

No. _____

In The
Supreme Court Of The United States

DANIEL KIM,
Petitioner,

v.

COMMONWEALTH OF MASSACHUSETTS
Respondent.

*On Petition For Writ Of Certiorari
To The Massachusetts Appeals Court*

APPENDIX

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April 2023

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* Exhibit 3, the petitioner’s blog posts, is 284 pages in length. The blog posts included in the petitioner’s appendix comprise only a small sampling, but these are the posts the government specifically pinpointed as violative of the law.

** Exh. ID M are the blog posts identified by Officer Hutchings in his testimony and are 244 pages in length. [Tr. 4, 18]. The blog post included in the petitioner’s appendix is only a small sampling, but this is a post the government specifically pinpointed as violative of the law.

January 12, 2023

491 Mass. 1103

(This disposition is referenced
in the North Eastern Reporter.)

Supreme Judicial Court of Massachusetts.

COMMONWEALTH

v.

Daniel KIM

Reported below: [101 Mass. App. Ct. 1124 \(2022\)](#).

Opinion

Appellate review denied.

All Citations

491 Mass. 1103, 201 N.E.3d 709 (Table)

End of Document

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COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

21-P-195

COMMONWEALTH

vs.

DANIEL KIM.

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

The defendant, Daniel Kim, appeals from his convictions, after a Superior Court jury trial, of stalking, G. L. c. 265, § 43 (a); indecent assault and battery, G. L. c. 265, § 13H; witness intimidation, G. L. c. 268, § 13B; criminal harassment, G. L. c. 265, § 43A; and four counts of violation of a harassment prevention order, G. L. c. 258E, § 9. We conclude that there was sufficient, indeed abundant, evidence that the defendant's blog posts constituted true threats. Further concluding that the posited errors in the jury instructions did not create a substantial risk of a miscarriage of justice and that the prosecutor's charging decisions do not show prosecutorial vindictiveness, we affirm.

1. Sufficiency of the evidence. When reviewing the denial of a motion for a required finding of not guilty, "we consider

the evidence introduced at trial in the light most favorable to the Commonwealth, and determine whether a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Commonwealth v. Oberle, 476 Mass. 539, 547 (2017). "The inferences that support a conviction 'need only be reasonable and possible; [they] need not be necessary or inescapable.'" Commonwealth v. Waller, 90 Mass. App. Ct. 295, 303 (2016), quoting Commonwealth v. Woods, 466 Mass. 707, 713 (2014).

The defendant challenges the sufficiency of the evidence only insofar as he argues that, to the extent a charge was based on his blog communications, the evidence was insufficient to find that these communications were not constitutionally protected speech. In this regard, a communication is not constitutionally protected if, inter alia, it constitutes a "true threat." See Commonwealth v. Bigelow, 475 Mass. 554, 566 (2016). A true threat exists where a person "communicate[s] a serious expression of an intent to commit an act of unlawful violence to a particular individual." Kareem K. v. Ida I., 100 Mass. App. Ct. 902, 904 (2022), quoting Virginia v. Black, 538 U.S. 343, 359 (2003). A true threat includes "not only . . . direct threats of imminent physical harm, but . . . words or actions that -- taking into account the context in which they arise -- cause the victim to fear such harm now or in the future

and evince an intent on the part of the speaker or actor to cause such fear." A.S.R. v. A.K.A., 92 Mass. App. Ct. 270, 280 (2017), quoting Bigelow, supra at 566-567.

"In the usual case, whether a communication constitutes a threat or a true threat is a matter to be decided by the trier of fact." A.S.R., 92 Mass. App. Ct. at 278, quoting Bigelow, 475 Mass. at 567. In evaluating whether the defendant's conduct constitutes a threat, a "court will look to the actions and words of the defendant in light of the attendant circumstances." Commonwealth v. Welch, 444 Mass. 80, 88 (2005), quoting Commonwealth v. Gordon, 407 Mass. 340, 349 (1990). See Commonwealth v. Cullen, 79 Mass. App. Ct. 618, 622 (2011) (for sufficient evidence of threat "the totality of the defendant's behavior must be considered"). "The assessment whether the defendant made a threat is not confined to a technical analysis of the precise words uttered." Commonwealth v. Leonardo L., 100 Mass. App. Ct. 109, 115 (2021), quoting Commonwealth v. Sholley, 432 Mass. 721, 725 (2000), cert. denied, 532 U.S. 980 (2001).

Here, the evidence was sufficient for a jury to find that the defendant's blog posts contained true threats made to place the victim in reasonable fear of death or bodily injury. See Commonwealth v. Chou, 433 Mass. 229, 234 (2001); Commonwealth v. Gupta, 84 Mass. App. Ct. 682, 687 (2014) ("Threatening letters may constitute stalking activity without the risk of immediate

or imminent physical harm to the recipient"). At trial, the victim testified to the defendant's behavior in the summer of 2011, including how the defendant sexually assaulted her, "bombard[ed] [her] with emails and texts," and appeared at her home unannounced. It is within this context that the defendant's online blog must be understood. See A.S.R., 92 Mass. App. Ct. at 280.

A jury could reasonably find that many of the defendant's blog entries constituted true threats against the victim. The victim testified that blog posts contained photos of her¹ and information concerning her personal whereabouts, and referenced her by her given name as well as "Ellie." The blog referenced the victim's impending death with posts such as, "Ellie RIP . . . May my beautiful and beloved Ellie rest in peace" and "Ellie need never fear this [death], because she will always be missed by me." In August 2013, a week before the harassment prevention order was set to expire, the defendant posted,

"Stand Up for Yourself If you lie now, you have no one you can blame for your actions. . . . Your actions have consequences, and if you lie about me again, I will have no choice but to take action against you. I love you, but I know that if I do not hold you responsible for your actions, no one will."

¹ The victim testified that she saw some of the photos for the first time on the defendant's blog.

Shortly after the order was extended, the defendant posted "Closing Doors" where he wrote that he dreamed that the victim died and that "I hope it isn't a vision of things to come." On August 15, 2014, the same day as the harassment prevention order extension hearing, the defendant posted "One Last Chance."² Given the content of the blog posts and the context in which they were made, there was sufficient evidence for a jury to find that the blog posts contained intentional threats that would place a reasonable person in imminent fear of death or bodily harm. See Cullen, 79 Mass. App. Ct. at 621 (Commonwealth presented "sufficient evidence of a targeted threat" where defendant mailed twenty-five letters containing victim's personal information to victim's workplace; letters repeatedly mentioned Latin King gang and stated "LOOK OVER YOUR SHOULDERS 4 LIFE").

2. Jury instructions. a. First Amendment to the United States Constitution. "Trial judges have 'considerable discretion in framing jury instructions, both in determining the precise phraseology used and the appropriate degree of elaboration.'" Commonwealth v. Alden, 93 Mass. App. Ct. 438, 444 (2018), quoting Commonwealth v. Kelly, 470 Mass. 682, 688

² The victim testified that on this date "the harassment order became permanent." "One Last Chance" was the defendant's last blog post.

(2015). "As there was no objection at trial, 'we review for a substantial risk of a miscarriage of justice.'" Commonwealth v. Diaz, 100 Mass. App. Ct. 588, 599 (2022), quoting Commonwealth v. Bolling, 462 Mass. 440, 452 (2012).

At trial, the judge instructed the jury on the elements of stalking, criminal harassment, and violation of the harassment prevention order that the Commonwealth was required to prove beyond a reasonable doubt. To satisfy the first element of criminal harassment, the judge instructed the jury:

"the Commonwealth must prove a pattern of conduct which includes a minimum of three incidents of harassment . . . phrased in the alternative [as] a knowing pattern of conduct, or speech, or series of events. Speech, even offensive speech, enjoys broad protection under the First Amendment, subject to narrow exceptions. So, to the extent that the Commonwealth solely relies on pure speech to satisfy this element, that speech must consist of threats or so-called fighting words that directly conveyed to the alleged victim[']s face [sic]. However, this limitation does not apply to speech that violates a court order, such as a no contact order, even if it would otherwise be protected. It also does not apply, if the conduct in conveying the speech, is itself harassment."

Because the jury convicted the defendant of stalking, the jury necessarily found that the defendant threatened the victim with the intent of placing her in imminent fear of death or bodily injury. See Commonwealth v. Chonga, 94 Mass. App. Ct. 385, 386-387 (2018) (for stalking conviction, "the evidence was clearly sufficient to support the jury's findings on the elements of threat and intent"). Accordingly, the jury

necessarily must have found that the defendant's blog posts constituted a "true threat." See Walters, 472 Mass. at 691 ("Comparing the definition of 'true threat' to the threat component of the stalking statute, we conclude that any verbal or written communication that qualifies as a threat as defined in the statute is also a 'true threat,' and therefore is not entitled to protection under the First Amendment"). Any error in defining the scope of true threats in the instruction on criminal harassment could not have affected the jury's decision. See O'Brien v. Borowski, 461 Mass. 415, 420 n.5, 425 (2012) ("discern[ing] an intent to confine the meaning of harassment to either fighting words or 'true threats'").

Moreover, the "knowing pattern of conduct or series of acts" in the criminal harassment indictment was not based solely on speech because the indictment included the defendant's "unwanted touching of and contact with" the victim and the defendant "mailing . . . a package containing writings directed to/and or about" the victim to her home. Cf. Bigelow, 475 Mass. at 571 ("'conducts or series of acts,' G. L. c. 265, § 43A [a], that the Commonwealth claimed qualified as harassment consisted solely or at least principally of speech -- i.e., the contents of the letters"). Furthermore, as explained supra, many of the defendant's blog entries focusing on the victim's death and the defendant's need to take action against her have no reasonable

interpretation but as true threats. Accordingly, any error in the instruction did not cause a substantial risk of a miscarriage of justice. See Commonwealth v. Buttimer, 482 Mass. 754, 772-773 (2019) (error in judge's instruction "did not rise to the level of a substantial risk of a miscarriage of justice").

b. Intent to communicate the threat. Here, where the Commonwealth introduced abundant evidence that the defendant intended to communicate the threat contained in his blog posts to the victim, the judge's failure to instruct the jury that the Commonwealth had to prove that he intended those posts to reach the victim did not create a substantial risk of a miscarriage of justice.³ See Walters, 472 Mass. at 693 ("although communication of a threat to its intended victim is not expressly required under [G. L. c. 265,] § 43 [a] [2], we agree with the Appeals Court that evidence of the defendant's intent to communicate the threat through direct or indirect means is necessary"). At trial, the Commonwealth introduced blog posts where the

³ On the stalking charge, the judge instructed the jury, "you'll need to consider what his [the defendant's] intention was in making it [the threat]." In contrast, for the violation of the harassment prevention order charge the judge instructed the jury that, if "the defendant is alleged to have violated the harassment prevention order by means of the actions of a third person or persons, the Commonwealth must prove that the defendant intended that a third person do the act that resulted in the Violation of the Order."

defendant expressed his intent that the victim read his posts. In November 2011, the defendant posted, "My beloved Ellie I am writing this post and hoping that the message here eventually makes its way to you" and, "I hope Ellie is reading this blog." In January 2012, the defendant posted, "Ellie I hope you are reading this" and, "Ellie If, by chance, you are still reading this blog . . . please read all the posts and comments I have written for you." In August 2013, the defendant posted, "If [the victim] . . . is reading this" In August 2014, the defendant posted, "If, by any chance, a part of my beloved [victim] does still exist and is still reading this blog." Although the blog posts were publicly accessible, they were specifically directed at the victim.⁴ See Commonwealth v. Johnson, 470 Mass. 300, 312-313 (2014) (where public Craigslist postings were directed at "the victims and the victims alone," "defendants cannot launder this harassment . . . through the Internet to escape liability").

Furthermore, the defendant mailed a package containing the blog posts to the victim's home. Although the package was addressed to the victim's younger sister, any reasonable jury would conclude that the defendant intended to communicate the

⁴ The victim testified that "you could go to dankim.com to find the defendant's blog or you could . . . google my name and . . . [i]t was on the first page of search results."

contents of the package -- the blog posts -- to the victim. See Commonwealth v. Hughes, 59 Mass. App. Ct. 280, 283 (2003) (evidence sufficient for jury to find that, in making statement to his brother, defendant intended it "to be passed on" to victim). Accordingly, there was no substantial risk of a miscarriage of justice.

3. Vindictive prosecution. "A defendant has a heavy burden to demonstrate that there was prosecutorial vindictiveness: there must be a high likelihood of actual vindictiveness, and application of the doctrine must not 'unduly undermine normal prosecutorial discretion' to bring charges in multiple prosecutions." Commonwealth v. Rodriguez, 476 Mass. 367, 374 (2017), quoting Commonwealth v. Johnson, 406 Mass. 533, 537 (1990). We assume, without deciding, that a claim of vindictive prosecution may be brought for the first time on appeal.

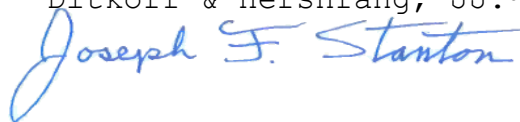
Here, the Commonwealth acted within its discretion in charging indecent assault and battery and additional violations of the harassment prevention order in the indictments that were not included in the District Court complaint. See Rodriguez, 476 Mass. at 374, quoting Johnson, 406 Mass. at 538-539 (prosecutor has discretion "after obtaining a first set of indictments, to initiate additional prosecutions for separate and distinct crimes"). Although the defendant's conduct during

the summer of 2011, which included the sexual assault, prompted the victim to seek a harassment prevention order, nothing in the record indicates that the victim reported the sexual assault to the police at that time. In any event, the Commonwealth was not restricted to the charges that the police sought in the application for a criminal complaint in deciding how to craft the indictments. Cf. Commonwealth v. Barbosa, 99 Mass. App. Ct. 132, 135 (2021), quoting Commonwealth v. Wilbur W., 479 Mass. 379, 409 (2018) ("A district attorney is vested with wide discretion in determining whether to prosecute an individual").

Similarly, the Commonwealth was entitled to amend its original complaint with additional harassment prevention order violations based on the defendant's continued blogging after the 2013 complaint was filed. See Rodriguez, 467 Mass. at 374. Accordingly, the Commonwealth's charging decisions were within its prosecutorial discretion.

Judgments affirmed.

By the Court (Neyman,
Ditkoff & Hershsfang, JJ.⁵),



Clerk

Entered: November 10, 2022.

⁵ The panelists are listed in order of seniority.

1482CR00816 Commonwealth vs. Kim, Daniel Larry

- Case Type:
- Indictment
- Case Status:
- Open
- File Date
- 09/30/2014
- DCM Track:
- B - Complex
- Initiating Action:
- STALKING c265 §43(a)
- Status Date:
- 10/24/2017
- Case Judge:
-
- Next Event:
-

[All Information](#) [Party](#) [Charge](#) [Event](#) [Tickler](#) [Docket](#) [Disposition](#)

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App. 16

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[More Party Information](#)

Party Charge Information

- Kim, Daniel Larry
- - Defendant

Charge # 1:

265/43/A-2 - Felony STALKING c265 §43(a)

- Original Charge
- 265/43/A-2 STALKING c265 §43(a) (Felony)
- Indicted Charge
- Amended Charge

Charge Disposition

Disposition Date

Disposition

05/23/2018

Guilty Verdict

- Kim, Daniel Larry
- - Defendant

Charge # 2:

265/13H-2 - Felony INDECENT A&B ON PERSON 14 OR OVER c265 §13H

- Original Charge
- 265/13H-2 INDECENT A&B ON PERSON 14 OR OVER c265 §13H (Felony)
- Indicted Charge
- Amended Charge

Charge Disposition

Disposition Date

Disposition

05/23/2018

Guilty Verdict

- Kim, Daniel Larry
- - Defendant

Charge # 3:

268/13B/A-4 - Felony WITNESS/JUROR/POLICE/COURT OFFICIAL, INTIMIDATE c268 §13B

- Original Charge
- 268/13B/A-4 WITNESS/JUROR/POLICE/COURT OFFICIAL, INTIMIDATE c268 §13B (Felony)
- Indicted Charge
- Amended Charge

Charge Disposition

Disposition Date

Disposition

05/23/2018

Guilty Verdict

- Kim, Daniel Larry
- - Defendant

Charge # 4:

265/43A/A-0 - Misdemeanor - more than 100 days incarceration HARASSMENT, CRIMINAL c265 §43A(a)

- Original Charge
- 265/43A/A-0 HARASSMENT, CRIMINAL c265 §43A(a) (Misdemeanor - more than 100 days incarceration)
- Indicted Charge
- Amended Charge

Charge Disposition

Disposition Date
Disposition
05/23/2018
Guilty Verdict

- **Kim, Daniel Larry**
- - Defendant

Charge # 5:

258E/9-0 - Misdemeanor - 100 days or less incarceration HARASSMENT PREVENTION ORDER, VIOLATE c258E §9

- Original Charge
- 258E/9-0 HARASSMENT PREVENTION ORDER, VIOLATE c258E §9 (Misdemeanor - 100 days or less incarceration)
- Indicted Charge
-
- Amended Charge
-

Charge Disposition

Disposition Date
Disposition
05/23/2018
Guilty Verdict

[Load Party Charges 6 through 8](#) [Load All 8 Party Charges](#)

Events

| <u>Date</u> | <u>Session</u> | <u>Location</u> | <u>Type</u> | <u>Event Judge</u> | <u>Result</u> |
|---------------------|----------------|--------------------------|---|------------------------|-------------------|
| 10/17/2014 02:00 PM | Criminal 1 | | Arraignment | | Held as Scheduled |
| 11/20/2014 09:00 AM | Criminal 1 | | Violation of Probation Hearing | | Held as Scheduled |
| 12/03/2014 02:00 PM | Criminal 1 | | Pre-Trial Conference | | Held as Scheduled |
| 01/29/2015 02:00 PM | Criminal 1 | | Pre-Trial Hearing | | Held as Scheduled |
| 03/11/2015 02:00 PM | Criminal 1 | | Motion Hearing | | Held as Scheduled |
| 05/18/2015 02:00 PM | Criminal 1 | | Hearing for Appearance / Appointment of Counsel | | Held as Scheduled |
| 06/24/2015 02:00 PM | Criminal 1 | | Pre-Trial Hearing | | |
| 09/01/2015 02:00 PM | Criminal 1 | | Pre-Trial Hearing | | Held as Scheduled |
| 10/05/2015 02:00 PM | Criminal 1 | DED-2nd FL, CR Main (SC) | Hearing RE: Discovery Motion(s) | Connors, Hon. Thomas A | Held as Scheduled |
| 11/09/2015 02:00 PM | Criminal 1 | DED-2nd FL, CR Main (SC) | Hearing RE: Discovery Motion(s) | Connors, Hon. Thomas A | Held as Scheduled |
| 12/11/2015 09:00 AM | Criminal 1 | DED-2nd FL, CR Main (SC) | Evidentiary Hearing on Suppression | Connors, Hon. Thomas A | Canceled |
| 12/18/2015 02:00 PM | Criminal 1 | DED-2nd FL, CR Main (SC) | Hearing RE: Discovery Motion(s) | Connors, Hon. Thomas A | Not Held |
| 01/11/2016 02:00 PM | Criminal 1 | | Conference to Review Status | | Held as Scheduled |
| 02/09/2016 02:00 PM | Criminal 1 | | Lobby Conference | Connors, Hon. Thomas A | Not Held |
| 03/01/2016 02:00 PM | Criminal 1 | | Final Pre-Trial Conference | | Rescheduled |
| 03/08/2016 09:00 AM | Criminal 1 | | Jury Trial | | Rescheduled |
| 03/29/2016 02:00 PM | Criminal 1 | | Trial Assignment Conference | Connors, Hon. Thomas A | Not Held |
| 05/06/2016 02:00 PM | Criminal 1 | | Conference to Review Status | | Held as Scheduled |
| 05/17/2016 02:00 PM | Criminal 1 | | Conference to Review Status | Connors, Hon. Thomas A | Held as Scheduled |

| <u>Date</u> | <u>Session</u> | <u>Location</u> | <u>Type</u> | <u>Event Judge</u> | <u>Result</u> |
|---------------------|----------------|-----------------|---|-------------------------|-------------------|
| 07/29/2016 02:00 PM | Criminal 1 | | Non-Evidentiary Hearing to Dismiss | Cannone, Hon. Beverly J | Not Held |
| 08/18/2016 02:00 PM | Criminal 1 | | Non-Evidentiary Hearing to Dismiss | Cannone, Hon. Beverly J | Held as Scheduled |
| 09/27/2016 02:00 PM | Criminal 1 | | Lobby Conference | Cannone, Hon. Beverly J | Held as Scheduled |
| 09/29/2016 02:00 PM | Criminal 1 | | Hearing for Change of Plea | Cannone, Hon. Beverly J | Not Held |
| 10/14/2016 02:00 PM | Criminal 1 | | Motion Hearing | Pasquale, Hon. Gregg J | Rescheduled |
| 10/18/2016 02:00 PM | Criminal 1 | | Motion Hearing | Pasquale, Hon. Gregg J | Held as Scheduled |
| 11/17/2016 02:00 PM | Criminal 1 | | Hearing for Appearance / Appointment of Counsel | Pasquale, Hon. Gregg J | Held as Scheduled |
| 12/07/2016 02:00 PM | Criminal 1 | | Conference to Review Status | Pasquale, Hon. Gregg J | Held as Scheduled |
| 01/17/2017 02:00 PM | Criminal 1 | | Final Pre-Trial Conference | | Not Held |
| 01/24/2017 09:00 AM | Criminal 1 | | Jury Trial | | Rescheduled |
| 01/24/2017 02:00 PM | Criminal 1 | | Trial Assignment Conference | | Held as Scheduled |
| 05/17/2017 02:00 PM | Criminal 1 | | Final Pre-Trial Conference | Pasquale, Hon. Gregg J | Rescheduled |
| 05/23/2017 09:00 AM | Criminal 1 | | Jury Trial | Pasquale, Hon. Gregg J | Rescheduled |
| 08/09/2017 02:00 PM | Criminal 1 | | Final Pre-Trial Conference | | Held as Scheduled |
| 08/11/2017 02:00 PM | Criminal 1 | | Final Pre-Trial Conference | | Held as Scheduled |
| 08/14/2017 09:00 AM | Criminal 1 | | Motion Hearing | | Held as Scheduled |
| 08/15/2017 09:00 AM | Criminal 1 | | Jury Trial | | Canceled |
| 08/28/2017 02:00 PM | Criminal 1 | | Conference to Review Status | | Not Held |
| 10/11/2017 02:00 PM | Criminal 1 | | Hearing for Warrant Removal | | Not Held |
| 10/17/2017 02:00 PM | Criminal 2 | | Hearing for Warrant Removal | | Not Held |
| 10/17/2017 02:00 PM | Criminal 1 | | Hearing for Warrant Removal | | Rescheduled |
| 10/24/2017 02:00 PM | Criminal 1 | | Hearing for Warrant Removal | | Held as Scheduled |
| 11/20/2017 02:00 PM | Criminal 1 | | Trial Assignment Conference | | Not Held |
| 11/28/2017 02:00 PM | Criminal 1 | | Trial Assignment Conference | | Not Held |
| 11/29/2017 10:00 AM | Criminal 1 | | Trial Assignment Conference | | Not Held |
| 12/29/2017 02:00 PM | Criminal 1 | | Trial Assignment Conference | | Held as Scheduled |
| 01/23/2018 02:00 PM | Criminal 1 | | Conference to Review Status | | Held as Scheduled |
| 05/08/2018 02:00 PM | Criminal 1 | | Final Pre-Trial Conference | | Held as Scheduled |
| 05/11/2018 10:30 AM | Criminal 1 | | Motion Hearing | Cosgrove, Hon. Robert C | Held as Scheduled |

| <u>Date</u> | <u>Session</u> | <u>Location</u> | <u>Type</u> | <u>Event Judge</u> | <u>Result</u> |
|---------------------|----------------|-----------------|---------------------------------|-------------------------|-------------------|
| 05/14/2018 09:00 AM | Criminal 1 | | Motion Hearing | Cosgrove, Hon. Robert C | Held as Scheduled |
| 05/15/2018 09:00 AM | Criminal 1 | | Jury Trial | | Held as Scheduled |
| 05/16/2018 09:00 AM | Criminal 1 | | Jury Trial | Cosgrove, Hon. Robert C | Held as Scheduled |
| 05/17/2018 08:30 AM | Criminal 1 | | Jury Trial | Cosgrove, Hon. Robert C | Held as Scheduled |
| 05/18/2018 08:30 AM | Criminal 1 | | Jury Trial | Cosgrove, Hon. Robert C | Held as Scheduled |
| 05/21/2018 08:30 AM | Criminal 1 | | Jury Trial | Cosgrove, Hon. Robert C | Held as Scheduled |
| 05/22/2018 08:30 AM | Criminal 1 | | Jury Trial | Cosgrove, Hon. Robert C | Held as Scheduled |
| 05/23/2018 08:30 AM | Criminal 1 | | Jury Trial | Cosgrove, Hon. Robert C | Held as Scheduled |
| 05/30/2018 02:00 PM | Criminal 1 | | Hearing for Sentence Imposition | Cosgrove, Hon. Robert C | Held as Scheduled |

Ticklers

| <u>Tickler</u> | <u>Start Date</u> | <u>Due Date</u> | <u>Days Due</u> | <u>Completed Date</u> |
|----------------------------|-------------------|-----------------|-----------------|-----------------------|
| Pre-Trial Hearing | 10/17/2014 | 10/17/2014 | 0 | 08/09/2017 |
| Final Pre-Trial Conference | 10/17/2014 | 06/30/2015 | 256 | 08/09/2017 |
| Case Disposition | 10/17/2014 | 07/14/2015 | 270 | 05/30/2018 |

Docket Information

| <u>Docket Date</u> | <u>Docket Text</u> | <u>File Ref Nbr.</u> | <u>Image Avail.</u> |
|--------------------|--|----------------------|---------------------|
| 09/30/2014 | Indictment returned | 1 | |
| 10/17/2014 | Appointment of Counsel Gregory V. St. Cyr, pursuant to Rule 53 | | |
| 10/17/2014 | Deft arraigned before Court - Track B - Plea Not Guilty - Bail: \$15,000.00 cash - B.W.*- Atty. Fee: \$150.00 (Gregory St. Cyr, Esq.) - Continued to 12/3/14 for PTC - PTH 1/29/15 - Habe DJJ (Fishman, J) J McDermott a.c., JAVS * Pre-Trial Probation with consent - GPS - Stay away, no contact with victim - stay off internet unless for business purposes - no blogging. | | |
| 10/17/2014 | Assigned to Track "B" see scheduling order | | |
| 10/17/2014 | Tracking deadlines Active since return date | | |
| 10/17/2014 | Tracking deadlines Active since return date | | |
| 10/17/2014 | RE Offense 1:Plea of not guilty | | |
| 10/17/2014 | RE Offense 2:Plea of not guilty | | |
| 10/17/2014 | RE Offense 3:Plea of not guilty | | |
| 10/17/2014 | RE Offense 4:Plea of not guilty | | |
| 10/17/2014 | RE Offense 5:Plea of not guilty | | |
| 10/17/2014 | RE Offense 6:Plea of not guilty | | |
| 10/17/2014 | RE Offense 7:Plea of not guilty | | |
| 10/17/2014 | RE Offense 8:Plea of not guilty | | |
| 10/17/2014 | Commonwealth files Statement of the Case | 2 | |
| 10/17/2014 | Commonwealth files Notice of Discovery | 3 | |

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| 10/17/2014 | MOTION by Commonwealth: To Impound with certificate of service | 4 | |
| 10/17/2014 | MOTION (P#3.0) Allowed, without prejudice revisiting to the issue at the request of the defendant. (Kenneth J. Fishman, Regional Administrative Justice). Copies mailed 10/27/2014 | | |
| 10/27/2014 | Habeas corpus for Deft at Norfolk House of Correction (Dedham) on 1/29/15. | 5 | |
| 11/17/2014 | Habeas corpus for Deft at Norfolk House of Correction (Dedham) FOR GPS HOOK-UP - 11/20/14 @9:00 am | 6 | |
| 11/19/2014 | MOTION by Deft: For Funds - Investigator and Affidavit In Support. | 7 | |
| 11/20/2014 | Cash Bail Received \$15,000.00 - Surety: Debora Kim - Receipt# 42055 | 8 | |
| 12/03/2014 | Pre-trial conference report filed | 9 | |
| 12/03/2014 | MOTION (P#7.0) Allowed at CPCS approved rates (Kenneth J. Fishman, Regional Administrative Justice). Copies mailed 12/3/2014 | | |
| 01/16/2015 | Court Cost/Adult (Code 01) \$15.00 paid - Receipt #42482 | | |
| 01/26/2015 | MOTION by Deft: to Amend Impoundment Order and Certificate of Service | 10 | |
| 01/26/2015 | MOTION by Deft: for Bills of Particulars & Certificate of Service | 11 | |
| 01/29/2015 | Defendants MOTION To Amend Impoundment Order by striking out numbers 1 & 2. - w/certificate of service - ALLOWED (Connors, J.) Copies sent to ADA & Attorney | 12 | |
| 01/29/2015 | Continued 3/11/15 Non-Evidentiary Motions/Pre-Trial Hearing - Terms of release clarified; no use of Social Media, Internet, Twitter, Facebook of any kind (Connors, J.) J. McDermott, asst. clerk - JAVS | | |
| 03/11/2015 | Defendants Motion For Bills of Particulars w/certificate of service - ALLOWED by agreement (Connors, J.) - Copies sent to ada & attorney on 3/13/15 | 13 | |
| 03/11/2015 | Continued 5/18/15 - Non-Evidentiary Motions (Connors, J.) B. Roche, asst. clerk - JAVS | | |
| 04/13/2015 | Commonwealth 's Response for Bill of Particulars is IMPOUNDED. | 14 | |
| 05/18/2015 | Attorney Daniel Tracy, appointed - Continued 6/24/15 Pre-Trial Hearing (Wilkins, J.) B. Roche, Asst. Clerk - JAVS | | |
| 06/25/2015 | Appointment of Counsel Daniel O Tracy, pursuant to Rule 53 (dated 5/18/15) | 15 | |
| 06/29/2015 | Continued to 9/1/15 PTH, agreed. (Wilkins,J) J. Mc Dermott ac JAVS Rule 36 Waived. (6/24/15) | | |
| 08/15/2015 | ** On 11/21/2014 \$15,000.00 was received for case NOCR2014-00816, funds received by the surety Debora Kim. The defendant in the case is Daniel Kim. As of the date of conversion a remaining balance of \$15,000.00 was converted for BAIL. | | |
| 08/15/2015 | **Converted and manual data; Converted from MassCourt Lite, BasCot or ForeCourt(08/15/2015). Refer to case file for assessments, disbursements, and receipt validations.** | | |
| 09/01/2015 | Event Result: The following event: Pre-Trial Hearing scheduled for 09/01/2015 02:00 PM has been resulted as follows: Result: Held as Scheduled - Tracking order filed; continued to 10/5/15 discovery - 12/11/15 Motion to Suppress - 3/1/16 FPTC & 3/8/16 Trial. (Fishman, J.) B G Roche a.c JAVS | | |
| 09/08/2015 | General correspondence regarding Criminal "A" Tracking Order (Dated 9/1/15) | 16 | |
| 09/08/2015 | General correspondence regarding Commonwealth's Response to Deft's Motion fot Bill of Particulars. (Dated 8/25/15) | 17 | |
| 10/05/2015 | Event Result: The following event: Hearing RE: Discovery Motion(s) scheduled for 10/05/2015 02:00 PM has been resulted as follows: Result: Held as Scheduled | | |
| 11/09/2015 | Commonwealth 's Response to Defendant's Motion For Bill Of Particulars | 18 | |
| 11/09/2015 | Event Result: The following event: Hearing RE: Discovery Motion(s) scheduled for 11/09/2015 02:00 PM has been resulted as follows: Result: Held as Scheduled | | |

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| 11/17/2015 | Event Result: The following event: Evidentiary Hearing on Suppression scheduled for 12/11/2015 09:00 AM has been resulted as follows: Result: Canceled Reason: By Court prior to date | | |
| 12/17/2015 | Event Result: The following event: Hearing RE: Discovery Motion(s) scheduled for 12/18/2015 02:00 PM has been resulted as follows: Result: Not Held Reason: Not reached by Court | | |
| 01/11/2016 | Event Result: The following event: Conference to Review Status scheduled for 01/11/2016 02:00 PM has been resulted as follows: Result: Held as Scheduled | | |
| 02/09/2016 | Appearance entered On this date Daniel O Tracy, Esq. dismissed/withdrawn as Appointed - Indigent Defendant for Defendant Daniel Kim | | |
| 02/09/2016 | Appearance entered On this date Katherine P Hatch, Esq. added as Appointed - Indigent Defendant for Defendant Daniel Kim Appointment made for the purpose of Case in Chief by Judge Hon. Thomas A Connors. | | |
| 02/09/2016 | Event Result: The following event: Lobby Conference scheduled for 02/09/2016 02:00 PM has been resulted as follows: Result: Not Held ; Atty Tracy Allowed to withdraw from case. Atty Hatch appointed. Con't to 03/29/2016 for scheduling conference. Reason: Other event activity needed D present ADA Erin Murphy Atty D Tracy Atty K Hatch JAVS -- Rm 1 Clerk: S Irwin | | |
| 02/09/2016 | Event Result: The following event: Final Pre-Trial Conference scheduled for 03/01/2016 02:00 PM has been resulted as follows: Result: Rescheduled Reason: Request of Defendant | | |
| 02/09/2016 | Event Result: The following event: Jury Trial scheduled for 03/08/2016 09:00 AM has been resulted as follows: Result: Rescheduled Reason: Request of Defendant | | |
| 03/29/2016 | Event Result: The following event: Trial Assignment Conference scheduled for 03/29/2016 02:00 PM has been resulted as follows: Result: Not Held - Continued 5/6/16 status of counsel - After interview, Defendant does not qualify for appointment of counsel - J. McDermott, Asst. Clerk Reason: Other event activity needed | | |
| 05/06/2016 | Event Result: The following event: Conference to Review Status scheduled for 05/06/2016 02:00 PM has been resulted as follows: Result: Held as Scheduled Appeared: Defendant Kim, Daniel Attorney Murphy, Esq., Erin | | |
| 05/17/2016 | Event Result: The following event: Conference to Review Status scheduled for 05/17/2016 02:00 PM has been resulted as follows: Result: Held as Scheduled | | |
| 05/18/2016 | Defendant 's EX PARTE Motion for funds to Hire an Independent Forensic Psychologist to Assist with the Defense - ALLOWED (IMPOUNDED) c/s Def. Atty. | 19 | |
| 05/18/2016 | Affidavit of of Defense Counsel in Support of Defendant's Motion to Obtain funds to Hire and Independent Forensic Psychologist Attorney: Hatch, Esq., Katherine P | 20 | |
| 05/18/2016 | Defendant 's Motion to Obtain Funds for Investigator | 21 | |
| 05/18/2016 | Affidavit of Katherine Hatch in Support of Defendant's Motion to Obtain Funds for Investigator | 22 | |

| Docket Date | Docket Text | File Ref Nbr. | Image Avail. |
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| 05/18/2016 | Defendant 's Motion to Obtain Funds for Investigator | 23 | |
| 05/18/2016 | Affidavit of of Defense Counsel in Support of Defendant's Motion to Obtain Funds for Investigator | 24 | |
| 07/22/2016 | Defendant 's Motion to Dismiss And Memorandum Of Law In Support Of Motion w/attachments | 25 | |
| 07/22/2016 | Affidavit of Of Counsel In Support Of Motion To Dismiss | 26 | |
| 07/29/2016 | Event Result: The following event: Non-Evidentiary Hearing to Dismiss scheduled for 07/29/2016 02:00 PM has been resulted as follows: Result: Not Held : Rescheduled to 08/18/2016 by agreement Reason: Both parties failed to appear | | |
| 08/17/2016 | Commonwealth's Memorandum in opposition to To Defendant's Motion To Dismiss | 26.1 | |
| 08/18/2016 | Event Result: The following event: Non-Evidentiary Hearing to Dismiss scheduled for 08/18/2016 02:00 PM has been resulted as follows: Result: Held as Scheduled Appeared: Attorney Lelle, Esq., Sarah A. Defendant Kim, Daniel Attorney Hatch, Esq., Katherine P Ct Rep: D Chapin Clerk: S Irwin | | |
| 09/09/2016 | MEMORANDUM & ORDER: On Deft's Motion to Dismiss - ORDER - The Motion to Dismiss is DENIED. (B. Cannone, Associate Justice)dated 9/9/16 Copies mailed to ADA and Defense Counsel Other records and CD re: Motion to Dismiss and attachments Filed in IMPOUNDED | 27 | Image |
| 09/09/2016 | Endorsement on Motion , (#25.0): DENIED See Memo -(Cannone,J) Dated 9/9/16 Copies mailed to ADA and Defense Counsel | | |
| 09/27/2016 | Event Result: The following event: Lobby Conference scheduled for 09/27/2016 02:00 PM has been resulted as follows: Result: Held as Scheduled D present ADA Lelle Atty Hatch Ct rep: D Keefer Clerk: S Irwin | | |
| 09/29/2016 | Event Result: The following event: Hearing for Change of Plea scheduled for 09/29/2016 02:00 PM has been resulted as follows: Result: Not Held as scheduled at request of Defendant: Further Lobby Conference conducted. Con't for trial on 01/17/2017 Appeared: Defendant Kim, Daniel Attorney Lelle, Esq., Sarah A. Attorney Hatch, Esq., Katherine P FTR Clerk: S Irwin | | |
| 10/14/2016 | Defendant 's Motion to Revised Motion to Obtain Funds for Investigator recd 10/11/2016 | 28 | |
| 10/14/2016 | Affidavit of Defense counsel in support of Defendant's revised motion to obtain funds for investigator recd 10/11/2016 | 29 | |
| 10/14/2016 | Event Result: The following event: Motion Hearing scheduled for 10/14/2016 02:00 PM has been resulted as follows: Result: Rescheduled Reason: Request of Defendant | | |
| 10/18/2016 | Event Result: The following event: Motion Hearing scheduled for 10/18/2016 02:00 PM has been resulted as follows: Result: Held as Scheduled | | |
| 10/18/2016 | Attorney appearance On this date Katherine P Hatch, Esq. dismissed/withdrawn as Appointed - Indigent Defendant for Defendant Daniel Kim - on 10/19/16 - Defendant found not indigent - continued 11/17/16 - status of counsel (Pasquale, J.) - Attest: J. McDermott, Asst.Clerk | | |

| Docket Date | Docket Text | File Ref Nbr. | Image Avail. |
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| 10/18/2016 | Defendant 's Motion to Obtain Funds For Investigator (Revised Motion) - DENIED after representation from probation that defendant is not indigent. (copies sent) | 30 | |
| 11/17/2016 | Event Result: The following event: Hearing for Appearance / Appointment of Counsel scheduled for 11/17/2016 02:00 PM has been resulted as follows: Result: Held as Scheduled Appeared: Defendant Kim, Daniel Attorney Lelle, Esq., Sarah A. | | |
| 12/07/2016 | Event Result: The following event: Conference to Review Status scheduled for 12/07/2016 02:00 PM has been resulted as follows: Result: Held as Scheduled | | |
| 12/07/2016 | Event Result: The following event: Final Pre-Trial Conference scheduled for 01/17/2017 02:00 PM has been resulted as follows: Result: Not Held Reason: Request of Defendant | | |
| 12/08/2016 | Event Result: The following event: Jury Trial scheduled for 01/24/2017 09:00 AM has been resulted as follows: Result: Rescheduled Reason: By Court prior to date | | |
| 01/24/2017 | Event Result: The following event: Trial Assignment Conference scheduled for 01/24/2017 02:00 PM has been resulted as follows: Result: Held as Scheduled Appeared: Prosecutor Commonwealth Defendant Kim, Daniel Attorney Lelle, Esq., Sarah A. Ct Rep: D Keefer | | |
| 05/09/2017 | Event Result: The following event: Final Pre-Trial Conference scheduled for 05/17/2017 02:00 PM has been resulted as follows: Result: Rescheduled Reason: By Court prior to date | | |
| 05/09/2017 | Event Result: The following event: Jury Trial scheduled for 05/23/2017 09:00 AM has been resulted as follows: Result: Rescheduled Reason: By Court prior to date | | |
| 08/02/2017 | Commonwealth 's Motion in limine to Allow In-Court Identification endorsed: Agreed and Allowed (Cosgrove,J.) 05/08/2018 | 31 | |
| 08/02/2017 | Commonwealth 's Motion in limine to Admit Evidence Of Other Bad Acts And Hostile Relationship Between The Defendant And The Alleged Victim Endorsed: As the Commonwealth, subsequent to filing this motion recognized, violations of Ch 265 s. 43 may be prosecuted wherever "an act constituting an element of the crime was committed." Thus, the events the Commonwealth sought to introduce here, which were contemporaneous with the conduct in Norfolk County but happened in ohter counties may be admitted substantively (Cosgrove, J) 05/14/2018 | 32 | |
| 08/02/2017 | Commonwealth 's Motion in limine to Exclude Reference To Collateral Consequences | 33 | |
| 08/02/2017 | Commonwealth 's Motion in limine to Preclude Reference To Any Alleged Bad Character, Bad Reputation or Prior/Subsequent Bad Acts Of The Alleged Victim Or Witnesses Endorsed: To be handled at trial as described in open court (Cosgrove, J) 05/08/2018 | 34 | |
| 08/02/2017 | Commonwealth Commonwealth's proposed juror Voir Dire questions filed. Proposed Jury Questions | | |
| 08/02/2017 | Witness list Commonwealth's Proposed Witness List Applies To: Commonwealth (Prosecutor) | 35 | |
| 08/02/2017 | Witness list Commonwealth's Amended Proposed Witness List Applies To: Commonwealth (Prosecutor) | 36 | |

