

**COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT**

No. SJC-13373

**RIAN WATERS,
Appellant/Complainant**
v.

**AIDAN KEARNEY,
Appellee/Defendant**

Single Justice	# SJ-2022-0432
Springfield District Court	# 2223AC000803
Boston Municipal Court	# 2201AC003838

Appellant brief

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Statement of issues

Whether I have standing to appeal the court's unintelligible refusal to issue a criminal complaint, when the crime is against justice, and my safety, prosperity, and a fair trial is dependent on the state's prosecution.

If so, whether it was an abuse of discretion for the district court and BMC to approve of obvious crimes that are violating Constitutional Rights without any intelligible reason, and for the Single Justice to affirm their denials without any intelligible reason.

Statement of the case

The Springfield District Court cited outdated elements in 2019 as a pretext to unintelligibly deny issuing a criminal complaint against Kearney. Vol V 159 I filed a well written redetermination motion, Vol V 172-179, but it was denied without explanation by now retired John Payne. Vol V 160 I asked for an explanatory memorandum, Vol V 185-6, and that Payne at least cite what element of the statute needed evidence, he denied that too. Vol V 161-2

On November 19th, 2021, the same day Kearney was served with a short order notice for a motion in 1879CV0344, (Vol III 115) Aidan

Kearney conspired with four others in a Facebook group chat titled “#BlogDat, to frame me for sending rape and murder threats to his children. Vol III 134-5; Vol III 106-9

“On January 15th, 2022, Aidan Kearney willfully and directly (i) threatened and attempted to cause an emotional or economic injury and/or property damage (A) to witness/ potential witness Cristina Yakimowsky. Alternatively, on January 15th, 2022, Aidan Kearney, (iii) intimidated and/or harassed (A) Cristina Yakimowsky.” Vol III 088-90

On March 25th, 2022, I filed an application for a criminal complaint over the November 19th fake threat conspiracy, and January 15th threats. Vol III 102 A hearing on the matter was scheduled for April 13th, 2022.

On April 7th, 2022, Kearney filed a secret ex parte motion pretending to not know what the allegations were so that he could delay the proceeding. Vol III 094 The Springfield District Court not only accepted Aidan Kearney’s e-mail motion, but they ruled on it and granted a continuance to May 25th, 2022, without giving me notice or an opportunity to respond. Vol III 104

Kearney did not appear or deny any allegations at the hearing, but on June 1st, 2022, the clerk denied the application without reason. (Vol iii 103)

“On June 18th, 2022, Aidan Kearney willfully and directly (i) threatened and attempted to cause an emotional or economic injury (A) to witness/ potential witness Cristina Yakimowsky with the intent to or with reckless disregard for the fact that it may; (1) impede, obstruct, delay, prevent or otherwise interfere with (1879CV0344)” Vol II 45-7

I filed a motion pursuant of G.L. c. 276, § 22 and/or G.L. c. 218, § 35, asking the court to redetermine the issuance of a criminal complaint, and issue a summons, and warrant for Aidan Kearney. To avoid conclusory decision, I included a verified proposed complaint that spelled out the claims like I just did. Vol III 85-101

I also alternatively moved, “under th[e] court’s inherent power” for the “court to hold an evidentiary hearing and issue subpoenas for Aidan Kearney, his two coconspirators, and his confidant, so that I can fairly collect Article 12 exculpatory evidence for myself, and inculpatory evidence for Kearney.” Vol III 058

The District Court again approved of Kearney's undenied crimes without any intelligible reason other than noting that courts "have uniformly held that the denial of a complaint creates no judicially cognizable harm." quoting *Bradford v. Knights*, 427 Mass. 748, (1998) Vol III 057

Cristina Yakimowsky [was] a primary/potential witness for SJC-13328, as I requested that the SJC hold evidentiary hearings and subpoena her to testify.

On October 10th, 2022, Aidan Kearney said that he was going to make Cristina Yakimowsky feel the way he felt when he was in his garage and wanted to kill himself.¹ Vol II 45

In response I filed a complaint in the Boston Municipal Court. "COUNT I : Threatening to cause a witness an emotional injury. GL CH 268 13B (i)(A)(1) "On October 10th, 2022, Aidan Kearney willfully and directly (i) threatened to cause an emotional injury (A) to witness/potential witness Cristina Yakimowsky with the intent to or with reckless disregard for the fact that it may; (1) impede, obstruct, delay, prevent or otherwise interfere with (SJC-13328)" I.d.

