases of which he was convicted of multiple felony offenses for doing the exact same thing, sending these frightening messages through the Internet to people.

Your Honor, it's important to note that he has been given the opportunity for treatment. He has been given the opportunity for supervision. The messages that he sent in this case for nearly the two years were while he was on post-release supervision for Internet threats. The [6] supervision was not enough to ensure community safety. It was not enough to ensure that he did not terrorize another person.

As the Court is aware, [C.W.], for very good reasons, did not come forward for quite some time, and frankly, we don't know if there are other people out there who have not come forward who have been victims of Mr. Counterman.

Your Honor, in looking at the purpose of the code with respect to sentencing, 18-1-102.5(a), to punish a convicted offender by assuring the imposition of the sentence he deserves in relation to the seriousness of this offense. This terrified [C.W.] It terrified those who love her and who care about her. This was an incredibly serious offense. (b), to assure the fair and consistent treatment of all convicted offenders by eliminating unjustified disparity in sentences, providing fair warning of the nature of the sentence to be imposed and establishing fair procedures for the imposition of the sentences. He has been sentenced to prison two times before for doing this exact same thing. He has been warned in the past what the consequences are for his actions and yet he continues to reoffend.

THE COURT: I thought the first time he was sentenced to 27 months – you are right.

[7] MS. ROBILOTTA: That was on each count. I believe there were 10 counts in that indictment, Your Honor.

THE COURT: Okay.

MS. ROBILOTTA: In looking at the legislative declaration for stalking under CRS 18-3-601, the general assembly hereby finds and declares that stalking is a serious problem in this state and nationwide. Although stalking also involves persons who had had an intimate

relationship with one another, it can also involve persons who have little or no past relationship. A stalker will obtain maintain strong, unshakable, and irrational emotional feelings for his or her victim and may likewise believe that the victim either returns these feelings of affection or will do so if the stalker is persistent enough. Further, the stalker often maintains this believe despite a trivial or nonexistent basis for it and, despite rejection, lack of reciprocation, efforts to restrict or avoid the stalker, and other facts that may conflict with disbelief. A stalker may also develop jealousy and animosity for persons who are in relationships with the victim, including family members, employers, coworkers, and friends, perceiving them as obstacles or as threats to the stalker's own "relationship" with the victim.

Because stalking involves highly inappropriate intensity, persistence, and possessiveness, it entails great [8] unpredictability and creates great stress and fear for the victim. Stalking involves severe intrusion on the victim's personal privacy and autonomy with an immediate and long lasting impact on quality of life, as well as risks to security and safety of the victim and persons close to the victim, even in the absence of express threats of physical harm.

Your Honor, I know that mental health is something that has been brought up at some pretrial hearings. He did not plead not guilty by reason of insanity in this matter, and in looking at the PSI, he talks about how he has gotten treatment for depression and anxiety. It is not a defense to this crime and it does not make the victim feel any more safe.

Your Honor, as I stated in trial, [C.W.] has suffered enough. What will make her feel most safe and what is the most justified sentence in this case based off the defendant's actions, as well as his criminal history, is to sentence him to the Department of Corrections for eight years. Thank you very much.

There are several witnesses that would like to address the Court.

THE COURT: That's fine. And again, if they prefer for me to read their statement, that's fine. I welcome their in-person comments. Ma'am, I need you to [9] start by telling me your name and please spell it for the court reporter.

MS. MILLER: Okay. Yes, sir. My name is Lucy Jane Miller; L U C Y, J A N E, M I L L E R. I direct the star Institute for sensory Processing Disorder, a non-profit center for children and families with autism and sensory processing disorder, and [C.W.] is my elder daughter.

I am here to plead with the Court to incarcerate Mr. Counterman. The emotional distress that my daughter, [C.W.], experienced as a result of the trauma induced by Counterman is deplorable. [C.W.] has always been a happy and carefree person. She doesn't show her distress on the outside. She contains it inside. But internalizing her fear doesn't make it any less poignant, and since a jury ruling of guilty while Counterman was free, we were waiting for the sentencing date. [C.W.] usual defense mechanisms are gone. She's now afraid, petrified actually, as are we all, her family and her friends.

[C.W.] is not the type of individual who exaggerates her feelings or turns to others for help. She wants to act maturely and usually handles things fine and for herself. When all this began, her dad and I knew about it only when she came to our house with a legal document, a restraining order. She did not come crying to us to ask what to do. She just handled it.