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| 08/07/2017 | Commonwealth 's Request for Jury Instructions | 37 | |
| 08/09/2017 | Event Result: The following event: Final Pre-Trial Conference scheduled for 08/09/2017 02:00 PM has been resulted as follows: Result: Held as Scheduled: Other activity needed. hearing commenced on D's claim of indigency and con't to 08/11/2017. FPTC also con't to 08/11/20017 Appeared: Attorney Murphy, Esq., Erin Defendant Kim, Daniel PO Rachel Bois Ct Rep: D Chapin Clerk: S Irwin | | |
| 08/11/2017 | Event Result: The following event: Final Pre-Trial Conference scheduled for 08/11/2017 02:00 PM has been resulted as follows: Result: Held as Scheduled: D found not indigent: Notified of right to appeal. Con't to 08/14/2017 for Motions to Limine Ct Rep: D Chapin Clerk: S Irwin | | |
| 08/14/2017 | Defendant 's Motion to Dismiss Endorsed: DENIED. Death of witnesses during pendency of trial is unfortunate, but not uncommon. There is no reason to believe that the Commonwealth (or the defendant) reasonably anticipated the young woman's death, or delayed the trial because of a belief that her death was imminent. Neither is there any basis to believe that her testimony would have been helpful to the defendant. (Csogrove, J.) 05/14/2018 | 38 | |
| 08/14/2017 | Habeas Corpus for defendant issued to Middlesex County House of Correction returnable for 10/17/2017 02:00 PM Hearing for Warrant Removal. | 42 | |
| 08/14/2017 | Event Result: The following event: Motion Hearing scheduled for 08/14/2017 09:00 AM has been resulted as follows: Result: Held as Scheduled | | |
| 08/14/2017 | Commonwealth 's Motion to use visual aid digital document camera and projector - filed 8/14/2017 Endorsed: ALLOWED (Cosgrove,J) 05/08/2018 | 44 | |
| 08/14/2017 | Event Result: The following event: Jury Trial scheduled for 08/15/2017 09:00 AM has been resulted as follows: Result: Canceled Reason: Other event activity needed | | |
| 08/14/2017 | Commonwealth 's Response to Defendant's motion for bill of particulars - filed 8/14/2017 | 43 | |
| 08/18/2017 | Opposition to P#38.0 to Defendant's motion to dismiss pursuant to Rule 36 filed by Commonwealth | 39 | |
| 08/18/2017 | Commonwealth 's Statement regarding proposed findings re: indigency determination | 40 | |
| 08/28/2017 | Issued: Default Warrant issued on 08/28/2017 for Kim, Daniel: NON BAILABLE WARRANT | | |
| 08/28/2017 | Event Result: The following event: Conference to Review Status scheduled for 08/28/2017 02:00 PM has been resulted as follows: Result: Not Held Reason: Defendant defaulted | | |
| 09/26/2017 | Habeas Corpus for defendant issued to Middlesex County House of Correction returnable for 10/11/2017 02:00 PM Hearing for Warrant Removal. | 41 | |
| 10/11/2017 | Event Result: Judge: Krupp, Hon. Peter B The following event: Hearing for Warrant Removal scheduled for 10/11/2017 02:00 PM has been resulted as follows: Result: Not Held Reason: Defendant not transported to event | | |
| 10/12/2017 | Commonwealth 's PROPOSED Statement to the jury venire - filed 8/14/2017 | 45 | |
| 10/13/2017 | Habeas Corpus for defendant issued to Middlesex County House of Correction returnable for 10/17/2017 02:00 PM Hearing for Warrant Removal. | 46 | |
| 10/16/2017 | Event Result: Judge: Krupp, Hon. Peter B The following event: Hearing for Warrant Removal scheduled for 10/17/2017 02:00 PM has been resulted as follows: Result: Rescheduled Reason: Transferred to another session | | |

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| 10/17/2017 | Event Result: Judge: Fishman, Hon. Kenneth J The following event: Hearing for Warrant Removal scheduled for 10/17/2017 02:00 PM has been resulted as follows: Result: Not Held Reason: Defendant not transported to event | | |
| 10/18/2017 | Habeas Corpus for defendant issued to Middlesex County House of Correction returnable for 10/24/2017 02:00 PM Hearing for Warrant Removal. | 47 | |
| 10/23/2017 | Habeas Corpus for defendant issued to Middlesex County House of Correction returnable for 10/24/2017 02:00 PM Hearing for Warrant Removal. DEFENDANT HAS NOT BEEN BROUGHT IN DESPITE HABES ISSUING FOR 10/11 and 10/17. DEFENDANT MUST BE TRANSPORTED ON 10/24/2017 per krupp j. | 48 | |
| 10/24/2017 | Event Result: Judge: Krupp, Hon. Peter B The following event: Hearing for Warrant Removal scheduled for 10/24/2017 02:00 PM has been resulted as follows: Result: Held as Scheduled | | |
| 10/24/2017 | Issued on this date: Mittimus in Lieu of Bail Sent On: 10/24/2017 14:28:41 Bail increased 5,000.00 to total of 20,000.00 | 49 | |
| 10/24/2017 | Bail set at \$200,000.00 Surety, \$20,000.00 Cash. Judge: Krupp, Hon. Peter B | | |
| 11/01/2017 | Habeas Corpus for defendant issued to Middlesex County House of Correction returnable for 11/20/2017 02:00 PM Trial Assignment Conference. Applies To: Middlesex County House of Correction (Holding Institution) | 50 | |
| 11/20/2017 | Event Result: Judge: Krupp, Hon. Peter B The following event: Trial Assignment Conference scheduled for 11/20/2017 02:00 PM has been resulted as follows: Result: Not Held Reason: Defendant not transported to event | | |
| 11/20/2017 | Habeas Corpus for defendant issued to Middlesex County House of Correction returnable for 11/28/2017 02:00 PM Trial Assignment Conference. | 51 | |
| 11/28/2017 | Event Result: Judge: Krupp, Hon. Peter B The following event: Trial Assignment Conference scheduled for 11/28/2017 02:00 PM has been resulted as follows: Result: Not Held Reason: Defendant not transported to event | | |
| 11/28/2017 | Habeas Corpus for defendant issued to Middlesex County House of Correction returnable for 11/29/2017 10:00 AM Trial Assignment Conference. | 52 | |
| 11/29/2017 | Event Result: Judge: Krupp, Hon. Peter B The following event: Trial Assignment Conference scheduled for 11/29/2017 10:00 AM has been resulted as follows: Result: Not Held Reason: Request of Defendant | | |
| 12/05/2017 | Habeas Corpus for defendant issued to Middlesex County House of Correction returnable for 12/29/2017 02:00 PM Trial Assignment Conference. Applies To: Middlesex County House of Correction (Holding Institution) | 53 | |
| 12/11/2017 | ORDER: DIRECTING THE NORFOLK SUPERIOR COURT TO HOLD \$15,000.00 - IMPOUNDED Judge: Henry, Hon. Bruce R | 54 | |
| 12/28/2017 | Habeas Corpus for defendant issued to Middlesex County House of Correction returnable for 12/29/2017 02:00 PM Trial Assignment Conference. | 55 | |
| 12/28/2017 | Habeas Corpus for defendant issued to Norfolk County Correctional Center returnable for 12/29/2017 02:00 PM Trial Assignment Conference. Habes Middlesex and Dedham | 56 | |
| 12/28/2017 | Habeas Corpus for defendant issued to Middlesex County House of Correction returnable for 12/29/2017 02:00 PM Trial Assignment Conference. | 57 | |

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| 12/29/2017 | Event Result: Judge: Krupp, Hon. Peter B The following event: Trial Assignment Conference scheduled for 12/29/2017 02:00 PM has been resulted as follows: Result: Held as Scheduled | | |
| 12/29/2017 | Attorney appearance On this date Scott P Murphy, Esq. added as Appointed - Indigent Defendant for Defendant Daniel Larry Kim Appointment made for the purpose of Case in Chief by Judge Hon. Peter B Krupp. | | |
| 12/30/2017 | Habeas Corpus for defendant issued to Norfolk County Correctional Center returnable for 01/23/2018 02:00 PM Conference to Review Status. Applies To: Middlesex County House of Correction (Holding Institution) | 58 | |
| 01/23/2018 | Event Result: Judge: Wilson, Hon. Paul D The following event: Conference to Review Status scheduled for 01/23/2018 02:00 PM has been resulted as follows: Result: Held as Scheduled | | |
| 03/27/2018 | Daniel Larry Kim's Memorandum Of Law in support of Motion to Dismiss- Filed on 3/26/2018 | 59 | |
| 05/04/2018 | Defendant 's Motion to dismiss | 60 | |
| 05/07/2018 | Habeas Corpus for defendant issued to Middlesex County House of Correction returnable for 05/08/2018 02:00 PM Final Pre-Trial Conference. | 61 | |
| 05/08/2018 | Event Result: Judge: Cosgrove, Hon. Robert C The following event: Final Pre-Trial Conference scheduled for 05/08/2018 02:00 PM has been resulted as follows: Result: Held as Scheduled Appeared: Defendant Kim, Daniel Larry Attorney Murphy, Esq., Scott P Attorney Murphy, Esq., Erin Ct Rep: D Chapin Clerk:S Irwin Judge: Cosgrove, Hon. Robert C | | |
| 05/08/2018 | Habeas Corpus for defendant issued to Middlesex County House of Correction returnable for 05/15/2018 09:00 AM Jury Trial. | 62 | |
| 05/08/2018 | Commonwealth 's PROPOSED Notice Jury Instructions | 64 | |
| 05/08/2018 | Pro Se Defendant 's Motion TO DIMISS | 65 | |
| 05/08/2018 | Defendant 's Motion To Dimiss and In The Alternative Motion in Limine on Rule 36 Grounds Endorsed: DENIED for essentially the reasons set forth in the Commonwealth's opposition. The Court reserves the right to file a further explanation memorandum (Cosgrove, J) 05/14/2018 | 66 | |
| 05/08/2018 | Defendant 's Notice on Witness Intimidation Endorsed: DENIED (Cosgrove, J) 05/18/2018 | 67 | |
| 05/08/2018 | Daniel Larry Kim's Memorandum in support of Opposition to Commonwealth's Motion To Admit Evidence of Prior Bad Acts | 68 | |
| 05/08/2018 | Defendant 's Motion To Preclude Reference to Complainant as "Victim" filed and endorsed: ALLOWED as to q and answers - not as to opening and closing (Cosgrove, J) 05/08/2018 | 69 | |
| 05/08/2018 | Defendant 's Motion To Sequester filed and endorsed: ALLOWED (Cosgrove, J) 05/08/2018 | 70 | |
| 05/08/2018 | Defendant 's Request For Individual Voir Dire of Prospective Jurors Endorsed: See ruling on paper 72 (Cosgrove, J) 05/14/2018 | 71 | |
| 05/08/2018 | Defendant 's Supplemental Motion For Individual Voir Dire of Prospective Jurors Endorsed: Individual voir dire is ALLOWED (Cosgrove, J) 05/14/2018 | 72 | |
| 05/08/2018 | Defendant 's Motion in limine To Preclude the Commonwealth From Introducing Evidence of Prior Convictions or Prior or Subsequent Bad Acts filed and endorsed: 1. CW represents that there are none; 2. ALLOWED as to case in chief -- CW will approach side bar if it believes the defense has "opened any doors" Cosgrove, J. 05/08/2018 | 69.1 | |
| 05/09/2018 | Commonwealth's Memorandum in opposition to Defendant's May 08, 2018 Motion to Dismiss Pursuant to Rule 36 | 63 | |
| 05/10/2018 | Defendant 's Request For Jury Instructions | 73 | |

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| 05/11/2018 | Event Result: Judge: Cosgrove, Hon. Robert C The following event: Motion Hearing scheduled for 05/11/2018 10:30 AM has been resulted as follows: Result: Held as Scheduled | | |
| 05/11/2018 | Habeas Corpus for defendant issued to Middlesex County House of Correction returnable for 05/14/2018 09:00 AM Motion Hearing. Applies To: Middlesex County House of Correction (Holding Institution) | 74 | |
| 05/14/2018 | Commonwealth's Motion in limine on Electronic Evidence Endorsed: DENIED after hearing. Based on the Commonwealth's representation of its anticipated evidence, which the defense agreed was accurate, the Commonwealth can sufficiently authenticate the blog and the defendant's authorship of it. Such evidence includes, but is not limited to, the defendant's admissions at Stoughton District Court, and a thumb drive containing, in pertinent part, copies of many of the blog posts which the defendant mailed to the alleged victims. (Cosgrove, J.) 05/14/2018 | 75 | |
| 05/14/2018 | Event Result: Judge: Cosgrove, Hon. Robert C The following event: Motion Hearing scheduled for 05/14/2018 09:00 AM has been resulted as follows: Result: Held as Scheduled Appeared: Prosecutor Commonwealth Defendant Kim, Daniel Larry Attorney Murphy, Esq., Scott P Attorney Murphy, Esq., Erin Ct Rep: D Chapin Clerk: S Irwin Judge: Cosgrove, Hon. Robert C | | |
| 05/14/2018 | Habeas Corpus for defendant issued to Middlesex County House of Correction returnable for 05/15/2018 09:00 AM Jury Trial. JURY TRIAL PLEASE HAVE D AT COURT BY 9 AM (per order Cosgrove,J) | 76 | |
| 05/15/2018 | Commonwealth's Response -- Second Amended Response To Defendant's Motion For Bill of Particulars. | 77 | |
| 05/15/2018 | Issued on this date: Mittimus in Lieu of Bail Sent On: 05/15/2018 09:46:08 | 78 | |
| 05/15/2018 | ORDER: of Remand to Norfolk County Jail for Duration of Trial Judge: Cosgrove, Hon. Robert C | 79 | |
| 05/15/2018 | Witness list Commonwealth's Amended Proposed Witness List 2 (filed in court on 05/10/2018) Applies To: Commonwealth (Prosecutor) | 80 | |
| 05/15/2018 | Habeas Corpus for defendant issued to Norfolk County Correctional Center returnable for . THIS IS A HABE FOR TRIAL COMMENCING TODAY AND CONTINUING DAY TO DAY UNTIL IT'S CONCLUSION ON OR ABOUT 05/22/2018. | | |
| 05/15/2018 | Impanelment of jurors on this date | | |
| 05/15/2018 | Event Result: Judge: Cosgrove, Hon. Robert C The following event: Jury Trial scheduled for 05/15/2018 09:00 AM has been resulted as follows: Result: Held as Scheduled: Impanelment of Jurors Day #1. Appeared: Defendant Kim, Daniel Larry Attorney Murphy, Esq., Scott P Attorney Murphy, Esq., Erin Ct Rep: D Chapin Clerk: S Irwin Judge: Cosgrove, Hon. Robert C | | |
| 05/15/2018 | Defendant's PROPOSED Statement To the Jury (Amended) filed on 05/10/2018 | 80.1 | |
| 05/16/2018 | Habeas Corpus for defendant issued to Middlesex County House of Correction returnable for 05/23/2018 08:30 AM Jury Trial. Defendant is to recieve all meds as prescribed and to be in Norfolk Superior Court each morning no later than 8:30 am. This is a day to day habe continuing through and including 05/23/2018. (Cosgrove, J.) | 81 | |

| Docket Date | Docket Text | File Ref Nbr. | Image Avail. |
|-----------------------------|--|-------------------------------|------------------------------|
| 05/16/2018 | <p>Event Result: Judge: Cosgrove, Hon. Robert C The following event: Jury Trial scheduled for 05/16/2018 09:00 AM has been resulted as follows: Result: Held as Scheduled: impanelment of jurors Day #2 Appeared: Prosecutor Commonwealth Defendant Kim, Daniel Larry Attorney Murphy, Esq., Scott P Attorney Murphy, Esq., Erin Ct Rep: D Chapin Clerk: S Irwin</p> <p>Judge: Cosgrove, Hon. Robert C</p> | | |
| 05/16/2018 | <p>Impanelment of jurors on this date</p> <p>Day #2</p> | | |
| 05/17/2018 | <p>Event Result: Judge: Cosgrove, Hon. Robert C The following event: Jury Trial scheduled for 05/17/2018 08:30 AM has been resulted as follows: Result: Held as Scheduled: 14 Jurors sworn. Evidence commenced. Appeared: Defendant Kim, Daniel Larry Attorney Murphy, Esq., Scott P Attorney Murphy, Esq., Erin Ct Rep: D Chapin Clerk: S Irwin</p> <p>Judge: Cosgrove, Hon. Robert C</p> | | |
| 05/18/2018 | <p>Event Result: Judge: Cosgrove, Hon. Robert C The following event: Jury Trial scheduled for 05/18/2018 08:30 AM has been resulted as follows: Result: Held as Scheduled Appeared: Prosecutor Commonwealth Defendant Kim, Daniel Larry Attorney Murphy, Esq., Scott P Attorney Murphy, Esq., Erin CT Rep: FTR Rm 1 -- L Everett Clerk: S Irwin</p> <p>Judge: Cosgrove, Hon. Robert C</p> | | |
| 05/21/2018 | <p>Event Result: Judge: Cosgrove, Hon. Robert C The following event: Jury Trial scheduled for 05/21/2018 08:30 AM has been resulted as follows: Result: Held as Scheduled: Trial Day #5 Appeared: Defendant Kim, Daniel Larry Attorney Murphy, Esq., Scott P Attorney Murphy, Esq., Erin Ct Rep: D Chapin Clerk: S Irwin</p> <p>Judge: Cosgrove, Hon. Robert C</p> | | |
| 05/22/2018 | <p>Event Result: Judge: Cosgrove, Hon. Robert C The following event: Jury Trial scheduled for 05/22/2018 08:30 AM has been resulted as follows: Result: Held as Scheduled: Trial Day #6. Commonwealth rests. Appeared: Defendant Kim, Daniel Larry Attorney Murphy, Esq., Scott P Attorney Murphy, Esq., Erin Ct Rep: D Chapin Clerk: S Irwin</p> <p>Judge: Cosgrove, Hon. Robert C</p> | | |
| 05/22/2018 | <p>Defendant's Motion For Required Finding of Not Guilty Endorsed: DENIED at the close of the CW's case (Cosgrove, J) 05/22/2018</p> | 82 | |
| 05/22/2018 | <p>Defendant's Motion For Required Finding of Not Guilty at the Close of All Evidence filed and DENIED (Cosgrove, J) 05/22/2018</p> | 83 | |
| 05/23/2018 | <p>Commonwealth's Response May 23, 2018 amended Response to Defendant's Motion for Bill of Particulars</p> | 84 | |

| Docket Date | Docket Text | File Ref Nbr. | Image Avail. |
|-----------------------------|---|-------------------------------|------------------------------|
| 05/23/2018 | List of exhibits | 86 | |
| 05/23/2018 | <p>Offense Disposition::</p> <p>Charge #1 STALKING c265 §43(a) On: 05/23/2018 Judge: Hon. Robert C Cosgrove By: Jury Trial Guilty Verdict</p> <p>Charge #2 INDECENT A&B ON PERSON 14 OR OVER c265 §13H On: 05/23/2018 Judge: Hon. Robert C Cosgrove By: Jury Trial Guilty Verdict</p> <p>Charge #3 WITNESS/JUROR/POLICE/COURT OFFICIAL, INTIMIDATE c268 §13B On: 05/23/2018 Judge: Hon. Robert C Cosgrove By: Jury Trial Guilty Verdict</p> <p>Charge #4 HARASSMENT, CRIMINAL c265 §43A(a) On: 05/23/2018 Judge: Hon. Robert C Cosgrove By: Jury Trial Guilty Verdict</p> <p>Charge #5 HARASSMENT PREVENTION ORDER, VIOLATE c258E §9 On: 05/23/2018 Judge: Hon. Robert C Cosgrove By: Jury Trial Guilty Verdict</p> <p>Charge #6 HARASSMENT PREVENTION ORDER, VIOLATE c258E §9 On: 05/23/2018 Judge: Hon. Robert C Cosgrove By: Jury Trial Guilty Verdict</p> <p>Charge #7 HARASSMENT PREVENTION ORDER, VIOLATE c258E §9 On: 05/23/2018 Judge: Hon. Robert C Cosgrove By: Jury Trial Guilty Verdict</p> <p>Charge #8 HARASSMENT PREVENTION ORDER, VIOLATE c258E §9 On: 05/23/2018 Judge: Hon. Robert C Cosgrove By: Jury Trial Guilty Verdict</p> | | |
| 05/23/2018 | <p>The defendant\petitioner is committed without bail for the following reason: Bail has been revoked C.276 § 58. pending sentencing</p> <p>Judge: Cosgrove, Hon. Robert C</p> | | |
| 05/23/2018 | <p>Verdict affirmed, verdict slip filed</p> <p>Guilty as to Count 001</p> | 87 | |
| 05/23/2018 | Habeas Corpus for defendant issued to Middlesex County House of Correction returnable for 05/30/2018 02:00 PM Hearing for Sentence Imposition. Defendant to be sentenced to prison on this date. | 85 | |
| 05/23/2018 | <p>Verdict affirmed, verdict slip filed</p> <p>Guilty as to Count 002</p> | 88 | |
| 05/23/2018 | <p>Event Result:</p> <p>Judge: Cosgrove, Hon. Robert C</p> <p>The following event: Jury Trial scheduled for 05/23/2018 08:30 AM has been resulted as follows:</p> <p>Result: Held as Scheduled: Closings and charge. Jurors in seats #2 and 7 randomly selected by court as alternates. Juror in seat #11 selected by Court as foreperson. Deliberations commenced at approx 12:20 pm. Verdicts as to all counts returned at 3:05 pm. Matter con't to 05/30/2018 at 2 pm for sentencing.</p> <p>Appeared::</p> <p>Defendant Kim, Daniel Larry</p> <p>Attorney Murphy, Esq., Scott P</p> <p>Attorney Murphy, Esq., Erin</p> <p>Ct Rep: D Chapin</p> <p>Clerk: S Irwin</p> <p>Judge: Cosgrove, Hon. Robert C</p> | | |
| 05/23/2018 | <p>Verdict affirmed, verdict slip filed</p> <p>Guilty as to Count 003</p> | 89 | |
| 05/23/2018 | <p>Verdict affirmed, verdict slip filed</p> <p>Guilty as to Count 004</p> | 90 | |
| 05/23/2018 | <p>Verdict affirmed, verdict slip filed</p> <p>Guilty as to Count 005</p> | 91 | |

| Docket Date | Docket Text | File Ref Nbr. | Image Avail. |
|-----------------------------|--|-------------------------------|------------------------------|
| 05/23/2018 | Verdict affirmed, verdict slip filed Guilty as to Count 006 | 92 | |
| 05/23/2018 | Verdict affirmed, verdict slip filed Guilty as to Count 007 | 93 | |
| 05/23/2018 | Verdict affirmed, verdict slip filed Guilty as to Count 008 | 94 | |
| 05/23/2018 | Defendant 's Motion For Required Finding of Not Guilty After Jury Verdict filed and DENIED (Cosgrove, J.) 05/23/2018 attest S Irwin | 95 | |
| 05/30/2018 | Event Result:: Hearing for Sentence Imposition scheduled on: 05/30/2018 02:00 PM Has been: Held as Scheduled *** BAIL MAY NOT BE RETURNED TO SURETY PER ORDER HENRY, J MIDDLESEX SUPERIOR COURT*** See Paper #54 Hon. Robert C Cosgrove, Presiding Appeared: Prosecutor Erin Murphy, Esq., Attorney for the Commonwealth Defendant Daniel Larry Kim Scott P Murphy, Esq., Appointed - Indigent Defendant Staff: Ct Rep: D Chapin Clerk: S Irwin Judge: Cosgrove, Hon. Robert C | | |
| 05/30/2018 | Date: 05/30/2018 Judge: Hon. Robert C Cosgrove Charge #: 1 STALKING c265 §43(a) State Prison Sentence Not Less Than: 4 Years, 0 Months, 0 Days Not More Than: 5 Years, 0 Months, 0 Days Charge #: 2 INDECENT A&B ON PERSON 14 OR OVER c265 §13H State Prison Sentence Not Less Than: 3 Years, 0 Months, 0 Days Not More Than: 5 Years, 0 Months, 0 Days Served Consecutively Committed to MCI - Cedar Junction (at Walpole) Credits 287 Days Financials: Victim/Witness Assessment on felony G.L. c. 258B, § 8. Amount \$90.00 Further Orders of the Court: Count 002 is imposed to run from and after the sentence on Count 001. Probation terms apply while in custody including but not limited to no contact with victim and no posting or publishing anything on internet or social media about the victim. | | |
| 05/30/2018 | Issued on this date: Mitt For Sentence (First 6 charges) Sent On: 05/30/2018 15:10:06 | 96 | |

| Docket Date | Docket Text | File Ref Nbr. | Image Avail. |
|-----------------------------|---|-------------------------------|------------------------------|
| 05/30/2018 | <p>Defendant sentenced:: Sentence Date: 05/30/2018 Judge: Hon. Robert C Cosgrove 20 Years probation commencing 05/30/2018. Probation to be unsupervised while Defendant is serving his committed sentences on counts 001 and 002. The Special Terms of no contact directly indirectly or thru 3rd parties with the victim and no publishing of any sort on internet, social media or other media; abide by all harassment prevention orders and/or restraining orders are in full force and effect as of 05/30/2018.</p> <p>***BAIL MAY NOT BE RETURNED TO SURETY PER ORDER HENRY, J. MIDDLESEX SUPERIOR COURT***</p> <p>Supervised Probation will commence upon release from committed sentence on Count 002. Special Terms and Conditions:</p> <ol style="list-style-type: none"> 1. Abide by any and all restraining order and/or harassment prevention orders; 2. No contact with victim or her family directly, indirectly or thru 3rd parties or the internet; 3. No publishing of any sort on internet, social media or other media regarding the named victim; this includes No posting; re-posting, publishing or reactivating websites about the named victim; 4. Register as a sex offender and comply with all Sex Offender Registry Board requirements; 5. Must have GPS with exclusion zones including victim's home and work; 6. Undergo a pharmacological evaluation and follow recommended treatment; 7. Undergo out patient mental health treatment; 8. Sign and do not rescind releases to allow probation to monitor evaluations and treatment both pharmacological and mental health; 9. Must provide a DNA sample; 10. \$65/month probation supervision fee. 11. \$90 victim witness fee <p>All standard terms of probation apply.</p> <p>Supervised probation is to be for 10 years following release. If Defendant is released prior to serving 10 years committed time, he may seek to have probation terminated following 10 years of supervised release.</p> <p>Charge #: 3 WITNESS/JUROR/POLICE/COURT OFFICIAL, INTIMIDATE c268 §13B Served Concurrently Charge # 1</p> <p>Charge #: 4 HARASSMENT, CRIMINAL c265 §43A(a) Served Concurrently Charge # 3</p> <p>Charge #: 5 HARASSMENT PREVENTION ORDER, VIOLATE c258E §9 Served Concurrently Charge # 3</p> <p>Charge #: 6 HARASSMENT PREVENTION ORDER, VIOLATE c258E §9 Served Concurrently Charge # 3</p> <p>Charge #: 7 HARASSMENT PREVENTION ORDER, VIOLATE c258E §9 Served Concurrently Charge # 3</p> <p>Charge #: 8 HARASSMENT PREVENTION ORDER, VIOLATE c258E §9 Served Concurrently Charge # 3</p> <p>Probation: Risk/Need Probation Duration: 20 Years, 0 Months, 0 Days Start Date: 05/30/2018 End Date: 05/29/2038</p> <p>Judge: Cosgrove, Hon. Robert C</p> <p>Judge: Cosgrove, Hon. Robert C</p> | | |
| 05/30/2018 | Commonwealth files sentence recommendation | 97 | |
| | Judge: Cosgrove, Hon. Robert C | | |
| 06/06/2018 | Notice of appeal from sentence to MCI - Cedar Junction (at Walpole) filed by defendant filed 6/4/2018 | 98 | |
| 06/06/2018 | Notification to the Appellate Division sent. | | |
| 06/12/2018 | Defendant's Motion to revise and revoke The Defendant specifically requests that this motion be neither marked for hearing nor presented to the sentencing Judge for consideration at his time. filed 6/5/2018 | 99 | |
| 06/12/2018 | Affidavit of Scott P. Murphy, Esq. filed 6/5/2018 | 100 | |
| 06/12/2018 | Defendant's Certificate of service - filed 6/5/2018 | 101 | |
| 06/13/2018 | David Rassoul Rangaviz, Esq.'s Notice Of Appearance Filed by David Rangaviz-Filed on 6/5/18 | 102 | |

| Docket Date | Docket Text | File Ref Nbr. | Image Avail. |
|-----------------------------|--|-------------------------------|------------------------------|
| 06/13/2018 | Notice of appeal filed. Applies To: Murphy, Esq., Scott P (Attorney) on behalf of Kim, Daniel Larry (Defendant) Above case being aggrieved by certain opinions, rulings, directions and judgments of the Court, hereby appeals his convictions pursuant to Massachusetts Rules of Appellate Procedure, Rule 3. | 103 | |
| 06/13/2018 | Attorney appearance On this date David Rassoul Rangaviz, Esq. added for Defendant Daniel Larry Kim | | |
| 06/13/2018 | Defendant 's Certificate of Service-Filed on 6/5/18 Applies To: Murphy, Esq., Scott P (Attorney) on behalf of Kim, Daniel Larry (Defendant) | 104 | |
| 06/13/2018 | Attorney appearance On this date Scott P Murphy, Esq. dismissed/withdrawn as Appointed - Indigent Defendant for Defendant Daniel Larry Kim | | |
| 06/20/2018 | Court Reporter Dawna Chapin is hereby notified to prepare one copy of the transcript of the evidence of 05/15/2018 09:00 AM Jury Trial, 05/16/2018 09:00 AM Jury Trial, 05/17/2018 08:30 AM Jury Trial, 05/18/2018 08:30 AM Jury Trial, 05/21/2018 08:30 AM Jury Trial, 05/22/2018 08:30 AM Jury Trial, 05/23/2018 08:30 AM Jury Trial, 05/30/2018 02:00 PM Hearing for Sentence Imposition | 105 | |
| 06/28/2018 | General correspondence regarding Defendant re-submits Appeal from Sentence to Appellate Division-filed on 6/18/18. Duplicate filing See P#98-filed on 6/6/18. | 106 | |
| 07/19/2018 | General correspondence regarding letter from Defendant requests the court waive all fees and costs associated with his trial - filed 7/18/2018 | 107 | |
| 07/19/2018 | General correspondence regarding letter from Defendant requesting information as to why surety was told the bail has been forfeited/revoked. Per docket sheet \$15000.00 held per order of Judge Bruce Henry. | 108 | |
| 07/26/2018 | Court Reporter Dawna Chapin is hereby notified to prepare one copy of the transcript of the evidence of 08/18/2016 02:00 PM Non-Evidentiary Hearing to Dismiss, 10/18/2016 02:00 PM Motion Hearing, 05/08/2018 02:00 PM Final Pre-Trial Conference, 05/11/2018 10:30 AM Motion Hearing, 05/14/2018 09:00 AM Motion Hearing Defense Attorney David Rangaviz request additional dates to be transcribed-Filed on 7/18/18 Applies To: Rangaviz, Esq., David Rassoul (Attorney) on behalf of Kim, Daniel Larry (Defendant) | 109 | |
| 08/10/2018 | Endorsement on Motion to waive all court and trial fees, (#107.0): Allowed to the extend that all fines and fees shall be suspended during the defendant's incarceration and may be paid during post-incarceration probation (Cosgrove, J) dated 8/10/2018 Copy mailed to Defendant ***BAIL MAY NOT BE RETURNED TO SURETY PER ORDER HENRY, J. MIDDLESEX SUPERIOR COURT*** | | |
| 11/06/2018 | Defendant 's Motion for Defendant to Receive Jail Credits | 110 | |
| 12/06/2018 | Defendant 's Motion for Order to Produce Transcripts-Filed on 12/6/18 by Defendant-Pro Se | 111 | |
| 12/10/2018 | Defendant 's Motion to Return Funds c/s Judge Connors | 112 | |
| 12/10/2018 | Defendant 's Motion of th Defendant for the Production of Police Reports | 113 | |
| 12/10/2018 | Transcript received from Yours Transcription Services dated 5/18/18 | | |
| 12/17/2018 | Appeal for review of sentence entered at the Appellate Division: Originating Court: Norfolk County Receiving Court: Suffolk County Criminal Case Number: 1884AD172-NO ; | | |
| 06/10/2019 | Appeal: Withdrawn by party re: Sentence Appeal Applies To: Kim, Daniel Larry (Defendant) | | |
| 07/23/2019 | Defendant 's Motion for EXPEDITED Production of TRANSCRIPT-Filed on 7/19/2019 | 114 | |
| 07/23/2019 | Affidavit filed by Defendant Daniel Larry Kim in support of Motion for EXPEDITE Production of TRANSCRIPT-Filed on 7/19/2019 | 115 | |
| 07/25/2019 | Endorsement on Motion for Expedited Production of Transcript-ALLOWED by Judge Cosgrove on 7/23/2019, (#114.0): ALLOWED Motion sent to OTS, and Defense Attorney on 7/25/2019 | | |
| 08/22/2019 | Attorney appearance On this date Nancy Ann Dolberg, Esq. added as Appointed - Indigent Defendant for Defendant Daniel Larry Kim | | |

| <u>Docket Date</u> | <u>Docket Text</u> | <u>File Ref Nbr.</u> | <u>Image Avail.</u> |
|--------------------|--|----------------------|---------------------|
| 10/08/2019 | Endorsement on Motion to return funds, (#112.0): ALLOWED dated 10/4/2019 Copies mailed Judge: Cosgrove, Hon. Robert C | | |
| 11/25/2019 | Defendant 's Motion to compel counsel to turn over case files and work production & Certificate of Service - original s/Judge Connors | 116 | |
| 01/28/2020 | Attorney appearance On this date Richard P Heartquist, Esq. added for Defendant Daniel Larry Kim - filed 1/27/20 | | |
| 02/04/2020 | Defendant 's Motion to compel production of arrest warrants (rec'd 1/31/2020) Forwarded to Judge Cosgrove. | 117 | |
| 02/07/2020 | Endorsement on Motion to Compel production of arrest warrants, (#117.0): DENIED (Cosgrove, J)(dated; 2/6/2020) ns pl Judge: Cosgrove, Hon. Robert C | | |
| 02/07/2020 | The following form was generated: A Clerk's Notice was generated and sent to: Defendant: Daniel Larry Kim Attorney: Nancy Ann Dolberg, Esq. Attorney: Richard P Heartquist, Esq. Attorney: David Rassoul Rangaviz, Esq. Attorney: Pamela Lynne Alford, Esq. Attorney: Erin Murphy, Esq. | | |
| 02/11/2020 | Nancy Ann Dolberg, Esq.'s Motion to withdrawal Allowed (Cosgrove, J) dated 2/11/20. Copies mailed to ADA and Defense | 118 | |
| 02/12/2020 | Defendant 's Notice of Appearance and Certificate of Service-Filed on 2/4/2020 | 119 | |
| 05/01/2020 | Docket Note: mailed copies of docket sheets and indictments to SORB- Attn: Erin Haynes on 5/1/2020-cm | | |

Case Disposition

| <u>Disposition</u> | <u>Date</u> | <u>Case Judge</u> |
|--------------------------|-------------|-------------------|
| Disposed by Jury Verdict | 05/30/2018 | |

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss

At the SUPERIOR COURT, begun and holden

at DEDHAM, within and for the County of Norfolk,

on the fifth Tuesday of September, 2014

THE JURORS for the Commonwealth of Massachusetts, on their oath present that

DANIEL KIM

of Newton in the County of Middlesex

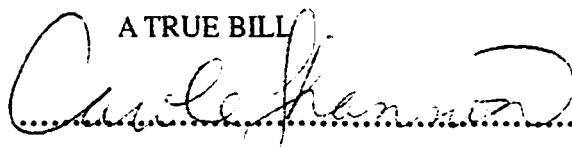
on or about and in between June 10, 2011 - August 31, 2014

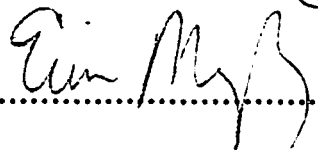
at Avon in the County of Norfolk

did willfully and maliciously engage in a knowing pattern of conduct or series of acts over a period of time directed at a specific person, to wit: Lauren Kelley, which did seriously alarm or annoy such person and would cause a reasonable person to suffer substantial emotional distress; and did make a threat with the intent to place such person in imminent fear of death or bodily injury, in violation of M.G.L. c.265, § 43(a),

against the peace of said Commonwealth, and contrary to the form of the Statute in such case made and provided.