¹ <https://youtu.be/0A3sJXeejfU?t=6141>

On November 14th, 2022, I had a 5 minute and 39 second conversation with Boston Municipal Court clerk's office requesting the court issue witness subpoenas for both Aidan Kearney and Cristina Yakimowsky. An assistant clerk conferred with a superior, and then told me that the court said that they will not issue a subpoena for a criminal show cause hearing. Vol I 024

On December 1st we had a show cause hearing, and Kearney closed his argument by asking about a child that he has been trying to identify so that he can destroy her future simply because she gave me a hug. Vol I 025 Kearney knew that because of his history attacking children that trying to identify the child would stress my adjustment disorder and prevent me from thinking clearly. Vol V 171; Vol III 116

The court then said I was only allowed to respond with one argument, and after allowing Kearney to speak freely the clerk said that I had to choose an argument relevant to the October 10th threat. As I started making an argument the court let Kearney yell over me, I asked that I be given a chance to speak and I do not feel I was given a meaningful one. Vol I 25

I filed a written motion requesting that the court make the record open to the public. Vol II 49-51 At the start of the hearing Kearney asked the court if he could record the hearing and distribute the proceeding publicly.

On December 2nd 2022 the Boston Municipal Court unintelligibly denied issuing a criminal complaint. I asked the court about getting the recording and transcript to identify perjury, and the court said that no probable cause was issued, so I am therefore not allowed access to the recording. Vol I 24

I filed a 211 3 petition in the Single Justice on November 8th 2022, Vol I 5-21. I argued that the petition was timely because it was not ripe until the court denied my other petition on 11/3/2022, SJC-13328, as the possibility of effective relief made it that I did not have an interest in Kearney's prosecution. Vol I 10

On December 6th, 2022, I moved in a single justice for the court to supplement the petition and include due process challenges over the handling of the show cause hearing in the Boston Municipal Court. Vol I 22-38 On December 7th, 2022, the Single Justice allowed my motion to

supplement the petition but denied the petition without any intelligible reason. Vol I 4

On December 8th, 2022, Aidan Kearney alleged that he somehow had a copy of the recording. Kearney used the recording to advertise his subscription service, Kearney also noted that he was preventing me from accessing the evidence. Vol IV 156

Statement of facts

Kearney said that the fake profile was up for about 15 minutes before Facebook took it down, Vol III 141 which proves that Kearny knew when the fake Facebook profile was created, and when it was removed by Facebook. Vol III 083

On June 10th, 2022, Kearney posted a picture of one of my motions in 1879cv0344 identifying Cristina Yakimowsky as a witness and he directed his followers on Facebook to harass her and her company. Vol III 143

On June 17th, 2022, in Milford Mass. District Court (1966CR1686) Kearney testified against Cristina Yakimowsky stating under penalties of perjury that Yakimowsky “worked” for him and that she was “an active participant” with his blog for over two years. Vol II

044 Vol III 084 On June 18th, 2022, Kearney claimed that he gave the DA's office #BlogDat screenshots as evidence that she intimidated the victim in her criminal case. Vol II 043-44; Vol III 145-7

On June 17th, 2022, Kearney was served with a witness subpoena to appear on June 28th, 2022, for a hearing on a motion for sanctions and or default (1879CV0344) Vol III 149-150

On June 18th, 2022, Aidan Kearney hosted a video on YouTube titled "Ep #493 – Worcester Softball Mom | Easton Trump Store Attack | Drag Queen | Is Chrissy Going to Jail?" which can be found here https://youtu.be/85Ch9_jAGG8?t=7676 In the video Kearney said;

a. "I don't know why you thought this was a smart idea, Chrissy, 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 to Chrissy right now cause I know she's listening. So, you a business, you have couple kids or whatever, and a family and it's called Royal Thermal View, did you think I wasn't gonna make it like my mission to take all that away from you? Did you think that?"