[10] This stalking has had a disastrous affect on her life and her music career. An outgoing young woman, [C.W.] was never afraid to perform for huge or small crowds. She had an amazing stage presence and would tell jokes between songs while performing. This amazing ability is now in reserve. She is less spontaneous and engages less freely with her audience. Recently, she had an anxiety episode on stage and had to leave. This was post-traumatic stress, a direct result of continually looking over her shoulder to check if Counterman was anywhere nearby – waiting, waiting, waiting for her.

[C.W.] was horrified when erroneously told by the legal authorities that Counterman was outside her house, based on bad GPS information from his ankle bracelet. And later, she was shaken when he said something about seeing [C.W.] and me, her mother, together, as we had just been together.

Counterman said that [C.W.] was sending him covert messages through websites like sarcastic Bad Bitches. He said she had 20 to 30 such accounts at websites where she would covertly communicate with him. Beside sarcastic Bad Bitches were sites like Liam, the Leprechaun, Radio 1 Lebanon, and dozens more. This suggests that

Counterman has a serious mental health problem and a deficiency with reality testing.

[11] Most terrifying is Counterman's lack of reality testing. The fact that he cannot distinguish fact and fantasy is more disturbing. Even I idea that he emailed her thousands of time over a period of seven years is terrifying; not hat emails themselves taken one by one, which were unsettling, but because it went on and on and on with no differentiation between what was real and what was fantasy.

This has to end and it has to end now. 2010 to 2017; seven years of stalking. Even though [C.W.] blocked him from her public website, she will got thousands of emails from a pseudonym of his. They came and came and kept on coming more and more and more. Prior to the trial, [C.W.] had no idea what Counterman looked like. She didn't try to connect with him; in fact, she avoided all contact, responding only once in 2010.

2010. Now, it's 2017. They have never spoken. They have never met, except in court. She's not suing him for pain and suffering. She just wants him to leave her alone. But Counterman won't – or worse, can't leave her alone. He won't or he can't. If it were a matter of won't leave her alone, we wouldn't be so worried. But if he doesn't have control and can't leave her alone, that's another thing. That's an obsession. What's next? what will he do next, having such poor judgment and an inadequate [12] grip on reality?

What makes Counterman's behavior so scary is his fragile hold on reality. Who knows what he might do.

Sadly, Counterman has not been cured, even after two guilty verdicts for previous stalking crimes.

I myself was raised in a Democratic, left-leaning family, and personally, I tend to be lenient. But when it comes to keeping my children safe, I might find myself in the unnoble position of asking for safety, rather than clemency. [C.W.] now always carries a mace gun and also has a permit to carry a weapon. She is more than scared; she is terrified. We all are.

I realize it is not my decision to make, but if it were, I would choose incarceration in a mental health locked prison facility. Counterman is not a well individual. He slips in and out of reality from comment to comment on websites. His reality is fluid and he could easily hurt someone, not because he is vicious, but from psychosis, or in everyday words, losing his grip on reality.

You have a chance to prevent [C.W.] from being victimized again. None of us want to see [C.W.] hurt. No more tears. No more fears. No more chance of horrendous things happenings. We are appalled, sickened, and upset. [C.W.] deserves to be free of this, to be happy again.

Only one person can put Counterman away, and [13] hopefully, for long enough that he can receive effective treatment for his perversion. But having been found guilty in 2002 and 2011, he hasn't yet received the kind of help he needs to stop stalking beautiful young women.

I feel sorry for Counterman, but not as sorry as I am scared for [C.W.] We are terrified that the Court will show leniency, a kindness that could well result in great harm to

[C.W.] Please put Counterman where he needs to be placed, in custody. The last eight weeks since the trial while we waited for sentencing, wondering if he was here, there, wherever [C.W.] was, have been gruesome. Please, please remand Counterman to prison today.

Thank you, Judge, for this opportunity to speak on [C.W.'s] behalf.

THE COURT: Thank you for being here today.

MS. MILLER: Pardon?

THE COURT: Thank you for being here today.

MS. MILLER: Oh, yes, you are welcome.

MS. KATHRYN MILLER: Good afternoon. My name is Kathryn Miller, KATHRYN, MILLER. I like the sign on the back of her machine that says, "Breathe."