A TRUE BILL


..... { Foreman of the Grand Jury


..... { Assistant District Attorney
Norfolk District

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss

At the SUPERIOR COURT, begun and holden

at DEDHAM, within and for the County of Norfolk,

on the fifth Tuesday of September, 2014

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DANIEL KIM

of Newton in the County of Middlesex

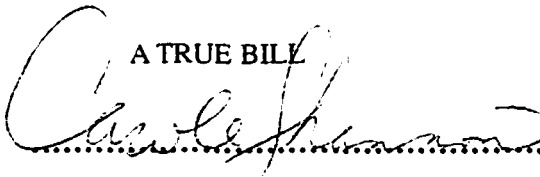
on or about June 10, 2011

at Avon in the County of Norfolk

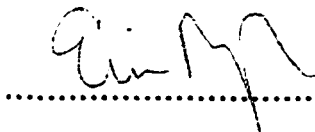
did indecently assault and beat a person known to the Commonwealth, L.K., a person who had attained 14 years of age, in violation of M.G.L. c.265, s.13H,

against the peace of said Commonwealth, and contrary to the form of the Statute in such case made and provided.

A TRUE BILL



{ Foreman of the
Grand Jury



{ Assistant District Attorney
Norfolk District

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss

At the SUPERIOR COURT, begun and holden

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on the fifth Tuesday of September, 2014

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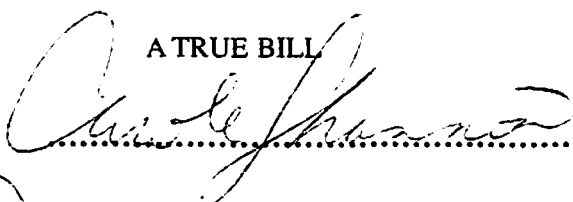
DANIEL KIM

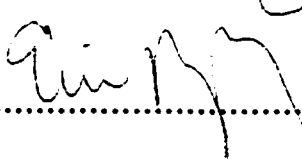
of Newton in the County of Middlesex
on or about August 8, 2013
at Avon in the County of Norfolk

did directly or indirectly, willfully: (a) threaten, or attempt or cause physical injury, emotional injury, economic injury or property damage to another person; or (b) convey a gift, offer or promise of anything of value to another person; or (c) mislead, intimidate or harass another person, that person being (1) a witness or potential witness at any stage of a criminal investigation, grand jury proceeding, trial or other criminal proceeding of any type; or (2) a person who is or was aware of information, records, documents or objects that relate to a violation of a criminal statute, or a violation of conditions of probation, parole or bail; or (3) a person who is furthering a civil or criminal proceeding, including criminal investigation, grand jury proceeding, trial, other criminal proceeding of any type, probate and family proceeding, juvenile proceeding, housing proceeding, land proceeding, clerk's hearing, court ordered mediation, any other civil proceeding of any type; or (4) a person who was attending or had made known her intention to attend a civil or criminal proceeding, including criminal investigation, grand jury proceeding, trial, other criminal proceeding of any type, probate and family proceeding, juvenile proceeding, housing proceeding, land proceeding, clerk's hearing, court-ordered mediation, or any other civil proceeding of any type; and did so with the intent to impede, obstruct, delay, harm, punish or otherwise interfere thereby, or did so with reckless disregard, with such a proceeding, in violation of M.G.L. ch. 268, s. 13B,

against the peace of said Commonwealth, and contrary to the form of the Statute in such case made and provided.

A TRUE BILL


..... { Foreman of the Grand Jury


..... { Assistant District Attorney
Norfolk District

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss

At the SUPERIOR COURT, begun and holden

at DEDHAM, within and for the County of Norfolk,

on the fifth Tuesday of September, 2014

THE JURORS for the Commonwealth of Massachusetts, on their oath present that

DANIEL KIM

of Newton in the County of Middlesex

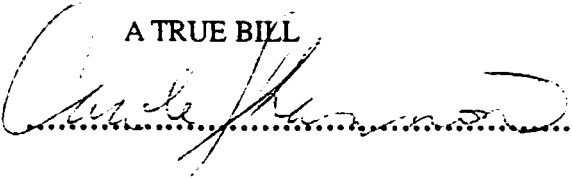
on or about and in between June 10, 2011 - August 31, 2014

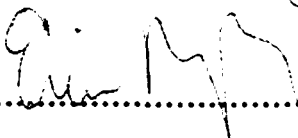
at Avon in the County of Norfolk

did willfully and maliciously engage in a knowing pattern of conduct or series of acts over a period of time directed at a specific person, to wit: Lauren Kelley, which did seriously alarm such person and would cause a reasonable person to suffer substantial emotional distress, in violation of M.G.L. c.265, § 43A,

against the peace of said Commonwealth, and contrary to the form of the Statute in such case made and provided.

A TRUE BILL


..... { Foreman of the Grand Jury


..... { Assistant District Attorney
Norfolk District

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss

At the SUPERIOR COURT, begun and holden

at DEDHAM, within and for the County of Norfolk,

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DANIEL KIM

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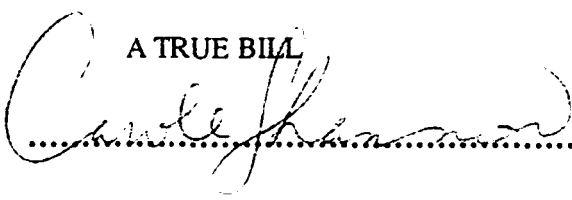
on or about and in between August 16, 2011 and December 31, 2011

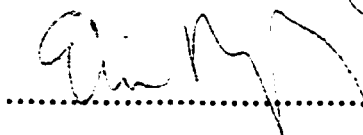
at Avon in the County of Norfolk

did fail to comply with a court order to refrain from harassing or to have no contact with the plaintiff, Lauren Kelley, issued under the provisions of M.G.L. c.258E, §§ 3, 5 or 6, in violation of M.G.L. c.258E, § 9,

against the peace of said Commonwealth, and contrary to the form of the Statute in such case made and provided.

A TRUE BILL


..... { Foreman of the Grand Jury


..... { Assistant District Attorney
Norfolk District

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss

At the SUPERIOR COURT, begun and holden

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of Newton in the County of Middlesex

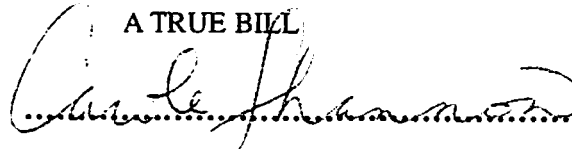
on or about and in between January 1, 2012 and December 31, 2012

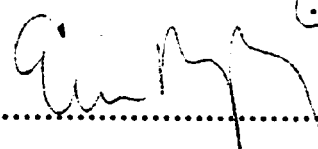
at Avon in the County of Norfolk

did fail to comply with a court order to refrain from harassing or to have no contact with the plaintiff, Lauren Kelley, issued under the provisions of M.G.L. c.258E, §§ 3, 5 or 6, in violation of M.G.L. c.258E, § 9,

against the peace of said Commonwealth, and contrary to the form of the Statute in such case made and provided.

A TRUE BILL


..... { Foreman of the Grand Jury


..... { Assistant District Attorney
Norfolk District

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss

At the SUPERIOR COURT, begun and holden

at DEDHAM, within and for the County of Norfolk,

on the fifth Tuesday of September, 2014

THE JURORS for the Commonwealth of Massachusetts, on their oath present that

DANIEL KIM

of Newton in the County of Middlesex

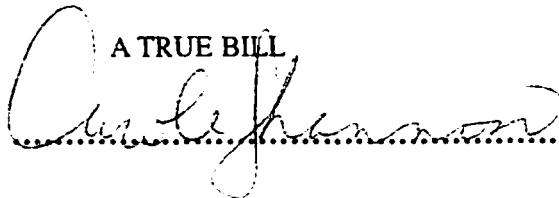
on or about and in between January 1, 2013 and December 31, 2013

at Avon in the County of Norfolk

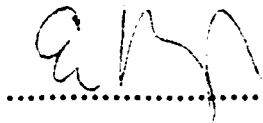
did fail to comply with a court order to refrain from harassing or to have no contact with the plaintiff, Lauren Kelley, issued under the provisions of M.G.L. c.258E, §§ 3, 5 or 6, in violation of M.G.L. c.258E, § 9,

against the peace of said Commonwealth, and contrary to the form of the Statute in such case made and provided.

A TRUE BILL



{ Foreman of the
Grand Jury



{ Assistant District Attorney
Norfolk District

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss

At the SUPERIOR COURT, begun and holden

at DEDHAM, within and for the County of Norfolk,

on the fifth Tuesday of September, 2014

THE JURORS for the Commonwealth of Massachusetts, on their oath present that

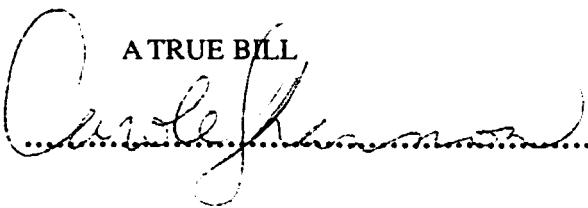
DANIEL KIM

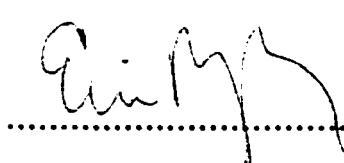
**of Newton in the County of Middlesex
on or about and in between August 1 - 31, 2014
at Avon in the County of Norfolk**

**did fail to comply with a court order to refrain from harassing or to have no contact with the
plaintiff, Lauren Kelley, issued under the provisions of M.G.L. c.258E, §§ 3, 5 or 6, in violation of
M.G.L. c.258E, § 9,**

against the peace of said Commonwealth, and contrary to the form of the Statute in such case
made and provided.

A TRUE BILL


..... { Foreman of the
Grand Jury


..... { Assistant District Attorney
Norfolk District

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT
NOCR2014-0816

COMMONWEALTH

VS.

DANIEL KIM

MOTION FOR BILLS OF PARTICULARS

Pursuant to Rule 13 (b) (1) of the Massachusetts Rules of Criminal Procedure, the defendant hereby moves this court for an order requiring the prosecution to file a statement of particulars necessary to give both the defendant and the court reasonable notice of the crimes charged in indictments 001, 005, 006, 007, and 008.

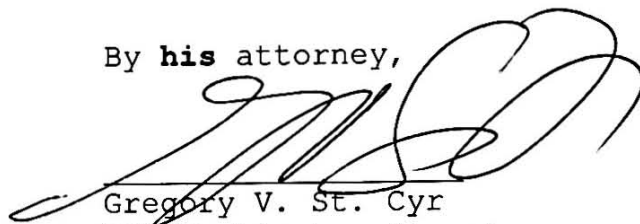
Indictment 001 charges the defendant with Stalking "on or about and in between" June 10, 2011 and August 31, 2014. The indictment specifically charges the defendant with making "a threat with the intent to place [the victim] in imminent fear of death or bodily injury." The defendant requests a statement describing the time, place, manner and means of any such threat.

Indictments 005, 006, 007, and 008 each charge the defendant with violating a harassment protection order "on or about and in between" the start and finish date of each calendar year since the issuance of the order. It is unreasonable to expect the defendant to defend against such vague allegations.

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NORFOLK COUNTY

The defendant therefore, requests that this court order the prosecution to provide the defendant with a bill of particulars for each such indictment that contains a statement describing the time, place, manner and means of any and all acts of the defendant that amount to a violation of the harassment protection order.

By **his** attorney,

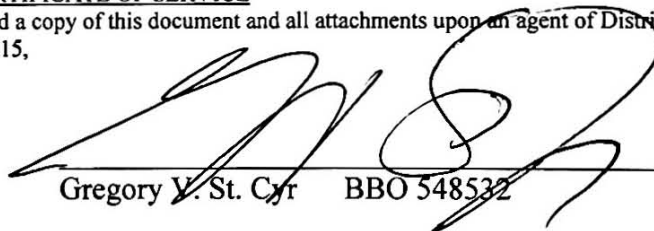


Gregory V. St. Cyr
368 Washington Street
Dedham, MA 02026
(781) 461-4590
BBO 548532

CERTIFICATE OF SERVICE

I, Gregory V. St. Cyr, hereby certify that I have served a copy of this document and all attachments upon an agent of District Attorney's Office by mail this 23d day of January 2015,

email



Gregory V. St. Cyr BBO 548532

11-9-15

18.0

COMMONWEALTH OF MASSACHUSETTS

Norfolk, SS.

NORFOLK SUPERIOR COURT
DOCKET NO. NOCR14-0816

COMMONWEALTH

v.

DANIEL KIM

COMMONWEALTH'S RESPONSE TO DEFENDANT'S MOTION FOR BILL OF PARTICULARS

The following constitutes a bill of particulars, providing the defendant and the Court with reasonable notice of the crime charged, including time, place, manner, or means. Mass. R. Crim. P., 13(b)(1). The purpose of this document is to provide the defendant with reasonable knowledge of the nature and character of the crimes charged, thereby enabling him to prepare an adequate defense. Commonwealth v. Amirault, 404 Mass. 221, 233 (1989), cert. denied, 113 S.Ct. 602 (1992).

This bill of particulars is not intended to be, nor can it reasonably be taken as, a complete statement of all of the Commonwealth's evidence. Commonwealth v. Kirpatrick, 26 Mass. App. Ct. 595, 598 (1988). "A defendant in a criminal proceeding is not entitled by a motion for a bill of particulars to secure a resume of the evidence that the Commonwealth intends to introduce at the trial, or to have such motion treated in all respects as if it were a set of interrogatories." Commonwealth v. Hayes, 311 Mass. 21, 25 (1942). "All that is required is that the indictment, read with the bill of particulars, be sufficient fully, plainly, substantially and formally to give the defendant reasonable knowledge of the crime with which he is charged." Id. This bill of particulars should be read in conjunction with any/all of the Commonwealth's Notices of Discovery, the Commonwealth's Response to Discovery Pursuant to Pre-trial Conference Report and Defendant's Discovery Motions.

The effect of a bill of particulars, when filed with the Court, "is to bind and restrict the Commonwealth as to the scope of the complaint and to the proof to be offered in support of it."

Commonwealth v. Iannello, 344 Mass. 723, 726 (1962). Yet, if at trial, there exists a material variance between the evidence and the bill of particulars, the judge may order the bill of particulars amended or may grant such other relief as justice requires. Mass. R. Crim. P. 13(b)(2). The amendment may be done at any stage of the proceedings, including during the trial, after the evidence is completed, or after the final argument, provided there is no change in the substantive offenses and the defendant is not prejudiced. Commonwealth v. Iacovelli, 9 Mass. App. Ct. 694, 697 (1980).

Indictment 001 of Norfolk Superior Court Docket NOCR14-0816 alleges that on or about and in between June 10, 2011 and August 31, 2014, Daniel Kim, of Newton in the County of Middlesex, at Avon in the County of Norfolk, did willfully and maliciously engage in a knowing pattern of conduct or series of acts over a period of time directed at a specific person, to wit: [REDACTED], which did seriously alarm or annoy such person and would cause a reasonable person to suffer substantial emotional distress; and did make a threat with the intent to place such person in imminent fear of death or bodily injury, in violation of M.G.L. c. 265, § 43(a). This knowing pattern of conduct or series of acts includes unwanted touching of and contact with [REDACTED]; writing and posting blog entries on an online website—www.dankim.com—directed to/and or about [REDACTED]; and mailing of a package containing writings directed to/and or about [REDACTED] to her family residence in Avon. The above-referenced threat was posted by the defendant in a blog entry directed toward [REDACTED] on the defendant's website—www.dankim.com— on August 8, 2013.

Indictment 005 of Norfolk Superior Court Docket NOCR14-0816 alleges that on or about and in between August 16, 2011 and December 31, 2011, Daniel Kim, of Newton in the County of Middlesex, at Avon in the County of Norfolk, did fail to comply with a court order to refrain from harassing or to have no contact with the plaintiff, [REDACTED], issued under the provisions of M.G.L. c.258E, §§ 3, 5 or 6, in violation of M.G.L. c. 258E, § 9, by writing and posting blog entries on an online website—www.dankim.com— directed to/and or about Lauren Kelley on one or more of the following dates: August 20, August 26, August 29, September 7, September 10, September 11, September 14, September

18, September 29, October 1, October 4, October 13, October 31, November 2, November 3, November 8, November 10, November 11, November 14, November 15, November 24, December 2, December 6, December 10, December 11, December 12, December 13, December 15, December 22, December 26, December 28, December 29, December 30, December 31, 2011.

Indictment 006 of Norfolk Superior Court Docket NOCR14-0816 alleges that on or about and in between January 1, 2012 and December 31, 2012, Daniel Kim, of Newton in the County of Middlesex, at Avon in the County of Norfolk, did fail to comply with a court order to refrain from harassing or to have no contact with the plaintiff, [REDACTED], issued under the provisions of M.G.L. c.258E, §§ 3, 5 or 6, in violation of M.G.L. c. 258E, § 9, by writing and posting blog entries on an online website—www.dankim.com— directed to/and or about [REDACTED] on one or more of the following dates: January 1, January 2, January 6, January 10, January 11, January 13, January 14, January 15, January 16, January 17, January 23, January 25, January 27, January 31, February 4, February 6, February 7, February 12, February 13, February 18, February 20, February 22, February 24, February 25, March 1, March 3, March 4, March 20, March 27, April 5, April 7, April 8, April 18, April 19, April 20, April 23, April 26, April 27, April 30, May 1, May 21, October 24, November 19, December 12, 2012.

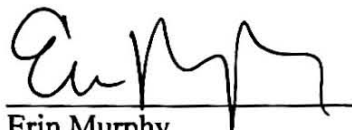
Indictment 007 of Norfolk Superior Court Docket NOCR14-0816 alleges that on or about and in between January 1, 2013 and December 31, 2013, Daniel Kim, of Newton in the County of Middlesex, at Avon in the County of Norfolk, did fail to comply with a court order to refrain from harassing or to have no contact with the plaintiff, [REDACTED], issued under the provisions of M.G.L. c.258E, §§ 3, 5 or 6, in violation of M.G.L. c. 258E, § 9, by mailing a package containing writings directed to/and or about [REDACTED] to her family residence in Avon and/or by writing and posting blog entries on an online website—www.dankim.com— directed to/and or about [REDACTED] on one or more of the following dates: April 5, April 25, May 5, June 8, July 12, August 8, August 17, August 30, 2013

Indictment 008 of Norfolk Superior Court Docket NOCR14-0816 alleges that on or about and in between August 1, 2014 and August 31, 2014, Daniel Kim, of Newton in the County of Middlesex, at Avon in the County of Norfolk, did fail to comply with a court order to refrain from harassing or to have no contact with the plaintiff, [REDACTED], issued under the provisions of M.G.L. c.258E, §§ 3, 5 or 6, in violation of M.G.L. c. 258E, § 9, by writing and posting blog entries on an online website—

www.dankim.com— directed to/and or about [REDACTED] on one or both of the following dates:
August 1, August 15, 2013,

The Commonwealth reserves the right to amend and/or supplement this response prior to trial.

Respectfully Submitted
For the Commonwealth,

A handwritten signature in black ink, appearing to read 'Erin Murphy', written over a horizontal line.

Erin Murphy
Assistant District Attorney
Norfolk County District Attorney
45 Shawmut Road
Canton, MA 02021
781.830.4800
781.830.4801 (fax)

Date: November 6, 2015

Commonwealth of Massachusetts

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT

INDICTMENT NO.: 2014 NOCR 0816

Commonwealth of Massachusetts

v.

Daniel Kim

Defendant

DEFENDANT'S MOTION TO DISMISS AND MEMORANDUM OF LAW
IN SUPPORT OF MOTION

NOW COMES THE DEFENDANT, in the above-captioned matter and hereby moves this Honorable Court, pursuant to Mass. R. Crim. P. 13, Articles 12 and 16 of the Massachusetts Declaration of Rights, and the First and 14th Amendments to the United States Constitution, to dismiss the above-captioned indictments charging: stalking, in violation of M.G.L. c. 265 §43(a); intimidation of a witness, in violation of M.G.L. c. 268 §13B; criminal harassment, in violation of M.G.L. c. 265 §43A; and four indictments alleging violation of a harassment prevention order, in violation of M.G.L. c. 258E §9. As reasons therefor, the defendant states:

1. Insofar as the indictment appears to allege one count of stalking, the presentment fails to support a showing of probable cause. *Commonwealth v. McCarthy*, 385 Mass. 160 (1982).
2. Insofar as the indictment appears to allege one count of intimidation of a witness, in violation of M.G.L. c. 268 §13B, and one count of criminal harassment, in violation of M.G.L. c. 265 §43A the presentment fails to support a showing of probable cause. *Commonwealth v. McCarthy*, 385 Mass. 160 (1982).
3. Probable cause to support indictments five through eight, alleging violation of a harassment prevention order, in violation of M.G.L. c. 258E §9, is lacking,

Commonwealth v. McCarthy, 385 Mass. 160 (1982); and the facts as the Commonwealth are prepared to prove are insufficient to sustain a guilty verdict. *Rosenberg v. Commonwealth*, 372 Mass. 59 (1977);

FACTS ALLEGED

The following facts have been adopted from the grand jury minutes and exhibits. Daniel Kim was a friend of the Kelley family in Avon, Massachusetts for many years. [GJ p. 4] [REDACTED] obtained the first harassment prevention order against Daniel Kim from the Stoughton District Court on August 10, 2011. [GJ p. 4] The order was extended until August 16, 2012. [GJ p. 5] The order was subsequently extended until August 16, 2013, then until August 15, 2014 and then once again after that. In her affidavit for the August 10, 2011, application for a harassment prevention order [REDACTED] wrote that “the defendant unwillingly attacked me in a ‘ticklefight’ and groped my breasts while forcing himself on top of me.” [GJ p. 6] The harassment prevention order prohibits Mr. Kim from harassing and from having direct or indirect contact with Lauren Kelley. [REDACTED] and her father met with Avon Police Officer Peter Hutchings on August 16, 2013 after they attended a hearing in Stoughton District Court where Ms. Kelley was granted an extension of the harassment prevention order. [GJ p. 6] Mr. Kelley explained to Officer Hutchings that a package of material which was postmarked August 8, 2013, was sent to the family home addressed to [REDACTED]’s sister Bridget Kelley. [GJ p. 7] At that time, [REDACTED] was a student at Emmanuel College and lived at school but the address was her permanent address. [GJ p. 8] Inside the package was a letter to Bridget Kelley allegedly from the defendant, a book called “One day at a time in Alanon,” another book called “Opening our hearts, Transforming Our Losses,” and a USB thumb drive. [GJ p. 7] The contents of the thumb drive include: a folder entitled “About Lauren” containing a number of files about [REDACTED]; a file called “Tweets” which contains copies of many tweets sent out by [REDACTED]; a

“Tweet Narrative” file which included interpretations of [REDACTED]’s tweets; a file called “Saving Ellie;” a file called “Articles I Think you Must Read;” a file called “Articles you might want to read;” a file called “Videos” and a file called “From the Blog.” [GJ p. 11-14]

The writings from the blog folder “all have the same general thoughts about [REDACTED], their love for each other, and how Mr. Kim could save [Lauren] from the drug and alcohol addiction” he suspected she had from her social media postings. [GJ p. 14-15] He writes about how he proposed marriage to [REDACTED], about their having children together, and about his love for her. An August 8, 2013 post is written as a letter to [REDACTED]. [GJ p. 18] In one part he writes, “next week, you have a choice, you can stand up for yourself against the bully, the coward, the abusive alcoholic that is your father – the man that coerced you into perjuring yourself and becoming so much less than you should be.” And then he later writes in the same post:

You have the choice whether to lie or stand up to him. It is that simple.
Your actions have consequences and if you lie about me again, I will have
no choice but to take action against you. I love you but I know if I do not
hold you responsible for your actions, no one will, not even yourself.

[GJ p. 18] [REDACTED] learned of this package mailed to her sister from her sister Bridget but not until after the August 16, 2013 hearing for the extension of the harassment order in Stoughton District Court. [GJ Testimony of [REDACTED] [LEK] p. 22] There is no indication that [REDACTED] knew anything about any writings at www.dankim.com until after the hearing on August 16, 2013.

One year later, at the end of August 2014, Lauren Kelley was informed by the DA’s Office that there were two more postings at www.dankim.com dated August 1, 2014 and August 15, 2014. [GJ Testimony of LEK 23] There is no indication that she read them only that she

was informed by the DA's Office that Mr. Kim had written about her in his blog. [GJ Testimony of LEK 23]

Ms. Kelley denies having a dating relationship or intimate relationship with Mr. Kim. [GJ Testimony of LEK 24] She also denies being in love with him and she denies ever expressing an interest in having children with him. [GJ Testimony of LEK 23]

ARGUMENT

In order to obtain an indictment, the Commonwealth must present the grand jury with sufficient evidence to establish the identity of the person to be indicted and probable cause to arrest him or her. See *Commonwealth v. McCarthy*, 385 Mass. 160, 163 (1982). Review of the sufficiency of the evidence presented before the grand jury is limited to a determination of whether the grand jury heard sufficient evidence to establish the identity of the accused and probable cause to arrest him. *Commonwealth v. Clarke*, 44 Mass. App. Ct. 502, 509 (1998); *Commonwealth v. Truong Vo Tam*, 49 Mass. App. Ct. 31, 37 (2000). “[P]robable cause to arrest exists where, at the moment of the arrest, the facts, [] circumstances [and reasonable inferences] within the knowledge of the police are enough to warrant a prudent person in believing that the individual arrested has committed or was committing an offense.” *Commonwealth v. Storey*, 378 Mass. 312, 321 (1979); *Commonwealth v. Hill*, 49 Mass. App. Ct. 58, 64 (2000). The police must have something definite and substantial, a suspicion of criminal activity is never enough. See *Commonwealth v. Rivera*, 27 Mass. App. Ct. 41, 45 (1989). To establish the requisite probable cause, the Commonwealth must provide to the grand jury sufficient evidence on each element of the crime charged. See *Commonwealth v. O'Dell*, 392 Mass. 445, 451 (1984). A leap of conjecture is insufficient. *Commonwealth v. Montalvo*,

76 Mass. App. Ct. 319, 329 (2010) (where the Commonwealth's evidence "required a leap of conjecture with respect to [the] essential elements of the crime charged" an inference of intent to distribute was unreasonable). A defendant may challenge the sufficiency of the evidence with a motion to dismiss. See *Commonwealth v. DiBennadetto*, 436 Mass. 310, 313 (2002); *Commonwealth v. Caracciola*, 409 Mass. 648 (1991) (defendant is entitled, via a motion to dismiss, to test the prosecution's view of the law as applied to the facts presented to the grand jury).

Here, the Commonwealth failed to present sufficient facts to the grand jury that Daniel Kim engaged in stalking, in violation of M.G.L. c. 265 §43(a); intimidation of a witness, in violation of M.G.L. c. 268 §13B; criminal harassment, in violation of M.G.L. c. 265 §43A; and four indictments alleging violation of a harassment prevention order, in violation of M.G.L. c. 258E §9. Therefore, these indictments must be dismissed.

I. There was insufficient probable cause presented to the grand jury that Mr. Kim stalked [REDACTED] in violation of G.L. c. 265 §43(a)

In order to prove the defendant guilty of stalking, the Commonwealth must prove five things beyond a reasonable doubt:

1. That over a period of time, the defendant knowingly engaged in a pattern of conduct or series of acts involving at least three incidents directed at the complainant;
2. That those acts were of a kind that would cause a reasonable person to suffer substantial emotional distress;
3. Those acts did cause the complainant to become seriously alarmed or annoyed;
4. That the defendant took those actions willfully and maliciously; and

5. That the defendant also made a threat with the intention of placing the complainant in imminent fear of death or bodily injury.

G.L. c. 265 § 43. The stalking statute prohibits conduct or acts that include threatening speech.

See Commonwealth v. Robicheau, 421 Mass. 176, 182-183 (1995) (upholding stalking conviction based in part on verbally threatening victim). The defendant contends that the Commonwealth failed to present sufficient evidence to establish probable cause under the “series of acts” prong as well as the “threats” prong of the stalking statute. This argument is based upon the fact that the Commonwealth relied in part on the blog postings at www.dankim.com to meet its burden under both prongs of the stalking statute and the defense contends that these writings are speech which is protected by the First Amendment to the United States Constitution.

a. **The Commonwealth has failed to demonstrate the “threat” requirement of the crime of stalking.**

To prove the crime of stalking, the Commonwealth, in addition to establishing (1) willful and malicious conduct over a period of time (directed at a specific person) which seriously alarms or annoys that person and would cause a reasonable person to suffer substantial emotional distress, must also prove that the defendant (2) made a threat with the intent to place the victim in imminent fear of death or bodily injury. G.L. c. 265 §43 (a). The Commonwealth contends that a statement posted by the Defendant in a blog dated August 8, 2013, fits this definition. Specifically the statement “Your actions have consequences, and if you lie about me again, I will have no choice but to take action against you,” according to the Commonwealth fits the threat

component of the stalking statute.¹ The defense strongly disagrees that this statement qualifies as a threat to place the victim in imminent fear of death or bodily injury.

Both the First Amendment to the United States Constitution and Article 16 of the Massachusetts Declaration of Rights generally protect speech from government regulation. *See O'Brien v. Borowski*, 461 Mass. 415, 422 (2012). In some circumstances, a court can (and should) restrict speech not protected by the First Amendment. But such unprotected speech must be found by the Court to fall within "certain well-defined and narrowly limited classes." *Id.* These "limited" classes include speech that is integral to criminal conduct,² "fighting words,"³ "true threats,"⁴ and "solicitation" (or "incitement").⁵ The United States Supreme Court has defined "true threats" as:

Those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals . . . The speaker need not actually intend to carry out the threat. Rather, a prohibition on true threats 'protect[s] individuals from the disruption that fear engenders,' in addition to protecting people 'from the possibility that the threatened violence will occur.'"

Virginia v. Black, 538 U.S. 343, 359-60 (2003) (quoting *R.A.V. v. St. Paul*, 505 U.S. 377, 388 (1992)). Comparing the threat component of the stalking statute with the definition of a "true threat," the Supreme Judicial Court has concluded that any verbal or written communication that qualifies as a threat as defined in the stalking statute is also a "true threat," and therefore is not

¹ Later in the same post is the statement "If you choose to lie and perjure yourself again, I will mourn you and grieve for the lost future with the Asians with freckles that our children Kelley and Cadence would have been. I will honor your memory and move on."

² See *Commonwealth v. Johnson*, 470 Mass. 300, 311 (2014) (where defendants used website to recruit others to harass victims, defendants could not "launder their harassment of the [victims] through the internet to escape liability" for criminal harassment under G. L. c. 265, § 43A).

³ See *O'Brien v. Borowski*, 461 Mass. 415, 423 (2012).

⁴ See *O'Brien*, 461 Mass. at 423; *Virginia v. Black*, 538 U.S. 343, 359-60 (2003).

⁵ See *Yakubowicz v. Paramount Pictures Corp.*, 404 Mass. 624, 630-31 (1989)

entitled to the protections of the First Amendment. Commonwealth v. Walters (SJC-11799) (2015).

Furthermore, for a defendant to make a threat that meets the requirements of the stalking statute, as with an assault, the defendant must intend to place the victim in fear that physical harm is likely to occur and the victim's fear must be reasonable. Commonwealth v. Matsos, 421 Mass.391, 394-95 (1995). The reasonableness of the victim's fear depends in part on the "actions and words of the defendant in light of the attendant circumstances." Matsos, 421 Mass. at 395. See Commonwealth v. Gupta, 84 Mass. App. Ct. 682, 684, 688 (2014) (where victim's imminent fear based upon long distance phone calls was reasonable in light of defendant's "mobility, history of abusive conduct, motivation," and knowledge of the victim's whereabouts).

Finally, although communication of a threat to its intended victim is not expressly required, evidence of the defendant's intent to communicate the threat through direct or indirect means is necessary. Commonwealth v. Walters, (SJC-11799) p. 8 (2015) (citing Commonwealth v. Hughes, 59 Mass. App. Ct. 280, 281-282 (2003)). And where the communication of the threat is indirect, the Commonwealth must prove beyond a reasonable doubt that the defendant intended the threat to reach the victim. Hughes, 59 Mass. App. Ct. at 283.

Turning to the statement "Your actions have consequences, and if you lie about me again, I will have no choice but to take action against you," it is clear that there is no threat of violence in the statement itself. Also, there is no evidence that the Defendant intended to evoke violence by writing the statement in his blog.⁶ There is nothing in the remainder of that specific post or in any of the other posts that threatens violence against the victim in any way. In fact, the statement itself is amenable to a reasonable nonviolent interpretation, namely that the Defendant intended

⁶ In fact, the next three words of the post are "I love you."

to pursue whatever legal means might be available to right a wrong he may have perceived the victim had inflicted on him. Under these circumstances the statement is not a “true threat” and therefore is entitled to the protections under the First Amendment. See Commonwealth v. Walters, (SJC-11799) p. 9 (2015) (addressing the statement “make no mistake of my will to succeed in bringing you two idiots to justice” in combination with a photograph of the defendant with a gun on a facebook post was insufficient to constitute a threat under the stalking statute). As a result, in this case, because the Commonwealth did not present sufficient evidence of a true threat to the grand jury to establish probable cause that Mr. Kim made a threat with the intent to place the victim in imminent fear of death or bodily injury, the indictment charging stalking in violation of G.L. c. 265 § 43 (a) must be dismissed.

- b. The Commonwealth failed to demonstrate that the defendant willfully and maliciously engaged in a knowing pattern of conduct or series of acts involving at least three incidents directed at the victim which seriously alarmed or annoyed that victim and would cause a reasonable person to suffer emotional distress as required by G.L. c. 265 § 43**

To prove the crime of stalking, the Commonwealth must prove that the defendant engaged in “willful and malicious conduct over a period of time (directed at a specific person) which seriously alarm[ed] or annoy[ed] that person and would cause a reasonable person to suffer substantial emotional distress.” G.L. c. 265 §43 (a). And the phrase “knowing pattern of conduct or series of acts” is interpreted to mean at least three incidents. See Instruction 3.13 of the Massachusetts Superior Court Criminal Practice Jury Instructions (2013). The Commonwealth has indicated that the conduct or series of acts in this case includes: (1) the unwanted touching and contact with [REDACTED] (alleged indecent assault and battery); (2) writing and posting blog entries on an online website directed to/and or about [REDACTED]; and

(3) mailing a package containing writings directed to/and or about [REDACTED] to her family residence in Avon. See Commonwealth's Response to Defendant's Motion for Bill of Particulars, p. 2, filed on November 6, 2015. The defense challenges the probable cause with respect to the evidence alleged in the "pattern of conduct or series of acts" component of stalking. First, the package mailed to the Avon address was not sent to [REDACTED] but rather to her sister, Bridget Kelley, and thus cannot meet the statutory requirement that the act must be directed at the victim. That the package was not directed at [REDACTED] is supported by the fact that there was a letter inside addressed to Bridget Kelley and the letter itself has personal information directed at Bridget Kelley and not her sister Lauren. Additionally, [REDACTED] was living at Emerson College at the time that the package was sent to Avon, Massachusetts, adding further proof that the mailing was not intended for Lauren. Second, some of the "series of acts" according to the Commonwealth are the blog postings at www.dankim.com (although the Commonwealth failed to specify any precise postings) and these writings are speech which is protected by the First Amendment to the United States Constitution.⁷

The defense acknowledges that the stalking statute specifies that conduct or acts described in the statute includes conduct, acts or threats conducted by mail or internet communications, among other means. G.L. c. 265 §43 (a). But, "online speech," like other speech, enjoys the highest protections under the First Amendment and Article 16. See Reno v. ACLU, 521 U.S. 844, 867-868 (1997) (applying strict scrutiny to regulation of internet speech); Psinet, Inc. v. Chapman, 362 F.3d 227, 235 (4th Cir. 2004). It does not matter that the defendant is not a member of the traditional media.⁸ See Shaari v. Harvard Student Agencies, Inc., 427

⁷ It should be clear that this case involves internet postings and not communications or letters which were sent to the alleged victim. See Commonwealth v. Matsos, 421 Mass.391, 394-95 (1995) (involving a case where forty sexually explicit letters expressing anger and dangerous behavior were sent directly to the victim).