b. "Yeah Chrissy, you are going to – – I am never going to stop until you are destitute, until you are in jail. I'm not going to break any

laws to do it. I'm not going to threaten you, I'm just going to do what I always do, I am going to remind you every ***** day, when you're alone, and sad, and crying, that you were the dumbest ***** person, who made the biggest mistake of your life when you decided to f*** with me, me of all people, me the most vindictive ***** on the planet, and you're like I'm gonna go f*** with that guy. That's a mistake girl, cause where is crusty panties? She's not protecting you anymore..."

c. Your business is going to severely suffer from this, when I contact every single one of your customers and let them know that — any conversation that they have with you on the phone was likely recorded. Because that's what you are, you're a convicted wiretapper and your lawyer has, you're gonna lose your lawyer now too, you are losing everyone, cause that's what I do to people, Chrissy, who ***** with me, and maliciously, I don't take it on the chin, I'm not one of those people that just moves on, I'm a vindictive ***** . 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 in early January when I found out that you betrayed me. I want you to feel that pain, and you're gonna feel it."

d. “I will not stop until you beg for mercy, and then I’m going to do it twice as much, you’re gonna feel the way I felt when I was in my garage when I wanted to kill myself.”

The witness got everyone in the group chat to identify themselves to police. Kearney admitted to the police that he was the only one with access to the Clarence Woods Emerson account that was in the #BlogDat group chat. Vol III 119- Vol III 120

Neither Kearney nor the Springfield District Court argued any facts or law to imply Kearney could be innocent, or that his acts were somehow not violative of my Constitutional rights. Vol III 55-57

If there was a legitimate argument that suggests Kearney is innocent, or that witness suppression is Constitutionally tolerable, I am not aware of it, and I still have not received notice of that argument.

If any court gave me notice of its reasoning, it would give me a realistic opportunity to seek alternative relief.

Kearney has said the best way to respond to lawsuits is to attack the litigant’s friends and family, so they pressure the litigant to stop. Vol I 28 “Find out everything about them. Learn what their vulnerabilities are. Attack that. Don't even go after them go after their employers,

friends, and people they love. Those unrelated parties won't want to deal with it and will begin to pressure them to stop ruin their lives as best as you can and make them regret the day, they ever thought it was a good idea to poke you.” Vol III 084

On July 11th, 2019, Kearney said he would harass anyone that hired me. Vol I 028; Vol V 168

As a result of Massachusetts courts bending over backwards to silence my witnesses, I filed a federal lawsuit in California. Waters v. Meta Platforms Inc. et al, 5:23-cv-00643 NC.

Summary of Argument:

Stare decisis must yield to Constitutional demands. *infra* 24
Abstention under the current circumstances would run afoul with the due process and equal protection clauses of the 14th amendment, as Kearney has made it abundantly clear that I cannot safely have witnesses, Supra 14-16, a job, or a driver's license until he is in jail. *Infra* 24-26

My safety prosperity and happiness, and my 14th Amendment right to have a fair trial demand that Kearney be held accountable for his on-going crimes against justice. Vol I 009

Due process also requires that I get notice of the reasoning behind the failure to prosecute, *infra* 28. because he has been using flagrant crime to prevent me from being reasonably employed and prevent me from having a fair opportunity to name or use witnesses since 2019 in civil case 1879CV0344.

The evidence in this case unquestionably established threats, *infr*. 30, to cause emotional and financial damage to a witness, *infra* 33, with timing routinely showing intent *infra* 34 to obstruct court cases. It is also unquestioned that the person responsible for the threats to my witnesses is Kearney, unintelligible denials show bias. *Infra* 29 Vol III 071; III 143

Argument:

Reasons relief is appropriate pursuant to g. L. C. 211, § 3 part 2

Unintelligible decisions with this defendant is a systemic problem. E.g., 1879CV0344. I have an interest in knowing that my other related disputes can be resolved in Massachusetts courts without collateral damage.

