COMMONWEALTH OF MASSACHUSETTS

Springfield District Court

2223A000803

RIAN WATERS, **Complainant**	)
AIDAN KEARNEY, **Defendant**	)

Complainant's Motion to Redetermine Issuance of a Criminal Complaint

Introduction

Now comes the complainant, Rian Waters, who respectfully requests that pursuant of G.L. c. 276, § 22 and/or G.L. c. 218, § 35, that this court redetermine the issuance of a criminal complaint, and issue a summons, and warrant for Aidan Kearney. See the attached proposed complaint.

Alternatively, under this court's inherent power I move for this court to hold an evidentiary hearing and issue subpoenas for Aidan Kearney, his two coconspiritors, and his confidant, so that I can fairly collect Article 12 exculpatory evidence for myself, and inculpatory evidence for Kearney.

Additionally, pursuant to article 114 the Massachusetts constitution, I request reasonable accommodation, that if this court denies issuing a criminal complaint, that it do so with a legal memorandum explaining why Kearney's flagrantly criminal conduct is acceptable in Massachusetts, as dealing with corruption is causing serious harm to my mental and physical health.

Table of Contents

Legal standard

"Probable cause to sustain an indictment is a decidedly low standard… Probable cause has been defined as reasonably trustworthy information sufficient to warrant a prudent man in believing that the defendant had committed or was committing an offense." Commonwealth v. Hanright, 466 Mass. 303, 311-12 (Mass. 2013) (citations omitted)

Background

In May 2018, I filed a lawsuit against Aidan Kearney for defamation in Hampden County Superior Court. (1879CV0344) Kearney made it too

dangerous to present evidence. The court told me to go to the police. I went to every available police station, and the State police told me to file a private complaint. This court cited outdated elements in 2019 to deny a criminal complaint against Kearney, so I filed a federal 42 USC 1985 witness intimidation lawsuit. (3:20-cv-30168)

On November 19th in 2021 Aidan Kearney was served with a motion for (1879CV0344) that included a note from my therapist identifying Kearney's harassment as the cause and stressor of my adjustment disorder. Aidan Kearney exploited my adjustment disorder by trying to frame me for threatening to molest and murder children. Two Coconspirators and a confidant have come forward with recorded videos of Kearney's conversations proving that Kearney orchestrated the conspiracy. Kearney has admitted publicly and privately, and even testified that the group chat messages are authentic, and he has relentlessly punished the witnesses that provided them.

Tyson Fung denied a complaint without reason on June 1st 2022. Kearney celebrated by escalating the witness intimidation.

On June 17th 2022 in Milford District Court (1966##1686) Kearney testified against Cristina Yakimowsky saying, "to clarify the court order

ordered Cristina Yakimowsky not to have anything to do with my blog, or anything like that. I was not aware of this, but for the last two years Chrissy has basically been trying to you know, she befriended me, *and attempted to use the blog to weaponize and attack Hadassah (the victim in the case)* more and torment her more, behind the scenes that way she was not the one publicly doing it she was essentially, you know feeding me stories, feeding me information about Hadassah. Helping me run the turtle boy Facebook page, she was an administrator on it. She worked for me. I mean she was an active participant in this for the last two years in spite of the court order specifically telling her to have nothing to do with me."

The judge asked "she used your business, or your day-to-day activity as an instrument against the alleged victim in the case, is that about the summary of it? Kearney responded, "that's correct."

Argument:

The witness intimidation is getting more intense with court approval.