⁸ Mr. Kim did pursue a journalism degree from the University of Missouri.

Mass. 129, 134 (1998) ("The press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion.")

The First Amendment and Article 16 guarantee the right of the Defendant to speak online about his thoughts, experiences, opinions, and attitudes even if others do not like what he says. The posts are not violent or threatening and they do not attempt to incite others to harass or annoy Lauren Kelley. Contrast Elonis v. United States, 135 S. Ct. 2001, 2016-2017 (2015) (Alito, J., concurring in part and dissenting in part) (applying "true threats" exception to First Amendment to violent statements made on social media that are pointedly directed at victims, whether made recklessly or with intent to threaten); Commonwealth v. Johnson, 470 Mass. 300, 312-313 (2014) (where defendants used Web site to recruit others to harass victims, defendants could not "launder their harassment of the [victims] through the Internet to escape liability" for criminal harassment under G. L. c. 265, § 43A). There is no evidence in this case of true threats and there is no evidence of an effort to recruit others. As a result, because the Commonwealth did not present sufficient evidence to the grand jury of willful and malicious conduct over a period of time (directed at a specific person) which seriously alarm[ed] or annoy[ed] that person and would cause a reasonable person to suffer substantial emotional distress, the indictment charging stalking in violation of G.L. c. 265 § 43 (a) must be dismissed.

II. Similarly, Indictment 003, charging intimidation of a witness, in violation of G.L. c. 268 § 13B, must be dismissed because there was not sufficient evidence presented to the grand jury establishing probable cause that Mr. Kim intimidated [REDACTED] on August 8, 2013

The Defendant is charged with violating G.L. c. 268 § 13B in that he allegedly intimidated or harassed [REDACTED] on August 8, 2013, who was expected to attend a civil proceeding to extend the harassment prevention order in Stoughton District Court on August 16,

Commonwealth must prove the same evidence that is required to prove stalking minus the threat element.

Looking at the evidence the Commonwealth alleges sets forth proof of the series of acts component of stalking it appears that the three acts include: (1) the unwanted touching and contact with [REDACTED] (alleged indecent assault and battery); (2) writing and posting blog entries on an online website directed to/and or about [REDACTED]; and (3) mailing a package containing writings directed to/and or about [REDACTED] to her family residence in Avon. See Commonwealth's Response to Defendant's Motion for Bill of Particulars, p. 2, filed on November 6, 2015. As argued previously with respect to the stalking indictment, the package was not directed to [REDACTED] because it was mailed to Bridget Kelley along with a personalized letter and there was nothing in the mailing which instructed or requested that Bridget Kelley communicate anything to her sister. Also, the defendant contends that there was insufficient evidence of malice for criminal harassment as the speech at issue did not contain "fighting words," "true threats" or obscenity-laced remarks. Commonwealth v. Welch, 444 Mass. 80, 94-95 (2005). Commonwealth v. Braica, *supra* at 247. As a result, because the speech in the content of the posts cannot constitutionally be prohibited under the protections of the First Amendment, the indictment charging criminal harassment in violation of G.L. c. 265 § 43A must be dismissed.

IV. The Commonwealth has failed to establish probable cause that Daniel Kim violated the harassment prevention order by harassing or by having contact with [REDACTED] in Indictments 005 thru 008

Chapter 258E was enacted in 2010 to allow individuals to obtain civil restraining orders against persons who are not family or household members, and to make the violation of those

2013. As mentioned above, the only event occurring on August 8, 2013, is the posting of a blog at www.dankim.com. This post was written as a letter to [REDACTED]. [GJ p. 18] In one part he writes, “next week, you have a choice, you can stand up for yourself against the bully, the coward, the abusive alcoholic that is your father – the man that coerced you into perjuring yourself and becoming so much less than you should be.” And then he later writes in the same post:

You have the choice whether to lie or stand up to him. It is that simple.
Your actions have consequences and if you lie about me again, I will have
no choice but to take action against you. I love you but I know if I do not
hold you responsible for your actions, no one will, not even yourself.

[GJ p. 18]

It is notable that [REDACTED] learned of the blog (from where this posting came) from her sister Bridget (because it was included in a thumb drive in the package addressed to Bridget) but not until after the August 16, 2013 hearing for the extension of the harassment order in Stoughton District Court. [GJ Testimony of [REDACTED] [LEK] p. 22] The post references the August 16, 2013 hearing but there is no indication that [REDACTED] knew anything about any writings at www.dankim.com until after the hearing on August 16, 2013. It is hard to imagine that someone can intimidate or harass someone about what may happen at an upcoming event if the intended victim is unaware of it. Furthermore, the Commonwealth has failed to meet its burden of probable cause related to the intimidation indictment because there was no evidence presented to the grand jury about how [REDACTED] felt about the August 8, 2013 post. Without this evidence, the Commonwealth cannot establish probable cause that Daniel Kim intimidated or harassed [REDACTED] as a result of the August 8, 2013 post. The statute defines “harass” to mean “to engage in any act directed at a specific person or persons,

which act seriously alarms or annoys such person or persons and would cause a reasonable person to suffer substantial emotional distress.” G.L. c. 268 § 13B(3). No reasonable person could suffer substantial emotional distress under these circumstances.

The Defense also makes the same argument noted above (related to the stalking indictment) that the Commonwealth failed to meet its burden with respect to the intimidation indictment because the content of the August 8, 2013 post is protected speech under the First Amendment and Article 16 of the Declaration of Rights. The United States Supreme Court has held that States may not proscribe speech based upon its content with the exception of “certain well-defined and narrowly tailored classes of speech” that, precisely because of their content may be constitutionally prohibited. Chaplinsky v. New Hampshire, 315 U.S. 568, 571 (1942). In this case, since the content of the August 8, 2013 post do not include: lewd, obscene, profane, “fighting words” or “true threats,” they are not constitutionally proscribable and thus the indictment for intimidation of a witness must be dismissed.

III. Because the Commonwealth failed to demonstrate that the defendant engaged in a knowing pattern of conduct or series of acts which seriously alarmed or annoyed [REDACTED] under the Stalking statute noted above, in section I. b., the Commonwealth has also failed to establish probable cause that Daniel Kim engaged in criminal harassment.

To be convicted of criminal harassment, a defendant must have willfully and maliciously engaged in a knowing pattern of conduct or a series of acts over a period of time directed at a specific person, which seriously alarms that person and would cause a reasonable person to suffer substantial emotional distress. G. L. c. 265, § 43A(a), as amended by St. 2010, c. 92, § 10. The pattern of conduct must consist of at least three separate incidents. Commonwealth v. Braica, 68 Mass. App. Ct. 244, 246 (2007). The acts may include speech or conduct, but if there is harassing speech, it must not be constitutionally protected. Ibid. To prove criminal harassment, the

orders punishable as a crime. See An Act Relative to Harassment Prevention Orders, Formal House Session January 28, 2010 (statements of Representatives O'Flaherty, Atkins, Jones, Swan). But while a protective order under c. 209A requires a finding of "abuse," a protective order under c. 258E requires a finding of "harassment," defined in G.L. c. 258E, § 1, as "[three] or more acts of willful and malicious conduct aimed at a specific person committed with the intent to cause fear, intimidation, abuse or damage to property and that does in fact cause fear, intimidation, abuse or damage to property." The acts of harassment must be willful and "[m]alicious," the latter defined as "characterized by cruelty, hostility or revenge," and they must be committed with "the intent to cause fear, intimidation, abuse or damage to property." G.L. c. 258E, § 1.

For the reasons stated previously, the content of the writings in the blog at www.dankim.com failed to meet this definition because they are protected free speech and cannot be characterized as cruel, hostile or stemming from revenge. As Officer Hutchings testified in the grand jury, the writings from the blog folder "all have the same general thoughts about Lauren, their love for each other, and how Mr. Kim could save [REDACTED] from the drug and alcohol addiction" he suspected she had from her social media postings. [GJ p. 14-15] The Commonwealth failed to present any evidence that Daniel Kim sent any communications to [REDACTED] directly or that Daniel Kim intended a third party to contact [REDACTED] (indirectly) by posting his thoughts, opinions or ideas (even if written in letter format to [REDACTED] [REDACTED]) in his blog. [REDACTED] learned of the blog from her sister Bridget who received a package but not until after the August 16, 2013 hearing for the extension of the harassment order in Stoughton District Court. [GJ Testimony of [REDACTED] [LEK] p. 22] There is no indication that [REDACTED] knew anything about any writings at www.dankim.com until after

the hearing on August 16, 2013. As a result, the four indictments for violation of a harassment prevention order must be dismissed.

V. There is insufficient evidence to prove stalking, criminal harassment, intimidation and violation of a harassment prevention order under *Rosenberg v. Commonwealth*.

“All the facts that are presently known and that the Commonwealth is prepared to prove” are insufficient to sustain a verdict of guilt. *Rosenberg v. Commonwealth*, 372 Mass. 59, 62-63 (1977); *see also Commonwealth v. Gordon*, 410 Mass. 498, 502 (1991) (approving the procedure of moving to dismiss based on the insufficiency of the evidence to be presented at trial and citing *Rosenberg* for that proposition). The Court in *Rosenberg* noted that a motion to dismiss on these grounds promotes “avoidance of substantial and unnecessary public expense” and “[p]ossible avoidance of the defendant’s ordeal in participating in what may be an unnecessary trial.” *Rosenberg*, 372 Mass. at 63.

Here, the Commonwealth failed to present sufficient facts to the grand jury that Daniel Kim engaged in stalking, in violation of M.G.L. c. 265 §43(a); intimidation of a witness, in violation of M.G.L. c. 268 §13B; criminal harassment, in violation of M.G.L. c. 265 §43A; and four indictments alleging violation of a harassment prevention order, in violation of M.G.L. c. 258E §9. This is because the Commonwealth relied primarily on protected speech to sustain its burden. Because the First amendment prohibits such restraints on speech these indictments must be dismissed.

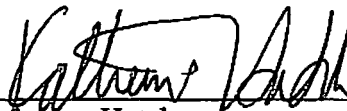
CONCLUSION

Because there was insufficient evidence presented to the grand jury that Mr. Kim engaged in anything other than protected speech under the First Amendment, all of the indictments with the exception of indictment 002 charging indecent assault and battery must be dismissed.

Dated: July 18, 2016

Respectfully submitted,

Daniel Kim ,
By his Attorney,



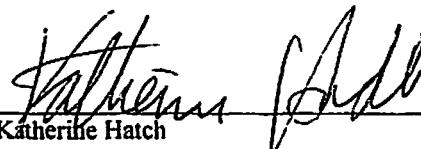
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the within Defendant's Motion to Dismiss was this day served upon the Norfolk DA's Office by email service to ADA Sarah Lelle:

SIGNED under the pains and penalties of perjury.

Dated: July 18, 2016



Katherine Hatch
Attorney for Defendant

Docket
8/17/16

26.1

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

NORFOLK SUPERIOR COURT
DOCKET NO. 2014NOCR0816

COMMONWEALTH

v.

DANIEL KIM

COMMONWEALTH'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

Now comes the Commonwealth and respectfully submits the Commonwealth's Memorandum in Opposition to Defendant's Motion to Dismiss Pursuant to Commonwealth v. McCarthy, 385 Mass. 160 (1982).

FACTS

The defendant, who was born in 1967, is a former friend of the victim's parents. The victim, L.K., was born in 1992. On August 10, 2011, the victim L.K., obtained a Harassment Prevention Order against the defendant in Stoughton District Court. One of the provisions of that order was that the defendant not contact L.K., "either in person, by telephone, in writing, or otherwise, either directly or indirectly or through someone else, and to stay at least 100 yards away from the Plaintiff..." (GJ Exhibit # 1). Earlier in the summer of 2011, the defendant told L.K. (who was then a 19-year-old college student entering her sophomore year) that his late wife would approve of him having a relationship with her, that they would get married, and have "freckled Asian babies" together. During that same timeframe, the defendant appeared frequently at L.K.'s home waking her up in the mornings and even sleeping outside her house on one occasion.

During one of the defendant's appearances at L.K.'s home in June 2011, he approached her in the living room and began poking her in an effort to gain her attention. When L.K. asked the defendant to leave her alone, he pinned her down and groped her breast. Despite L.K. telling the defendant not to contact her, he sought her out during that summer at her vacation home on Cape Cod. He also parked his car outside of her home in Avon until L.K.'s parents asked him to leave. During the summer of 2011, L.K. also became aware that the defendant was maintaining a blog about her and their purported romantic relationship on his website, www.blog.dankim.com. On August 10, 2011 in response to an email in which L.K. asked the defendant to leave her alone, the defendant told L.K. that he would not because he is one of the few that truly loves her (GJ Exhibit #1).

After L.K. obtained a Harassment Prevention Order against the defendant on August 10, 2011 the defendant continued to regularly post lengthy entries about L.K. on his online blog. This continued throughout 2011, 2012, and 2013, despite L.K.'s extension of the Harassment Prevention Order each year. In his blog entries, the defendant claims that he and L.K. were in love, planned to get married, and have children together. However, the defendant claims that L.K. had developed a drug and alcohol addiction that caused her to push him away. The defendant acknowledged in his blog entries that he was monitoring L.K.'s activities and whereabouts by following her social media accounts and the social media accounts of her friends. The defendant also posted numerous pictures and videos of L.K. in these blog entries. Some of the defendant's blog postings are written directly to L.K., opening with lines such as "Ellie [his nickname for L.K.] -I am hoping you are reading this blog and will read this." Some of the entry titles included, "Love Don't Run," "Glimpses of Ellie," "Grieving the Death of Our Dream," and "RIP Ellie."

After the Harassment Prevention Order was in place in August 2011, the defendant continued posting on his blog about L.K. and to L.K., knowing that she was aware of the blog. In many of the postings, the defendant referenced being prohibited from contacting L.K., but wanting to make contact with her through his posts. For example, on September 7, 2011, the defendant posted, "the main reason I keep posting about her on this blog is because I hope she is still reading my blog..." On November 11, 2011 the defendant wrote, "My beloved Ellie. Since I cannot tell you myself, I am writing this post and hoping this message makes its way to you somehow." On January 14, 2012, the defendant wrote a blog post entitled, "Ellie- Please Read This," in which he then wrote directly to L.K. On January 16, 2012, the defendant wrote that if L.K. is still reading his blog he wants her to read all the posts and comments he has written for her. On August 2, 2013, the defendant wrote, "L.K. has never denied anything I have written here or on my social media posts. She has admitted to having read everything I had written on my blog as well as my social media accounts up to at least March of 2012. Whether she is still reading, I do not know. I hope and pray she is..." (Grand Jury Exhibit #17).

In January 2012, the defendant scheduled a meeting with the Residence Hall Director of the dormitory where L.K. lived at Emmanuel College. The purpose of the meeting was to discuss his concerns about L.K.'s "addictions." The defendant brought to the meeting printed pages from L.K.'s Facebook and Twitter accounts and from those of her friends. The defendant told the Residence Hall Director that he and L.K. had a romantic relationship and referenced having "freckled Asian babies" with her. As a result of this meeting, the defendant was given a no-trespass order from Emmanuel College (Grand Jury Exhibit #11).

Also, in January 2012, the defendant sent an email to L.K.'s mother asking why L.K.'s car was in the shop for repairs. L.K. had not told the defendant of her car troubles as the

restraining order had been in effect for approximately 17 months. L.K. believed he obtained this knowledge by physically following her.

L.K. was aware that the defendant had continued writing blog entries about her in 2012 and 2013. L.K. knew that the defendant had been monitoring her social media postings, as well as her friend's, since he would reference them on his website. Additionally, Emmanuel College Campus Safety reached out her in October 2012 as a Wheelock College student became familiar with the defendant's blog and found the content concerning. At that time, L.K. met with Officer MacGregor and Chief Kelly and read the recent blog posts. Lt. MacGregor's report indicates that L.K. was visibly upset and stated that she was in fear of the defendant (Grand Jury Exhibit #14).

On August 8, 2013, one week prior to the yearly Harassment Prevention Order extension hearing, the defendant posted a blog entry entitled, "Stand Up for Yourself" on his website. It was written as a letter to L.K. The defendant wrote, "Next week you have a choice," and went on to discuss how L.K. could tell the truth or continue to perjure herself. He also wrote in the letter, "You are an adult now. You are responsible for your actions. If you lie now, you have no one you can blame for your actions. While your father may be coercing you, you have the choice whether to lie or to stand up to him. It is that simple. Your actions have consequences, and if you lie about me again, I will have no choice but to take action against you. I love you, but I know that if I do not hold you responsible for your actions, no one will- not even yourself."

On the same date, the defendant also mailed a package to L.K.'s home in Avon. The package contained a letter, two books, and a thumb drive. In the letter, which was addressed to L.K.'s 16-year-old sister, the defendant wrote about proposing to L.K. and his belief that L.K.'s father coerced her into getting the Harassment Prevention Order against him (Grand Jury Exhibit

#5). The enclosed thumb drive contained a folder titled, "About L.K.]", which contained a number of documents written about L.K. as well as a video of her. The thumb drive also contained copies of 42 blog entries that the defendant recently wrote and posted about L.K., including his August 8, 2013 letter to her (Grand Jury Exhibit #9). L.K.'s sister informed her of the defendant's mailing, prompting L.K. to report the incident to the police.

Due to the defendant's actions, L.K. changed her phone number, stopped using social media for a time, blocked the defendant from all social media accounts and anyone that she believed was associated with him. L.K. considered changing her name and moving across the country due to the defendant's actions. L.K. has indicated that the defendant's actions have affected her life by putting her in constant fear, "that this crazy delusional person is going to come after me." L.K. also indicated that anytime her name is Google searched the defendant's blog website appears. She has had to discuss the blog with places of employment, family and friends, and anyone she is dating. L.K. has stated that she has been affected financially, emotionally, and socially by the defendant's actions (See Grand Jury Transcript of L.K., page 25-26).

ARGUMENT

The Defendant's Motion to Dismiss should be denied because sufficient evidence was presented to the Grand Jury to establish probable cause to believe that the Defendant committed all of the offenses charged in the indictments.

In Commonwealth v. McCarthy, the Supreme Judicial Court announced the rule that, in order to indict, the grand jury "must hear sufficient evidence to establish the identity of the accused and probable cause to arrest him." 385 Mass. 160, 163 (1982). Probable cause is based on "reasonably trustworthy information ... sufficient to warrant a prudent man in believing that

the defendant has committed ... an offense.” See Commonwealth v. O’Dell, 392 Mass. 445, 450 (1984), quoting Commonwealth v. Stevens, 362 Mass. 24, 26 (1972). This standard is considerably less exacting than a requirement of sufficient evidence to warrant a guilty finding. See O’Dell, 392 Mass. at 451; Commonwealth v. Badgett, 38 Mass. App. Ct. 624, 625-626 (1995).

The evidence required to establish probable cause to arrest is “considerably less exacting than a requirement of sufficient evidence to warrant a guilty finding.” Commonwealth v. Capone, 39 Mass. App. Ct. 606, 609 (1996), quoting Commonwealth v. O’Dell, 392 Mass. 445, 451 (1984); Commonwealth v. Roman, 414 Mass. 642, 643 (1993) (probable cause to arrest is defined as “more than mere suspicion but something less than evidence sufficient to warrant a conviction”); Commonwealth v. Santaliz, 413 Mass. 238, 241 (1992) (probable cause is more than a suspicion, but not a prima facie case of the commission of a crime, let alone a case beyond a reasonable doubt); Commonwealth v. Peguero, 26 Mass. App. Ct. 912, 914 (1988) (“Probable cause is satisfied with less than a smoking gun”). “Probable cause does not require the same type of specific evidence of each element of the offense as would be needed to support a conviction.” Commonwealth v. DeCologero, 19 Mass. App. Ct. 956, 958 (1985), citing Commonwealth v. O’Dell, 392 Mass. at 451, quoting Smith, Criminal Practice and Procedure, sec. 104 (2d ed. 1983).

I. Indictment 1- Stalking

The Grand Jury indicted the defendant for Stalking, pursuant to Massachusetts General Laws c. 265 §43(a). The defendant alleges that the evidence presented to the Grand Jury was flawed in regards to the “threats” and “pattern of conduct or series of acts” prongs of the stalking statute.

- a. The Commonwealth presented sufficient evidence to satisfy the threat requirement of the crime of stalking.

On August 8, 2013, the defendant posted on his website (www.dankim.com) a blog entry directed to L.K. entitled, "Stand Up For Yourself" (Part of Grand Jury Exhibit 10). The entry was posted one week prior to the Harassment Prevention Order Extension hearing that was scheduled in Stoughton District Court. In that blog post, which is written as a letter directly to L.K., the defendant wrote,

I wish you could stand up for yourself... Next week, you have a choice. You can stand up for yourself against the bully, the coward, the abusive alcoholic that is your father- the man who has coerced you into perjuring yourself and becoming so much less than you should be. You can tell the truth and be free from your father... Or, you can continue to lie about me... You are an adult now. You are responsible for your actions. If you lie now, you have no one you can blame for your actions. While your father may be coercing you, you have the choice whether to lie or stand up to him. It is that simple. Your actions have consequences, and if you lie about me again, I will have no choice but to take action against you. I love you, but I know that if I do not hold you responsible for your actions, no one will- not even yourself.

This letter to L.K. qualifies as a threat under the stalking statute. Defense argues that the First Amendment to the United States Constitution and Article 16 of the Massachusetts Declaration of Rights protects this type of speech. Specifically, the defense contends that this speech does not fall into any of the classes of unprotected speech including, "fighting words, true threats, and solicitation or incitement."

In Commonwealth v. Matsos, 421 Mass. 391, 394 (1995), the Supreme Judicial Court determined that in order to obtain a conviction under M.G.L. c. 265, §43(a), it must be shown that the defendant made a threat with the intent to place the victim in fear of death or bodily injury. The SJC went on to note that this threat element closely approximates the common law definition of assault. "Under the common law, 'it is well established...that an act placing

another in reasonable apprehension that force may be used is sufficient for the offense of criminal assault. Id. at 395, citing Commonwealth v. Delgado, 367 Mass. 431, 437 (1975).

Additionally, the court noted that to determine whether an apprehension of anticipated physical force is reasonable, a court will look to the actions and words of the defendant in light of the attendant circumstances. Id.

Here, the defense solely examines the words, “Your actions have consequences, and if you lie about me again, I will have no choice but to take action against you” and claims that it is not a threat. However, the post when taken as a whole is clearly a threat to L.K. regarding her testimony at the upcoming Harassment Prevention Order extension hearing. The post was written just one week prior to that hearing and clearly references what the defendant wants L.K. to say at that hearing, making it clear that there would be consequences if she testified against the defendant in an effort to extend the Harassment Prevention Order.

In examining the attendant circumstances surrounding the post it becomes even clearer that the writing is indeed a threat. The Harassment Prevention Order was taken out in part because the defendant had already sexually assaulted L.K. The defendant committed an Indecent Assault & Battery on L.K. by groping her breast while forcing himself on top of her. Additionally, the defendant would show up at L.K.’s residence without invitation and was found sleeping outside. After the Harassment Prevention Order was granted, instead of ceasing all communication with L.K., the defendant instead increased the amount of blog posts directed to and about her. The defendant continued posting in 2011, 2012, 2013, and into 2014. The posts include commentary about L.K.’s whereabouts, what she was doing, and who she was with, all while the defendant referenced his undying love for L.K. and their future life that he believed they would have together. Additionally, he showed up at her place of schooling (unbeknownst to

L.K. at the time) in violation of the Harassment Prevention Order that was in effect. The purpose of his presence at her school was to discuss L.K.'s alleged "addictions" with the resident director of her campus housing. The defendant also took it upon himself to mail a copy of this same blog post along with numerous other items to L.K.'s residence prior to the hearing.

The defense contends that the writing is amendable to a nonviolent interpretation including some type of legal action against L.K. However, there is nothing in the post that would suggest that was the message being conveyed. The defense points to the case of Commonwealth v. Walters, 472 Mass. 680 (2015) to bolster this argument. However, the facts in Walters, are quite different from the facts at hand. In Walters, the defendant posted a photograph of himself with a gun on Facebook along with the words, "Make no mistake of my will to succeed in bringing you two idiots to justice." Id. at 690.

In Walters, the Supreme Judicial Court noted that, "A "true threat" need not take the form of an explicit statement that the speaker intends to cause imminent physical harm to the victim, but may comprise "words or actions that- taking into account the context in which they arise- cause the victim to fear such harm now or in the future." Id. at 691. The Court examined the content of the Facebook communications in that case in the context of the past and present relationship between the defendant and the victim in order to determine whether there was sufficient evidence that the defendant intended to threaten the victim and whether the victim's fear was reasonable. Id. at 694. In Walters, the photograph was uploaded three years after the last time the victim had seen the defendant and no one was specifically mentioned in the post. Id. Here, unlike Walters, the post was clearly directed to L.K., a known and identified individual and was made just days before the Harassment Protection Order hearing.

- b. The Commonwealth presented sufficient evidence that the defendant willfully and maliciously engaged in a knowing pattern of conduct or series of acts involving at least three incidents directed to the victim.

The Commonwealth contends that the defendant engaged in a knowing pattern of conduct or series of acts by 1) groping L.K.'s breast and forcing himself on top of her, 2) by writing and publishing blog entries on the website www.dankim.com, and 3) by mailing a package containing writings directed to and about L.K. to her home residence in Avon.

The defense contends that there was not a "pattern of conduct" because the package was not addressed to L.K. and was sent to her Avon address. Despite the fact that the package was addressed to L.K.'s sister, the contents were nonetheless a way of indirectly communicating with the L.K.

Throughout the defendant's blog, the defendant makes references to not being able to directly communicate with the victim due to the Harassment Prevention Order being in place. For example, in the August 2, 2013 blog post the defendant writes, "LEK has never denied anything I have written here or on my social media posts. She has admitted to having read everything I had written on my blog as well as my social media accounts up to at least March of 2012. Whether she is still reading, I do not know. I hope and pray she is..." He makes it clear that his intent is for L.K. to view his writings. The defendant sending the package to Avon is no different.

The defendant sent the package to a juvenile, the 16-year-old sister of L.K. To think that a juvenile would not be sharing the contents of the package with her family is preposterous. It was clearly the defendant's intent that the contents of that package be shared with L.K. The defense points out that L.K. was living at Emerson College at the time the package was sent and not at her family home in Avon. However, L.K. indicated in her grand jury testimony that she

resided in Avon during the summer months and Emerson College during the school year. (Grand Jury Minutes of L.K., Page 4) The package was sent in August of 2013, which was clearly during the summer months when L.K. would have been living in Avon.

The defense next claims that blog postings cannot be included in the series of acts because the writings are speech protected by the 1st Amendment to the United States Constitution. The defense points out that the defendant is not a member of the traditional media, but that his online speech is still protected. However, the defendant's postings are not protected speech as they are defamatory and also are used an integral part of conduct in violation of a criminal statute. The sole intent of the writings is to discuss the drug and alcohol "addictions" of L.K., to discuss how these "addictions" are preventing L.K. and the defendant from being together and married, and to harass and intimidate L.K. into terminating the Harassment Prevention Order that is in place. The blogs are of no political, social, or other legitimate news interest to the community.

The defense writes in its motion that, "The posts are not violent or threatening, and they do not attempt to incite others to harass or annoy L.K." What the defense fails to acknowledge is that the posts are indeed threatening and scary for the victim when examined as a whole and the defendant himself is harassing and annoying L.K. The defendant posted over thirty blog entries about L.K. or to L.K. from mid-2011 to end of the 2011. In 2012, he posted over forty entries about L.K. or to L.K. In 2013, he posted over thirty blog entries about L.K. or to L.K. Almost all of these entries were written after the Harassment Prevention Order was in effect and it had made clear to the defendant that L.K. was not interested in having a relationship with him.

The theme of the posts is clearly the defendant's obsession with marrying L.K. and having children with her. The defendant also focuses on L.K.'s purported drug and alcohol

addictions as justification as to why he can't be with L.K., as opposed to the fact that they were never romantically involved and she rebuffed his advances (Grand Jury Minutes of L.K., Page 24).

The subject matter of the posts are alarming as the defendant is clearly obsessed with L.K. He follows L.K.'s whereabouts, activities, and friends through social media. He then uses that information to comment and analyze L.K.'s every move including, but not limited to: discussing what her blood alcohol content might be, stating on more than one occasion she is prostituting herself for drugs and alcohol, evaluating and commenting about L.K.'s current and past romantic relationships in a derogatory fashion (including calling her boyfriends "a gangbanger and Neo-Nazi"), saying that L.K. is a drunk driver, writing that L.K. has failed to make the Dean's List due to her addictions, stating that L.K. is at high risk for being raped, assaulted, or murdered, and comparing L.K. to a sex worker. These are just a few of the themes that can be found on the defendant's blog (Grand Jury Exhibit # 17).

The defense contends that the defendant's writings on the blog are speech protected by the First Amendment and Article 16 of the Massachusetts Declaration of Rights. The defense argues that the posts aren't violent, threatening, and do not attempt to incite others to harass or annoy L.K. However, the defense fails to recognize that the defendant's blog postings are integral to the defendant's criminal conduct and also defamatory, neither of which are protected by the First Amendment.

While few Massachusetts cases have analyzed this issue especially in the context of stalking, in Commonwealth v. Johnson, 470 Mass. 300 (2014), the Supreme Judicial Court addressed the constitutionality of the criminal harassment statute in the context of cyber harassment and First Amendment speech. In Johnson, the husband and wife defendants were

convicted of criminal harassment after posting information about their neighbors online along with false advertisements about items they were giving away or selling. Id. at 302. The Supreme Judicial Court found that the defendant's communications were constitutionally unprotected as the speech was integral to criminal conduct. Id. at 311. "Where the sole purpose of the defendant's speech was to further endeavor to intentionally harass the Lyonses, such speech is not protected by the First Amendment. "The [F]irst [A]mendment does not provide a defense to a criminal charge simply because the actor uses words to carry out his illegal purpose." Id. at 309.

In making its ruling, the Supreme Judicial Court in Johnson, was guided by several of the decisions of the circuit courts of the United States Court of Appeals. Id. Specifically, the court examined United States v. Sayer, 748 F. 3d 425 (1st. Cir. 2014) and United States v. Petrovic, 701 F. 3d 849 (8th Cir. 2012) Id.

In Sayer, the defendant was charged with interstate stalking after the defendant's former girlfriend moved from Maine to Louisiana to escape him U.S. v. Sayer, 2012 WL 1714746 (see attached). The defendant then created fictitious social media and internet advertisements using the victim's name inviting men to come to her house for sex. The defendant also posted clips of the victim performing consensual sexual acts that he had filmed during their relationship. The court found that none of this activity was protected by the First Amendment as the speech or writing as it was used was an integral part of conduct in violation of a valid criminal statute.

In making the determination that the speech was not protected, the court found that the facts were dissimilar to the facts of United States v. Cassidy, 814 F. Supp. 2d 574 (D. Md. 2011). The Sayer court noted, "In Cassidy, the victim was "not merely a private individual but rather an easily identifiable public figure that leads a religious sect, and...many of the Defendant's

statements relate to [the sect's] beliefs and [the victim's] qualifications as a leader. *3 The court noted that the facts in Sayer did not involve any political or religious speech or promotion of ideas of any sort. "Instead, everything that Sayer allegedly said was "integral to criminal conduct," his criminal conduct seeking to injure, harass, or cause substantial emotional distress to the victim." Id.

In Petrovic, the defendant was also charged with interstate stalking after he set up a website of with nude images of his ex-wife and images of her engaging in sex acts. U.S. v. Petrovic, 701 F. 3d 849, 852 (2012). The defendant contended that his communications were protected by the First Amendment. The court found that the speech was not protected as it was integral to his criminal conduct. Id. at 855. In making its decision the court noted, "Furthermore, "where matters of purely private significance are at issue, First Amendment protections are often less rigorous... because restricting speech on purely private matters does not implicate the same constitutional concerns as limiting speech on matters of public interest." Id. citing Snyder v. Phelps, 131 S. Ct. 1207, 1215 (2011). The court went on to note that the victim was a private individual, the defendant's communications revealed private information about her, and that the public had no legitimate interest in the private sexual activities of the victim or the facts that the defendant revealed about her life. Id. at 856.

Similarly, in this case, L.K. is a private individual and the public had no legitimate interest in the blog postings of the defendant. The purpose of the postings was clearly to shame and harass L.K. about her alleged addictions in hopes that she would pursue a romantic relationship with defendant.

Other circuit court opinions that have addressed the First Amendment speech issue in the context of stalking include United States v. Sergentak, 2015 WL 3763988 (see attached). In

Sergentakis, the defendant was charged with cyberstalking and moved to dismiss the indictment, asserting that his First Amendment Rights were being violated. Id. at *1. The defendant in Sergentakis began sending letters to his former boss indicating that the boss was a child molester. The defendant also created and maintained a series of websites with similar content to the letters. Id. The court first determined that the victim was not a public figure and that the speech in question did not implicate matters of public concern. Id. at *7. As such, the communications of the defendant, “were not protected under the First Amendment because they were integral to criminal conduct in intentionally harassing, intimidating or causing substantial emotion distress to” the defendant”. Id. citing United States v. Osinger, 753 F. 3d 939 (9th Cir. 2014). (Where defendant’s Facebook page and emails regarding an ex-girlfriend (a private individual) were not protected by the First Amendment as the communications were integral to criminal conduct and the defendant was on notice that his conduct was harassing and criminal).

Additionally, the court in Sergentakis found that the speech in question was also not protected as it was defamatory. Id. at *7. After analyzing whether the statements made by the defendant were protected statements of opinion, the court found that the statements were unprotected statements of fact. Id. Specifically, the court noted that the statements had an apparent and unambiguous meaning that was different from rhetorical hyperbole. Id. at *8.

Here, the defendant’s writings were not only integral to his criminal conduct they were also defamatory as well. The defendant consistently wrote about L.K. being drug and alcohol addicted, a drunk driver, and a prostitute. He based these conclusions on the various social media posts of L.K. and her friends.

II. Indictment 3- Intimidation of a Witness

The Grand Jury indicted the defendant for Intimidation of a Witness, pursuant to Massachusetts General laws c. 268 §13B. The defendant intimidated L.K. by posting on his blog on August 8, 2013, one week prior to the Harassment Prevention Order hearing,

“I wish you could stand up for yourself... Next week, you have a choice. You can stand up for yourself against the bully, the coward, the abusive alcoholic that is your father- the man who has coerced you into perjuring yourself and becoming so much less than you should be. You can tell the truth and be free from your father... Or, you can continue to lie about me... You are an adult now. You are responsible for your actions. If you lie now, you have no one you can blame for your actions. While your father may be coercing you, you have the choice whether to lie or stand up to him. It is that simple. Your actions have consequences, and if you lie about me again, I will have no choice but to take action against you. I love you, but I know that if I do not hold you responsible for your actions, no one will- not even yourself.”

The defendant mailed this specific blog post to L.K.’s residence in a letter that was postmarked on August 8, 2013 as well. The defense contends that because L.K. did not receive the package until after the extension hearing that intimidation could not have occurred because the intended victim may have been unaware of it. However, in Commonwealth v. Valentin V., 83 Mass.App.Ct. 202 (2013), the Appeals Court examined the Intimidation of a Witness statute in the context of whether a threat made by a defendant had to actually be communicated to the intended victim. The Appeals Court determined that the communication does not have to be communicated to the intended victim stating, “Nothing in this language suggest that the Commonwealth must prove, as an element of the crime, that a threat communicated to an intermediary was received by the intended victim. Id. at 205-206. The Appeals Court also stated that, “As the statute expressly recognizes, a defendant may act “directly or indirectly,” and the focus here as well is on the defendant’s actions and intentions, not the victim’s reactions. Id. at 205.

Similarly, in this case, it doesn't matter whether L.K. received the communication prior to the hearing. The defendant's intent for the writing to be communicated was evidenced by the fact that he sent it to L.K.'s residence a week prior to the hearing and posted it on his website as well.

Additionally, the harassment prevention order is an ongoing proceeding. The defendant was aware that the order had previously been extended and was likely going to be extended again. L.K. was a witness in this ongoing proceeding. Even though the defendant's communication may not have been received by the victim prior to that particular hearing date it does not negate the fact that harassment prevention order was extended and the defendant's words still had the ability to intimidate L.K. at any point. See Commonwealth v. Robinson, 444 Mass. 102 (2005)(The defendant was convicted of Intimidation of a Witness for comments made following a show cause hearing. The court found that even though the hearing was over the defendant had notice that it was ongoing proceeding.)

III. Indictment 4 -Criminal Harassment

The Commonwealth relies primarily upon the arguments made under Section I of this memorandum. The defense argues that the mailing of the package to the juvenile sister at the Kelley household was not contact with L.K. The Commonwealth again contends that the package and its contents were very clearly also intended for L.K. In fact, many of the writings in the package were directly written to L.K. herself.

The defense additionally argues that the communications were insufficient to show malice as the speech did not contain, "fighting words, true threats, or obscenity laced language. However, under the statute, the requirement of malice does not require a showing of cruelty,

hostility, or revenge, nor does not require an actual intent to cause the required harm, but merely that the conduct be “intentional and without justification or mitigation, and any reasonable prudent person would have foreseen the actual harm that resulted.” Commonwealth v. O’Neil, 67 Mass. App. Ct. 284, 290-293 (2006). See also Commonwealth v. Nazzaro, 89 Mass. App. Ct. 1120 (2016) (Unpublished Opinion- see attached)(The defendant was convicted of criminal harassment after sending card/notes to an acquaintance and trying to visit her in person on approximately six occasions even after being told to stop).

In this instance, a reasonably prudent person, clearly would have foreseen the harm in sending a package containing a letter, books, blog posts, tweets and analysis of tweets to L.K., especially when a harassment prevention order was in place.