“[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) “The public welfare demands that the

agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud.” Hazel-Atlas Co. v. Hartford Co., 322 U.S. 238, 246 (1944) “[A] systemic issue affecting the proper administration of the judiciary has been presented, resolution of the issue by this court is appropriate...” Simmons v. Clerk-Magistrate, 448 Mass. 57, 61 (Mass. 2006)

This is a matter of public concern

“For two or more to confederate and combine together to commit or cause to be committed a breach of the criminal laws is an offense of the gravest character, sometimes quite outweighing, in injury to the public, the mere commission of the contemplated crime. It involves deliberate plotting to subvert the laws, educating and preparing the conspirators for further and habitual criminal practices. And it is characterized by secrecy, rendering it difficult of detection, requiring more time for its discovery, and adding to the importance of punishing it when discovered.” United States v. Rabinowich, 238 U.S. 78, 35 S.Ct. 682, 59 L.Ed. 1211 (1915)

Confidence in the judiciary is eroded if judicial decision-making is perceived to be subject to inappropriate outside influences. Unchecked

“instances of witness intimidation create the perception that the law cannot protect its citizens and thereby undermines public confidence in the police and government. If individuals believe that they cannot be adequately protected, they are less likely to cooperate with the police,” (and Plaintiff’s) “which in turn impedes the ability of the police to gather evidence in attempt to stop criminal behavior. Thus, the cycle is vicious and invidious...

Community intimidation is characterized by an atmosphere of fear and noncooperation with the police. It is generated by a history of community members witnessing incidents of gang violence, crimes, and retaliation against cooperating witnesses. Each instance of witness intimidation by gang violence or threat of violence reinforces the perception that cooperation with the ~~criminal~~ justice system is dangerous.”²

Kearney is not making numbers out of thin air when he says that he is not worried about getting in trouble because “90% of court clerks support [him.]” Vol II 050 Kearney regularly helps judicial officials punish people without due process of the law. Vol I 020 This practice is

² ARTICLE: Balancing the Anonymity of Threatened Witnesses Versus a Defendant's Right of Confrontation: The Waiver Doctrine After Alvarado, 39 San Diego L. Rev. 1165, 1195-1196

dangerous as it gives him leverage that prevents courts from being able to rule against him.

“Outsourcing has come into vogue at all levels of government as a means of cutting costs; but farming out public functions to private contractors does not relieve state or local governments of their Fourteenth Amendment [duties.]” *Dunn v. Washington County Hosp*, 429 F.3d 689, 695 (7th Cir. 2005) “[N]o one has constitutional protection in engaging in organized crime or in corrupt practices in government.” *Sheridan v. Gardner*, 347 Mass. 8, 17 (1964) “We set up government by consent of the governed, and the Bill of Rights denies those in power any legal opportunity to coerce that consent. Authority here is to be controlled by public opinion, not public opinion by authority.” *Board of Education v. Barnette*, 319 U.S. 624, 641 (1943)

I have standing to vindicate constitutional rights.

On the surface I am the complainant in this case, but my safety, prosperity and 14th Amendment right to due process is/was reliant on these courts issuing a fair and impartial decision. Vol III 066

Currently in Massachusetts a private citizen automatically “lacks a judicially cognizable interest in the prosecution of another, appellate

courts have consistently declined to review, under the authority given by Mass. Gen. Laws ch. 211, § 3, refusals to issue complaints.” *Bradford v. Knights*, 427 Mass. 748, (1998) But this automatic conclusion of a lack of interest has little support in case law, and it is plainly unconstitutional.

“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)

The *Bradford* Court cited *Whitley v. Commonwealth*, 369 Mass. 961, 962 (Mass. 1975) as the source of that precedent. The *Whitley* court grounded their decision with a cherry-picked citation of *Linda R.S. v. Richard D.* 410 U.S. 614, 619 (1973). When the Supreme Court decided in *Linda* that “a private citizen lacks a judicially cognizable interest in the prosecution or non-prosecution of another.” They did so because that particular “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 concomitant 9th amendment right to protection in the courts, which certainly is an injury in fact. Vol I 017; Vol III 066

Additionally, the Whitley Court had reasoned their decision with the fact that “if aggrieved, [the Complainant could] have recourse to relief through administrative procedures or civil suit. It may further be stated that there is nothing before us which indicates any impropriety in

the failure to issue process in th[o]se cases.” Whitley v. Commonwealth, 369 Mass. 961, 962 (Mass. 1975)

In this case every charge in the proposed criminal complaint is for a crime against justice that is preventing me from having recourse to a constitutionally fair civil suit. Vol III 066-100 The courts are consistently having ex parte conversations with Kearney Vol III 104 and allowing violations to my rights without any intelligible excuse. Vol I 4; Vol II 41;

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. Vol II 046

“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)

Stare decisis must yield to Constitutional demands

“The force of stare decisis is at its nadir in cases concerning procedural rules that implicate fundamental constitutional provisions.” Doe v. Sex Offender Registry Bd., 41 N.E.3d 1058, 1062 (Mass. 2015) quoting Alleyne v. United States, – U.S., 133 S.Ct. 2151, 2163 n. 5, 186

L.Ed.2d 314 (2013) “Stare decisis, while an unquestionably important pillar of our judicial system, does not require slavish adherence to unconstitutional precedent.” *Hancock v. Commissioner of Education*, 443 Mass. 428, 470 (Mass. 2005) Citations omitted.