On June 18th 2022, Aidan Kearney said, "I don't know why you thought this was a smart idea, Crissy, because you know me, and you know what I do, and you know I'm not gonna rest, you know that right? Like you own

a business, I am speaking at Crissy right now cause I know she's listening. So you own a business, you have couple kids or whatever, and a family, and it's called Royal Thermal View[1], did you think I wasn't gonna make it like my mission to take all that away from you? Did you think that?" "I'm a vindictive c***. And I'm not gonna stop, we're just beginning here. I'm not gonna stop destroying your life, just destroying it, like I am gonna take everything away from you that you love, I want you to feel as low as I did…" (Count VI) CC ¶ 61

"[W]ords do not need to be expressly intimidating, threatening, or harassing in order to fall within the meaning of intimidation. The assessment whether the defendant made a threat is not confined to a technical analysis of the precise words uttered the jury may consider the context in which the allegedly threatening statement was made and all of the surrounding circumstances." Commonwealth v. John, 43 N.E.3d 340, 347 (Mass. App. Ct. 2016) citations omitted. Kearney noted in the beginning of his threat that she knew him, and that she would know that he was going to retaliate. It is important to "consider the unique sensitivity of the recipient." *U.S. v. Fulmer, 108 F.3d 1486, 1491 (1st Cir.*

[1] Cristina Yakimowsky's business is called Royal Thermal View

1997) "[A]n eventual trial that reflects witness intimidation or jury tampering is as bad as not trial at all. " United States v. Acevedo-Ramos, 755 F.2d 203, 206 (1st Cir. 1985)

Kearney's alleged discernible purpose is irrelevant

Aidan Kearney publicly says that his threats attacking Cristina Yakimowsky are examples of his "greatest hits," and he implies that they are legal because he thinks he has just reasons for retaliating against her because she also leaked non-criminal private messages from the #BlogDat group chat. But "a statement constitutes a threat if it expresses an intention to inflict harm, loss, evil, injury, or damage on another, **regardless** of whether the person making the threat has a discernible purpose for communicating such an intention." U.S. v. Jongewaard, 567 F.3d 336, 340 (8th Cir. 2009) cert den (2010, US) 130 S Ct 1502, 176 L Ed 2d 118.

GL ch 268 S 13B does not have a discernible purpose exception, "[w]e will not add words to a specific statute that the Legislature did not put there, either by inadvertent omission or by design." Simmons v. Clerk-Magistrate, 448 Mass. 57, 64 (Mass. 2006)

I have standing to appeal all the way to The Supreme Court

Inaction under the current circumstances would run afoul with the due process and equal protection clauses of the 14th amendment. When the Supreme Court decided that "a private citizen lacks a judicially cognizable interest in the prosecution or non-prosecution of another." They did so because the "appellant ha[d] made an insufficient showing of a direct nexus between the vindication of her interest and the enforcement of the State's criminal laws." Linda R. S. v. Richard D, 410 U.S. 614, 619 (1973) A few years later the Supreme Court clarified their decision. "Upon careful reading, however, it is clear that standing was denied not because of the absence of a subject-matter nexus between the injury asserted and the constitutional claim, but instead because of the unlikelihood that the relief requested would redress appellant's claimed injury." Duke Power Co. v. Carolina Env. Study Group, 438 U.S. 59, 79 n.24 (1978) ("We continue to be of the same view and cannot accept the contention that, outside the context of taxpayers' suits, a litigant must demonstrate something more than injury in fact and a substantial likelihood that the judicial relief requested will prevent or redress the claimed injury to satisfy the 'case or controversy' requirement of Art. III")

In this case, Kearney's crimes have been preventing me from presenting evidence in multiple court cases, intimidating witnesses, and causing extreme emotional and financial damage to me and all my witnesses in a direct violation to my 14th amendment right to a fair trial, and my 9th amendment right to protection in the courts, which certainly is an injury in fact. If Aidan Kearney is charged for threatening to cause emotional damage to my witnesses, my injury will be redressed because it will become safe and fair for me to depose witnesses and present evidence in court. "It is well established that a procedural rule that unreasonably precludes the vindication of constitutional rights itself raises serious constitutional questions." Davis v. United States, 411 U.S. 233, 256-57 (1973) "It is a settled and invariable principle, that every right, when withheld, must have a remedy, and every injury its proper redress." Marbury v. Madison, 5 U.S. 137, 147 (1803)