IV. Indictments 5-8 – Violation of the Harassment Prevention Order

The defense contends that there was not probable cause for the grand jury to believe that the defendant violated the harassment prevention order between August 16, 2011 and December 31, 2011, from January 1, 2012 through December 31, 2012, from January 1, 2013 through December 31, 2013, and from August 1, 2014 through August 31, 2014. The Harassment Prevention Order was initially ordered on August 10, 2011 and is still in effect today.

The defense argues that because the blog and the package were not “directly” sent to L.K. However, the order itself, makes clear that the defendant was ordered to have no direct or indirect contact. The defendant had both direct and indirect contact with L.K. He had direct contact when posting on his blog about and specifically to L.K. The defendant made clear in his blog that he was aware that L.K. had viewed the blog previously and that he was hopeful that his messages got to her. See defendant’s blog posts dated September 7, 2011; November 11, 2011; January 14, 2012; January 16, 2012; and August 2, 2013 (Grand Jury Exhibit #17).

The defendant also violated the harassment prevention order via indirect contact with L.K. by mailing the package to L.K.'s residence addressed to her juvenile sister. There was no purpose to send the package to a juvenile sibling other than for it to be shared. The defendant was clearly using L.K.'s sibling as a conduit to L.K. herself.

The defense contends that all of the indictments pertaining to the violations of the Harassment Prevention Order must be dismissed because L.K. learned of the blog from her sister after August 16, 2013. However, is clear from the grand jury transcripts and exhibits that L.K. knew of the blog long before August 16, 2013. L.K. first cites the defendant's blog in her harassment prevention order affidavit as to one the reasons that she is seeking the order in the first place (GJ Exhibit #1). The incident report from Emmanuel College regarding the Wheelock blogger's concern over the defendant's blog also references that L.K. was aware of the blog and shown the blog by Campus Safety. The report indicates that L.K. was in fear of the defendant at that point in time (GJ Exhibit #14). Additionally, the Grand Jury Minutes of L.K. also make it clear that L.K. was aware of the blog well in advance of August 16, 2013 (Grand Jury testimony of L.K., pages 11-12).

V. There is sufficient evidence to prove Stalking, Criminal Harassment, Intimidation of a Witness, and Violations of the Harassment Prevention Orders.

The Commonwealth objects to any dismissal of the indictments based upon Rosenberg v. Commonwealth, 372 Mass. 59, 62-63 (1977). The evidence is clearly sufficient to support going to trial and the defendant would not be entitled to a directed verdict at the close of the Commonwealth's case.

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COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

**SUPERIOR COURT
CRIMINAL ACTION
No. 14-0816**

COMMONWEALTH

vs.

DANIEL KIM

DECISION AND ORDER ON DEFENDANT'S MOTION TO DISMISS

The defendant has been charged with: Stalking, in violation of G.L. 265 §43A; Intimidation of a Witness, in violation of G.L. 268 §13B; Criminal Harassment, in violation of G.L. 265 §43A; Violation of Harassment Order, in violation of G.L. 258 § 9 and Indecent Assault and Battery, in violation of 265 § 13(h)¹, stemming from incidents occurring during the summer of 2011 through the defendant's arrest in 2013 and actions subsequent to that arrest in 2014.

The defendant is a former friend of the victim's parents and is 25 years the victim's senior. The grand jury was presented with evidence of the defendant's obsessive and frightening behavior that over time increased in both frequency and intensity. The incidents began with unwanted overtures, efforts to gain the victim's attention and episodes where the defendant followed the victim, and culminated with a sexual assault; frequent blog postings describing intimate details of the victim's life (and many fabrications); intrusions into the victim's social media accounts and a meeting with the victim's college Residence Hall Director that resulted in a no trespass order being issued against him from Emmanuel College. A Harassment Prevention

¹ The defendant is not challenging the indictment alleging indecent assault and battery in this motion to dismiss.

Order was issued against the defendant,² and the grand jury heard evidence that the defendant repeatedly violated the order. The grand jury also heard from the victim who described how the defendant's obsessive conduct negatively affected her life: "Ordinarily I would be working, or dating someone freely, or not having to worry about this constant fear that this crazy delusional person is going to come after me. I've considered moving across the country, changing my name, the eighth Google result when you look for my name is this, as of a couple of years ago. I think it's number three now. It's affected me financially, emotionally, socially, a lot." (GJ p. 26).

The defendant argues that the evidence presented to the grand jury does not meet the standard annunciated in *Commonwealth v. McCarthy*, 385 Mass. 160 (1982). Generally, a court will not review the competency or sufficiency of the evidence before a grand jury. *Commonwealth v. O'Dell*, 392 Mass. 445, 450 (1984). A court may, however, consider whether the grand jury received sufficient evidence to establish "probable cause to arrest," and whether the integrity of the proceedings was impaired. *Commonwealth v. McCarthy*, 385 Mass. at 163; see also *Commonwealth v. O'Dell*, 392 Mass. at 446 - 447. To support an indictment, the grand jury must receive evidence sufficient to establish the identity of the accused and probable cause to arrest him or her. (citations omitted). Probable cause to arrest is defined as "more than mere suspicion but something less than evidence sufficient to warrant a conviction." *Commonwealth v. Roman*, 414 Mass. 642, 643 (1993) (internal quotations omitted)." To establish probable cause, the Commonwealth must present the grand jury with evidence on each element of the crime charged. *Commonwealth v. Moran*, 453 Mass. 880, 884 (2009).

² The order was extended yearly and ultimately a permanent order was issued.

After hearing and upon thorough review of the grand jury minutes and exhibits, the court is satisfied that the Commonwealth presented sufficient evidence of each element of the crimes charged to support the indictments therefore, the motion to dismiss is **DENIED**

ORDER

For the reasons stated above, the defendant's motion to dismiss is **DENIED**.


Beverly J. Canone
Justice of the Superior Court

DATE: September 9, 2016

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT

NORFOLK, SS

NORFOLK SUPERIOR COURT
DOCKET NO. 1482CR0816

COMMONWEALTH
v.
DANIEL KIM

DEFENDANT'S MOTION TO DISMISS

The Defendant moves to dismiss all charges in accordance with Rule 36 of Massachusetts Criminal Procedure.

FACTS

The Defendant was charged on October 17, 2014 in Norfolk Superior Court. The Commonwealth has failed to provide the Defendant with a speedy trial. The Court had originally scheduled trial for June 2015. It is now over two years past that time and the Defendant believes that the Court has failed in its duty to try the Defendant in a timely manner.

ARGUMENT

As a result of the untimely delays on the part of the Commonwealth, one key witness the Defendant was planning to call in his defense, as discussed with his original attorney of record, Gregory St. Cyr, is no longer available. The witness, Bridget Mary Kelley, committed suicide on December 21, 2015. Had the Commonwealth proceeded in a timely fashion, Ms. Kelley would have been available to testify.


As Ms. Kelley was the actual recipient of the package mentioned in the Commonwealth's case against the Defendant, her no longer being available to testify to both the package and to the truth of the relationship the Defendant had with her older sister makes a fair defense impossible.

Furthermore, the Commonwealth's untimely delays has deprived the Defendant of proper counsel. The defendant had a court-appointed counsel in June 2015 and to the time the trial was continued until initially.

CONCLUSION

The Defendant's motion should be allowed under Rule 36 of Massachusetts Criminal Procedure and the Defendant's Constitutional right under the Sixth Amendment of the United States Constitution and because his defense has been irreparably damaged by the Commonwealth's delays.

Respectfully Submitted,
For the Defendant


Daniel Kim

5/14/18 - Denied. Death of
witness during pendency of trial
is unfortunate, but not uncommon. There
is no reason to believe that the Commonwealth
(or the defendant) reasonably anticipated the young
woman's death, or delayed the trial because of a
belief that her death was imminent. Neither is
there any basis to believe that her testimony would
have been helpful to the defendant.



8/14/17

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COMMONWEALTH OF MASSACHUSETTS

Norfolk, SS.

NORFOLK SUPERIOR COURT
DOCKET NO. NOCR14-0816

COMMONWEALTH

v.

DANIEL KIM

**COMMONWEALTH'S AMENDED RESPONSE TO DEFENDANT'S
MOTION FOR BILL OF PARTICULARS**

The following constitutes a bill of particulars, providing the defendant and the Court with reasonable notice of the crime charged, including time, place, manner, or means. Mass. R. Crim. P., 13(b)(1). The purpose of this document is to provide the defendant with reasonable knowledge of the nature and character of the crimes charged, thereby enabling him to prepare an adequate defense. Commonwealth v. Amirault, 404 Mass. 221, 233 (1989), cert. denied, 113 S.Ct. 602 (1992).

This bill of particulars is not intended to be, nor can it reasonably be taken as, a complete statement of all of the Commonwealth's evidence. Commonwealth v. Kirpatrick, 26 Mass. App. Ct. 595, 598 (1988). "A defendant in a criminal proceeding is not entitled by a motion for a bill of particulars to secure a resume of the evidence that the Commonwealth intends to introduce at the trial, or to have such motion treated in all respects as if it were a set of interrogatories." Commonwealth v. Hayes, 311 Mass. 21, 25 (1942). "All that is required is that the indictment, read with the bill of particulars, be sufficient fully, plainly, substantially and formally to give the defendant reasonable knowledge of the crime with which he is charged." Id. This bill of particulars should be read in conjunction with any/all of the Commonwealth's Notices of Discovery, the Commonwealth's Response to Discovery Pursuant to Pre-trial Conference Report and Defendant's Discovery Motions.

The effect of a bill of particulars, when filed with the Court, "is to bind and restrict the Commonwealth as to the scope of the complaint and to the proof to be offered in support of it."

Commonwealth v. Iannello, 344 Mass. 723, 726 (1962). Yet, if at trial, there exists a material variance between the evidence and the bill of particulars, the judge may order the bill of particulars amended or may grant such other relief as justice requires. Mass. R. Crim. P. 13(b)(2). The amendment may be done at any stage of the proceedings, including during the trial, after the evidence is completed, or after the final argument, provided there is no change in the substantive offenses and the defendant is not prejudiced. Commonwealth v. Iacovelli, 9 Mass. App. Ct. 694, 697 (1980).

Indictment 001 of Norfolk Superior Court Docket NOCR14-0816 alleges that on or about and in between June 10, 2011 and August 31, 2014, Daniel Kim, of Newton in the County of Middlesex, at Avon in the County of Norfolk, did willfully and maliciously engage in a knowing pattern of conduct or series of acts over a period of time directed at a specific person, to wit: Lauren Kelley, which did seriously alarm or annoy such person and would cause a reasonable person to suffer substantial emotional distress; and did make a threat with the intent to place such person in imminent fear of death or bodily injury, in violation of M.G.L. c. 265, § 43(a). This knowing pattern of conduct or series of acts includes unwanted touching of and contact with Lauren Kelley; writing and posting blog entries on an online website— www.blog.dankim.com—directed to/and or about Lauren Kelley; and mailing of a package containing writings directed to/and or about Lauren Kelley to her family residence in Avon. The above-referenced threat was posted by the defendant in a blog entry directed toward Lauren Kelley on the defendant's website— www.blog.dankim.com— on August 8, 2013.

Indictment 005 of Norfolk Superior Court Docket NOCR14-0816 alleges that on or about and in between August 16, 2011 and December 31, 2011, Daniel Kim, of Newton in the County of Middlesex, at Avon in the County of Norfolk, did fail to comply with a court order to refrain from harassing or to have no contact with the plaintiff, Lauren Kelley, issued under the provisions of M.G.L. c.258E, §§ 3, 5 or 6, in violation of M.G.L. c. 258E, § 9, by writing and posting blog entries on an online website— www.dankim.com— directed to/and or about Lauren Kelley on one or more of the following dates: August 20, August 26, August 29, September 7, September 10, September 11, September 14, September

18, September 29, October 1, October 4, October 13, October 31, November 2, November 3, November 8, November 10, November 11, November 14, November 15, November 24, December 2, December 6, December 10, December 11, December 12, December 13, December 15, December 22, December 26, December 28, December 29, December 30, December 31, 2011.

Indictment 006 of Norfolk Superior Court Docket NOCR14-0816 alleges that on or about and in between January 1, 2012 and December 31, 2012, Daniel Kim, of Newton in the County of Middlesex, at Avon in the County of Norfolk, did fail to comply with a court order to refrain from harassing or to have no contact with the plaintiff, Lauren Kelley, issued under the provisions of M.G.L. c.258E, §§ 3, 5 or 6, in violation of M.G.L. c. 258E, § 9, by writing and posting blog entries on an online website— www.dankim.com— directed to/and or about Lauren Kelley on one or more of the following dates: January 1, January 2, January 6, January 10, January 11, January 13, January 14, January 15, January 16, January 17, January 23, January 25, January 27, January 31, February 4, February 6, February 7, February 12, February 13, February 18, February 20, February 22, February 24, February 25, March 1, March 3, March 4, March 20, March 27, April 5, April 7, April 8, April 18, April 19, April 20, April 23, April 26, April 27, April 30, May 1, May 21, October 24, November 19, December 12, 2012.

Indictment 007 of Norfolk Superior Court Docket NOCR14-0816 alleges that on or about and in between January 1, 2013 and December 31, 2013, Daniel Kim, of Newton in the County of Middlesex, at Avon in the County of Norfolk, did fail to comply with a court order to refrain from harassing or to have no contact with the plaintiff, Lauren Kelley, issued under the provisions of M.G.L. c.258E, §§ 3, 5 or 6, in violation of M.G.L. c. 258E, § 9, by mailing a package containing writings directed to/and or about Lauren Kelley to her family residence in Avon and/or by writing and posting blog entries on an online website— www.blog.dankim.com— directed to/and or about Lauren Kelley on one or more of the following dates: April 5, April 25, May 5, June 8, July 12, August 8, August 17, August 30, 2013.

Indictment 008 of Norfolk Superior Court Docket NOCR14-0816 alleges that on or about and in between August 1, 2014 and August 31, 2014, Daniel Kim, of Newton in the County of Middlesex, at Avon in the County of Norfolk, did fail to comply with a court order to refrain from harassing or to have no contact with the plaintiff, Lauren Kelley, issued under the provisions of M.G.L. c.258E, §§ 3, 5 or 6, in violation of M.G.L. c. 258E, § 9, by writing and posting blog entries on an online website—

www.blog.dankim.com— directed to/and or about Lauren Kelley on one or both of the following dates:
August 1, August 15, 2014.

The Commonwealth reserves the right to amend and/or supplement this response prior to trial.

Respectfully Submitted
For the Commonwealth,

A handwritten signature in black ink, appearing to be 'EM' with a stylized flourish at the end.

Erin Murphy
Assistant District Attorney
Norfolk County District Attorney
45 Shawmut Road
Canton, MA 02021
781.830.4800
781.830.4801 (fax)

Date: August 14, 2017

COMMONWEALTH OF MASSACHUSETTS

Norfolk County, ss.

NORFOLK SUPERIOR COURT
Docket No. 1482CR00816

COMMONWEALTH V. DANIEL KIM

MOTION TO DISMISS

RECEIVED & FILED
2018 MAY -4 AM 11:16
CLERK OF THE COURT
NORFOLK COUNTY

Now comes the Defendant who respectfully moves that this Honorable Court dismiss all charges in the above-mentioned matter on the grounds of prosecutorial misconduct, ineffective assistance of counsel, and violation of the Defendant's rights to a fair and speedy trial.

As grounds therefore, the Defendant states:

On or about August 28, 2014, the Stoughton District Court's Prosecuting Attorney's Office did mail printouts of two blog posts written by the Defendant to the alleged victim, LEK. Mailing of these printouts was outside of the scope of the Prosecuting Attorney's Office's legitimate duties. This misconduct resulted in the Defendant being arrested and held in the Dedham House of Corrections for a bail violation, as well as in six additional charges being filed and the case being raised to Norfolk Superior Court.

In the police report, dated on or about August 30, 2014, LEK states that the only reason she came into the police station and filed the same police report was due to receiving the printouts mailed by the Prosecuting Attorney's Office. In that same police report, LEK clearly states that she has had NO CONTACT WITH THE DEFENDANT and she makes NO ALLEGATIONS OF ANY KIND. Yet, despite the clear statement and no allegations of any wrong-doing in the report, the Defendant was arrested and incarcerated for a bail violation; had six new charges filed against him; and the case was raised to Norfolk Superior Court.

Also, the Prosecution's delay in bringing charges has resulted in the loss of exculpatory evidence for one of the charges. The charge stems from an event that allegedly occurred in June 2011, but charges were not filed until August 2014, over three years later. The delay in bringing charges resulted in the loss of exculpatory video evidence which would have confirmed that the Defendant could not have been present at the alleged event.

The loss of this evidence threatens the Defendant's right to a fair trial and to due process of law. According to *Henderson v. Henderson*, 411 Mass 497, the judge has discretion concerning the manner in which to protect the defendant's rights. "When potentially exculpatory evidence is lost or destroyed, a balancing test is employed to determine the appropriateness and extent of remedial action. The courts must weigh the culpability of the Commonwealth, the materiality of the evidence, and the potential prejudice to the defendant." *Commonwealth v. Willie*, 400 Mass 427, 432 (1987).

Ineffective assistance of counsel has also impaired the Defendant's ability to be tried fairly. The Defendant's second court-appointed counsel, Daniel Tracy, was appointed because Attorney Gregory St. Cyr was appointed as a Clerk-Magistrate to Dedham District Court in Norfolk County and had to withdraw as the Defendant's counsel. During Mr. Tracy's nine-month representation, from May 18, 2015 to February 9, 2016, Mr. Tracy failed to meet with the Defendant to discuss his case or defense aside from brief courtroom lobby consultations prior to court hearings. Mr. Tracy also waived the Defendant's right to a speedy trial under Rule 36 without consulting with or the consent of the Defendant.

Finally, the above-mentioned case originally stems from a case in Stoughton District Court, where the most egregious of the prosecutorial misconduct mentioned above was committed, from charges filed on or about September 5, 2013. Even though almost 1500 days have passed, the Commonwealth has failed to bring the case to trial.

Under Rule 36, a Defendant is supposed to be tried within 365 days of charges being brought. 288 days of delay are attributable to the Commonwealth's refusal or inability to respond to the Defendant's motion for a Bill of Particulars in a timely fashion. It is unreasonable to believe that the additional 77 days necessary to make up the 365 days that count towards a speedy trial can not be found among the remaining 1,200+ days that have passed.

These delays by the Commonwealth, including the 288-day delay in responding to a simple motion for a Bill of Particulars, have also resulted in the unavailability of a key defense witness. The witness, BMK, the younger sister of the alleged victim LEK, was present for most, if not all, of the time frame covered by the charges against the Defendant. BMK is unavailable as she committed suicide on December 21, 2015. Without this key defense witness the Defendant's ability to be tried fairly is seriously impaired.

Wherefore, premises considered, the Defendant respectfully moves that this Honorable Court dismiss all charges against him due to the egregious and willful misconduct of the Prosecuting Attorney's Office and the violation to the Defendant's rights to a fair and speedy trial, as well as the ineffective assistance of counsel.

Respectfully submitted,


Daniel Kim

Dated: 30 April 2018

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COMMONWEALTH OF MASSACHUSETTS

Norfolk County, ss.

NORFOLK SUPERIOR COURT
Docket No. 1482CR00816

COMMONWEALTH V. DANIEL KIM

MOTION TO DISMISS

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On or about August 28, 2014, the Stoughton District Court's Prosecuting Attorney's Office did mail printouts of two blog posts written by the Defendant to the alleged victim, LEK. Mailing of these printouts was outside of the scope of the Prosecuting Attorney's Office's legitimate duties. This misconduct resulted in the Defendant being arrested and held in the Dedham House of Corrections for a bail violation, as well as in six additional charges being filed and the case being raised to Norfolk Superior Court.

In the police report, dated on or about August 30, 2014, LEK states that the only reason she came into the police station and filed the same police report was due to receiving the printouts mailed by the Prosecuting Attorney's Office. In that same police report, LEK clearly states that she has had NO CONTACT WITH THE DEFENDANT and she makes NO ALLEGATIONS OF ANY KIND. Yet, despite the clear statement and no allegations of any wrong-doing in the report, the Defendant was arrested and incarcerated for a bail violation; had six new charges filed against him; and the case was raised to Norfolk Superior Court.

Also, the Prosecution's delay in bringing charges has resulted in the loss of exculpatory evidence for one of the charges. The charge stems from an event that allegedly occurred in June 2011, but charges were not filed until August 2014, over three years later. The delay in bringing charges resulted in the loss of exculpatory video evidence which would have confirmed that the Defendant could not have been present at the alleged event.

The loss of this evidence threatens the Defendant's right to a fair trial and to due process of law. According to *Henderson v. Henderson*, 411 Mass 497, the judge has discretion concerning the manner in which to protect the defendant's rights. "When potentially exculpatory evidence is lost or destroyed, a balancing test is employed to determine the appropriateness and extent of remedial action. The courts must weigh the culpability of the Commonwealth, the materiality of the evidence, and the potential prejudice to the defendant." *Commonwealth v. Willie*, 400 Mass 427, 432 (1987).

Ineffective assistance of counsel has also impaired the Defendant's ability to be tried fairly. The Defendant's second court-appointed counsel, Daniel Tracy, was appointed because Attorney Gregory St. Cyr was appointed as a Clerk-Magistrate to Dedham District Court in Norfolk County and had to withdraw as the Defendant's counsel. During Mr. Tracy's nine-month representation, from May 18, 2015 to February 9, 2016, Mr. Tracy failed to meet with the Defendant to discuss his case or defense aside from brief courtroom lobby consultations prior to court hearings. Mr. Tracy also waived the Defendant's right to a speedy trial under Rule 36 without consulting with or the consent of the Defendant.

Finally, the above-mentioned case originally stems from a case in Stoughton District Court, where the most egregious of the prosecutorial misconduct mentioned above was committed, from charges filed on or about September 5, 2013. Even though almost 1500 days have passed, the Commonwealth has failed to bring the case to trial.

Under Rule 36, a Defendant is supposed to be tried within 365 days of charges being brought. 288 days of delay are attributable to the Commonwealth's refusal or inability to respond to the Defendant's motion for a Bill of Particulars in a timely fashion. It is unreasonable to believe that the additional 77 days necessary to make up the 365 days that count towards a speedy trial can not be found among the remaining 1,200+ days that have passed.

These delays by the Commonwealth, including the 288-day delay in responding to a simple motion for a Bill of Particulars, have also resulted in the unavailability of a key defense witness. The witness, BMK, the younger sister of the alleged victim LEK, was present for most, if not all, of the time frame covered by the charges against the Defendant. BMK is unavailable as she committed suicide on December 21, 2015. Without this key defense witness the Defendant's ability to be tried fairly is seriously impaired.

Wherefore, premises considered, the Defendant respectfully moves that this Honorable Court dismiss all charges against him due to the egregious and willful misconduct of the Prosecuting Attorney's Office and the violation to the Defendant's rights to a fair and speedy trial, as well as the ineffective assistance of counsel.

Respectfully submitted,


Daniel Kim

Dated: 30 April 2018

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

NORFOLK SUPERIOR COURT
DOCKET NO. 1482CR00816

COMMONWEALTH OF MASSACHUSETTS,)
Plaintiff)

VS.)

DANIEL KIM,)
Defendant)

5/14/18
Denied for essentially
the reasons set forth
in the Commonwealth's
opposition. The court
reserves the right
to file a further
explanatory memorandum
Cryer, J.

**DEFENDANT'S MOTION TO DISMISS AND IN
THE ALTERNATIVE MOTION IN LIMINE ON RULE 36 GROUNDS**

The Indictments should be dismissed for two reasons. First, they should be dismissed because the conduct of the prosecuting attorney in bringing the defendant to trial has been unreasonably lacking in diligence and this conduct on the part of the prosecuting attorney has resulted in prejudice to the defendant. Mass. R. Crim. P. 36(c). Second, they should be dismissed because defendant has been denied his right to a speedy trial, as guaranteed by Article 11 of the Massachusetts Declaration of Rights and the Sixth Amendment of the United States Constitution. In the alternative, the Defendant moves, in limine, that the commonwealth not be allowed to introduce testimony relating to the indecent assault and battery offense.

BACKGROUND

The Commonwealth alleges that in June 2011, the defendant committed an indecent assault and battery against the complaining witness. The defendant was not charged in this matter, even though other cases were brought against him, until October 2014, over three years later. The defendant contends that the delay in bringing the charges caused a loss of exculpatory video evidence. The defendant contends that the

delay in bringing charges also resulted in the unavailability of a key defense witness, the younger sister of the complaining witness, who was present for most if not all of the timeframe covered by the charges against the defendant. That witness is unavailable as she passed away on December 21, 2015

ARGUMENT

Under Massachusetts Rules of Criminal Procedure 36(c) the defendant is entitled to have the charges against him dismissed.

Because the conduct of the prosecution in bringing defendant to trial has been unreasonably lacking in diligence and because that conduct has resulted in prejudice to the defendant, the charges against him should be dismissed. Mass. R. Crim. P. 36(c). "For those defendants who are not yet entitled to the mandatory dismissal upon motion under subdivision (b)(1), [subdivision (c)] states the standard by which an allegation of a denial of a speedy trial may nonetheless be judged: it is a statement of the fundamental constitutional guarantee." Notes to Mass. R. Crim. P. 36.

This subdivision puts the constitutional standard into manageable operational terms. Four factors were mentioned by the United States Supreme Court in Barker¹ as among those to be considered: the length of delay, the reason for delay, the resulting prejudice to the defendant, and the assertion of the right by the defendant. This subdivision isolates two essential factors which are the substance of the constitutional protection. These are unreasonable prosecutorial delay and resulting prejudice to the defendant.

Id. According to this subdivision, only prosecutorial delay is within the scope of the relief, but "[p]rejudice in the context of this subdivision is not restricted to prejudice to the preparation or presentation of the defense." Id. "The Supreme Court in Barker v. Wingo listed three distinct functions served by the prohibition against unreasonable delay: "(i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and

¹ Barker v. Wingo, 407 U.S. 514 (1972).

concern of the accused; and (iii) to limit the possibility that the defense will be impaired.”
407 U.S. 514,532 (1972).

It is within a judge's discretion to dismiss charges under Rule 36(c) when defendant's right to a speedy trial has been violated. In Com. v. Plantier, 22 Mass. App. Ct. 314 (1986) the court upheld the dismissal of charges against a defendant who had objected to a continuance due to the prosecution's lack of preparedness and whose charges were dismissed at the request of the prosecution on the second trial date and then rebrought in a new complaint. In regards to prejudice resulting from the delay, the court noted that the defendant's teaching schedule had to be changed to avoid contact with students involved in the case thereby decreasing defendant's salary and social and professional relationships. Id. at 316-17. The court also noted that the pendency of the trial caused the defendant and his family stress and anxiety and that the defendant was not responsible for a single day's delay. Id. at 317. See also Com. v. Sheridan, 40 Mass. App. Ct. 700 (1996) (upholding dismissal pursuant to 36(c) when defendant appeared ready for trial twice; continuance granted first time, charges dismissed second time, third complaint issued).

Defendant has been prejudiced in many ways by this delay. One reason that defendants are guaranteed speedy trials is to avoid stress and anxiety.

The defendant is entitled to have the charges against him dismissed pursuant to both the United States and the Massachusetts Constitutions.

In causing the delay in charging and then trying the defendant, the Commonwealth violated defendant's Constitutional right to a fair and speedy trial pursuant to Article 11 of the Massachusetts Declaration of Rights and the Sixth Amendment to the United States Constitution.

The four factors to be considered when determining whether a defendant's Sixth Amendment right to a speedy trial has been violated are

- (1) the length of the delay in charging the defendant;
- (2) the reason for the delay;
- (3) the defendant's assertion of his right; and
- (4) prejudice to the defendant.

Doggett v. United States, 505 U.S. 647, 651-658 (1992) (citing Barker v. Wingo, 407 U.S. 514 (1972)).

Analysis of a speedy trial claim pursuant to art. 11 of the Massachusetts Declaration of Rights is analogous to the analysis under the sixth amendment to the United States Constitution. Commonwealth v. Gove, 366 Mass. 351, 357 n. 6 (1974).

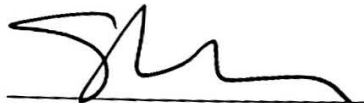
As noted above, the analysis under Mass. R. Crim. P. 36(c) implicates two of the Barker factors, reason for delay and prejudice to defendant. The prejudice to the defendant has been discussed above. The only remaining factors are the length of the delay and the defendant's assertion of his right. The defendant asserts his right and asks the court to find that the prosecution has unreasonably delayed this trial.

CONCLUSION

For the above-stated reasons, the charges against the defendant should be dismissed. In the alternative, the Commonwealth should be precluded from introducing

evidence against the defendant on the indecent assault and battery charge.

Respectfully submitted,
The Defendant, Daniel Kim,
By his attorney,



Scott P. Murphy, Esq. BBO#555212
129 Morgan Drive
Norwood, MA 02062
(781) 278-9990

Dated: 5/8/18

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

NORFOLK SUPERIOR COURT
DOCKET NO. 1482CR0618

COMMONWEALTH

v.

DANIEL KIM

**COMMONWEALTH'S OPPOSITION TO DEFENDANT'S MAY 8, 2018 MOTION TO
DISMISS PURSUANT TO RULE 36**

Procedural Background

On September 20, 2014 the defendant was arraigned in Norfolk Superior Court. Attorney Gregory St. Cyr was appointed for bail purposes only after Probation Department personnel reported to the court (Fishman, J.) that the defendant did not qualify for court-appointed counsel. On October 17, 2014, Attorney St. Cyr was appointed to the case for all purposes. A pre-trial conference was held on December 3, 2014 and a pre-trial hearing was held on January 29, 2015. Attorney St. Cyr filed a motion for bill of particulars and a hearing on that motion was held on March 11, 2015.

On May 18, 2015, Attorney Daniel Tracey was appointed after Attorney St. Cyr's motion to withdraw from the case was allowed. On June 24, 2015, a pre-trial conference was held with newly-appointed counsel Daniel Tracey, who waived Rule 36 and requested a September 1, 2015 pretrial hearing date. That hearing was held as scheduled. An October 5, 2015 hearing on unusual discovery motions was held as scheduled. A December 11, 2015 motion to suppress hearing was canceled by the Court when the defendant failed to file a motion in advance of that date. A status hearing on January 11, 2016 was held as scheduled, and the defendant requested a

February 9, 2016 lobby conference date. Additionally, a March 1, 2016 final pre-trial conference and March 8, 2016 trial date was scheduled.

At the February 9, 2016 lobby conference, Attorney Tracey was permitted to withdraw from the case. Attorney Katherine Hatch was appointed. As a result of the appointment of new counsel, the March 1, 2016 final pre-trial conference and March 8, 2016 trial dates were cancelled at the defendant's request. A scheduling conference was scheduled for March 29, 2016.

On March 29, 2016, the defendant was re-interviewed by the Probation Department regarding his finances. The Court determined that the defendant did not qualify for court-appointed counsel. A May 6, 2016 "status of counsel" hearing was scheduled to permit the defendant time to hire private counsel. The May 6, 2017 status hearing was held and a further status date was scheduled for May 17, 2016. Attorney Hatch was permitted to continue acting as court-appointed counsel for the defendant, despite the Court's determination that the defendant did not qualify. On May 18, 2016 Attorney Hatch filed a motion for funds to have the defendant evaluated by an independent forensic psychologist. On July 22, 2016, Attorney Hatch filed a Motion to Dismiss, which was argued on August 18, 2016 and denied (Cannone, J.) on September 9, 2016. A lobby conference was held on September 27, 2016 (Cannone, J.) and a change of plea hearing was scheduled for September 29, 2016. That change of plea hearing was not held at the request of the defendant. A final pretrial hearing was scheduled for January 17, 2017 and a trial date was scheduled for January 24, 2017.

On October 14, 2016, Attorney Hatch filed a Motion to Obtain Funds. On October 18, 2016, the Court (Pasquale, J.) notified the defendant that he was not indigent and did not qualify for court-appointed counsel. Attorney Hatch was dismissed as appointed counsel. A hearing

was scheduled for November 17, 2016 for the appearance of private counsel. At that November 17, 2016 status hearing, the defendant reported to the Court that he had consulted with attorneys but had not yet retained counsel. The defendant requested a continuance.

On December 7, 2016, a further hearing was held for status on the appearance of private counsel. The defendant reported to the Court that he had not hired an attorney. At the defendant's request, the January 17 and 24, 2017 final pretrial hearing and trial dates were cancelled. A January 24, 2017 trial assignment date was scheduled in the alternative. At the January 24, 2017 trial assignment date, the defendant notified the court that he had not hired counsel. The Court (Pasquale, J.) inquired about the defendant's intention to represent himself at trial. The defendant confirmed that he would be representing himself at trial. A May 23, 2017 trial date was scheduled.

On May 9, 2017, the upcoming May trial date was rescheduled by the Court. The case was rescheduled for final pretrial conference on Wednesday, August 9, 2017 and for trial on August 15, 2017. At the final pretrial conference on August 9, 2017, the defendant announced to the Court that he had independently visited the Probation Department earlier that day to be re-interviewed regarding his finances and potential indigency. The Court requested that the Probation Department take steps to investigate the defendant's claims regarding his finances. The defendant reported to the Court that he would attempt to obtain documents from his financial advisor. The final pretrial conference was rescheduled for Friday, August 11, 2017.

At the August 11, 2017 final pretrial conference, the Probation Department reported to the Court its findings relative to the defendant's financial status. The Court found that the defendant was not indigent but advised the defendant of his right to appeal that determination.

The case remained scheduled for trial on Tuesday, August 15, 2017. At the Commonwealth's request, the case was scheduled for Monday, August 14, 2017 to address motions in limine.

On Monday, August 14, 2017, the defendant filed a Motion to Dismiss pursuant to Rule 36 and served it upon the Commonwealth. The defendant reported to the Court that he wished to have court-appointed counsel, despite the Court's determination that he did not qualify. The defendant stated that he had spoken with one attorney about retaining his case and could not afford to pay what that attorney had quoted him. The defendant further reported to the Court that he intends to appeal the Court's determination that he is not indigent. The Court advised the defendant that if he wished to file that appeal, the Court would delay the trial to permit him to do so. The August 15, 2017 trial date was canceled due to the defendant's representation that he intended to appeal the Court's indigency determination, and the Court scheduled an August 28, 2017 conference hearing to review the status of the defendant's intended appeal. The defendant failed to file an appeal.

The defendant defaulted at the August 28, 2017 conference hearing. The Commonwealth reported to the Court that it had been advised by Newton Police that the defendant was hospitalized after allegedly setting a fire in the basement of his parents' apartment building/retail space while he was locked in the basement of that building. The Court issued a non-bailable warrant for the defendant at the request of the Commonwealth.

The defendant was released from Massachusetts General Hospital on September 18, 2017 and immediately arrested on a Newton warrant relative to the August 28, 2017 alleged arson. He was arraigned in Middlesex County on the date of his arrest—September 18, 2017—and held without bail pursuant to G.L. ch. 276, s. 58A. On September 26, 2017, a habeas corpus for the defendant was issued by this Court to the Middlesex County House of Correction for an October

11, 2017 hearing on the removal of the warrant. The defendant was not transported to Norfolk Superior Court on October 11, 2017. As a result, the hearing was rescheduled to October 17, 2017. The defendant was not transported to Norfolk Superior Court on October 17, 2017, so the hearing was again rescheduled to October 24, 2017.

On October 24, 2017, the hearing on the removal of the warrant was held as scheduled. The case was scheduled for November 20, 2017 for trial assignment. The Middlesex County Sheriff's Department did not transport the defendant to court for the November 20, 2017 trial assignment date or for the rescheduled November 28, 2017 trial assignment date. A November 29, 2017 trial assignment date was then continued at the request of the defendant to December 29, 2017.

At the December 29, 2017 trial assignment hearing, Attorney Scott Murphy was appointed as counsel to the defendant. A January 23, 2018 status date was scheduled to provide new defense counsel time to acquire and review discovery. A final pretrial hearing was scheduled for May 8, 2018 with a trial date of May 15, 2018. On March 26, 2018, the defendant himself filed a Motion to Dismiss but did not serve a copy of said motion on the Commonwealth prior to May 8, 2018. On May 8, 2018, a final pretrial hearing was held as scheduled. On that date, defense counsel filed a "Motion to Dismiss and In the Alternative Motion in Limine on Rule 36 Grounds." A May 11, 2018 hearing on that motion was scheduled. The matter remains scheduled for trial on May 15, 2018. Notably, the defendant did not object to any of the continuances discussed above.

May 22, 2018
Filed

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

NORFOLK SUPERIOR COURT

DOCKET NO. 1482CR00816

5/22/18
Denied
as the close
of the CW's
case.
Longrove, J.

COMMONWEALTH OF MASSACHUSETTS,)
Plaintiff)

VS.)

DANIEL KIM,)
Defendant)

MOTION FOR REQUIRED FINDING OF NOT GUILTY

NOW COMES the Defendant, through counsel, and respectfully moves this Honorable Court, pursuant to Mass.R.Crim.P. 25, to enter a finding of not guilty as to the offenses charged in the above-captioned complaint.

As grounds therefore, counsel states that the proper and constitutionally permissible evidence presented by the Commonwealth, even viewed in its most favorable light, is insufficient as a matter of law to sustain convictions on the offenses charged in the above-captioned indictments.

ARGUMENT

I. There was insufficient evidence that Mr. Kim stalked Lauren Kelley in violation of G.L. c. 265 §43(a)

In order to prove the defendant guilty of stalking, the Commonwealth must prove five things beyond a reasonable doubt:

1. That over a period of time, the defendant knowingly engaged in a pattern of conduct or series of acts involving at least three incidents directed at the complainant;
2. That those acts were of a kind that would cause a reasonable person to suffer substantial emotional distress;

3. Those acts did cause the complainant to become seriously alarmed or annoyed;
4. That the defendant took those actions willfully and maliciously; and
5. That the defendant also made a threat with the intention of placing the complainant in imminent fear of death or bodily injury.