“Stare decisis is not an inexorable command; rather, it is a principle of policy and not a mechanical formula of adherence to the latest decision. This is particularly true in constitutional cases.” *Id.* At 471 “[W]here the Constitution commands it, stare decisis must yield.”) *Id.* At 472. “[A] law repugnant to the constitution is void; and that courts, as well as other departments, are bound by that instrument.” *Marbury v. Madison*, 5 U.S. 137, 180 (1803) “Any departure from [the Court’s Constitutional obligations], therefore, is not the kind of inconsistency that must be followed in the name of stare decisis. Where the reasons for departing from precedent outweigh the factors that favor adherence to it, we can and should acknowledge our past mistakes and cease perpetuating them.” *Commonwealth v. Rossetti*, 489 Mass. 589, 609-10 (Mass. 2022) “When new insight reveals discord between the Constitution’s central protections and a received legal stricture, a claim to liberty must be addressed.” *Obergefell v. Hodges*, 576 U.S. 644, 664, 135 S. Ct. 2584, 2598, 192 L. Ed. 2d 609 (2015)

I have a Constitutional right to safely have witnesses in court.

There are “fundamental requirements of fairness which are of the essence of due process in a proceeding of a judicial nature. Those requirements relate not only to the taking and consideration of evidence but also to the concluding, as well as to the beginning and intermediate, steps in the procedure.” *Morgan v. United States*, 304 U.S. 1, (1938) 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 for witnesses who are participating in court proceedings.

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 *Emphasis added*

“It may be that it is the most obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure... It is the duty of courts to be

watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon.” Coolidge v. New Hampshire, 403 U.S. 443, 454, 91 S. Ct. 2022, 2031, 29 L. Ed. 2d 564 (1971)

I should have gotten notice of opposing arguments

It is a violation of my due process rights to approve of obvious crimes that are causing violations to my constitutional rights without informing me of the reasoning. If any court identified a perceived deficiency, I could have cured it or explained their miscomprehension. Each court case is the result of the last court’s abstention

“[I]t is equally essential in order that litigants may not be surprised on appeal by final decision there of issues upon which they have had no opportunity to introduce evidence.” Hormel v. Helvering, 312 U.S. 552, 556 (1941) If the Court identified a policy issue, I would know not to waste any more effort presenting evidence, and I could use the decision to address Kearney’s next crime. “[A] court should let the parties and an appellate court know why it acts, and on what factual basis.” Ben David v. Travisono, 495 F.2d 562, 563 (1st Cir. 1974) “Where no judicial resources have been spent on the resolution of a question, trial courts must be eroding the principle of party presentation so basic to our system

of adjudication.” Arizona v. California, 530 U.S. 392, 412-13 (2000) “It would be reckless to affirm on a ground that the appellant had never had a chance to address because the appellee had failed to raise it.” Frederick v. Marquette Nat. Bank, 911 F.2d 1, 2 (7th Cir. 1990)

Decisions approving of Kearney’s crimes were patently discriminatory, arbitrary or pretextual

Since neither the court nor Kearney can come up with an intelligible excuse for why his threats are legal, its obvious that the decisions were patently discriminatory, arbitrary or pretextual, and therefore not in the public interest.

Imagine you get a traffic ticket upon being pulled over, and you ask the officer why, and he says; “I don’t have to tell you anything because a driver has no right to appeal my decision.” With careful reading that is the only factual reasoning Springfield has ever given me for their decision, Vol. III 57, which is notably better than what the BMC gave. Vol. III 41

The Single Justice’s decision, Vol I 4, and this court’s last decision with this Defendant are not any more intelligible. SJC-13328

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)

Kearney’s threats obviously intended to cause financial and emotional damage, and thereby prevent a fair trial.