Additionally, the non-prosecution of Aidan Kearney has emboldened him to commit even more heinous crimes and he has promised that he will not stop until my witnesses are destitute or in jail. "[T]he guaranty was intended to secure equality of protection not only for all but against all similarly situated. Indeed, protection is not protection unless it does

so. Immunity granted to a class, however limited, having the effect to deprive another class, however limited, of a personal or property right, is just as clearly a denial of equal protection of the laws to the latter class as if the immunity were in favor of, or the deprivation of right permitted worked against, a larger class." Universal Adjustment Corp. v. Midland Bank, Ltd., of London, 281 Mass. 303, 322 (Mass. 1933) ("The question to be determined in every case is whether citizens, aliens, nonresidents, or corporations are singled out for special hostile or *favorable* discrimination.")

I have a Constitutional right to safety in the court

The First Amendment's right to litigation, the Ninth Amendment's reservation of unenumerated rights to the people, and the Fourteenth Amendment's rights to due process and equal protection imply a concomitant right to protection in the courts. All courts are bound by the Constitution, including this one. Marbury v. Madison, 5 U.S. 137, 180 (1803) "[A] provision of the Bill of Rights which is 'fundamental and essential to a fair trial' is made obligatory upon the States by the Fourteenth Amendment." Gideon v. Wainwright, 372 U.S. 335, 342 (1963) "[S]tate courts have the solemn responsibility equally with the

federal courts to safeguard constitutional rights." Burt v. Titlow, 571 U.S. 12, 19, 134 S. Ct. 10, 15, 187 L. Ed. 2d 348 (2013)

The Massachusetts Constitution says that this specific right was already included in the Massachusetts Constitution, even though it had not yet been specifically mentioned. "No proposition inconsistent with any one of the following rights of the individual, as at present declared in the declaration of rights, shall be the subject of an initiative or referendum petition… the right of access to *and protection in courts of justice*…" Massachusetts Constitution 48, Init., Pt. 2, § 2

"One purpose of ALM GL c 268 § 13B is protection of participants in judicial proceedings and thereby protection of public interest in due administration of justice." Commonwealth v. Burt (Mass. App. Ct. Apr. 5, 1996) "It is essential to the preservation of the rights of every individual, his *life, liberty*, property, and *character*, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as free, impartial and independent as the lot of humanity will admit." Mass. Const. Pt. 1, art. XXIX

"Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty and property, according to standing laws." Mass. Const. Pt. 1, art. X

"Every subject of the commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. *He ought to obtain right and justice freely*, and without being obliged to purchase it; completely, and without any denial; promptly, and without delay; *conformably to the laws."* Mass. Const. Pt. 1, art. XI

"From these provisions, it necessarily follows that courts of general jurisdiction have the inherent power to do whatever may be done under the general principles of jurisprudence to insure to the citizen a fair trial, whenever his *life*, *liberty*, property or *character* is at stake." O'Coin's, Inc. v. Treasurer of the County of Worcester, 362 Mass. 507, 509-10 (Mass. 1972) "Every judge **must** exercise his inherent powers as necessary to secure the full and effective administration of justice." Commonwealth v. O'Neil, 418 Mass. 760, 764-5 (Mass. 1994) ("[T]he power of the judiciary to control its own proceedings, *the conduct of participants*, the actions of officers of the court and the environment of the court is a power

absolutely **necessary** for a court to function effectively and do its job of administering justice.")

"The administration of justice by an impartial judiciary has been basic to our conception of freedom ever since Magna Carta. It is the concern not merely of the immediate litigants. Its assurance is everyone's concern, and it is protected by the liberty **guaranteed by the Fourteenth Amendment.** That is why this Court has outlawed mob domination of a courtroom, mental coercion of a [Plaintiff and his witnesses"] Bridges v. California, 314 U.S. 252, 282 (1941) citations omitted.

The witness intimidation statute has been amended.