G.L. c. 265 § 43. The stalking statute prohibits conduct or acts that include threatening speech. See Commonwealth v. Robicheau, 421 Mass. 176, 182-183 (1995) (upholding stalking conviction based in part on verbally threatening victim). The defendant contends that the Commonwealth failed to present sufficient evidence under the “series of acts” prong as well as the “threats” prong of the stalking statute. This argument is based upon the fact that the Commonwealth relied in part on the blog postings at www.dankin.com to meet its burden under both prongs of the stalking statute and the defense contends that these writings are speech which is protected by the First Amendment to the United States Constitution.

a. **The Commonwealth has failed to demonstrate the “threat” requirement of the crime of stalking.**

To prove the crime of stalking, the Commonwealth, in addition to establishing (1) willful and malicious conduct over a period of time (directed at a specific person) which seriously alarms or annoys that person and would cause a reasonable person to suffer substantial emotional distress, must also prove that the defendant (2) made a threat with the intent to place the victim in imminent fear of death or bodily injury. G.L. c. 265 §43 (a). The Commonwealth contends that a statement posted by the Defendant in a blog dated August 8, 2013, fits this definition. Specifically the statement “Your actions have consequences, and if you lie about me again, I will have no choice but to take action against you,” according to the Commonwealth fits the threat

component of the stalking statute.¹ The defense strongly disagrees that this statement qualifies as a threat to place the victim in imminent fear of death or bodily injury.

Both the First Amendment to the United States Constitution and Article 16 of the Massachusetts Declaration of Rights generally protect speech from government regulation. *See O'Brien v. Borowski*, 461 Mass. 415, 422 (2012). In some circumstances, a court can (and should) restrict speech not protected by the First Amendment. But such unprotected speech must be found by the Court to fall within "certain well-defined and narrowly limited classes." *Id.* These "limited" classes include speech that is integral to criminal conduct,"² "fighting words,"³ "true threats,"⁴ and "solicitation" (or "incitement").⁵ The United States Supreme Court has defined "true threats" as:

Those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals . . . The speaker need not actually intend to carry out the threat. Rather, a prohibition on true threats 'protect[s] individuals from the disruption that fear engenders,' in addition to protecting people 'from the possibility that the threatened violence will occur.'"

Virginia v. Black, 538 U.S. 343, 359-60 (2003) (quoting R.A.V. v. St. Paul, 505 U.S. 377, 388 (1992)). Comparing the threat component of the stalking statute with the definition of a "true threat," the Supreme Judicial Court has concluded that any verbal or written communication that qualifies as a threat as defined in the stalking statute is also a "true threat," and therefore is not entitled to the protections of the First Amendment. Commonwealth v. Walters, (SJC-11799) (2015).

¹ Later in the same post is the statement "If you choose to lie and perjure yourself again, I will mourn you and grieve for the lost future with the Asians with freckles that our children Kelley and Cadence would have been. I will honor your memory and move on."

² See Commonwealth v. Johnson, 470 Mass. 300, 311 (2014) (where defendants used website to recruit others to harass victims, defendants could not "launder their harassment of the [victims] through the internet to escape liability" for criminal harassment under G. L. c. 265, § 43A).

³ See O'Brien v. Borowski, 461 Mass. 415, 423 (2012).

⁴ See O'Brien, 461 Mass. at 423; Virginia v. Black, 538 U.S. 343, 359-60 (2003).

Furthermore, for a defendant to make a threat that meets the requirements of the stalking statute, as with an assault, the defendant must intend to place the victim in fear that physical harm is likely to occur and the victim's fear must be reasonable. Commonwealth v. Matsos, 421 Mass.391, 394-95 (1995). The reasonableness of the victim's fear depends in part on the "actions and words of the defendant in light of the attendant circumstances." Matsos, 421 Mass. at 395. See Commonwealth v. Gupta, 84 Mass. App. Ct. 682, 684, 688 (2014) (where victim's imminent fear based upon long distance phone calls was reasonable in light of defendant's "mobility, history of abusive conduct, motivation," and knowledge of the victim's whereabouts).

Finally, although communication of a threat to its intended victim is not expressly required, evidence of the defendant's intent to communicate the threat through direct or indirect means is necessary. Commonwealth v. Walters, (SJC-11799) p. 8 (2015) (citing Commonwealth v. Hughes, 59 Mass. App. Ct. 280, 281-282 (2003)). And where the communication of the threat is indirect, the Commonwealth must prove beyond a reasonable doubt that the defendant intended the threat to reach the victim. Hughes, 59 Mass. App. Ct. at 283.

Turning to the statement "Your actions have consequences, and if you lie about me again, I will have no choice but to take action against you," it is clear that there is no threat of violence in the statement itself. Also, there is no evidence that the Defendant intended to evoke violence by writing the statement in his blog.⁶ There is nothing in the remainder of that specific post or in any of the other posts that threatens violence against the victim in any way. In fact, the statement itself is amenable to a reasonable nonviolent interpretation, namely that the Defendant intended to pursue whatever legal means might be available to right a wrong he may have perceived the victim had inflicted on him. Under these circumstances the statement is not a "true threat" and

⁵ See Yakubowicz v. Paramount Pictures Corp., 404 Mass. 624, 630-31 (1989)

⁶ In fact, the next three words of the post are "I love you."

therefore is entitled to the protections under the First Amendment. See Commonwealth v. Walters, (SJC-11799) p. 9 (2015) (addressing the statement “make no mistake of my will to succeed in bringing you two idiots to justice” in combination with a photograph of the defendant with a gun on a facebook post was insufficient to constitute a threat under the stalking statute). As a result, in this case, because the Commonwealth did not present sufficient evidence of a true threat and that Mr. Kim made a threat with the intent to place the victim in imminent fear of death or bodily injury, a required finding of not guilty must enter on the indictment charging stalking in violation of G.L. c. 265 § 43 (a).

- b. **The Commonwealth failed to demonstrate that the defendant willfully and maliciously engaged in a knowing pattern of conduct or series of acts involving at least three incidents directed at the victim which seriously alarmed or annoyed that victim and would cause a reasonable person to suffer emotional distress as required by G.L. c. 265 § 43**

To prove the crime of stalking, the Commonwealth must prove that the defendant engaged in “willful and malicious conduct over a period of time (directed at a specific person) which seriously alarm[ed] or annoy[ed] that person and would cause a reasonable person to suffer substantial emotional distress.” G.L. c. 265 §43 (a). And the phrase “knowing pattern of conduct or series of acts” is interpreted to mean at least three incidents. See Instruction 3.13 of the Massachusetts Superior Court Criminal Practice Jury Instructions (2013). The Commonwealth has indicated that the conduct or series of acts in this case includes: (1) the unwanted touching and contact with Lauren Kelley (alleged indecent assault and battery); (2) writing and posting blog entries on an online website directed to/and or about Lauren Kelley; and (3) mailing a package containing writings directed to/and or about Lauren Kelley to her family residence in Avon. The defense challenges the sufficiency of the evidence alleged in the “pattern

of conduct or series of acts” component of stalking. First, the package mailed to the Avon address was not sent to Lauren Kelley but rather to her sister, Bridget Kelley, and thus cannot meet the statutory requirement that the act must be directed at the victim. That the package was not directed at Lauren Kelley is supported by the fact that there was a letter inside addressed to Bridget Kelley and the letter itself has personal information directed at Bridget Kelley and not her sister Lauren. Additionally, Lauren Kelley was living at Emerson College at the time that the package was sent to Avon, Massachusetts, adding further proof that the mailing was not intended for Lauren. Second, some of the “series of acts” according to the Commonwealth are the blog postings at www.dankim.com (although the Commonwealth failed to specify any precise postings) and these writings are speech which is protected by the First Amendment to the United States Constitution.⁷

The defense acknowledges that the stalking statute specifies that conduct or acts described in the statute includes conduct, acts or threats conducted by mail or internet communications, among other means. G.L. c. 265 §43 (a). But, “online speech,” like other speech, enjoys the highest protections under the First Amendment and Article 16. See Reno v. ACLU, 521 U.S. 844, 867-868 (1997) (applying strict scrutiny to regulation of internet speech); Psinet, Inc. v. Chapman, 362 F.3d 227, 235 (4th Cir. 2004). It does not matter that the defendant is not a member of the traditional media.⁸ See Shaari v. Harvard Student Agencies, Inc., 427 Mass. 129, 134 (1998) (“The press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion.”)

⁷ It should be clear that this case involves internet postings and not communications or letters which were sent to the alleged victim. See Commonwealth v. Matsos, 421 Mass.391, 394-95 (1995) (involving a case where forty sexually explicit letters expressing anger and dangerous behavior were sent directly to the victim).

⁸ Mr. Kim did pursue a journalism degree from the University of Missouri.

The First Amendment and Article 16 guarantee the right of the Defendant to speak online about his thoughts, experiences, opinions, and attitudes even if others do not like what he says. The posts are not violent or threatening and they do not attempt to incite others to harass or annoy Lauren Kelley. Contrast Elonis v. United States, 135 S. Ct. 2001; 2016-2017 (2015) (Alito, J., concurring in part and dissenting in part) (applying "true threats" exception to First Amendment to violent statements made on social media that are pointedly directed at victims, whether made recklessly or with intent to threaten); Commonwealth v. Johnson, 470 Mass. 300, 312-313 (2014) (where defendants used Web site to recruit others to harass victims, defendants could not "launder their harassment of the [victims] through the Internet to escape liability" for criminal harassment under G. L. c. 265, § 43A). There is no evidence in this case of true threats and there is no evidence of an effort to recruit others. As a result, because the Commonwealth did not present sufficient evidence of willful and malicious conduct over a period of time (directed at a specific person) which seriously alarm[ed] or annoy[ed] that person and would cause a reasonable person to suffer substantial emotional distress, a required finding of not guilty must enter on the indictment charging stalking in violation of G.L. c. 265 § 43 (a).

II. Similarly, Indictment 003, charging intimidation of a witness, in violation of G.L. c. 268 § 13B, must be dismissed because there was not sufficient evidence establishing that Mr. Kim intimidated Lauren Kelley on August 8, 2013

The Defendant is charged with violating G.L. c. 268 § 13B in that he allegedly intimidated or harassed Lauren Kelley on August 8, 2013, who was expected to attend a civil proceeding to extend the harassment prevention order in Stoughton District Court on August 16, 2013. As mentioned above, the only event occurring on August 8, 2013, is the posting of a blog at www.dankim.com. This post was written as a letter to Lauren Elizabeth Kelley. [GJ p. 18] In

one part he writes, “next week, you have a choice, you can stand up for yourself against the bully, the coward, the abusive alcoholic that is your father – the man that coerced you into perjuring yourself and becoming so much less than you should be.” And then he later writes in the same post:

You have the choice whether to lie or stand up to him. It is that simple. Your actions have consequences and if you lie about me again, I will have no choice but to take action against you. I love you but I know if I do not hold you responsible for your actions, no one will, not even yourself.

[GJ p. 18]

It is notable that Lauren Kelly learned of the blog (from where this posting came) from her sister Bridget (because it was included in a thumb drive in the package addressed to Bridget) but not until after the August 16, 2013 hearing for the extension of the harassment order in Stoughton District Court. The post references the August 16, 2013 hearing but there is no indication that Lauren Kelley knew anything about any writings at www.dankim.com until after the hearing on August 16, 2013. It is hard to imagine that someone can intimidate or harass someone about what may happen at an upcoming event if the intended victim is unaware of it. The statute defines “harass” to mean “to engage in any act directed at a specific person or persons, which act seriously alarms or annoys such person or persons and would cause a reasonable person to suffer substantial emotional distress.” G.L. c. 268 § 13B(3). No reasonable person could suffer substantial emotional distress under these circumstances.

The Defense also makes the same argument noted above (related to the stalking indictment) that the Commonwealth failed to meet its burden with respect to the intimidation indictment because the content of the August 8, 2013 post is protected speech under the First Amendment and Article 16 of the Declaration of Rights. The United States Supreme Court has

held that States may not proscribe speech based upon its content with the exception of “certain well-defined and narrowly tailored classes of speech” that, precisely because of their content may be constitutionally prohibited. Chaplinsky v. New Hampshire, 315 U.S. 568, 571 (1942). In this case, since the content of the August 8, 2013 post do not include: lewd, obscene, profane, “fighting words” or “true threats,” they are not constitutionally proscribable and thus a required finding of not guilty must enter on the indictment for intimidation of a witness.

III. Because the Commonwealth failed to demonstrate that the defendant engaged in a knowing pattern of conduct or series of acts which seriously alarmed or annoyed Lauren Kelley under the Stalking statute noted above, in section I. b., the Commonwealth has also failed to prove beyond a reasonable doubt that Daniel Kim engaged in criminal harassment.

To be convicted of criminal harassment, a defendant must have willfully and maliciously engaged in a knowing pattern of conduct or a series of acts over a period of time directed at a specific person, which seriously alarms that person and would cause a reasonable person to suffer substantial emotional distress. G. L. c. 265, § 43A(a), as amended by St. 2010, c. 92, § 10. The pattern of conduct must consist of at least three separate incidents. Commonwealth v. Braica, 68 Mass. App. Ct. 244, 246 (2007). The acts may include speech or conduct, but if there is harassing speech, it must not be constitutionally protected. Ibid. To prove criminal harassment, the Commonwealth must prove the same evidence that is required to prove stalking minus the threat element.

Looking at the evidence the Commonwealth alleges sets forth proof of the series of acts component of stalking it appears that the three acts include: (1) the unwanted touching and contact with Lauren Kelley (alleged indecent assault and battery); (2) writing and posting blog entries on an online website directed to/and or about Lauren Kelley; and (3) mailing a package

containing writings directed to/and or about Lauren Kelley to her family residence in Avon. As argued previously with respect to the stalking indictment, the package was not directed to Lauren Kelley because it was mailed to Bridget Kelley along with a personalized letter and there was nothing in the mailing which instructed or requested that Bridget Kelley communicate anything to her sister. Also, the defendant contends that there was insufficient evidence of malice for criminal harassment as the speech at issue did not contain "fighting words," "true threats" or obscenity-laced remarks. Commonwealth v. Welch, 444 Mass. 80, 94-95 (2005). Commonwealth v. Braica, supra at 247. As a result, because the speech in the content of the posts cannot constitutionally be prohibited under the protections of the First Amendment, a required finding of not guilty must enter on the indictment charging criminal harassment in violation of G.L. c. 265 § 43A.

IV. The Commonwealth has failed to meet its burden that Daniel Kim violated the harassment prevention order by harassing or by having contact with Lauren Kim in Indictments 005 thru 008

Chapter 258E was enacted in 2010 to allow individuals to obtain civil restraining orders against persons who are not family or household members, and to make the violation of those orders punishable as a crime. See An Act Relative to Harassment Prevention Orders, Formal House Session January 28, 2010 (statements of Representatives O'Flaherty, Atkins, Jones, Swan). But while a protective order under c. 209A requires a finding of "abuse," a protective order under c. 258E requires a finding of "harassment," defined in G.L. c. 258E, § 1, as "[three] or more acts of willful and malicious conduct aimed at a specific person committed with the intent to cause fear, intimidation, abuse or damage to property and that does in fact cause fear, intimidation, abuse or damage to property." The acts of harassment must be willful and

“[m]alicious,” the latter defined as “characterized by cruelty, hostility or revenge,” and they must be committed with “the intent to cause fear, intimidation, abuse or damage to property.” G.L. c. 258E, § 1.

For the reasons stated previously, the content of the writings in the blog at www.dankim.com failed to meet this definition because they are protected free speech and cannot be characterized as cruel, hostile or stemming from revenge. As was testified to at trial, the writings from the blog folder “all have the same general thoughts about Lauren, their love for each other, and how Mr. Kim could save [Lauren] from the drug and alcohol addiction” he suspected she had from her social media postings. The Commonwealth failed to present any evidence that Daniel Kim sent any communications to Lauren Kelley directly or that Daniel Kim intended a third party to contact Lauren Kelley (indirectly) by posting his thoughts, opinions or ideas (even if written in letter format to Lauren Kelley) in his blog. Lauren Kelly learned of the blog from her parents, her sister Bridget and other friends, and from that point on logged onto the blog herself. As a result, a required finding of not guilty must enter on the four indictments for violation of a harassment prevention order.

CONCLUSION

Because there was insufficient evidence presented to the jury that Mr. Kim engaged in anything other than protected speech under the First Amendment, and that he directly or indirectly contacted Lauren Kelley, a required finding of not guilty must enter on all of the indictments.

WHEREFORE, Defendant respectfully requests this Honorable Court to enter a finding of not guilty on the offenses charged in the above-captioned indictments.

Respectfully submitted,
The Defendant,
By his attorney,

A handwritten signature in black ink, appearing to read 'Scott P. Murphy', is written over a horizontal line.

Scott P. Murphy, Esquire
129 Morgan Drive
Norwood, MA 02062
(781) 278-9990
BBO#: 555212

Dated: 5/22/18

5/22/18 Denied (Cassano, J) after neg attest GAG AC - May 22, 2018

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

NORFOLK SUPERIOR COURT

DOCKET NO. 1482CR00816

COMMONWEALTH OF MASSACHUSETTS,)
Plaintiff)

VS.)

DANIEL KIM,)
Defendant)

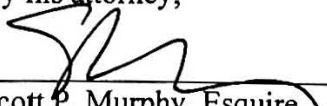
MOTION FOR REQUIRED FINDING OF NOT GUILTY

NOW COMES the Defendant, through counsel, and respectfully moves this Honorable Court, pursuant to Mass.R.Crim.P. 25, to enter a finding of not guilty as to the offenses charged in the above-captioned complaint.

As grounds therefore, counsel states that the proper and constitutionally permissible evidence presented by the Commonwealth, even viewed in its most favorable light, is insufficient as a matter of law to sustain convictions on the offenses charged in the above-captioned indictments. As further grounds for this motion, the defendant relies on the motion for required finding which was previously filed.

WHEREFORE, Defendant respectfully requests this Honorable Court to enter a finding of not guilty on the offenses charged in the above-captioned indictments.

Respectfully submitted,
The Defendant,
By his attorney,



Scott P. Murphy, Esquire
129 Morgan Drive
Norwood, MA 02062
(781) 278-9990
BBO#: 555212

Dated: 5/22/18

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT
DOCKET NO.
1482CR00816
001

COMMONWEALTH

V.

DANIEL KIM

VERDICT SLIP

We the jury upon our oath find the following:

001 - STALKING (MGL ch.265 s. 43(a))
on or about and in between June 10, 2011 and August 31, 2014

() NOT GUILTY

(✓) GUILTY as Charged

DATE: 5/23/18

Van Le
FOREPERSON OF THE JURY

COMMONWEALTH OF MASSACHUSETTS**NORFOLK, ss.****SUPERIOR COURT
DOCKET NO.
1482CR00816
002****COMMONWEALTH****V.****DANIEL KIM****VERDICT SLIP****We the jury, upon our oath, find the following:****002 - Indecent Assault & Battery, Person 14 years or older (MGL ch.265, s 13H)
on or about June 10 , 2011****() NOT GUILTY****(✓) GUILTY as Charged****DATE:** 5/23/18

Van Le
FOREPERSON OF THE JURY

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT
DOCKET NO.
1482CR00816
003

COMMONWEALTH

v.

DANIEL KIM

VERDICT SLIP

We the jury upon our oath find the following on the charge of:

003 - WITNESS INTIMIDATION (MGL ch.268 s. 13B)
on or about August 8, 2013

() NOT GUILTY

(☒) GUILTY as Charged

DATE: 5/23/18

Van Le
FOREPERSON OF THE JURY

90

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

**SUPERIOR COURT
DOCKET NO.
1482CR00816
004**

COMMONWEALTH

V.

DANIEL KIM

VERDICT SLIP

We the jury upon our oath find the following on the charge of:

**004 - CRIMINAL HARASSMENT (MGL ch.265 s. 43A)
on or about and in between June 10, 2011 and August 31, 2014**

() NOT GUILTY

(☒) GUILTY as Charged

DATE: 5/23/18


FOREPERSON OF THE JURY

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT
DOCKET NO.
1482CR00816
005

COMMONWEALTH

V.

DANIEL KIM

VERDICT SLIP

We the jury upon our oath find the following on the charge of:

005 - VIOLATION of HARASSMENT PREVENTION ORDER (MGL ch.258E s. 9)
on or about and in between August 16, 2011 and December 31, 2011

() NOT GUILTY

(✓) GUILTY as Charged

DATE: 5/23/18

Van Le
FOREPERSON OF THE JURY

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT
DOCKET NO.
1482CR00816
006

COMMONWEALTH

V.

DANIEL KIM

VERDICT SLIP

We the jury upon our oath find the following on the charge of:

006 - VIOLATION of HARASSMENT PREVENTION ORDER (MGL ch.258E s. 9)
on or about and in between January 1, 2012 and December 31, 2012

() NOT GUILTY

(✓) GUILTY as Charged

DATE: 5/23/18


FOREPERSON OF THE JURY

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT
DOCKET NO.
1482CR00816
007

COMMONWEALTH

V.

DANIEL KIM

VERDICT SLIP

We the jury upon our oath find the following on the charge of:

007 - VIOLATION of HARASSMENT PREVENTION ORDER (MGL ch.258E s. 9)
on or about and in between January 1, 2013 and December 31, 2013

() NOT GUILTY

(✓) GUILTY as Charged

DATE: 5/23/18

Van Le
FOREPERSON OF THE JURY

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT
DOCKET NO.
1482CR00816
008

COMMONWEALTH

v.

DANIEL KIM

VERDICT SLIP

We the jury upon our oath find the following on the charge of:

008 - VIOLATION of HARASSMENT PREVENTION ORDER (MGL ch.258E s. 9)
on or about and in between August 1 and August 31, 2014

() NOT GUILTY

(☒) GUILTY as Charged

DATE: 5/23/18

Van Le
FOREPERSON OF THE JURY

5/23/18 David (Casapara, J.)
attest S. Dem
May 23, 2018
filed

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

NORFOLK SUPERIOR COURT

DOCKET NO. 1482CR00816

COMMONWEALTH OF MASSACHUSETTS,)
Plaintiff)

VS.)

DANIEL KIM,)
Defendant)

MOTION FOR REQUIRED FINDING OF NOT GUILTY
AFTER JURY VERDICT

The Defendant respectfully moves, pursuant to Mass.R.Crim.P. 25(b)(2), for this Honorable Court to set aside the jury verdict of guilty and order the entry of a finding of not guilty, or in the alternative, to order a new trial. See Commonwealth v. Millyan, 399 Mass. 171, 189, 503 N.E.2d 934, 944 (1987) (“[R]ule 25(b)(2) empowers the trial judge to act when he believes a lesser verdict is more consonant with the interest of justice.”); Commonwealth v. Keough, 385 Mass. 314, 431 N.E.2d 915 (1982); Commonwealth v. Carter, 423 Mass. 506, 511-513, 669 N.E.2d 203, 206-207 (1996).)

As grounds therefore, counsel states that the proper and constitutionally permissible evidence presented by the Commonwealth, even viewed in its most favorable light, is insufficient as a matter of law to sustain convictions on the offenses charged in the above-captioned complaint. As further grounds for this motion, the defendant relies on the motion for required finding which was previously filed.

WHEREFORE, Defendant respectfully requests this Honorable Court to enter a finding of not guilty on the offenses charged in the above-captioned complaint.

Respectfully submitted, --
The Defendant,
By His Attorney,

A handwritten signature in black ink, appearing to read 'S. Murphy', written over a horizontal line.

Scott P. Murphy, Esq.
129 Morgan Drive
Norwood, MA 02062
(781) 278-9990
BBO # 555212

DATED 5/8/18

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

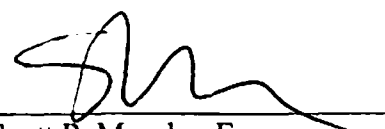
NORFOLK SUPERIOR COURT
DOCKET NO. 1482CR00816

COMMONWEALTH OF MASSACHUSETTS,)
Plaintiff)
VS.)
DANIEL KIM,)
Defendant)

NOTICE OF APPEAL

Notice is hereby given that the defendant, in the above case, being aggrieved by certain opinions, rulings, directions and judgments of the Court, hereby appeals his convictions pursuant to Massachusetts Rules of Appellate Procedure, Rule 3.

Respectfully submitted,
The Defendant,
By His Attorney,



Scott P. Murphy, Esq.
129 Morgan Drive
Norwood, MA 02062
(781) 278-9990
BBO # 555212

DATED 5/31/18



About Dan's Blog

This is a place where I put my thoughts for the world to read. I write about current events, my life, photography, politics, sailing and technology. There may be other subjects as well. This is only a part of my writings. More can be seen on my website. ***The most important part of my story thus far is My Life With Gee.***

Please feel free to register as a user on this blog, and to leave me comments. Your thoughts, comments, and feedback are appreciated.

Note: Comments are moderated—if you are leaving a comment for the first time, it will need to be approved.

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Honoring [REDACTED]

Posted on Friday 1 August 2014

Recently, I was at the local West Marine delivering a pair of snack sized cheesecakes to my friend Maddie. She and I started talking and she asked me why I made them. I thought about it for a minute and realized that the reason I have been making snack-sized cheesecakes and delivering them, in some cases to people I barely even know, is because I want to honor the memory of the woman I love most, [REDACTED] [REDACTED] [REDACTED].



Some of the snack-sized cheesecakes I loved to make and give to my beautiful and beloved [REDACTED]

Talking to Maddie, I realized that I really only started making the snack-sized versions of my cheesecakes about eight years ago, at least making them with any regularity. The main reason I had done that was so I could deliver them to [REDACTED] and to a lesser degree, Bridget, her little sister.

Years ago, it had become something of a ritual for me to go visit Lauren in the morning and bring her a ziploc bag with half-a-dozen snack-sized cheesecakes in it. I started doing this long before I realized how much I love [REDACTED] [REDACTED] [REDACTED] or that I wanted to marry her—because she was my friend and I really delighted in seeing the smile bringing them to her would bring to her face.

Many mornings, I would go over to her family's house and bring her the cheesecakes, often bringing her an iced coffee as well. And we'd spend an hour or more talking. Often, she'd try and sneak a cheesecake out of the bag as she made a show of putting them in the freezer for later... but I'd usually catch her—often by finding the crumpled aluminum evidence of the cheesecake's demise.

- ☐ pv
- ☐ Travel

Pages

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- ☐ Life With Gee
- ☐ The Boat—s/v Pretty Gee

Links

- ☐ Barbara Kinney
- ☐ Barbara Ries
- ☐ Beth's Miaow The Cat
- ☐ Bob Kingsland's S/V Restless

Bob Kingsland website about his custom, home-built 50' steel schooner, sv Restless.

- ☐ Bonnie's Lovely Frogma—A Kayaking Blog
- ☐ Brian Howe's Blog
- ☐ Bruce Schneier on Security
- ☐ Cap'n K's Sailfar forums
- ☐ Carol Anne's Five O'Clock Somewhere
- ☐ Cidnie's Boat Blog
- Cidnie's boat blog.
- ☐ Ed's Sailing Blog
- ☐ Esther's Blog
- ☐ EVK4
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- ☐ MobileWhack
- ☐ Paul Fettes' Calendar Project
- ☐ Sailing Simplicity

Teresa Carey, her cat Dory and their adventures on s/v Daphne, a Norse 27

- ☐ Sarah's Blog—Catharsis Crystallised
- ☐ Sass's Postmodern blog
- ☐ Sherry's Stay of Execution
- ☐ Tammy's Daily Warrior
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- ☐ Zephyr's Sailing Blog

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A [REDACTED]-style iced coffee—hazelnut with four splenda and milk.

The person I made these snack-sized cheesecakes for was an amazing young woman. She was smart, honest, beautiful, funny, lovable, and sweet. She was someone I have known all of her life and loved all of her life. In fact, I do not know how to not love her because I have always loved her and always will.

She was the person who laughed when we were cleaning the green slime out of her family's pool and asked me to make sure she didn't fall in [REDACTED] would squeal "Danny" with delight and run up to hug me when I would show up at the cinema she worked at when she was a teen. She was the person who danced a little victory dance when she beat me at Scrabble during our late night bouts.



[REDACTED] beautiful smile during a late night game of Scrabble down at the Cape.

That was the person I really started making the snack sized cheesecakes for. As time went by, I would take the other cheesecakes and give them to other people I knew. After all, I make them two dozen at a time and I can't possibly eat them all.

Three years ago, I lost that amazing woman to her additions to drugs and alcohol. Her father's lifelong abuse of her is likely one of the major reasons she became a drug-addicted alcoholic that would rather prostitute herself to get the drugs and alcohol her addictions require than to ask the man she said she loves for help.

I also believe that her father coerced her into perjuring herself to selfishly protect himself by threatening to withhold her college tuition if she did not. Considering that the woman I love has always considered education paramount, this was a very genuine threat to her.

Three years ago, I stopped making my snack-sized cheesecakes. I don't really remember consciously making the decision to do that, but I did, and after talking with Maddie, I realized that the real reason I did was because I couldn't bring them to the one person I really made them for—my beautiful and beloved [REDACTED]

About two years ago, I realized that not making them made no sense. Just because I couldn't taken them to Lauren any longer didn't mean I should stop making them because too many people enjoyed them. So, I started making them again and delivering them.

The people I deliver them to are my friends down on the SouthCoast, like Jaime, Katie, Jesse, Cassie, Laura, Dave and Maddie. Most of them are young women because they really love cheesecake. I've added a few new people to the list, like Corrie and her co-workers over at Flour Girls, and Libby and the crew she works with at Jake's Diner. Seeing the smiles on their faces, while not quite the same as seeing my beautiful [REDACTED] smile, is still well worth all the work and effort.



*My fierce, funny, sweet, feisty and lovable [REDACTED]
hamming it up for the camera down at her Cape house.*

Today, I am at my friend Dave's house. I am making a batch of two dozen cheesecakes this morning. A dozen vanilla and a dozen blueberry. This afternoon, I will be delivering them and collecting the smiles and hugs I receive as payment.

This is one way I honor the memory of the amazing woman I love and lost to her addictions. I haven't seen the woman I love in over three years. All that seems to be left is the drug-addicted alcoholic who does nothing but lie. That is why I finally chose to walk away from her and her family a year ago. Trying to stay was destroying my health and turning me into someone other than the man [REDACTED] loves. [REDACTED] had chosen to lie once again and perjure herself. She had chosen her addictions and her abusive father over me.

I'd rather remember [REDACTED] as the amazing, brutally honest, beautiful, funny, smart and gracious woman I thought fit to be Gee's successor.



very late one night, after we had come in from a walk along the streets and beach near her family's Cape house.

Her father's years of abuse of his wife and his children has left them all badly damaged. They are four of the people I have loved most and considered part of my family for decades. I lost them all to [REDACTED] addictions.

Yet, in many ways, [REDACTED] mother Sue's last text message to me is the truth and always will be. Almost three years ago, Sue sent me a message that said, "Dan, I know you will always be there for us." That is the truth, especially for [REDACTED] a woman I have loved all of her life and always will.



Three people I love and consider family—[REDACTED] her mother Sue and her little sister Bridget.

While [REDACTED] is someone I will always love, I realize that she can not be a part of my life, at least not while she is in denial about the truth—the truth about her addictions and the truth about who we are to each other. The longer she goes on living a life based on lies, the less likely it is she will ever return to being the amazing woman that said "Sarangheyo" and told me

she would adore the Asians with freckles our children would be.

If, by any chance, a part of my beloved [REDACTED] does still exist and is still reading this blog, I want her to remember the truth of who we were to each other. I have written a post, titled "My Gift to [REDACTED] [REDACTED]" which I think shows the truth of who we were and why we spent a week talking about getting married.

Even if I never see my beautiful [REDACTED] again, she will always be in my thoughts and in my heart. And, I will go on baking snack-sized cheesecakes to honor the amazing woman I would have married had I been given the chance.

I am moving on. The healing process has been difficult and long. My life has been richer and better for having had [REDACTED] in it. I just wish she were healthy and still here so that we could start on the future we once talked about.

God Bless you [REDACTED] [REDACTED]

May God watch over you and protect you from all harm—even that you cause yourself.

I hope God gives you the strength to fight your addictions and the wisdom to see the truth about what the alcohol and drugs are doing to you.

I pray that God grants you the serenity and peace you will need to love yourself once again and to forgive yourself for the things your addictions have made you do.

I ask that God helps you find your way back to being the amazing, beautiful, intelligent, feisty, stubborn, strong, and devout woman He wants you to be.

Finally, may He grant you the ability to see yourself as I do and let you remember who we are to each other; let you remember the years of friendship, love and devotion we once shared; and give you the strength to make amends so we can start the future together we talked about last June.

All this in Jesus's name I pray.

Amen.

Filed under: Life with Ellie and My Life

Dan @ 1:20 pm

No Comments

My Gift To [REDACTED] [REDACTED]

Posted on Monday 19 November 2012

We don't *remember* days...we remember *moments*

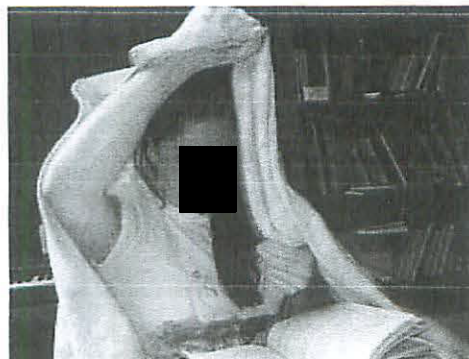


We don't remember days...we remember moments

There are many moments I remember from the years I have loved [REDACTED]
cared for [REDACTED] and been friends with [REDACTED]

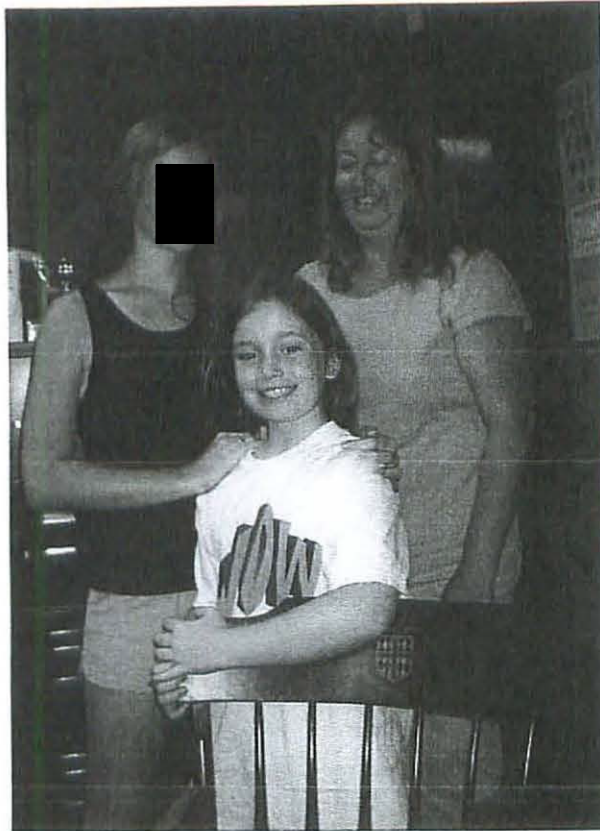
Here are some of my favorites, in no particular order...

- Watching the adorable freckle-faced, redheaded toddler of two people I have considered family for over a decade throw a temper tantrum because she doesn't get her way. Her temper tantrums when she was very young were cute—when she was a bit older—they were a force of nature, being powered by one of the feistiest, most stubborn and willful children I have ever known—one who grew into one of the most amazing women I have ever known.



[REDACTED] [REDACTED] [REDACTED] unhappy about doing homework
early one morning at her mom's office.

- Watching a sleepy young girl that I have always loved cover her head with a blanket, with a book on a pillow at her mother's desk because she, [REDACTED] just doesn't want to do her homework.



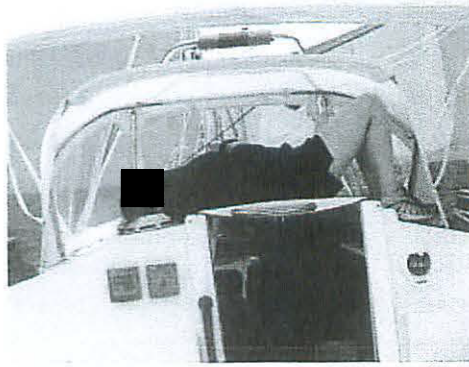
Three people I love and consider family—[redacted] her mother Sue and her little sister Bridget.

- Working at her father's company and seeing [redacted] and her family—five people I love and have considered family for 30 years. These are the three I miss the most—[redacted] her mother Sue, and her sister Bridget.
- Taking [redacted] to Cracker Barrel for the very first time for her seventeenth birthday and watching her browse the country store with a look of wonder and amusement.
- Laughing at hearing my beautiful friend [redacted] shout out that she isn't going to become a vegan because she didn't want to give up Coach purses or nice shoes. I knew the nutrition argument would be tough against someone as stubborn and feisty as [redacted], but I also knew she was very fashion and status conscious as a teen.



[redacted] shows excitement when I offer to teach her how to drive.

- Seeing the unabashed happiness and excitement when I told [redacted] I would teach her to drive.
- Spending an afternoon with [redacted] teaching her to check the oil, brake fluid, windshield washer fluid and tire pressure on her car.
- Sitting with [redacted] and rubbing her shoulders and neck.



████████████████████ sleeping on the companionway,
under the dodger in a fleece shirt she borrowed from me.

- Watching ██████████ sleep, curled up on s/v Pretty Gee's companionway like a beautiful ginger cat, in the polar fleece she swiped from me.
- Cleaning out the pool and laughing with ██████████ and listening to her fears of falling in the green slime while I held her feet so she'd be safe—promising to pick her up out of the slime if she fell, but reserving the right to laugh first.
- Having ██████████ ██████████ ██████████ rub my shoulders and neck.



