
STATE OF CONNECTICUT
APPELLATE COURT

A.C. 43174

STATE OF CONNECTICUT

vs.

BRUCE JOHN BEMER

APPENDIX PARTS I AND II
TO THE BRIEF OF THE DEFENDANT-APPELLANT

To BE ARGUED BY:

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Appendix Part I

Docket Sheet

State of Connecticut vs. Bruce John Bemer
Docket # DBD-CR17-0155220-S

Number	Date	Description of Item
1	6/17/19	Short form information with verdict and sentence thereon
2	4/5/19	Substitute long form information
No # 3	---	No document marked #3
4	4/01/19	Substitute short form information
5	4/01/19	Substitute long form information
6	2/28/19	Substitute short form information
7	2/28/19	Substitute long form information
No # 8	---	No document marked #8
9	2/22/19	Substitute short form information
10	2/22/19	Substitute long form information filed 1:30 pm
11	2/22/19	Substitute long form information filed 10:45 am
12	6/16/17	Substitute short form information
13	3/20/17	Warrant information, served March 28, 2017
14	3/20/17	Copy of warrant information
15	3/20/17	Arrest warrant application

Docket Sheet

State of Connecticut vs. Bruce John Bemer
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Number	Date	Description of Item
16	3/28/17	Uniform arrest report
17	2/20/19- 6/17/19	Transaction sheets
18	8/09/17- 6/14/19	List of motions/pleadings
19	8/17/16	Property seized under search warrant, return, and application of sealing
20	9/19/16	Property seized under search warrant, return, and application of sealing
21	9/19/16	Property seized under search warrant, return, and application of sealing
22	9/19/16	Property seized under search warrant, return, and application of sealing
23	3/29/17	Appearance – Atty. John F. Droney for defendant
24	3/29/17	Revised Continuance Mittimus for 3/30/2017
25	3/29/17	Continuance Mittimus for 04/26/2017
26	3/30/17	Criminal Appearance Bond and Power of Attorney
27	4/05/17	Appearance – Atty. Joel T. Faxon for the victims
28	4/17/17	Property Seized Under Search Warrant and Return
29	4/17/17	Property Seized Under Search Warrant and Return
30	4/21/17	Pre-Trial Supervision Progress Report

Docket Sheet

State of Connecticut vs. Bruce John Bemer
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Number	Date	Description of Item
31	5/11/17	Motion for Continuance
32	5/16/17	Property Seized Under Search Warrant
33	8/07/17	Notice of Media Request
34	8/8/17	Appearance – Atty. Anthony Spinella for defendant
35	8/9/17	Defendant's Application for Change in Conditions of Release
36	8/10/17	Defendant's Motion in Opposition to Media Coverage
37	8/10/17	Memorandum of Law in Support of Motion in Opposition to Media Coverage
38	8/22/17	Defendant's Motion for Discovery
39	8/24/17	Defendant's Motion for Discovery
40	8/24/17	Defendant's Motion for Continuance
41	10/5/17	Notification of Victim's Rights
42	10/18/17	State's Motion for Venereal Examination and HIV Testing
43	11/8/17	Letter from Atty. Spinella's Office
44	12/6/17	Memorandum of Law in Opposition to Request for HIV Testing
45	12/18/17	Defendant's Motion for Discovery

Docket Sheet

State of Connecticut vs. Bruce John Bemer Docket # DBD-CR17-0155220-S

Number	Date	Description of Item
46	1/16/18	Defendant's Motion for Continuance
47	1/19/18	Victim's Request to Obtain HIV/STD/Venereal Information Relating to Defendant Bemer
48	1/19/18	Victim's Request to Obtain HIV/STD/Venereal Information Relating to Defendant Bemer
49	1/19/18	Victim's Request to Obtain HIV/STD/Venereal Information Relating to Defendant Bemer
50	1/19/18	Victim's Request to Obtain HIV/STD/Venereal Information Relating to Defendant Bemer
51	1/19/18	Appearance – Atty. Kevin C. Ferry for victims
52	1/30/18	Victim's Request to Obtain HIV/STD/Venereal Information Relating to Defendant Bruce Bemer
53	1/31/18	Defendant's Motion to File Record Under Seal, with Court's order of 3/2/18
54	1/31/18	Memorandum of Law in Support of Motion to File Record Under Seal
55	1/31/18	Defendant's Motion to File Record Under Seal, with Court's order of 3/2/18
56	1/31/18	Memorandum of Law in Support of Motion to File Record Under Seal
57	1/31/18	Defendant's Motion to File Record Under Seal, with Court's order of 3/2/18
58	1/31/18	Memorandum of Law in Support of Motion to File Record Under Seal
59	1/31/18	Lodged record, original sent to Appellate Court 4/12/18
60 - A	2/1/18	Motion to sequester witnesses
60 - B	2/1/18	Notice of Hearing Pursuant to Practice Book Sec. 42-49a