In 2019, at the end of a hearing after all the evidence was presented and argued this court sua sponte argued that civil witnesses were not protected by the GL 268 13B. The law has been expanded to civil cases since 2010. "[A]n official title to an act does not control the plain provisions of the statute, and, if there is any variation between the title and the body of the statute, the latter governs." Commonwealth v. Muckle, 90 Mass. App. Ct. 384, 392 (2016)

The court also sua sponte argued that it did not think that I was intimidated. “Mass. Gen. Laws ch. 268, § 13B punishes anyone who ‘willfully [attempts]’ to intimidate a witness; it does not require that the intimidation be successful.” Commonwealth v. Robinson, 444 Mass. 102, 102 (2005) “The Commonwealth does not need to prove that the victim of witness intimidation was actually intimidated or frightened.” Commonwealth v. Nordstrom, No. 20-P-1192, (Mass. App. Ct. Nov. 23, 2021)

The group chat messages were authored by Kearney and are admissible for evidence.

"Before admitting an electronic communication in evidence, a judge must determine whether sufficient evidence exists 'for a reasonable jury to find by a preponderance of the evidence that the defendant authored' the communication. Evidence may be authenticated by direct or circumstantial evidence, including its appearance, contents, substance, internal patterns, or other distinctive characteristics" Commonwealth v. Middleton, No. 20-P-1278, 5 (Mass. App. Ct. Mar. 7, 2022) (citations omitted)

First, Kearney has publicly posted several screenshots of the #BlogDat group chat, and he has given screenshots to the District Attorney to prove that Cristina conspired to intimidate a victim in another court case. (RA 45-46) CC ¶ 30

Second, Kearney sent Shannon Labarre a screenshot of the #BlogDat group chat during the conspiracy from his perspective (Chrissy's messages are in grey on the left in (Exhibit D 02) (RA. 24) instead of being in blue and on the right like in (Exhibit A 07), and Kearney's messages are in blue on the right, instead of as Clarence in grey on the left.

Third, on November 19th 2021 Kearney uploaded my motion signed by the sheriff, into the #BlogDat group chat about 30 minutes after the sheriff served him and left his house. Exhibit B (RA 13-14)

Forth, on November 19th at 11:42 PM, I emailed screenshots of the fake profile and fake threats to Kearney's lawyer Ryan McLane, and Facebook lawyers, and I asked Facebook to investigate the crime. McLane forwarded my e-mail to Kearney on November 20th at 12:16 AM, and said "Bro it's getting worse." Kearney forwarded the e-mail that only he had access to into the #BlogDat group chat at 10:19 AM on November 20th. Exhibit F 1-2 (RA. 36)

Fifth, the November 19th, 2021, threats are part of a pattern of consistent threats against children and or harassment after court filings and before court hearings, and just like all of Kearney's other threats the threats were exceptionally heinous.

Sixth, Kearney admitted to the Holden police that he was the only one who had access to the Clarence Woods Emerson Facebook account (RA. 21) that was in the group chat. (RA 19-20) At first, Kearney told the police that there is no way anyone could have certain information without hacking his Clarence Woods Emerson account, but after Cristine came forward, Kearney admitted to the police that he sent the information in the BlogDat group chat. (Exhibit C) (RA 20 at 3)

Seventh, the coconspirators can testify to the group chat messages authenticity.

"[U]nlike former in-court testimony, co-conspirator statements 'provide evidence of the conspiracy's context that cannot be replicated, even if the declarant testifies to the same matters in court,' Also, given a declarant's likely change in status by the time the trial occurs, simply calling the declarant in the hope of having him repeat his prior out-of-court statements is a poor substitute for the full evidentiary significance

that flows from statements made when the conspiracy is operating in full force.