I'm a trial lawyer at Miller and Steriet. I've been in courtrooms all my life. This is the hardest one I've ever been in. Speaking about the danger that this man imposed on my niece is harder than I thought it would be. [14] It was hard for me to sit on the witness stand and speak, but it's important that you hear what we have to say, and I'm confident that you will listen.

I learned about the Facebook postings years after they started. [C.W.] came to my office in April of 2016 to show me the Facebook postings she had been receiving at that time for six plus years. When I saw he Facebook postings, I became so alarmed that I immediately spoke to my law partner, whose name is Chris Forest, who also

testified in the trial. He has experience dealing with Internet stalkers. Should I go on?

THE COURT: That's fine, and I do recall your testimony from the trial.

MS. KATHRYN MILLER: Using he phone number that Mr. Counterman provided in he Facebook postings, we learned – we used the Internet to find out who he was. And we learned that he had been arrested and convicted twice for the exact same type of crime of stalking and threatening women. We called the police that day in 2016 when we found the indictments on the Internet from his prior convictions. We now know that at that time while he was stalking [C.W.], he was on supervised release from the federal court in New York for his second felony conviction for the same type of crime. We now know that during the entire time that he was on supervised release from this second conviction at least, [15] he was reoffending. He was stalking [C.W.] and threatening her with her life. We don't know if there were other victims.

[C.W.] did not ask for this. As you know, she is strong and independent. She hides her fears from her family. She hid them from us for over six years. The day that we called the police and told her what we had found about this man's prior convictions, she was in total shock. She knew intuitively at that moment that calling the police would mean she would have to confront him.

He has been tormenting her for years. She didn't know who he was. She did not if he had shown up at her performances. She didn't know if she had spoken to him. She didn't know if he was following her. His Facebook posts suggested that he was following her. He knew when she was with her mother. He knew what color her vehicle was. He said in the Facebook postings that, you know, he asked the question, is that your white Jeep I just saw, knowing she had a Jeep. It was very frightening, but she didn't know what he looked like so she didn't know how to protect herself. That's why we called the police.

We know that you know all this. We know that you know the history, but it's critical to us that you consider the fact that he has been sentenced to prison twice. He's been on supervised release for 36 months on each of the two [16] occasions, and he continues to reoffend, to threaten women, to stalk them, and to frighten them.

We know he has a mental illness. This is clear, and we feel badly for him. But you cannot let his mental illness cause you to lose sight of the fact that he is a dangerous and violent man who has repeatedly and purposefully victimized multiple women. In sending thousands of unwanted messages to [C.W.], which contained threats and reflect that he was following her, she was in physical danger and she will continue to be in physical danger as long as he is not in prison.

We are thankful that the legal system worked quickly to prevent him from causing any greater physical injury, but do not be swayed by the fact that he did not have a chance to follow through on his threats. The injury that he knowing caused her is real. The penal system, the legal system is the only place from which she can receive protection. He's been on supervised release now three times. We know it doesn't work. You know it doesn't work. It's

not going to work to prevent him from reoffending. He was reoffending while he was on his last supervised release.

Courts up to now have been ineffective in protecting victims of his crimes. Do not sentence him lightly. It has been said that when you to the same thing over and over and expect different results, it won't work. [17] Don't do the same thing over and over that prior courts have done. It's understandable that they have done it, but don't do it again. If you want a different result than what we've seen in the past, we have to try a different approach.

Please incarcerate Mr. Counterman for the maximum penalty. The damage that [C.W.] has suffered to her well-being and her career has been severe. She does not deserve this. Please give him the maximum sentence. Thank you.

THE COURT: Thank you for being here.

MS. O'HARA: Hi, Your Honor. My name is Kimberly O'Hara; K I M B E R L Y, O H A R A. I got to open for Joan Jett a few years ago because I play bass for [C.W.], who was her opening act. There were 30,000 people in that audience. [C.W.] walked out with as much confidence as any pro would. She led our band fearlessly. We spent hours selling CDs and talking to people afterwards. [C.W.] personally met and hugged and shook hands with hundreds and hundreds of people. She smiled the entire time and told each person thank you so much for coming. This is the [C.W.] that I'm used to playing with.

Since this man started sending harassing messages, I've had o witness a heartbreaking change in my best friend and band leader. She was too frightened to book shows because it meant that we had to post online where we would [18] be and at what time. We did not know what Bill Counterman looked like. He could be anyone, anywhere, at any point.