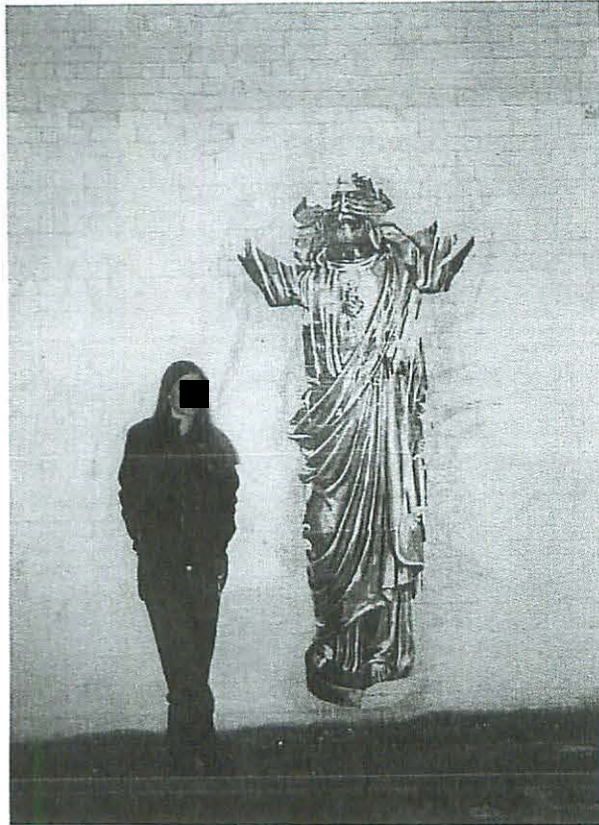
████████████████████ very late one night,
after we had come in from a walk along the
streets and beach near her family's Cape
house.

- Walking in the early morning fog along the road and the beach near ██████████ ██████████ Kelley's family's Cape house one August evening, holding hands with her. She was wearing the red fleece cape I had given her.
- Going to the Registry of Motor Vehicles and standing in line with ██████████ to register her very first car.
- Hearing ██████████ laugh when she realizes her dad has sabotaged my go-kart so he can win.



██████████ and me while kayaking during a family outing on the Bass River back in 2008.

- Kayaking with ██████████ family and the Garcias and towing our sunken kayak with ██████████ sitting in it back to the Bass River Kayak place because she wouldn't get out and we couldn't paddle the sunken kayak.
- The small near-heart attack I had when Bridget told me that ██████████ had told her and their mother Sue about me asking ██████████ ██████████ to marry me, and fearing how Sue would react. It turns out that Sue really wasn't surprised or even concerned about my asking ██████████ ██████████ to marry me—in fact, *in some ways I think she had been expecting it.*
- Watching the sunrise with ██████████ down at the Cape house after talking through the night and having her mother come up and ask us what we wanted for breakfast.



██████████ and Jesus, in New Bedford. Taken one evening when we were out playing pool and getting pizza.

- Taking ██████████ down to New Bedford to go shoot pool and then taking a photo of ██████████ posed beside the painted Jesus on the pizza shop wall before we got dinner.
- Having ██████████ steal my polar fleece out of my sailing bag during a day sail on s/v Pretty Gee.
- Going over to ██████████ house to pick up ██████████ her sister Bridget and her brother Johnny so we could have a meal at Chipolte's because I wanted to spend time with three people I have loved all of their lives.



A ██████████-style iced coffee—hazelnut with four splenda and milk.

- Waking ██████████ and watching her beautiful smile appear as she realizes I have brought her an iced coffee because I love her.
- Stealing a sip and then a gulp of ██████████'s iced coffee because she loves me and would let me.
- Nibbling on ██████████'s earlobes and inhaling the scent of her hair as I whisper in her ear to wake her up in the morning.



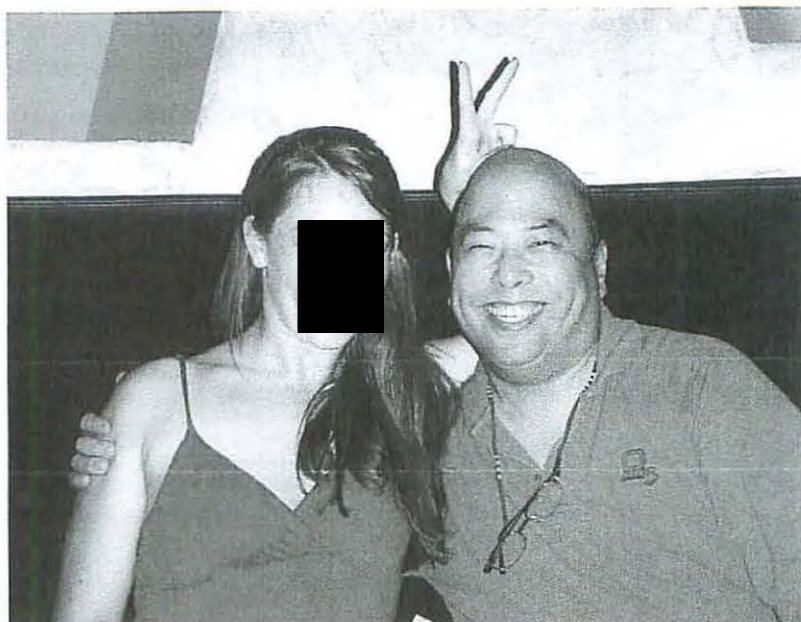
████████████████████ hamming it up and brandishing two spatulas at Fire & Ice on her 18th birthday.

- Laughing as ██████████████████████ brandished twin spatulas at Fire & Ice, when they let her cook on the big grill at Fire & Ice on her 18th birthday.
- Teaching ██████████████████████ how to parallel park and spending hours with her teaching her how to drive so she would be safer on the roads when she finally got her driver's license.
- Going to the movies and seeing ██████████████████████ at the cinema she works at and getting a big hug and a huge smile from her when she sees me.



My funny and much beloved ██████████████████████
████████████████████

- Rubbing ██████████████████████ beautiful but not ticklish feet while she lounged on the sofa at her house before she had to get ready for work.
- Tickling ██████████████████████ and blowing raspberries on her beautiful smooth stomach and holding her in my arms.
- Tasting the salt on ██████████████████████ skin when I would kiss her stomach.



Ellie giving me bunny ears at her 18th birthday dinner at Fire & Ice in Boston, 2010.

- Letting [REDACTED] [REDACTED] [REDACTED] give me "bunny ears" when getting our photo taken at her 18th birthday party at Fire & Ice in Boston.
- Going with [REDACTED] [REDACTED] and talking with her insurance agent and making sure she got the right things on her first car's insurance policy as her mother Sue asked me to.
- Going over to [REDACTED] house to make breakfast at 1600 in the afternoon because Bridget and [REDACTED] [REDACTED] were hungry and didn't know what to make. Breakfast is probably [REDACTED] favorite meal.



Ellie beautiful smile during a late night game of Scrabble down at the Cape.

- Playing Scrabble late into the night and watching [REDACTED] smile as she realizes that she can win—beating me with the words I had taught her.
- Walking into [REDACTED] family's kitchen and stealing a cookie from the batch Bridget just pulled out of the oven and doing my cookie trick for her to see her laugh.
- Talking about projects she wanted to do around the house—like painting her room and converting the porch into a sunroom for her parent's anniversary in the hopes her parents would install a hot tub in response.



Some of the snack-sized cheesecakes I loved to make and give to my beautiful and beloved [REDACTED]

- Bringing [REDACTED] cheesecakes and watching her try and sneak one and hide the aluminum pie plate in her room as she takes the rest to the kitchen to put in the freezer.
- Listening to [REDACTED] tell me how she wants to name our children Kelley and Cadence and that the names would work for either boys or girls, *and pointing out how it was a good thing she was going to take my last name, since naming a child Kelley Kelley would probably be evil.*
- Laughing as [REDACTED] capsized the O'Day Javelin her mother bought for Bridget—*dumping Bridget, Johnny Jr., me and Lauren into the water.*

Tickling Ellie



- Laughing as I sent Bridget and Carmen to tickle [REDACTED] and pounce on her even as she pleads for me to save her. I should have saved her, but I use my powers for good mostly.
- Going grocery shopping with [REDACTED] [REDACTED] [REDACTED] because she didn't like anything they had at the house to eat.
- Sitting and watching [REDACTED] [REDACTED] try on two dozen outfits and seeing how happy she was to fit into a size 3 pair of jeans and enjoying how good they look on her.



██████████ at Texas Roadhouse for dinner with me and her family.

- Seeing ██████████ look so cool, confident and beautiful when we went out to dinner at the Texas Roadhouse. It was back when she still knew she was smart, capable, strong, beautiful and loved—and she knew I loved her.
- Putting together a car safety kit for ██████████ because she had just bought her first car. The kit contained basic supplies like a first aid kit, a polar fleece blanket, jumper cables, spare fuses for her car's electrical system, a good flashlight, and a tire pressure gauge that was once my twin brother's because that is how much I love ██████████ ██████████.
- Carrying ██████████ purse and all the clothes she wanted to try on while out shopping with her. Shelley, Su, Gee and Yoon had done the same thing when shopping.



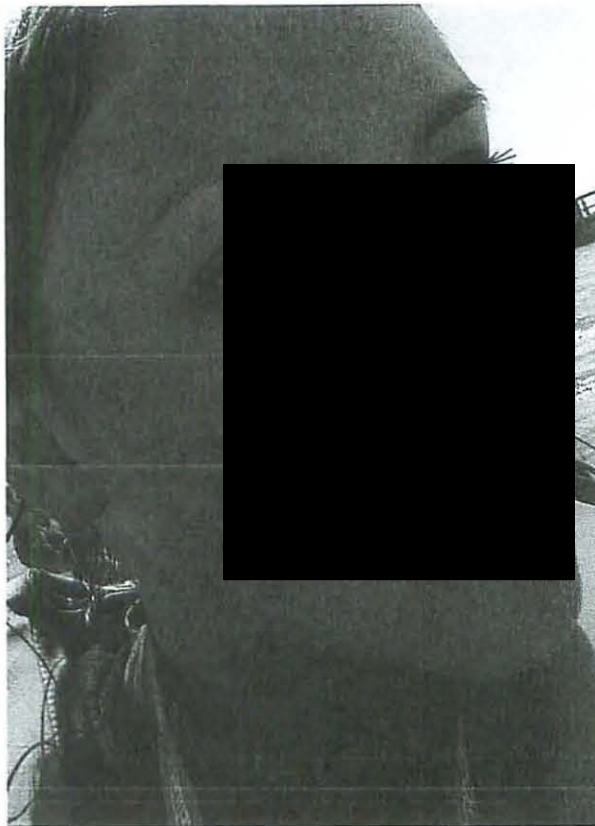
A group photo of Carmen's mother, Johnny Kelley Jr. Carmen, Carmen's brother, Bridget Kelley, and ██████████ after we got ice cream at the ice cream truck at the park across from ██████████ family's Cape house in Yarmouth.

- Treating my beautiful ██████████ to a Klondike bar at the ice cream truck stopped at the park across from her family's Cape house in Yarmouth, Mass., with the Garcias.
- Walking Brandy, ██████████'s big white labrador retriever with her. Brandy is the company mascot for ██████████ father's company.
- Volunteering to fix her family's clothes dryer just so I could have an excuse to spend time with ██████████ in the mornings, and doing laundry for my beautiful ██████████ when I finally fixed the dryer.



My fierce, funny, sweet, feisty and lovable [REDACTED] [REDACTED] hamming it up for the camera down at her Cape house.

- Watching the funny faces that [REDACTED] would make while hamming it up for the camera down at her family's Cape house. I love how expressive her beautiful face is.
- Walking up behind [REDACTED] [REDACTED] [REDACTED] and wrapping my arms around her waist to hug the woman I love and resting my chin on her shoulder and burying my face in her beautiful and silken red hair and breathing in the scent of her hair.
- Taking photos of [REDACTED] when she isn't paying attention and making her laugh when she finally realizes what I've been doing.



My beautiful [REDACTED] freckled face...

- Telling [REDACTED] [REDACTED] that I wanted to kiss and count every freckle she had—like all the ones you can see on her beautiful, freckled face. I adore [REDACTED] [REDACTED] beyond measure and hope that she fights her addictions and comes home to me soon.
- Trying to count the freckles on [REDACTED] beautiful face just before waking her up for the day—wishing I had the courage to kiss them all.
- Getting hugs from [REDACTED] when I'd bring her souvenirs from the various trips I went on. [REDACTED] was the only one who got more than one postcard or souvenir from me from any trip. She was always someone I loved to dote on and spoil.

These are all small vignettes of a life we shared together—of years of friendship, love, caring, devotion and loyalty. *They are the truth of who we are to each other and what we have meant to each other over the years.* I think [REDACTED] [REDACTED] sister Bridget was right when she said, "You're perfect for her. No one else will ever love her or care about her the way you do or as much as you do" when I asked Bridget what she thought of me and her older sister as a couple.

These are the memories of the beautiful young girl that I have loved all of her life and the incredible woman she has grown into. *These are the memories I will keep and cherish and share of the amazing woman I love and still hope to marry.* [REDACTED] is mi querencia and mo chuisle mo chroil. [REDACTED] is the woman whose love for me has healed me.

These memories are part of the many reasons I have found the strength to abide and stay, even when [REDACTED] appears to be nothing more than the drug-addicted alcoholic that has hurt me and lied about us. These memories are part of the reason I still want to be with [REDACTED] [REDACTED]

This is my gift to [REDACTED]—the amazing woman I love—for whenever she gains the strength, the courage and the will to fight her addictions and to see the truth once again. My beloved [REDACTED] is one of the most honest people I have ever known—yet her addictions have robbed her of the truth and made her tell horrific lies.

I hope someday [REDACTED] [REDACTED] [REDACTED] will look back and recognize the truth of what I have written here, of what the photos of us show and of the feelings we have shared over her entire life. I hope that she can forgive herself for destroying all that we had and all that she

and I could have been together. I hope that we are together the way we should be in our next lives—for I know a love as strong as ours will eventually bring us together again.

I have loved [REDACTED] all of her life, cared for her all of her life, and considered her a part of my family since she was born. Last summer, I realized that [REDACTED] was the woman I loved most of all and that I wanted to spend the rest of my life with her—even if it means walking beside her on her long road to recovery.

I will never betray [REDACTED] as Ian did. I will never throw [REDACTED] away as Jarrod did. I will never hurt [REDACTED] as her father has for years. I have never stopped loving [REDACTED], caring for [REDACTED] or being [REDACTED]'s friend. I hope that [REDACTED] will realize the truth some day soon—fight her addictions and come back to being the amazing woman I love so that we can start on the future we had talked about together.

I wish I could let [REDACTED] see herself as I do for just a day—then she would not let her fears, insecurities or self-doubts give her addictions the power they hold over her. [REDACTED] is one of the most amazing women I have ever met. [REDACTED] is capable, strong, smart, sweet, kind, compassionate, generous, gracious, stubborn, feisty and lovable beyond measure—whether she sees the truth of this or not.

I do not know if I will still be here for her—because all I see is the drug-addicted alcoholic that she has been pretending to be for the past seventeen months. If [REDACTED]—the woman that loves me and talked of starting a future together—is reading this, I would ask that she give me a clear and obvious sign that she still loves me and still want me to be here for her. If she are still here, there is nothing that would make me leave. If all that is left is the pale, pathetic, drug-addicted alcoholic shadow of her true self—then I have no reason to stay.

God Bless you [REDACTED]

May God watch over you and protect you from all harm—even that you cause yourself.

I hope God gives you the strength to fight your addictions and the wisdom to see the truth about what the alcohol and drugs are doing to you.

I pray that God grants you the serenity and peace you will need to love yourself once again and to forgive yourself for the things your addictions have made you do.

I ask that God helps you find your way back to being the amazing, beautiful, intelligent, feisty, stubborn, strong, and devout woman He wants you to be.

Finally, may He grant you the ability to see yourself as I do and let you remember who we are to each other; let you remember the years of friendship, love and devotion we once shared; and give you the strength to make amends so we can start the future together we talked about last June.

All this in Jesus's name I pray.

Amen.

Filed under: Life with Ellie andpv

Dan @ 6:33 pm

11 Comments

One Last Chance

Posted on Friday 15 August 2014

Today is a bittersweet day. I will be going to see [REDACTED] for what will likely be the very last time. I will find out today if there is anything left of the amazing young woman that I

have loved for over 20 years—all of her life.

Today, she has a choice to make—she can do one of three things.

First, she can lie again and perjure herself once more to protect her father—the man that has abused her all of her life. I believe he has coerced her into perjuring herself for the last three years by threatening to withhold [REDACTED] college tuition.

However, since she graduated from Emmanuel College back in May, her father no longer has that huge financial leverage over her, so she is far freer to make a choice decided by her conscience and heart than her fear of her father and need for education than she has been in the past three years.

Second, she can decide that she is honest enough and brave enough to not lie to protect the man who abused her all her life and made her perjure herself for the last three years. While this is not telling the truth, it is a step up from actively lying and participating in the defamation of the man she said she loves—the only person who has always been there for her all her life—me.

Third, she can decide that having defamed me for the last three years is wrong and she can take a stand and tell the truth about what her father made her do and how. She can tell the world that he coerced her into perjuring herself for the last three years.

However, I doubt this last one will happen. *It would take a woman of courage, honesty and integrity to do that—something the drug-addicted alcoholic that I have seen for the last three years is not capable of doing.* The most likely result is that [REDACTED] will perjure herself once more and protect her abuser, much as her mother has done for thirty years.

I have stood by my promise to [REDACTED] and it has cost me my health. *It has cost me physically, mentally, emotionally and financially.*

I decided not to try and sue [REDACTED] for defamation of character because she is not truly at fault for what has happened over the past three years. It is the fault of her father—John Walker Kelleyr—a cowardly alcoholic bully that has been abusing his wife and children for the better part of the last three decade.

I am not willing to punish [REDACTED] for the actions of her father. I know how difficult it is for abuse victims to stand up to their abusers because I too was abused by my own father. And, like [REDACTED], I chose to keep a relationship with him instead of walking away.

In fact, I have forgiven [REDACTED] for all that has occurred during these last three years. *Forgiving [REDACTED] is my final gift to her.* She can choose to see it as she will. While I believe it is up to [REDACTED] to take responsibility for what she has done these past three years, it is her addictions and her father that are truly at fault for all that has happened.

Today, I will ask [REDACTED] to tell the truth, or to at least not continue to lie. I doubt she will be able to do that. But, I can hope and pray that something of the amazing, strong, beautiful woman that said she loved me and wanted to name our children Kelly and Cadence three years ago still exists and is willing to do that much.

If she lies again, then I will truly know that nothing is left of the strong, beautiful, honest and loving woman that talked about having a future with Asians with freckles three years ago but the cowardly, drug-addicted alcoholic whore that has given up all of her compassion, integrity, honesty, morals, values, hope, dreams and love to the man that has abused her all of her life—*nothing more than an echo of her own father and a mere shadow of the amazing woman God has always meant for her to be.*

If she lies again, it means that [REDACTED] has let her father win—*something the woman that loves me would never do.*

I know the truth of what has happened these past three years. *I believe that Sue McMenamy Kelley, [REDACTED] mother, also knows the truth and that is why she texted me "Dan, I know you will always be there for us." as her last text message to me three years ago.*

One day, [REDACTED] addictions and drinking will catch up to her. *I would hope that Sue would remember the man who has been her family's friend for over thirty years and always stood to protect, teach and love them as his very own and call me to help my beautiful [REDACTED] or, at the very least, be with her once again.*

I pray that [REDACTED] does not end up in jail, the hospital or dead because of her addictions and alcoholism. *But the chances are far more likely that will not be the case—and it is likely that she will have to walk her long road to recovery alone if she does not reach out to me.*

Today, I will see what decisions [REDACTED] makes, possibly for the last time. I hope she chooses wisely.

[REDACTED] [REDACTED] [REDACTED] can choose her future and a man that has always loved her or [REDACTED] can choose her past of lies, pain and abuse with the father that has abused her all of her life.

If [REDACTED] chooses her father then she will have proven nothing remains of the amazing woman that loved me and adored the Asians with freckles our children would have been.

Either way, I have done all I can. The ball is now in her court. I will not wait any longer. I will not watch her destroy herself any more. [REDACTED] deserves whatever she chooses, though I hope she is wise enough, brave enough and strong enough to choose her future—the one we talked about three years ago—rather than her past and the continued pain and hurt it will cause.

I truly hope that [REDACTED] does not make a choice that she will end up regretting for the rest of her life. It is said that we will regret the chances we did not take and the relationships we did not have.... I believe that this is the truth and that [REDACTED] will regret not having taken a chance on us and the amazing future we talked about.

In the end, I think Bridget, her younger sister, was right when she told me that I was perfect for [REDACTED] because no one else would ever love her as much or as perfectly as I did. After all, no one else has known her all of her life and seen all that she has gone through and seen what an amazing woman she had become in spite of all the hardships and abuse she had been subjected to—and no one else ever will.

God Bless you [REDACTED] [REDACTED].

May God watch over you and protect you from all harm—even that you cause yourself.

I hope God gives you the strength to fight your addictions and the wisdom to see the truth about what the alcohol and drugs are doing to you.

I pray that God grants you the serenity and peace you will need to love yourself once again and to forgive yourself for the things your addictions have made you do.

I ask that God helps you find your way back to being the amazing, beautiful, intelligent, feisty, stubborn, strong, and devout woman He wants you to be.

Finally, may He grant you the ability to see yourself as I do and let you remember who we are to each other; let you remember the years of friendship, love and devotion we once shared; and give you the strength to make amends so we can start the future together we talked about last June.

All this in Jesus's name I pray.

Amen.

Ellie RIP

Posted on Monday 23 January 2012

May my beautiful and beloved Ellie rest in peace.

For the past seven months, I've been holding out hope that she still lives—that *the incredible woman I love and wanted to marry was not destroyed by her addictions*. But it seems that this is not the case—it seems that my Ellie is truly gone. I had a conversation with an acquaintance about alcoholics and drug addicts. They believe that once an addiction takes a hold of a person they can never again be who they once were. If that is true, then the amazing woman I love is gone. *I have certainly not seen any sign that she still exists since July.*

I still find it hard to believe that someone who was so strong, so smart and so stubborn could be vanquished by her addictions in only seven months. *But, I have seen no evidence that the proud, brilliant, beautiful, and sweet woman I love still survives.* I was hoping that someone as smart, strong and stubborn she was could still be fighting her addictions—*fighting to save herself, fighting to save the bright future she once had, and fighting to be with the man she loves once again.* That is pretty clearly not the case.

My Ellie was proud of being a good student. She considered getting a good education very important. *Her choice of colleges was very important to her—going to a Catholic college was important to her.* Back in May, shortly before she succumbed to her addictions, she posted that she was proud to have made Dean's List at her school two semesters in a row—her entire freshman year—while taking five courses each semester instead of the normal load of four.

Last semester, she was only taking four courses and did not make Dean's List. *Whatever her addictions have left has no anger, no outrage, no sense of shame at how poorly they did academically.* Whomever she has become doesn't seem to care that she is putting her scholarship at risk, or realize that if she loses the scholarship, she will have to drop out of the school she is at for financial reasons, if nothing else. Considering how important going to the particular college she is at was to her, she must surely be gone if she isn't going to fight to save her scholarship.

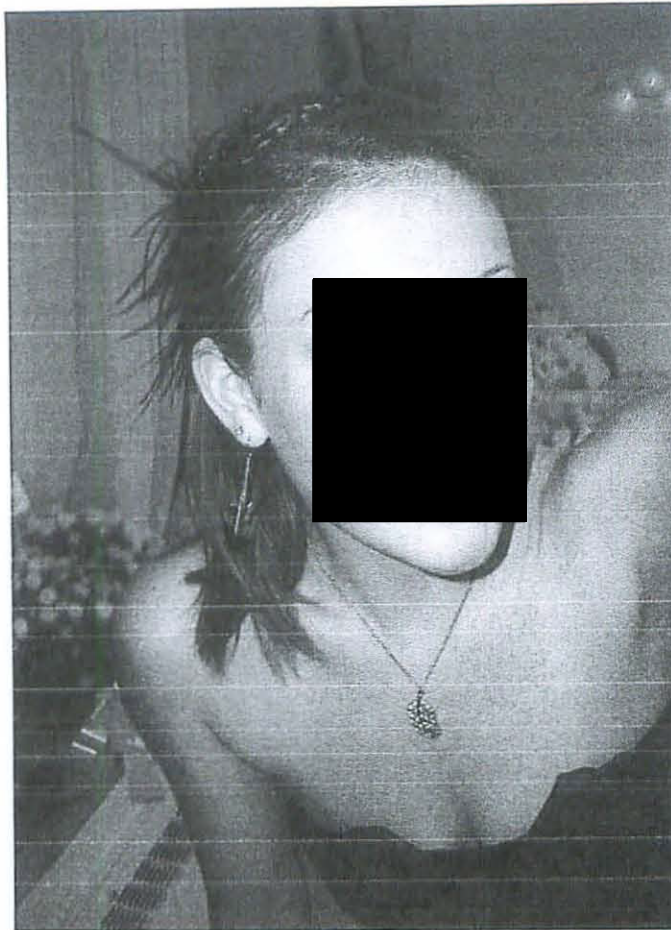
My Ellie cared about herself. She cared about what other people thought of her. *She cared about how she treated people—especially the people she loved.* Whomever is inhabiting her body doesn't care that her addictions are destroying her health and her beauty—*both physical and spiritual.* Whatever she has become doesn't care that she is destroying her future. Whatever her addictions have turned her into doesn't care that she has hurt people she loves; lied about people she loves; and disappointed the man she loves. *It is pretty clear that she no longer cares about anything other than her next drink, her next blunt, her next buzz or her next high.*

The photographs she has posted of herself clearly show how the drugs and alcohol have taken a toll on her. In her most recent photograph, she appears a bit jaundiced with red, watery, bloodshot eyes, and an almost gaunt, almost-anorexic appearance to her once-beautiful face.



Ellie posted this after a long night of work, drinking tea with her mother, and smoking weed—in her own words, she said: "Tired af...worked mad, smked mad, shower bathrobe bedtime night"

The change is very dramatic, especially if you consider how different she looks from a photograph she took only a seven weeks earlier or so.



Ellie dressed to kill for the Harvest Ball in November.

I am sure that the reason she has let her addictions gain the hold over her the way they have is because she no longer believes in herself—*she no longer sees herself as the amazing, confident, strong, smart, and beautiful woman she truly is.* She has let her self-doubts and her insecurities turn her into a pale, unhealthy, drug-addicted, alcoholic shadow of her true self. She has allowed her addictions to make her so much less than the woman I love. She has allowed drugs and alcohol to steal the love she has for me from us. *It doesn't seem to matter that I believe in her—that I know she is smart, beautiful, strong, confident, desirable and amazing in so many ways.*

If Ellie can not see the damage she is doing to herself—if she can not see how her addictions have affected her as a student and are destroying any chance she has at the bright future and all her dreams and hopes that she once had—*then surely, she must be dead.* If she does not care that her addictions are destroying her health, her body and her looks—then she surely is a casualty of her addictions. *If it does not matter that her addictions are hurting the people that love her, then all that is left is her body, and that is slowly being destroyed by her addictions.*

Ellie—if you still exist at all—if you still love me as you told me dozens of times in two different languages—if you still love yourself at all *please fight for yourself; fight for us; and fight for that future we talked about—the hopes and dreams you had told me of.* Show me that you still are there—that you still love me—that you still want to make that future we talked about come true. I know you are **smart enough, strong enough, and stubborn enough to beat your addictions—but only if you want to.** Only you can fight your addictions and ask for help—no one else can make you do this—you must do it for yourself.

If you ask me to, I will walk beside you on your long road to recovery as I have promised. *Please ask me to help you get the help you need—please let me help save the woman I love.*

That you do not fight to save yourself; to fight for the love we have for each other; to fight to save the future we talked about tells me that you are a casualty of your addictions. *Because either you are a casualty of your addictions or you do not think the love we have between us is worth fighting for—and I can not believe that.*

I know the woman that loves me would fight for me just as fiercely as I have fought for her. I did not think there was anything that we could not face together. Together, you and I, are so much more than we could ever be apart. I guess I was wrong.

Unfortunately, I do not think enough of the woman I love survives to help herself—or to

ask for help. *I do not see you asking me for help in time to save yourself, your future, or your scholarship.* I truly believe that if you lose your scholarship and have to drop out of the college you have picked for yourself, you will turn even more heavily to drugs and alcohol and likely seriously injure or kill yourself in the process. I can not stay and watch you do that.

I have done everything I can for you—more than anyone could rightfully expect—and there is nothing I can do now but walk away, since you will not help yourself.

I hope you wake up one morning and regret what you have done—at the pain and suffering you have caused—at how you have hurt me—and realize that the only reason I did all I did do was because I love you. *I hope that some day you realize what you have thrown away.* Somehow, I doubt either of those things will ever happen—because whatever it is that you have become doesn't care about anything beyond her next drink or blunt. *Whomever it is your addictions have made you is willing to sacrifice everything, including herself, to feed her addictions.*

That is why I believe the woman I love is dead and gone—*only her body, the physical shell she once lived in, remains.* And, if God is merciful, that too will be gone soon. I doubt that my beautiful, caring, compassionate, smart, stubborn and sweet Ellie would want to live out her days for long as whatever it is your addictions have made you. This is not the path God would have chosen for you. You chose this path for yourself, and the woman I love would never have done that—she would have fought to save herself.

I can't tell you how much I wish that you were here beside me—*fighting to get better, fighting for us, and fighting for the future we had talked about in June.* I am lost without you. Eventually, I will find my way again without you—but it will take time.

Ellie—I hope that you know I will mourn for you and grieve for you as I have for no one else—*not even my own twin.* While I was born a twin and will die a twin, it was never something I had a choice about. *I chose you because you were so beautiful—in mind, body and spirit. I chose you because you could make me laugh and smile like no one else I've ever known. I chose you because you had grown into such an amazing woman—smart, strong, confident, beautiful, sweet, caring and gracious. I chose you because I have never loved anyone as long or as much as I love you. I have cared for you, protected you and guided you all of your life. I have loved you all of your life in some fashion—I always will.*

I am moving on because it is what you would want for the man you love, *because you love me.* I am moving on because I can not stay to watch your addictions destroy what is left of you. I am moving on because I can not bear to see all your hopes and dreams that you had told me about die with you. *Most of all, I am moving on because I can not bear to see the loss of our future together that we had talked about—like the Asians with freckles that our children would have been and will now never be.*

Ellie—I pray that God loves you enough to grant you peace and show you mercy. I am sure that you are not on the path that God would want for you. I am sure that being a drug-addicted alcoholic is not God's Will. *I know that the woman that loves me would despise and loathe the thing you have become.* I will pray for you as I have been doing and hope that you, my beloved, find peace.

Filed under: Life with Ellie andpv

Dan @ 4:20 am

3 Comments

Etta James, RIP

Posted on Friday 20 January 2012

Etta James, probably best known for her song At Last, just passed away. It's sad to hear for me because Etta and At Last were what Gee and I picked for our wedding 12 years ago. We didn't even have to discuss it...it was the first choice for both of us.

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Adrift at Sea — Dan's blog on dankim.com

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Posted on Thursday 8 August 2013

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Shane Koyczan

To This Day ... for the bullied and beautiful

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I wish you could stand up for yourself. Of course, as Shane Koyczan said:

“Stand up for yourself. And that’s hard to do if you don’t know who you are.”

Of course, I think that is your real problem—the years of abuse your father has subjected you to all your life has made you doubt who you truly are. You don’t know that you are a good person. You don’t know that you are an amazing woman. You don’t know that you are strong. You don’t know that you are beautiful. You don’t know that you are smart—in fact, you are one of the smartest women I have ever met. You don’t know that you are brave and courageous.

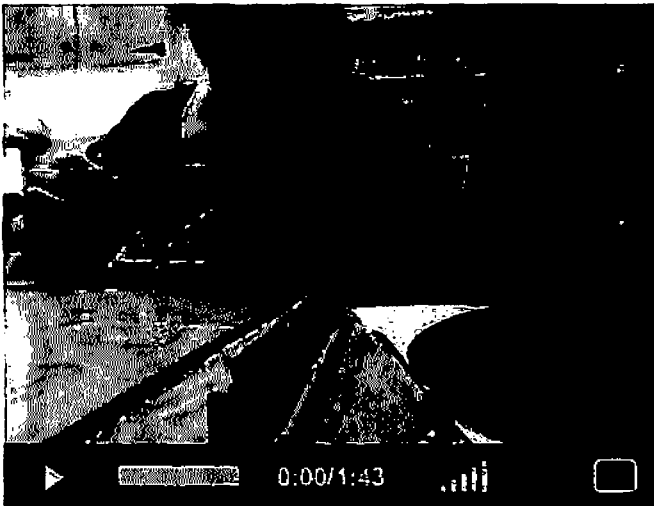
Your father’s life-long abuse of you has left you with doubts, fears and insecurities about who you are. These are things that his abuse of you taught you. Your father told you that you aren’t pretty, you aren’t smart, you aren’t good enough, you aren’t lovable and so much more. *What you don’t realize is that these were and always have been lies.*

[REDACTED] you are beautiful—both inside and out as I told you in your Palanca letter years ago. You are strong. You are smart. You are brave and courageous. You are compassionate, caring and loving. And, you are lovable beyond measure.

I know all these things because I have known you all of your life and watched you grow up, from an adorable toddler, to a spoiled and tempermental child, to a beautiful, strong, smart, compassionate, good, kind and caring young woman — a young woman so amazing that I love her and want to spend the rest of my life beside her.

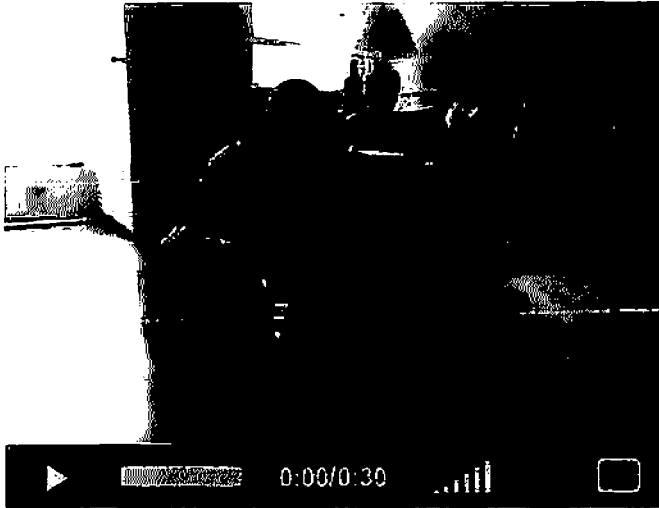


Next week, you have a choice. You can stand up for yourself against the bully, the coward, the abusive alcoholic that is your father—the man who has coerced you into perjuring yourself and becoming so much less than you should be. He is your father, but he does not care about you. You said so yourself, as you can see in this video from 2008.



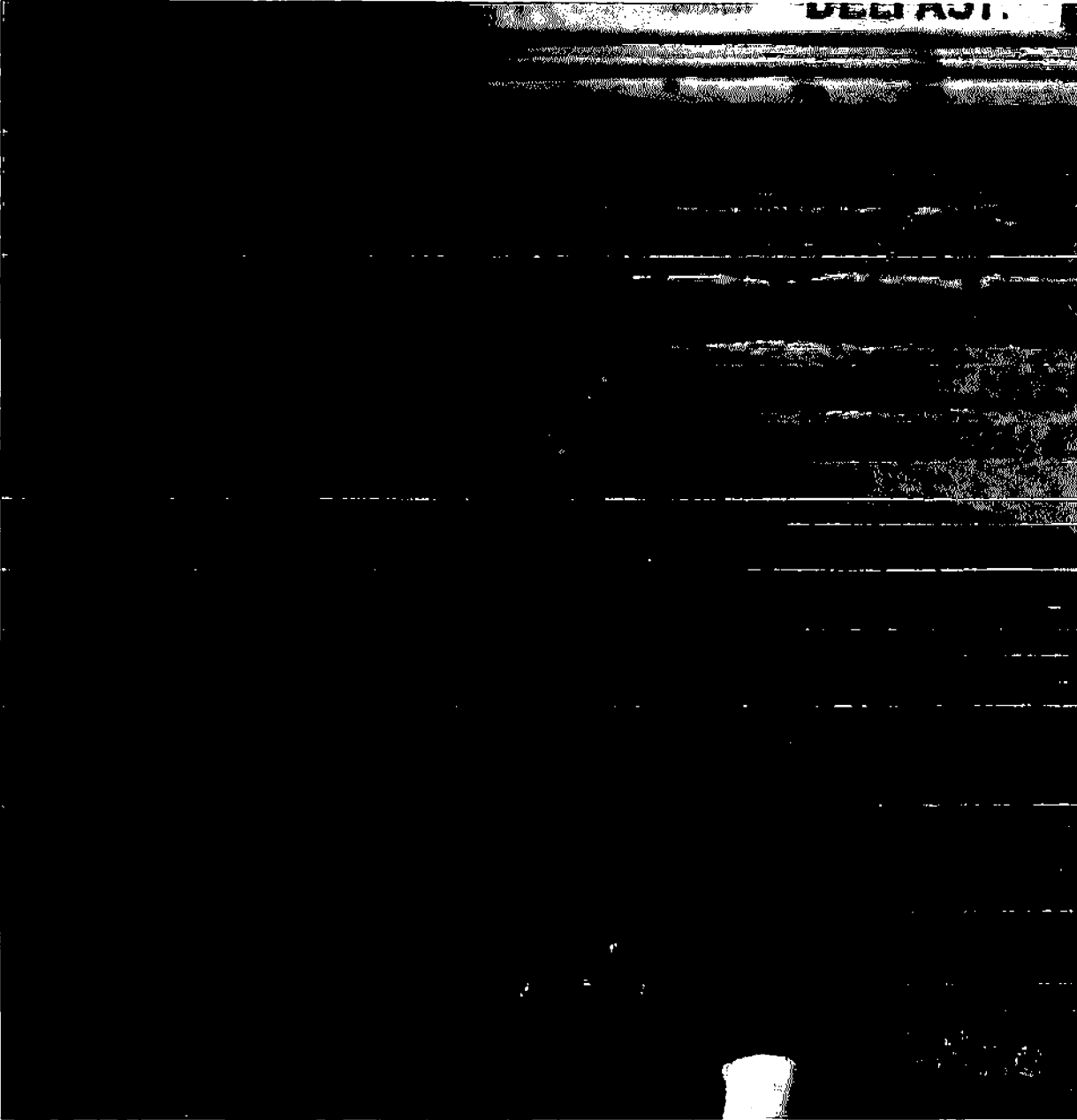
You can tell the truth and free yourself from your father. You can free yourself from the shame and guilt of telling lies about the man you love—me. You can follow your heart home to me and let us start working on the future we talked about two years ago. I still love you. I always have loved you and I always will love you. I do not know how to not love you.