Kearney’s threats to harass my witness’s customers and make her want to commit suicide, *Supra 14-16* (the day after he was served with a witness subpoena, Vol III 150 and ten days before a hearing discussing the witness’s evidence Vol III 149) obviously violates Gl ch 268 S 13B “[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.

“[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. Vol II 046 It is important to “consider the unique sensitivity of the recipient.” *U.S. v. Fulmer*, 108 F.3d 1486, 1491 (1st Cir. 1997) “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) “[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)

“The target[s] of public shaming lose their jobs, and those not yet targeted adjust their own public and perhaps even private speech to avoid being the next national pariah. In a regime where both financial and

social possibilities hinge on employment, to be rendered not just temporarily unemployed but unemployable is a fate not substantially better than imprisonment. Social media can punish those deemed offensive more severely than any formal sentence for a speech violation ever could in the United States. The best strategy for most reasonably risk-adverse people will hit upon to deal with this ominous threat to their livelihoods is to shut up.” Koganzon, Rita. “The Politics of Digital Shaming.” *The New Atlantis*, no. 45, 2015, pp. 118–26. At 124

“It is important, in applying constitutional principles, to interpret them in light of the fundamental interests of personal liberty they were meant to serve. Respect for these principles is eroded when they leap their proper bounds to interfere with the legitimate interest of society in enforcement of its laws.” *Couch v. United States*, 409 U.S. 322, 336, 93 S. Ct. 611, 620, 34 L. Ed. 2d 548 (1973)

“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.*, 281 Mass. 303, 306 (1933)

Cristina was clearly a witnesses.

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. (Vol III 083-4) To prove this, Kearney presented to the Milford District Court screenshots between him and Cristina from their #BlogDat group chat. Vol II 043; Vol III 145 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. Vol III 082 Cristina was also identified by the Holden police as an “inner circle” member of Kearney’s organization. Vol III 120

“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)

Timing shows intent and/or reckless disregard

Kearney has been nearly consistent in harassing me before court hearings since 2019. Vol V 171 and 177. 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. Vol III 077 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. Vol III 149-150 "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).

Kearney clearly misled a clerk to delay a criminal proceeding.

On November 23rd 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 courts³, and publicly he says he stands by everything he said in the #BlogDat group

³ 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.

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)

Auxiliary precautions are necessary

In Massachusetts the clerk can deny the complaint without an intelligible excuse, as with this case, and the complainant is left with no effective remedy.

According to the Boston Globe, Massachusetts is the only state that has secret show cause hearings, but in Pennsylvania they have a

comparable process where private complainants first must request the district attorney's approval to file a complaint. The extra step makes the decision more appealable as the decision not to prosecute for policy reasons is the prosecutor's discretion and not the clerk's.

“The private criminal complainant has the burden to prove the district attorney abused his[/her] discretion, and that burden is a heavy one. In the Rule 506 petition for review, the private criminal complainant must demonstrate the district attorney's decision amounted to bad faith, fraud or unconstitutionality. The complainant must do more than merely assert the district attorney's decision is flawed in these regards. The complainant must show the facts of the case lead only to the conclusion that the district attorney's decision was patently discriminatory, arbitrary or pretextual, and therefore not in the public interest. In the absence of such evidence, the [court of common pleas] cannot presume to supervise the district attorney's exercise of prosecutorial discretion and should leave the district attorney's decision undisturbed.

Thereafter, the appellate court will review the court of common pleas' decision for an abuse of discretion, in keeping with settled principles of appellate review of discretionary matters.” In re Ajaj, 55 MAP 2021, 5 (Pa. Jan. 19, 2023)

“The provision for defense must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place. It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.” Federalist paper 51 Hamilton or Madison

“When the ability to pursue a profession and reputation are involved, fundamental constitutional rights are to be strictly protected to prevent arbitrary state action.” Chase v. Fall Mountain Reg'l Sch. Dist., 330 F. Supp. 388, 398 (D.N.H. 1971)

Certificate of compliance

I pro se appellant Rian waters hereby certify under the pains and penalties of perjury that the brief was written with times new Roman 14 point font, with 7968 words.

Respectfully submitted,

Pro se, Rian Waters

/s/ Rian Waters dated 2/16/2023 Before 1 am

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
No. SJ-2022-0432

Hampden Superior Court
No. 1879CV00344

Springfield District
Court No. 2223AC803

RIAN WATERS

v.