[C.W.] became afraid to talk to people. She was anxious, unhappy, constantly checking in with security. Playing a show was clearly more stressful than joyful. Last month I had to watch her leave the stage for the first time in her 10 year career. We played a show in Dallas in front of just 100 people. [C.W.] had what I would describe as a panic attack on stage. She looked at me 20 minutes into the set and told me she wasn't okay. She was shaking and breathing shallowly and I was worried that she would faint. I grabbed her a chair and asked her if she could keep playing. She told me that she was terrified that Bill Counterman was there and that he intended to hurt her or me and I had no way of reassuring her that he wasn't.

She got through one more song sitting down and then to my horror, she got up and walked off the stage. When I finally found her in the green room, she was embarrassed, deeply upset, and was worried that she might not ever be able to play shows again without fear.

Writing, singing, and performing is [C.W.'s] passion. Playing with her is one of my passions because she genuinely loves what she does and it shows. We were both so proud the day that Music Tyro wrote a review about [C.W.], saying, "It's truly inspirational to see an artist that [19] possesses so many excellent qualities; she's talented, approachable, and extremely loyal to her fans."

I am asking you to protect my friend and band leader so that we can be free to perform and do what we love. Please make sure that Bill Counterman will no show up anywhere that we are by sentencing him to incarceration for as long as possible. Thank you.

THE COURT: Thank you for being here.

[C.W.]: Hello. My name is [C.W.]; [C.] [spelled], [W.] [spelled]. Thank you for listening to my friends and family. I know this is our American system and I am not saying that I have a better one, but having to stand 20 feet from your stalker ask that he be punished by being sent to prison is very horrifying. This entire experience has been a nightmare for me. I did not ask to be on trial. I did not ask to have to prove that I have suffered emotional distress. I didn't even ask for these charges to be filed. But I am asking for the Court to please provide me with some safety.

I have suffered seven years of harassing communications from this man. They ranged in tone from inappropriate to scary. I never responded, but that doesn't mean I wasn't frightened. I researched victimofcrime.org. Stalking Resource Center says many victims struggle with how to respond to a stalker. Methods rarely work because [20] stalkers are actually encouraged by any contact with the victim, even negative interactions. In fact, stalking safety tip number nine is, do not interact with the person stalking you. Responding to stalker's actions may reinforce their behavior. So even though I received thousands of messages, I never responded. I did block him multiple times. He messaged my best friend and asked her if she could

please get to me. We were both so freaked out that we reported it to Facebook, but they didn't take any action.

When the messages got so scary, I finally asked for help. At this point he had mentioned physical sightings, the color of my car, he had threatened me saying things like staying in cyberspace will kill you and telling me to fuck off and die.

I didn't know if he was following me so I asked my Aunt Katy to help me and we decided to report him to the police. If I was scared when I reported him, I was absolutely terrified afterwards. It turns out that this man has already been convicted twice for the same crime, stalking women. In fact, he was still communicating with his second victim when he started messaging me. He made a phone call from Colorado to New York in 2011 and he said, I will make a trip back east and I will put your head on a fucking sidewalk block and I will bash it in. I'm coming back to New York. I'm looking forward to meeting up with [21] you. I will rip your throat out on sight. This was in 2011. He was contacting me in 2010. He was contacting at least two victims at the same time.

He also said in 2003 to his first victim, people in this position that I am in right now have been known to have gone and killed people, take nine millimeters and blow their heads off and shit like that. This is what happens, you know. In 2015, to me, dammit, where do you think a person in my position should be at. Some crawl out of where I'm at and some don't make it. Fuck off and die permanently. You cannot come true. I won't say the rest.

This man's stalking crosses state lines. It crosses all boundaries of mental stability and physical safety. On another phone call to his victim in 2002, he said –

MS. ARCHAMBAULT: Your Honor, I'll object at this point. Mr. Counterman is here for this case, not for previous cases.

THE COURT: I understand. I also understand he's been convicted twice before, and that he was on supervision for this incident.

[C.W.]: Okay. I just want to also say that he threatened his victim's sister and the rest of her family. This stalking has had a crippling affect on me for six years. I was terrified that he would hurt me or hurt [22] someone that I loved. I was nervous to meet new people, to go places alone. The past year has been far worse. I stopped performing. I played almost no shows. I used to play dozens in a year. I couldn't meet my fans. I was too frightened to travel alone. I got a concealed carry permit so I could carry a gun. I often had trouble sleeping. The terror and isolation that this has caused me is real and has had real consequences.