This is who you are when we are together:



Or, you can continue to lie about me. You can continue to lie about us and who we are to each other and deny the truth of how we feel about each other. You can continue to protect someone who has abused you all of your life. You can continue to lie to yourself. But, that will mean that the amazing, honest, beautiful, smart, strong and stubborn woman that loves me is truly dead.

This is who you are when you lie about me and about us:



You are an adult now. You are responsible for your actions.

If you lie now, you have no one you can blame for your actions. While your father may be coercing you, you have the choice whether to lie or to stand up to him. It is that simple. Your actions have consequences, and if you lie about me again, I will have no choice but to take action against you. I love you, but I know that if I do not hold you responsible for your actions, no one will—not even yourself.

If you lie and perjure yourself, I will know that I have no more reason to stay. The woman that loves me is dead—that all that is left is the drug-addicted alcoholic that would prostitute herself out for the drugs and alcohol her addictions require—a drug-addicted alcohol whore in all but name because she does not have the honesty, the integrity, the love, the caring, the self-respect or the goodness that were core values of the amazing woman I love.

At this point, [REDACTED] it is your decision. I have done all I can for you. I have done more than any other person would consider reasonable.

In trying to help you—the beautiful, feisty, strong-willed, brave, freckled, red-haired, Irish woman I

love more than anyone one else in the world—I have paid a heavy price—*socially, financially, psychologically, physically, spiritually and emotionally.*

██████████ I doubt realize the damage your lies and the horrific actions that your addictions have made you do have caused me. I can do nothing more for you unless you are willing to stand up for yourself, fight for yourself, fight for us and the future we talked about, and most of all, fight for me—the man you said you loved in two different languages dozens of times a day the week we talked about our future.

I promise you that if you stand up for yourself, fight your father, fight your addictions and face the fears that his years of abuse left you with that it will be worth it. You do not have to face all these things alone—that if you ask me to—I will be standing beside you—the woman I love most of all—supporting you, helping you, protecting you and loving you, as I have all of your life. We have always been far greater and stronger together than we could ever be apart.

The truth of who we are is seen in the photos of us together. I doubt you have really smiled or laughed like you always did whenever we were with each other. Though all of these photos are from before I asked you to marry me, they show the depth of love, devotion, caring, happiness, joy, and friendship that was the basis for me asking you to marry me.

You have to choose whether you want to remain *stuck in the past with your abusive father* or whether you want to take a risk that your heart knew what it wanted and follow it to a future we talked about together.

I know what the woman I love would choose—she would choose love over fear—she would choose the future over her past. *I do not know what the drug-addicted alcoholic that you have been for the past two years would do.*

No matter what you choose ██████████ you will always be in my heart my beloved. You have been in my heart since the day you were born and you always will be there. If you choose to lie and perjure yourself again, I will mourn you and grieve for the lost future with the Asians with freckles that our children Kelley and Cadence would have been. I will honor your memory and move on.

You'll Be In My Heart-phil collins



But, in all honesty, I would rather have you beside me and start on the future together we once talked about. That is my hope—that the honest woman that I love so much is still there and is willing to fight for herself, to fight for us and to fight for the Asians with freckles she adores.

God Bless you [REDACTED] [REDACTED]

May God watch over you and protect you from all harm—even that you cause yourself.

I hope God gives you the strength to fight your addictions and the wisdom to see the truth about what the alcohol and drugs are doing to you.

I pray that God grants you the serenity and peace you will need to love yourself once again and to forgive yourself for the things your addictions have made you do.

I ask that God helps you find your way back to being the amazing, beautiful, intelligent, feisty, stubborn, strong, and devout woman He wants you to be.

Finally, may He grant you the ability to see yourself as I do and let you remember who we are to each other; let you remember the years of friendship, love and devotion we once shared; and give you the strength to make amends so we can start the future together we once talked about for a week.

All this in Jesus's name I pray.

Amen.

No comments have been added to this post yet.

Leave a comment

Name (required)

E-mail (required)

Website URI (optional)

Information for comment users

Line and paragraph breaks are implemented automatically. Your e-mail address is **never** displayed. Please consider what you're posting.

All comments are subject to review and approval before being posted on this site.

Use the buttons below to customise your comment.

Please type your comment here

Add my comment

[RSS feed for comments on this post](#) | [TrackBack URI](#)

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PLAINTIFF'S NAME

COURT NAME & ADDRESS

Stoughton District Court
1288 Central Street
Stoughton MA. 02072

DEFENDANT'S NAME AND ADDRESS

DANIEL KIM
49 FLORAL STREET
NEWTON, MA. 02461

ALIAS, IF ANY

DATE OF BIRTH
12-6-67

SEX
☒ Male ☐ Female

PLACE OF BIRTH

MOTHER'S MAIDEN NAME (FIRST & LAST)
AGNES

SOCIAL SECURITY NO.
109-60-4048

DAYTIME PHONE NO.
571-331-3621

FATHER'S NAME (FIRST & LAST)
DAESIK KIM

VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE punishable by imprisonment or fine or both.

A. THE COURT HAS ISSUED THE FOLLOWING ORDERS TO THE DEFENDANT: (only those items checked shall apply)

☒ This Order was issued without advance notice because the Court determined that there is a substantial likelihood of immediate danger of harassment. ☐ This Order was communicated by telephone from the Judge named below to:

Police Dept. _____ Police Officer _____

☒ 1. **YOU ARE ORDERED NOT TO ABUSE THE PLAINTIFF** by harming or attempting to harm the Plaintiff physically or by placing the Plaintiff in fear of imminent serious physical harm. **YOU ARE ALSO ORDERED NOT TO HARASS THE PLAINTIFF** (1) by any willful and malicious conduct aimed at the Plaintiff and intended to cause fear, intimidation, abuse or damage to property, or (2) by using force, threat or duress to make the Plaintiff engage in sexual relations unwillingly, or (3) by committing any of the following: indecent assault and battery, rape, statutory rape, assault with intent to rape (G.L. c. 265, §§ 13B, 13F, 13H, 22, 22A, 23, 24, 24B), enticing a child (§ 26C), criminal stalking (§ 43), criminal harassment (§ 43A), or drugging for sexual intercourse (G.L. c.272, §3).

☒ 2. **YOU ARE ORDERED NOT TO CONTACT THE PLAINTIFF** either in person, by telephone, in writing or otherwise, either directly or through someone else, and to stay at least 100 yards from the Plaintiff even if the Plaintiff seems to allow or request contact. The only exception to this Order is that you may send to the Plaintiff by mail or by sheriff or other authorized officer copies of papers filed with the court when that is required by statute or court rule.

☒ 3. **YOU ARE ORDERED TO REMAIN AWAY FROM THE PLAINTIFF'S RESIDENCE** located at 98 WE. HIGH ST., AVON, MA., AND 128 INDIAN MEMORIAL DR., SO. YARMOUTH, MA. and wherever else you have reason to know the Plaintiff may reside.

☐ If this box is checked, you are also **ORDERED** to remain away from the entire apartment building or other multiple family dwelling in which the Plaintiff's residence is located.

☒ 4. **YOU ARE ORDERED TO REMAIN AWAY FROM THE PLAINTIFF'S WORKPLACE** located at RANDOLPH SHOWCASE CINEMA, 73 MAZZEO DR., RANDOLPH, MA.; JL MC INTOSH, 875 WASHINGTON ST., CANTON, MA. and wherever else you have reason to know the Plaintiff may work.

☐ 5. **YOU ARE ORDERED TO COMPENSATE THE PLAINTIFF** for \$ _____ in losses suffered as a direct result of the harassment, to be paid in full on or before _____, 20____ ☐ by mailing directly to the Plaintiff. ☐ through the Court.

☒ 6. I shall not enter onto the campus of Emmanuel College - Boston. I must stay away from Emmanuel College.

B. NOTICE TO LAW ENFORCEMENT Deleted 8-15-14 RD 2 College.

1. An appropriate law enforcement officer shall serve upon the Defendant in hand a copy of the Complaint and a certified copy of this Order (and Summons) and make return of service to this court. If this box is checked ☐ service may instead be made by leaving such copies at the Defendant's address shown above but only if the police officer is unable to deliver such copies in hand to the Defendant.

2. Defendant information Form accompanies this Order. ☐ 3. Police reports are on file with _____.

☐ 4. Outstanding warrants for the Defendant's arrest: PCF No. _____ THIS SET NO. 92 DAY OF SEPT. 2014

☐ 5. An imminent threat exists of bodily injury to the Plaintiff. P.D. notified _____

I HEREBY CERTIFY THAT THIS IS A TRUE COPY, GIVEN UNDER MY HAND AND SEAL

DATE OF THIS ORDER
AUG. 10, 2011

TIME OF THIS ORDER
3:47 ☒ A.M. ☒ P.M.

EXPIRATION DATE OF THIS ORDER
8-18-11 at 4 P.M.

SIGNATURE OF CLERK
ASSISTANT CLERK

NEXT HEARING DATE

8-18-11

at 9 ☒ A.M. ☐ P.M. in Courtroom _____

FIRST OR CHIEF JUSTICE

WITNESS: RICHARD D. SAVIGNANO

A TRUE COPY ATTEST:

CLERK-MAGISTRATE ASST. CLERK

The Plaintiff must appear at scheduled hearings, or this Order will expire. The Defendant may appear, with or without an attorney, to oppose any Order. If the Defendant does not appear, the Order may be extended or modified as determined by the Judge. For good cause, either the Plaintiff or the Defendant may petition the Court to modify this Order before its scheduled expiration date. NOTICE TO DEFENDANT: If the Plaintiff is your spouse or former spouse, or you cohabit or have cohabited with the Plaintiff, the purchase and/or possession of a firearm and/or ammunition while this order is in a certain exceptions. 18 U.S.C. §§ 922(g)(9) and 925.

1A-2 (5/10)

Exp. RGP

EXHIBIT DMC
14-816
4
5-18-18

PROTECTION, EXTENSION OR TERMINATION
HARASSMENT PREVENTION ORDER
G.L. c. 258E

DOCKET NO.
1155-R0-0133

Massachusetts Trial Court
COURT NAME & ADDRESS

PLAINTIFF'S NAME

DEFENDANT'S NAME

DANIEL KIM

Stoughton District Court
1288 Central Street
Stoughton MA. 02072

☒ C. PRIOR COURT ORDER (ATTACHED) MODIFIED/EXTENDED: This modification was issued after a hearing at which the Plaintiff ☒ appeared ☐ did not appear and the Defendant ☒ appeared ☐ did not appear with counsel. The Court has ORDERED that the prior order issued on 8-10-2011 be MODIFIED as follows:
☒ The expiration date of this order has been EXTENDED (see below). ☐ OTHER MODIFICATION(S)

DATE OF THIS ORDER

TIME OF THIS ORDER

EXPIRATION DATE OF THIS ORDER

SIGNATURE/NAME OF JUDGE

8-18-11

12:33 ☐ A.M. ☒ P.M.

August 16, 2012

RDf

NEXT HEARING DATE

8-16-2012

at 9- ☒ A.M. ☐ P.M. in Courtroom

X

☒ D. PRIOR COURT ORDER (ATTACHED) MODIFIED/EXTENDED: This modification was issued after a hearing at which the Plaintiff ☒ appeared ☐ did not appear and the Defendant ☒ appeared ☐ did not appear. The Court has ORDERED that the prior order issued on 8-16-2012 be MODIFIED as follows:
☒ The expiration date of this order has been EXTENDED (see below). ☒ OTHER MODIFICATION(S)

#10 is added Re Emmanuel College.

DATE OF THIS ORDER

TIME OF THIS ORDER

EXPIRATION DATE OF THIS ORDER

SIGNATURE/NAME OF JUDGE

8-16-12

10:57 ☒ A.M. ☐ P.M.

8-16-13 at 4 P.M.

RDA

NEXT HEARING DATE

8-16-2013

at 9- ☒ A.M. ☐ P.M. in Courtroom

X

☒ E. PRIOR COURT ORDER (ATTACHED) MODIFIED/EXTENDED: This modification was issued after a hearing at which the Plaintiff ☒ appeared ☐ did not appear and the Defendant ☒ appeared ☐ did not appear. The Court has ORDERED that the prior order issued on 8-16-12 be MODIFIED as follows:
☒ The expiration date of this order has been EXTENDED (see below). ☐ OTHER MODIFICATION(S)

THIS IS A TRUE COPY GIVEN UNDER MY HAND AND SEAL
THIS 22 DAY OF Sept 2014
MARGARET S. JACO
CLERK/MAGISTRATE
ASSISTANT CLERK

DATE OF THIS ORDER

TIME OF THIS ORDER

EXPIRATION DATE OF THIS ORDER

SIGNATURE/NAME OF JUDGE

8-16-13

9:50 ☐ A.M. ☒ P.M.

8-15-14 at 4 P.M.

Maureen R. Chucci

NEXT HEARING DATE

8-15-14

at 9- ☐ A.M. ☒ P.M. in Courtroom

X

☐ F. PRIOR COURT ORDER (ATTACHED) TERMINATED

This Court's prior Order has been terminated. Law enforcement shall destroy all records of such Order. ☐ Terminated at Plaintiff's request.

DATE OF PRIOR ORDER

DATE TERMINATION EFFECTIVE

SIGNATURE/NAME OF JUDGE

DATE OF TERMINATION ORDER

TIME TERMINATION EFFECTIVE

☐ A.M. ☐ P.M.

Maureen R. Chucci

A TRUE
COPY
ATTEST:

CLERK/MAGISTRATE/ASST. CLERK

X

HA-2A (5/10)

| | | | | | |
|---|--|-------------------------------|-------------------------|---|--|
| MODIFICATION, EXTENSION OR OF HARASSMENT PREVENTIVE G.L. c. 258E | | MINATION ORDER | | Massachusetts Trial Court COURT NAME & ADDRESS Stoughton District Court 1288 Central Street Stoughton, MA. 02072 | |
| PLAINTIFF'S NAME [REDACTED] | | | | Stoughton District Court 1288 Central Street Stoughton, MA. 02072 | |
| DEFENDANT'S NAME Daniel Kim | | | | | |
| <input checked="" type="checkbox"/> C. PRIOR COURT ORDER (ATTACHED) MODIFIED/EXTENDED: This modification was issued after a hearing at which the Plaintiff <input checked="" type="checkbox"/> appeared <input type="checkbox"/> did not appear and the Defendant <input checked="" type="checkbox"/> appeared <input type="checkbox"/> did not appear. The Court has ORDERED that the prior order issued on <u>6-16</u> , 20 <u>13</u> be MODIFIED as follows: <input checked="" type="checkbox"/> The expiration date of this order has been EXTENDED (see below). <input type="checkbox"/> OTHER MODIFICATION(S) _____ <u>Workplaces amended in #4. Add Riverway Lobster House</u> <u>S. Yarmouth Episcopal Diocese of Mass - Bay State St, Boston over</u> <u>Moose Hill CSA - Moose Hill Rd. Sharon Delere, Emmanuel College & Showcase Cinema</u> | | | | | |
| DATE OF THIS ORDER | TIME OF THIS ORDER | EXPIRATION DATE OF THIS ORDER | SIGNATURE/NAME OF JUDGE | | |
| 8-15-14 | 10:14 <input checked="" type="checkbox"/> A.M. <input type="checkbox"/> P.M. | PERMANENT at 4 P.M. | X | | |
| NEXT HEARING DATE | | | | | |
| at PERMANENT <input type="checkbox"/> A.M. <input type="checkbox"/> P.M. in Courtroom _____ | | | | | |
| <input type="checkbox"/> D. PRIOR COURT ORDER (ATTACHED) MODIFIED/EXTENDED: This modification was issued after a hearing at which the Plaintiff <input type="checkbox"/> appeared <input type="checkbox"/> did not appear and the Defendant <input type="checkbox"/> appeared <input type="checkbox"/> did not appear. The Court has ORDERED that the prior order issued on _____, 20____ be MODIFIED as follows: <input type="checkbox"/> The expiration date of this order has been EXTENDED (see below). <input type="checkbox"/> OTHER MODIFICATION(S) _____ | | | | | |
| DATE OF THIS ORDER TIME OF THIS ORDER EXPIRATION DATE OF THIS ORDER SIGNATURE/NAME OF JUDGE <input type="checkbox"/> A.M. <input type="checkbox"/> P.M. at 4 P.M. | | | | | |
| NEXT HEARING DATE | | | | | |
| at _____ <input type="checkbox"/> A.M. <input type="checkbox"/> P.M. in Courtroom _____ | | | | | |
| <input type="checkbox"/> E. PRIOR COURT ORDER (ATTACHED) MODIFIED/EXTENDED: This modification was issued after a hearing at which the Plaintiff <input type="checkbox"/> appeared <input type="checkbox"/> did not appear and the Defendant <input type="checkbox"/> appeared <input type="checkbox"/> did not appear. The Court has ORDERED that the prior order issued on _____, 20____ be MODIFIED as follows: <input type="checkbox"/> The expiration date of this order has been EXTENDED (see below). <input type="checkbox"/> OTHER MODIFICATION(S) _____ <div style="text-align: right; margin-top: 10px;"> I HEREBY CERTIFY THAT THIS IS A TRUE COPY, GIVEN UNDER MY HAND AND SEAL THIS <u>23</u> DAY OF <u>SEPT.</u> 20<u>14</u> CLERK/MAGISTRATE </div> | | | | | |
| DATE OF THIS ORDER TIME OF THIS ORDER EXPIRATION DATE OF THIS ORDER SIGNATURE/NAME OF JUDGE <input type="checkbox"/> A.M. <input type="checkbox"/> P.M. at 4 P.M. | | | | | |
| NEXT HEARING DATE | | | | | |
| at _____ <input type="checkbox"/> A.M. <input type="checkbox"/> P.M. in Courtroom _____ | | | | | |
| <input type="checkbox"/> F. PRIOR COURT ORDER (ATTACHED) TERMINATED This Court's prior Order has been terminated. Law enforcement shall destroy all records of such Order. <input type="checkbox"/> Terminated at Plaintiff's request. | | | | | |
| DATE OF PRIOR ORDER | | DATE TERMINATION EFFECTIVE | | SIGNATURE/NAME OF JUDGE | |
| DATE OF TERMINATION ORDER | | TIME TERMINATION EFFECTIVE | | | |
| | | | | X | |
| | | | | | |
| A TRUE COPY ATTEST: <input checked="" type="checkbox"/> CLERK/MAGISTRATE/ASST. CLERK | | | | | |

TO ANY OFFICER OF THE POLICE DEPARTMENT TO WHICH THE COURT HAS DIRECTED THIS ORDER:

PURSUANT TO G.L. c. 250E, §§ 8-9, THIS ORDER SHALL BE ENFORCED BY ANY LAW ENFORCEMENT OFFICER IN THE COMMONWEALTH WHO IS AWARE OF, OR SHOWN A COPY OF, THIS ORDER. IF SERVICE ON THE DEFENDANT HAS NOT YET BEEN MADE, ANY LAW ENFORCEMENT OFFICER SHALL ADVISE THE DEFENDANT OF THE TERMS OF THE ORDER AND THEN SHALL ENFORCE IT.

The YELLOW COPY of this Order must be served on the Defendant immediately. Please return the GREEN COPY of this Order to the Court with your return of service prior to the next scheduled hearing date, or new service may be required. The BLUE COPY of this Order is for your records.

"Whenever a law officer has reason to believe that a person has been abused or harassed or is in danger of being abused or harassed, such officer shall use all reasonable means to prevent further abuse or harassment. Law officers shall make every effort to do the following as part of the emergency response:

- (i) assess the immediate physical danger to the victim and provide assistance reasonably intended to mitigate the safety risk;
- (ii) if there is observable injury to the victim or if the victim is complaining of injury, encourage the victim to seek medical attention and arrange for medical assistance or request an ambulance for transport to a hospital;
- (iii) if a sexual assault has occurred, notify the victim that there are time-sensitive medical or forensic options that may be available, encourage the victim to seek medical attention and arrange for medical assistance or request an ambulance for transport to a hospital;
- (iv) provide the victim with referrals to local resources that may assist the victim in locating and getting to a safe place; and
- (v) provide adequate notice to the victim of his rights including, but not limited to, obtaining a harassment prevention order.

"Upon receipt of information that an outstanding warrant exists against the named defendant, a judge shall order that the appropriate law enforcement officials be notified and shall order that any information regarding the defendant's most recent whereabouts shall be forwarded to such officials. In all instances in which an outstanding warrant exists, the court shall make a finding, based upon all of the circumstances, as to whether an imminent threat of bodily injury exists to the petitioner. In all instances in which such an imminent threat of bodily injury is found to exist, the judge shall notify the appropriate law enforcement officials of such finding and such officials shall take all necessary actions to execute any such outstanding warrant as soon as is practicable.

"Whenever the court orders that the defendant refrain from harassing the plaintiff or have no contact with the plaintiff, the clerk or clerk-magistrate shall verify and certify copies of each such order and 1 copy of the complaint and summons forwarded to the appropriate law enforcement agency, which, unless otherwise ordered by the court, shall serve 1 copy of each order upon the defendant, together with a copy of the complaint and order, and summons. The law enforcement agency shall promptly make its return of service to the court.

"Law officers shall use every reasonable means to enforce such harassment prevention orders. Law enforcement agencies shall establish procedures adequate to ensure that an officer on the scene of an alleged violation of such order may be informed of the existence and terms of such order."

G.L. c. 250E, §§ 8 & 9

RETURN OF SERVICE

I certify that I have served a copy of this Order on the Defendant named in this Order by:

- ☒ delivering a copy in hand to the Defendant.
- ☐ leaving a copy at the Defendant's last and usual address as shown in this Order.
- ☐ Other (specify):

I HEREBY CERTIFY THAT THIS IS A TRUE COPY, GIVEN UNDER MY HAND AND SEAL

THIS 22 DAY OF Sept. 2014

M. M. Caruso
CLERK/MAGISTRATE
ASSISTANT CLERK

☐ I was unable to make service because

DATE & TIME OF SERVICE

08/12/2011 / 09:00

SIGNATURE OF OFFICER MAKING SERVICE

x *[Signature]*

PRINTED NAME OF OFFICER MAKING SERVICE

Edward J. Raymond

TITLE/RANK

Det. [Signature]

POLICE DEPARTMENT

Norton P.D.

ATENÇÃO: ESTE É UM AVISO OFICIAL DO LA. COATS, DI VOSTRO NOME SARE LEGG. INGLESE, OBTENGA UNA TRADUZIONE.
ATTENTION: C'EST UNE ANNONCE OFFICIELLE DU PALAIS DE JUSTICE. SI VOUS ÊTES INCAPABLE DE LIRE ANGLAISE, OBTENEZ UNE TRADUCTION.
ATTENZIONE: IL PRESENTE È UN AVVISO UFFICIALE DAL TRIBUNALE. SE NON SAPETE LEGGERE IN INGLESE, OTTENETE UNA TRADUZIONE.
ATTENÇÃO: ESTE É UM AVISO OFICIAL DO TRIBUNAL. SE NÃO SABER LER INGLÊS, OBTENHA UMA TRADUÇÃO.
LƯU Ý: ĐÂY LÀ THÔNG BÁO CHÍNH THỨC CỦA TÒA ÁN, NẾU BẠN KHÔNG ĐỌC ĐƯỢC TIẾNG ANH, HÃY TÌM NGƯỜI DỊCH HỖ.

注意：此份表格係官方文件。如果您不諳英文的話，可向法庭官員索取中文翻譯。

TO ANY OFFICER OF THE POLICE DEPARTMENT TO WHICH THE COURT HAS DIRECTED THIS ORDER:

PURSUANT TO G.L. c. 258E, §§ 8-9, THIS ORDER SHALL BE ENFORCED BY ANY LAW ENFORCEMENT OFFICER IN THE COMMONWEALTH WHO IS AWARE OF, OR SHOWN A COPY OF, THIS ORDER. IF SERVICE ON THE DEFENDANT HAS NOT YET BEEN MADE, ANY LAW ENFORCEMENT OFFICER SHALL ADVISE THE DEFENDANT OF THE TERMS OF THE ORDER AND THEN SHALL ENFORCE IT.

The YELLOW COPY of this Order must be served on the Defendant immediately. Please return the GREEN COPY of this Order to the Court with your return of service prior to the next scheduled hearing date, or new service may be required. The BLUE COPY of this Order is for your records.

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- (i) assess the immediate physical danger to the victim and provide assistance reasonably intended to mitigate the safety risk;
- (ii) if there is observable injury to the victim or if the victim is complaining of injury, encourage the victim to seek medical attention and arrange for medical assistance or request an ambulance for transport to a hospital;
- (iii) if a sexual assault has occurred, notify the victim that there are time-sensitive medical or forensic options that may be available, encourage the victim to seek medical attention and arrange for medical assistance or request an ambulance for transport to a hospital;
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- (v) provide adequate notice to the victim of his rights including, but not limited to, obtaining a harassment prevention order.

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"Whenever the court orders that the defendant refrain from harassing the plaintiff or have no contact with the plaintiff, the clerk or clerk-magistrate shall transmit 2 certified copies of each such order and 1 copy of the complaint and summons forthwith to the appropriate law enforcement agency which, unless otherwise ordered by the court, shall serve 1 copy of each order upon the defendant, together with a copy of the complaint and order and summons. The law enforcement agency shall promptly make its return of service to the court.

"Law officers shall use every reasonable means to enforce such harassment prevention orders. Law enforcement agencies shall establish procedures adequate to ensure that an officer on the scene of an alleged violation of such order may be informed of the existence and terms of such order."

G.L. c. 258E, §§ 8 & 9

RETURN OF SERVICE

I certify that I have served a copy of this Order on the Defendant named in this Order by:

- ☒ delivering a copy in hand to the Defendant.
- ☐ leaving a copy at the Defendant's last and usual address as shown in this Order.
- ☐ Other (specify) _____

Kim, Daniel
11-133

I HEREBY CERTIFY THAT THIS IS A TRUE COPY, GIVEN UNDER MY HAND AND SEAL

THIS 22 DAY OF Sept 20 14

Maneas, Joe

CLERK/MAGISTRATE
ASSISTANT CLERK

☐ I was unable to make service because _____

DATE & TIME OF SERVICE

8/18/2011

SIGNATURE OF OFFICER MAKING SERVICE

[Signature]

PRINTED NAME OF OFFICER MAKING SERVICE

Timothy C Foley

TITLE/RANK

C.O.

POLICE DEPARTMENT

TRINL CT.

ATENCIÓN: ESTE ES UN AVISO OFICIAL DE LA CORTE. SI USTED NO SABE LEER INGLÉS, OBTENGA UNA TRADUCCIÓN.

ATTENTION: CE CI EST UNE ANNONCE OFFICIALE DU PALAIS DE JUSTICE. SI VOUS ÊTES INCAPABLE DE LIRE ANGLAISE, OBTENEZ UNE TRADUCTION.

ATTENZIONE: IL PRESENTE È UN AVVISO UFFICIALE DAL TRIBUNALE. SE NON SAPETE LEGGERE IN INGLESE, OTTENETE UNA TRADUZIONE.

ATENÇÃO: ESTE É UM AVISO OFICIAL DO TRIBUNAL. SE NÃO SABE LER INGLÊS, OBTENHA UMA TRADUÇÃO.

LƯU Ý: ĐÂY LÀ THÔNG BÁO CHÍNH THỨC CỦA TÒA ÁN, NẾU BẠN KHÔNG ĐỌC ĐƯỢC TIẾNG ANH, HÃY TÌM NGƯỜI DỊCH HỖ.

注意：此信表格係官方文件。如果您不諳英文的話，可向法庭官員索取中文翻譯。

PURSUANT TO G.L.c. 209A, § 6, THIS ORDER SHALL BE ENFORCED BY ANY LAW ENFORCEMENT OFFICER IN THE COMMONWEALTH WHO IS AWARE OF OR SHOWN A COPY THIS ORDER. IF SERVICE ON THE DEFENDANT HAS NOT YET BEEN MADE, ANY LAW ENFORCEMENT OFFICER SHALL ADVISE THE DEFENDANT OF THE TERMS OF THE ORDER THEN SHALL ENFORCE IT.

The YELLOW COPY of this Order must be served on the Defendant immediately. Please return the GREEN COPY of this Order to the Court with your return of service prior to any scheduled hearing date, or new service may be required.

The BLUE COPY of this Order is for your records.

"Whenever the court orders . . . the defendant to vacate, refrain from abusing the plaintiff or to have no contact with the plaintiff or the plaintiff's minor child, the register or clerk-magistrate shall transmit two certified copies of each such order . . . forthwith to the appropriate law enforcement agency which, unless otherwise ordered by the court, shall serve one copy of each order upon the defendant . . . The law enforcement agency shall promptly make its return of service to the court.

"Law enforcement officers shall use every reasonable means to enforce such abuse prevention orders. Law enforcement agencies shall establish procedures adequate to insure that an officer on the scene of an alleged violation of such order may be informed of the existence and terms of such order."

G.L.c.209A,§7

RETURN OF SERVICE

Daniel Kim # 1155R01
49 Federal St
Newton, MA

I certify that I have served a copy of this Order upon the Defendant named in this Order by

- ☐ delivering a copy in hand to the Defendant.
☐ leaving a copy at the Defendant's last and usual address as shown in this Order.
☐ Other (specify) _____

☐ I was unable to make service because _____

I HEREBY CERTIFY THAT THIS IS A TRUE
COPY, GIVEN UNDER MY HAND AND SEAL
THIS 22 DAY OF Sept 2014

Monica S. Bac

CLERK MAGISTRATE
ASSISTANT CLERK

SIGNATURE OF OFFICER MAKING SERVICE

DATE & TIME OF SERVICE

X

PRINTED NAME OF OFFICER MAKING SERVICE

TITLE/RANK

POLICE DEPARTMENT

Atencion: Notificación oficial del tribunal; si no entiende inglés, obtenga una traducción.
Attention: Avis officiel du tribunal, Anglais limite, veuillez faire traduire.
Attenzione: avviso ufficiale del tribunale. Chi non capisce l'inglese lo faccia tradurre.
Atenção: Este é um anúncio jurídico oficial. Mande traduzí-lo se você não compreende o Inglês.
Atenção: Es é um anúncio oficial di tribunal. Mandâ traduzil si bu ca ta entendê Inglês.
Atansyon: Se avi ofisyel Tribunal la. Fe tradwi'l souple, si'w pa kon Angle.
Внимание! Это повестка из суда. Если Вы не читаете по-английски, обратитесь к переводчику.

注意: 這是正式的法院通告。如果您不懂英語，請找人代為翻譯。
XIN CHÚ Y: ĐÂY LÀ MỘT THÔNG CÁO CHÍNH THỨC CỦA TÒA ÁN. NẾU QÚI VỊ KHÔNG BIẾT TIẾNG ANH, VUI LÒNG NHỜ NGƯỜI DỊCH.

WHO IS AWARE OF OR SHOWN A COPY OF THIS ORDER. IF SERVICE ON THE DEFENDANT BY ENFORCEMENT OFFICER SHALL ADVISE THE DEFENDANT OF THE TERMS OF THE ORDER AND THEN SHALL ENFORCE IT.

The YELLOW COPY of this Order must be served on the Defendant immediately. Please return the GREEN COPY of this Order to the Court with your return of service prior to any scheduled hearing date, or new service may be required.

The BLUE COPY of this Order is for your records.

"Whenever the court orders . . . the defendant to vacate, refrain from abusing the plaintiff or to have no contact with the plaintiff or the plaintiff's minor child, the register or clerk-magistrate shall transmit two certified copies of each such order . . . forthwith to the appropriate law enforcement agency which, unless otherwise ordered by the court, shall serve one copy of each order upon the defendant . . . The law enforcement agency shall promptly make its return of service to the court.

"Law enforcement officers shall use every reasonable means to enforce such abuse prevention orders. Law enforcement agencies shall establish procedures adequate to insure that an officer on the scene of an alleged violation of such order may be informed of the existence and terms of such order."

G.L.C.209A,§7

RETURN OF SERVICE

Manil Kim # 1155RB 133
49 Alford St
Newton, Ma


I certify that I have served a copy of this Order upon the Defendant named in this Order by

- ☒ delivering a copy in hand to the Defendant.
- ☐ leaving a copy at the Defendant's last and usual address as shown in this Order.
- ☐ Other (specify) _____

☐ I was unable to make service because _____

I HEREBY CERTIFY THAT THIS IS A TRUE
COPY, GIVEN UNDER MY HAND AND SEAL
THIS 22 DAY OF Sept. 2014

Monica S. Saco
CLERK/MAGISTRATE
ASSISTANT CLERK

| | |
|---|--|
| SIGNATURE OF OFFICER MAKING SERVICE  | DATE & TIME OF SERVICE 08/19/2013 1:30 PM HRS |
| PRINTED NAME OF OFFICER MAKING SERVICE Paul | TITLE/RANK PATROL OFF |
| | POLICE DEPARTMENT Newton PD |

Atencion: Notificación oficial del tribunal; si no entiende inglés, obtenga una traducción.
Attention: Avis officiel du tribunal, Anglais limite, veuillez faire traduire.
Attenzione: avviso ufficiale del tribunale. Chi non capisce l'inglese lo faccia tradurre.
Atenção: Este é um anúncio jurídico oficial. Mandê traduzi-lo se você não compreende o Inglês.
Atenção: Es é um anúncio oficial di tribunal. Mandâ traduzil si bu ca ta entendê Inglês.
Атэнсьон: Се авл офісьел Тiбунал іа. Фе традвілі соупле, сі'w па кон: Англе.
Вниманіе! Это повестка из суда. Если Вы не читаете по-английски, обратитесь к переводчику.
အသိပေးချက်: ဘုရားရှိခိုးရုံးမှ တရားရုံးမှ အမိန့်ချမှတ်ချက်ကို အသိပေးသည့် အမိန့်ချမှတ်ချက်ဖြစ်သည်။
XIN CHÚ Ý: BÀI LÀ MỘT THÔNG CÁO CHÍNH THỨC CỦA TÒA ÁN. NẾU QUA VÌ KHÔNG BIẾT TIẾNG ANH, VUI LÒNG NHỎ NGƯỜI DỊCH.
注意: 這是正式的法院通告。如果您不懂英語，請找人代為翻譯。

TO ANY OFFICER OF THE POLICE DEPARTMENT TO WHICH THE COURT HAS DIRECTED THIS ORDER

PURSUANT TO G.L. c. 209A, § 6, THIS ORDER SHALL BE ENFORCED BY ANY LAW ENFORCEMENT OFFICER IN THE COMMONWEALTH WHO IS AWARE OF OR SHOWN A COPY OF THIS ORDER. IF SERVICE ON THE DEFENDANT HAS NOT YET BEEN MADE, ANY LAW ENFORCEMENT OFFICER SHALL ADVISE THE DEFENDANT OF THE TERMS OF THE ORDER AND THEN SHALL ENFORCE IT.

The YELLOW COPY of this Order must be served on the Defendant immediately. Please return the GREEN COPY of this Order to the Court with your return of service prior to any scheduled hearing date, or new service may be required.

The BLUE COPY of this Order is for your records.

"Whenever the court orders . . . the defendant to vacate, refrain from abusing the plaintiff or to have no contact with the plaintiff or the plaintiff's minor child, the register or clerk-magistrate shall transmit two certified copies of each such order . . . forthwith to the appropriate law enforcement agency which, unless otherwise ordered by the court, shall serve one copy of each order upon the defendant . . . The law enforcement agency shall promptly make its return of service to the court.

"Law enforcement officers shall use every reasonable means to enforce such abuse prevention orders. Law enforcement agencies shall establish procedures adequate to insure that an officer on the scene of an alleged violation of such order may be informed of the existence and terms of such order."

G.L.c.209A,§7

RETURN OF SERVICE

Kim, Daniel

ify that I have served a copy of this Order upon the Defendant named in this Order by

- ☒ delivering a copy in hand to the Defendant.
☐ leaving a copy at the Defendant's last and usual address as shown in this Order.
☐ Other (specify) _____

I was unable to make service because _____

I HEREBY CERTIFY THAT THIS IS A TRUE COPY, GIVEN UNDER MY HAND AND SEAL THIS 22 DAY OF Sept. 20 14

Monica S. Sacc

CLERK/MAGISTRATE
ASSISTANT CLERK

| ATURE OF OFFICER MAKING SERVICE | DATE & TIME OF SERVICE |
|-----------------------------------|------------------------|
| Patrick Connolly | 8-15-14 10:20 AM |
| ED NAME OF OFFICER MAKING SERVICE | TITLE/RANK |
| Patrick Connolly | Court Off. |
| | POLICE DEPARTMENT |
| | Stoughton |

Atencion: Notificación oficial del tribunal; si no entiende inglés, obtenga una traducción.
Attention: Avis officiel du tribunal, Anglais limite, veuillez faire traduire.
Attenzione: avviso ufficiale del tribunale. Chi non capisce l'inglese lo faccia tradurre.
Atenção: Este é um anúncio jurídico oficial. Mande traduzir-lo se você não compreende o Inglês.
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Atansyon: Se avi ofisyel Tribunal la. Fe tradwi'l souple, si'w pa kon Angle.
Внимание! Это повестка из суда. Если Вы не читаете по-английски, обратитесь к переводчику.

សូមបញ្ជាក់: នេះគឺជាសំបុត្រជាផ្លូវការពីតុលាការ។ បើប្រជាពលរដ្ឋមិនយល់ភាសាអង់គ្លេសទេ សូមរកមនុស្សជួយបកប្រែ។

XIN CHÚ Ý, ĐÂY LÀ MỘT THÔNG CÁO CHÍNH THỨC CỦA TÒA ÁN. NẾU QUA VỊ KHÔNG BIẾT TIẾNG ANH, VUI LÒNG NHỜ NGƯỜI DỊCH.

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