AIDAN KEARNEY

JUDGMENT

This matter came before the Court, Gaziano, J., on a petition pursuant to G.L. c. 211, § 3 and motion to supplement the petition filed pro se by the petitioner Rian Waters referencing the above-referenced Hampden Superior Court civil action and Springfield District Court application for criminal complaint.

Upon consideration thereof, it is ORDERED that the petitioner be, and hereby is, allowed to supplement his petition. It is FURTHER ORDERED that the petition, including all requests for relief set forth in the petition and supplement, are hereby denied without hearing.

By the Court, (Gaziano, J.)

/s/ Maura S. Doyle
Maura S. Doyle, Clerk

Entered: December 7, 2022

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

DISTRICT COURT DEPARTMENT
SPRINGFIELD DIVISION
DOCKET NO. 2223AC000803

RIAN WATERS

v.

AIDAN KEARNEY

**ORDER OF THE COURT ON
COMPLAINANT'S MOTION TO REDETERMINE ISSUANCE OF CRIMINAL COMPLAINT**

Introduction: The complainant, Rian Waters has requested redetermination of a decision made by Assistant Clerk Magistrate Fung with where he found no probable cause regarding a private criminal complaint he filed against Aidan Kearney. After review of the filings and the hearing, the request for redetermination is **DENIED.**

Procedural History: On or about March 25, 2022, Mr. Waters filed a private criminal complaint with the Springfield District Court clerk's office against Mr. Kearney alleging two counts of Intimidation of a Witness, G.L. ch. 268, § 13B, and Unlawful Wiretap in violation of G.L. ch. 272, § 99(C)(1). The matter was originally scheduled for hearing on April 13, 2022. On April 7, 2022, Mr. Kearney requested a continuance because he had another matter scheduled for the same time, Case No: 2223AC0620 filed by "another private citizen". The court allowed the motion to continue and rescheduled the hearing to May 25, 2022. Despite the allowance, on April 13, 2022, Mr. Waters filed a motion to "Hold hearing 4/13/2022 or Provide Alternate Relief". It does not appear as though the court acted on the motion since the matter was already continued at Mr. Kearney's request to May 25, 2022.

On May 12, 2022, Mr. Waters filed a motion seeking that two additional counts of Intimidation of a Witness, G.L. ch. 268, § 13B be included in the Application for Criminal Complaint. This motion was allowed administratively by the court.

On May 25, 2022, Assistant Clerk Magistrate Fung presided over the probable cause hearing which was conducted over ZOOM. Mr. Waters appeared remotely. ACM Fung commenced the hearing at approximately 2:55 pm. Mr. Kearney did not appear. At the commencement of the hearing ACM Fung stated that he had read “the file several times before the hearing”. The file consisted of the “Complainant’s Statement of Facts/Affidavit” (8 pages) and Exhibits A-F (30 pages, including Exhibit designation). The hearing lasted until approximately 3:44 pm. During the hearing, ACM Fung took the time to listen to Mr. Waters, inquired as to the evidence and conducted the hearing in a fair and deliberate manner. When he had questions, he asked Mr. Waters to explain. In short, the court finds that ACM Fung gave Mr. Waters every opportunity to present evidence supportive of the claims. At the conclusion of the hearing, Mr. Waters stated that he has petitioned the United States Supreme Court on a *writ of certiori*.

Discussion: “If the complainant seeks redetermination by a judge of the clerk-magistrate’s decision to deny the issuance of a criminal complaint, the judge may examine the denied applications and the records associated with them.” *See Boston Globe Media Partners, LLC v. Chief Justice of Trial Court*, 483 Mass. 80, 88–89 (2019); *See also* standard 3:22 of the Complaint Standards. A request for redetermination is not formally an appeal, because there is no entitlement to review by a judge. *See id.* “If the magistrate denies a complaint, the complainant may not appeal the magistrate’s determination, but may request a judge to redetermine the matter”. *See Id.*