At that show in Dallas just one month ago, I got so nervous that I started feeling nauseous. I almost fainted and I had to leave the stage. I've never left a stage in my life. I've never even had a little stage fright. But I was shaking and I was crying so badly that I didn't come out for an hour and when I finally did, I just spent the night with security.

So I know the American prison system does not serve the mentally ill well, but that is not my concern today. Today my concern is my safety and the safety of my family. This man is a disturbed person. He's been convicted of stalking three times and he has shown no remorse, no change in behavior –

MS. ARCHAMBAULT: Again, objection as to if he was convicted of stalking previously.

[C.W.]: I'm almost finished.

THE COURT: And I understand, ma'am. I understand [23] what his prior charges are and I'll take the record for what they are. It's okay. Take a deep breath. Just relax. It's okay.

[C.W.]: Relax. Okay. I do believe, I truly believe I could easily be the victim of serious physical harm at his hands and I'm just asking the Court to protect me. Please sentence Bill Counterman to incarceration for as much time as possible. Thank you.

THE COURT: I want to thank you for being here today.

MS. ROBILOTTA: There is no one further that wants to address the Court, Your Honor.

THE COURT: All right, from defense?

MS. ARCHAMBAULT: Judge, this is a little tricky for me as Mr. Counterman's attorney because from Mr. Counterman's perspective, everything that he said in the recorded interview hat was presented at trial, he wholeheartedly, absolutely believes. He did not think that

he was contacting anyone who was not contacting him back. He thought that he was having conversations with this person. And so I disagree that he purposely victimized [C.W.] He very much thought that he was conversing with her.

Mr. Counterman was on supervision at the time that this case was picked up. He was enrolled in treatment with [24] a therapist named Cindy Crane or a counselor named Cindy Crane at Independence House. She's a licensed counselor. She's not a psychiatrist or a psychologist. And I think as is evidenced by the PSI, if Mr. Counterman isn't talking specifically about the facts of this case or the messages themselves, someone who is speaking to him isn't going to be tapped into the underlying issues here. I spoke with Ms. Crane and I can let the Court know that she did not know the real issue that she should have been treating, and I think that that's just the nature of what she knew to ask and perhaps the level of care that she was able to give as just a counselor and not someone higher and more experienced in mental health.

If you ask Mr. Counterman what his mental health issues are, he will report from what he feels and what he has been told in the past, that he suffers from anxiety and depression and he's not aware of anything else. I'm certainly not a therapist. I'm not a mental health professional. I don't know how to address these things with my client in a productive way, but I do very much think that it needs to be addressed and I think that if we really want to ensure safety to the community, then that's the way to do it.

Incarceration will incapacitate him. That is certainly one of the factors under the factors that the [25] Court considers in imposing a sentence, but it is absolutely not going to lower his risk or ensure anyone be in a better situation when he is released. It would be great if there was a locked mental health facility. Mr. Counterman can't get sentenced to that as a part of this sentence. That's just not an option that does exist. Prison doesn't treat the mentally ill well. People do not come out any better, if not much worse.

So I think that treatment from a capable person would be to everyone's benefit. I think it's incredibly noteworthy that since this case was filed, since Mr. Counterman was told directly not to have contact with [C.W.], there has been absolutely no contact – not on Facebook, not on the phone, not in person. Certainly the Court knows the facts of this case, that the contact that he did have was all over the Internet. I understand that that doesn't lessen [C.W.'s] fear and the reality of her fear, the genuineness of her fear, but as far as Mr. Counterman's actual actions go and the actual actions that he took, he typed messages and sent them over the Internet.

Mr. Counterman has lots of stability factors going for him. He has a stable job. He has stable housing. He has a vehicle. I thought it was suspect in the presentence investigation report that his risk factor, risk assessment and LSI score weren't listed at all. I did follow up with [26] the probation officer who wrote this. He's a low risk. I think it's concerning that that was just left out completely, but I can report to the Court that he is on the LSI listed as a low risk. I think that treatment would be the most appropriate option for the Court here, understanding that the concern

is safety and I just think that treatment is going to achieve that better than anything else that the Court has as far as options.

So that is what we're requesting today, and I don't have anything further. I have, just so the Court knows, advised Mr. Counterman, since we will be appealing this case, not to say anything about the facts of the case. Thank you.

What, if anything, has happened in the federal case where he was on supervision at the time?

MS. ARCHAMBAULT: He was terminated successfully from that case.