Second, we observed that there is little benefit, if any, to be accomplished by imposing an 'unavailability rule.' Such a rule will not work to bar absolutely the introduction of the out-of-court statements; if the declarant either is unavailable, or is available and produced for trial, the statements can be introduced." White v. Illinois, 502 U.S. 346, 354, 112 S. Ct. 736, 742, 116 L. Ed. 2d 848 (1992)

Shannon and Cristina are clearly witnesses, and I was attending a motion hearing.

Kearney committed the crimes in count one and two as a direct response to being served on November 19th with a short order notice to appear at a motion hearing on December 2nd (CC ¶ 15, 38)

Aidan Kearney testified that Cristina Yakimowsky worked for him for two years and that she used his blog to intimidate the victim of a different criminal case. (CC ¶ 30) To prove this, Kearney presented to the Milford District Court screenshots between him and Cristina from their #BlogDat group chat. Cristina released videos of the same #BlogDat group chat showing that he tried to frame me for threatening his children

to obstruct our court case. Cristina was also identified by the Holden police as an "inner circle" member of Kearney's organization.

Kearney sent Shannon a screenshot of the conspiracy group chat from his perspective showing he has access to the account the orchestrated the conspiracy, and at a minimum, Kearney admitted to Shannon that he presented falsified evidence and was a coconspirator with Crissy in an attempt to frame me for threats against his children, and he admitted to her that he presented the fake threats to the court knowing that I did not send them. "The term 'witness' is broadly used to characterize an individual with information that is pertinent to an investigation or case and is often used interchangeably with 'potential witness.' See Commonwealth v. Rakes, 478 Mass. 22, 41, 82 N.E.3d 403 (2017) (describing individuals who might testify in future as 'witnesses' and 'potential witnesses')" Commonwealth v. Brown, 479 Mass. 163, 167 (Mass. 2018) "The Commonwealth was not required to prove that an actual crime had occurred or that a criminal investigation was in progress when the alleged intimidation occurred." Commonwealth v. Fragata, No. SJC-12330, 10-11 (Mass. Jul. 18, 2018)

Kearney clearly misled a clerk to delay a criminal proceeding.

Kearney lied to the clerk saying that he had no idea what the allegations were. Kearney was informed and neglected an opportunity to deny the allegations and exhibits in four courts,[2] and publicly he says he stands by everything he said in the #BlogDat group chat. This lie is not only an obvious factor in the court's decision to delay the preceding, but the lie also would reasonably mislead anyone into thinking that Kearney was denying the allegations. Kearney also misled the clerk into thinking that my past lawsuits were all dismissed as frivolous by falsely stating so, and "intentionally omitting [the fact that 1879CV0344 had been reversed on appeal] from a statement and thereby causing a portion of such statement to be misleading" Commonwealth v. Paquette, 475 Mass. 793, 799 (Mass. 2016) "It is well established that a criminal defendant's right to testify does not include the right to commit perjury… The fact that respondents were not under oath is irrelevant, since they were not charged with perjury, but with making false statements [misleading a clerk, is] a charge that does not require sworn statements." LaChance v. Erickson, 522 U.S. 262, 263 (1998)

[2] US. Supreme 21A626, Hampden County Superior 1879CV0344, First Circuit 21-1582, Fed. Mass District 3:20-cv-30168 Each court denied motions without reaching the merits of the threats.

Timing shows intent

Kearney sent the pedophile and murder threats on November 19th 2021, the same exact day that he got a short order notice to show up to a court hearing on December 2nd 2021. Kearney filed a malicious harassment order and committed perjury to try to frame me for his crime the day before a court hearing. On June 18th, 2022, Kearney threatened the witness that had provided evidence for a motion hearing on June 28th 2022. "The timing of the defendant's actions makes it more, rather than less, likely that he was trying to intimidate [or punish] the witness." Commonwealth v. Robinson, 444 Mass. 102, 109, 825 N.E.2d 1021 (2005).

Respectfully submitted under the pains and penalties of perjury

/S/ Rian Waters
(530)739-8951 Watersrian@gmail.com Dated: 8/25/2022