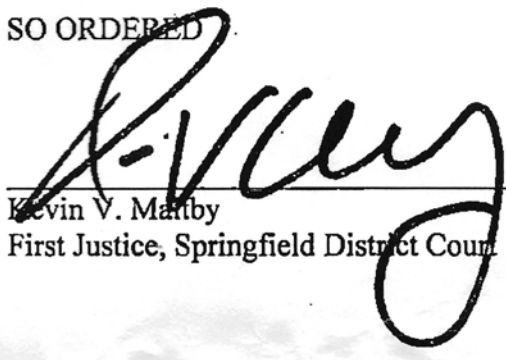
Where a redetermination is requested, the judge has the discretion to (1) “consider the application *de novo*” and hold a new show cause hearing, (2) to review the factual information previously provided to the clerk-magistrate, or (3) to deny redetermination, presumably because the complainant’s allegations do not warrant further review. *Id.* If the judge denies redetermination or declines to issue a complaint after redetermination, the complainant has no right to further judicial review. *See Commonwealth v. Orbin O.,*

478 Mass. 759, 765 (2018), *quoting Bradford*, 427 Mass. at 751 (“even where the Legislature has given a private party the opportunity to seek a criminal complaint, we have uniformly held that the denial of a complaint creates no judicially cognizable wrong”).

Based on the court’s review of the record and submissions, the petition for redetermination is **DENIED**. See *Boston Globe Media Partners, LLC*, 483 Mass. at 88–89; See also standard 3:22 of the Complaint Standards.

SO ORDERED

September 8, 2022
Date entered



Kevin V. Marby
First Justice, Springfield District Court

14th amendment due process clause.

nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

9th Amendment

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Massachusetts Constitution 48, Init., Pt. 2, § 2

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 to receive compensation for private property appropriated to public use; the right of access to and protection in courts of justice;

GL CH 268 Section 13B:

Intimidation of witnesses, jurors and persons furnishing information in connection with criminal proceedings

Section 13B. (a) As used in this section, the following words shall have the following meanings unless the context clearly requires otherwise:—

...

"Harass", to engage in an act directed at a specific person or group of persons that seriously alarms or annoys such person or group of persons and would cause a reasonable person or group of persons to suffer substantial emotional distress including, but not limited to, an act conducted by mail or by use of a telephonic or telecommunication device or electronic communication device including, but not limited to, a device that transfers signs, signals, writing, images, sounds, data or intelligence of any nature, transmitted in whole or in part by a wire,

radio, electromagnetic, photoelectronic or photo-optical system including, but not limited to, electronic mail, internet communications, instant messages and facsimile communications.

(b) Whoever willfully, either directly or indirectly: (i) threatens, attempts or causes physical, emotional or economic injury or property damage to; (ii) conveys a gift, offer or promise of anything of value to; or (iii) misleads, intimidates or harasses another person who is a: (A) witness or potential witness; (B) person who is or was aware of information, records, documents or objects that relate to a violation of a criminal law or a violation of conditions of probation, parole, bail or other court order; (C) judge, juror, grand juror, attorney, victim witness advocate, police officer, correction officer, federal agent, investigator, clerk, court officer, court reporter, court interpreter, probation officer or parole officer; (D) person who is or was attending or a person who had made known an intention to attend a proceeding described in this section; or (E) family member of a person described in this section, with the intent to or with reckless disregard for the fact that it may; (1) impede, obstruct, delay, prevent or otherwise interfere with: a criminal investigation at any stage, a grand jury proceeding, a dangerousness hearing, a motion hearing, a trial or other criminal proceeding of any type or a parole hearing, parole violation proceeding or probation violation proceeding; or an administrative hearing or a probate or family court proceeding, juvenile proceeding, housing proceeding, land proceeding, clerk's hearing, court-ordered mediation or any other civil proceeding of any type; or (2) punish, harm or otherwise retaliate against any such person described in this section for such person or such person's family member's participation in any of the proceedings described in this section, shall be punished...

(c) A prosecution under this section may be brought in the county in which the criminal investigation, trial or other proceeding was being conducted or took place or in the county in which the alleged conduct constituting the offense occurred.

Certificate of Service

I Rian Waters hereby swear under penalties of perjury that I will serve Kearney today with the appellate brief by email at TurtleboySports@gmail.com, I will try to serve Kearney tomorrow at 111 Mason Rd. Jefferson mass 01052, I will serve him by the end of the week.

Rian Waters

/s/ Rian Waters dated 2/16/2023 Before 1 am

(530) 739-8951 Watersrian@gmail.com