THE COURT: so they did not do anything in response to these charges?

MS. ARCHAMBAULT: No, they did not.

THE COURT: All right. Is there anyone who wishes to speak on Mr. Counterman's behalf?

MS. ARCHAMBAULT: No, Judge.

THE COURT: Mr. Counterman, is here anything you would like to tell me?

[27] THE DEFENDANT: No, thank you.

THE COURT: All right. This is a troublesome case in frankly more ways than I can imagine. It's troublesome because there clearly is some sort of mental health issue going on with Mr. Counterman that causes him to continue to go down this sort of path despite having been

charged and convicted previously. It is surprising to me that he would keep going down this when he's been sentenced to prison, although federal, two times in the past on supervision, and yet, he goes down this road.

Now, that is either because he does intentionally decide that he will stalk someone or it's because he is just is out of touch with reality and doesn't understand the harm that his actions are causing. It is not clear to me precisely which that is, although, I think that most people here are willing to give Mr. Counterman the benefit of the doubt that he is doing it through a lack of understanding, as supposed to a malicious intent that he is, as several people said, suffering from some form of mental health problem. I think that is the most likely cause of why he keeps going down this road, but again, I can't determine that with certainty.

That's troublesome to me because 1 think just about everyone here also agrees that prison does not provide meaningful treatment for this type of mental health issue, [28] and so, sending someone to prison for a prolonged period of time isn't likely to solve the underlying problem. I recognize that; however, I also recognize the harm that his behavior cause to [C.W.], Ms. O'Hara, her family, and I think it's apparent from anyone who watched the trial, from anyone who listened to them today, that the harm caused, although not necessarily physical, was truly significant. The behavior was, I think, terrifying to a reasonable personal. The lack of certainty was terrifying – who is this person, where is this person, is this person watching me. And even if I give Mr. Counterman the benefit of the doubt

that he was not maliciously doing this, that doesn't change the fact that his behavior caused real and significant harm.

Now, if this were he first time that we had gone down that road, I think people do tend to think, well, let's see if we can get treatment, let's see if we can do something to try to address this issue and prevent future harm, have some punitive consequence, but try to deal more with the underlying problem, but it isn't. This is the third time we've been down that road and I have no reason o believe that if Mr. Counterman were just on supervision, we would not go down this road a fourth time, either with [C.W.] or with some other person.

For purposes of the record, I have considered all [29] of the statutory factors set forth in CRS 18-1-1-02.5, including the nature of the offense, the harm caused by the offense, and the need to impose a sentence that recognizes the seriousness of the offense. I've also considered Mr. Counterman's individual circumstances, his potential for rehabilitation, and have tried to think of a sentence hat would impose appropriate punishment while at he same time trying to ensure that something like this does not happen down the road, that Mr. Counterman learns from this.

Having balanced all of the factors, what I have concluded is that the appropriate sentence is a sentence to the Department of Corrections for a period of four and a half years, followed by a mandatory period of parole of 24 months. He will receive 13 days presentence confinement credit. He will be required to pay all fines, fees, costs, and

surcharges as required by law. I did no see any request for restitution from the People.

MS. ROBILOTTA: If I may have just a moment, we have not filed anything. I would ask for 91 days to file something in case there is a victim's compensation or similar issue.

THE COURT: All right. I'll reserve restitution for 90 days. Mr. Counterman, I wish there was something I could do that would make me feel that you are going to get the type of treatment that you need to understand that you [30] can't engage in this type of behavior. I wish that there was something I could do to break through and make sure that you recognize the harm that you have caused so that you do not cause this sort of harm in the future. I encourage you to pursue any and all treatment or programs in the Department of Corrections that are available to you to try to help deal with this underlying issue and to do so further after you have served your sentence. But in the meantime, I do feel that it is necessary for community safety to have you serve a significant period of incarceration.

Anything further that we need to address from the People?

MS. ROBILOTTA: Your Honor, I just wanted to be clear that the mandatory protection order will remain in place for the length of the incarceration, as well as the parole period.

THE COURT: Yes, that is required by law. Mr. Counterman, it's important that you understand that even

after you've served your sentence, even while you're on parole, the mandatory protection order remains in place. Anything else from the People?

MS. ROBILOTTA: No, Your Honor. Thank you very much.

THE COURT: Anything else from defense?

MS. ARCHAMBAULT: Judge, I wasn't able to look up [31] the 16M case on data access. It's sealed from me. But thinking about it, I think that Mr. Counterman may have been arrested and spent time in Denver. I just called the jail to see how much time he served there. The case is 16M1519. Mr. Counterman does have his room that he rents, as well as his car. In preparing for possibly going away, he did what he could, but not knowing he sentence, he didn't want to sell his car in the off chance that he wouldn't have to go to prison, so we would ask for a stay for Mr. Counterman to get his affairs in order. He doesn't really have someone to do this for him, so that would be our request.

THE COURT: I will not approve any stay. He has been on notice certainly since the trial and the presentence investigation report that a sentence to the Department of Corrections was likely, particularly given his past record. I'm not comfortable from a community safety point of view of granting a stay.

MS. ARCHAMBAULT: Judge, even though he's been out of custody since April of last year with no issues?

THE COURT: Your request is denied.

MS. ROBILOTTA: Your Honor, with regard to Ms. Archambault trying to figure out he number of days, in reviewing the 16M case, I believe he was first arrested on May 20th and did not bond until June 6th, which would come to 17 days of presentence confinement.

[32] THE COURT: So a total of 17, as opposed to 13?

MS. ROBILOTTA: Yes.

THE COURT: Is that agreed?

MS. ARCHAMBAULT: I don't have any way to know, so sure.

THE COURT: All right. Then we'll change it to 17 days presentence confinement credit. Anything else from defense?

MS. ARCHAMBAULT: No.

THE COURT: Okay. [C.W.], I hope that you and your family are finally able to get a sense of closure with this matter and start moving forward. I know it's been a long road since you called the police and I do appreciate your being here. As I say, I hope that you are now able to begin to put this matter behind you.

MS. ARCHAMBAULT: Judge, did the Court get my motion for appointment of the public defender?

THE COURT: Yes, I pulled it out of the division box and I will grant that.

MS. ARCHAMBAULT: Thank you.

THE COURT: All right. Thank you, all.

(The proceedings were concluded.)

\* \* \*

[33] [Reporter's Certificate Omitted]

# RID:D0032016CR002633-000087

District Court, Arapahoe County, State of Colorado Case#:D0032016CR002633 Div/Room: 408 JUDGMENT OF CONVICTION, SENTENCE Original

# The People of the State of Colorado vs. COUNTERMAN, BILLY RAYMOND

DOB 12/13/1961

AKA: COUNTERMAN, BILL AKA: COUNTERMAN, BRAY

DATE FILED: June 30, 2017 CASE NUMBER: 2016CR2633

The Defendant was sentenced on: 6/30/2017

People represented by . . . :

JARAMILLO, DANIELLE DAWN HELEN

Defendant represented by: ARCHAMBAULT, ELSA A.

UPON DEFENDANT'S CONVICTION this date of: 4/27/2017

The defendant was found guilty after trial of: Count # 2 Charge:

STALKING-EMOTIONAL DISTRESS

C.R.S # 18-3-602(1)(c) Class: F5

Date of offense(s): 4/01/2014 to 4/30/2016

Date of finding(s): 4/27/2017

IT IS THE JUDGMENT/SENTENCE OF THIS COURT that the defendant be sentenced to THE CUSTODY OF THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS

Department of Corrections	$4.50\mathrm{YEARS}$	COUNT	2	
Credit for Time Served	$17.00 \; \mathrm{DAYS}$	COUNT	2	
ALL FINES AND FEES T	O BE PAID			
RESTITUTION RESERVED		/BAI	ζ	
Plus a mandatory period of parole as required by statute.				
Months on parole 0024				
Assessed	Balance			
\$ 501.50	\$ 501.50	)		
THEREFORE, IT IS ORD AHOE COUNTY shall conv following department TO B ACCORDING TO LAW COMENT OF CORRECTIONS	ey the DEFEN E RECEIVEI LORADO STA'	NDANT to O AND KE TE DEPAI	the EPT RT-	
ADDITIONAL REQUIREMENTS				
JUDGMENT OF CONVICTION IT IS FURTHER ORDERS				
DATE <u>6-30-17</u> NPT				
JUDGE/MAGISTRATE				
s/ <u>F. Stephen Collir</u>				
F. STEPHEN C	ULLINS			

# CERTIFICATE OF SHERIFF

I CERTIFY THAT DIRECTED	I EXECUTED THIS ORDER AS	
DATE	SHERIFF BY DEPUTY	