Docket Sheet

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Number	Date	Description of Item
61	2/14/18	State's Objection to Defendant's Motion to File Record Under Seal, to Wit: Motion to Strike and Erase
62	2/14/18	State's Objection to Defendant's Motion to File Record Under Seal, to Wit: Motion to Transfer
63	2/14/18	State's Objection to Defendant's Motion to File Record Under Seal, to Wit: Motion to Dismiss
64	2/15/18	State's Objection to Defendant's Motion to File Record Under Seal, to Wit: Motion Previously Filed in the Above Captioned Matter for §54-102a Testing
65	2/16/18	Transaction Sheet – Motion Hearing 2/16/18
66	2/16/18	Exhibit list, motion hearing 2/16/18, copies of exhibits 1 and 2
67	3/5/18	Caseflow Memo
68	3/6/18	Caseflow Memo
69 - A 69 - B	3/20/18	Appeal form, JD-SC-33, from decision 3/2/2018 Appeal Docket sheets from trial court
70	4/5/18	Letter from Atty. Ryan P. Barry
71	4/10/18	Request for Order with 14 redacted Subpoenas
72	4/10/18	Sealed envelope containing 14 non-redacted Subpoenas
73	4/12/18	Certificate of transmittal for appeal AC 41477
74	5/11/18	Motion for continuance
75	6/1/18	State's Motion to Transfer

Docket Sheet

State of Connecticut vs. Bruce John Bemer
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Number	Date	Description of Item
76	6/19/18	Defendant's Motion for Discovery
77	8/8/18	Motion for continuance
78	10/29/18	Order from Supreme Court SC 20195 (AC 41477)
79	10/30/18	Defendant's Motion in Limine
80	11/16/18	Limited Appearance – Atty. Kelly D. Neyra for non-party witness Danbury Hospital, Keeper of Records
81	11/16/18	Motion to Quash Subpoena and Motion for Productive Order (redacted)
81-B		Un-redacted front page of motion, and exhibit B of motion
82	11/21/18	Defendant's Motion for Hearing Pursuant to Franks v. Delaware
83	11/26/18	Defendant's Motion in Limine
84	11/26/18	Defendant's Motion for Discovery
85	11/27/18	Notice of Filing Confidential Documents Under Seal, Subpoena, and Sealed Records
86	11/27/18	Notice of Court Hearing
87	11/27/18	Notice of Court Hearing
88	11/27/18	Medical Records from Adult Probation
89	12/3/18	Sealed Medical Records Notice
90	12/5/18	Court Order Concerning Subpoena for Medical Records

Docket Sheet

State of Connecticut vs. Bruce John Bemer
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Number	Date	Description of Item
91	12/6/18	Authorization to pick up medical records
92	1/7/19	Defendant's Motion to Quash Subpoena
93	1/25/19	Defendant's Motion to Preclude Propensity Evidence
94	1/25/19	SC 20195 Motion for Extension of Time, On Consent
95	1/28/19	Defendant's Motion in Limine
96	1/28/19 (filed 2/20/19)	Defendant's Motion in Limine (with color photos)
97	1/30/19	State's Objection to Defendant's Motion for Hearing Pursuant to Frank's v. Delaware
98	1/30/19	Appearance – Hollaran & Sage for Subpoenaed Witness Middlesex Hospital
99	1/30/19	Appearance – Hollaran & Sage for Subpoenaed Witness Middlesex Hospital
100	1/31/19	Ex Parte Motion to Quash Subpoena and Motion for Protective Order
101	2/1/19	Notice of Court Hearing
102	2/11/19	Defendant's authorization to have records picked up
103	2/15/19	Defendant's Motion to Extend Trial Date
104	2/19/19	Affidavit of Fabian M. Saleh
105	2/19/19	State's Objection to Defendant's Motion to Extend Trial Date

Docket Sheet

State of Connecticut vs. Bruce John Bemer
Docket # DBD-CR17-0155220-S

Number	Date	Description of Item
106	2/22/19	State's Witness Accommodations
107	2/22/19	State's Supplemental Witness List
108	3/7/19	Motion (Frank's hearing) Exhibit List & Exhibit A
109	3/7/19	Certificate of Transmittal to Appeal SC 20195 (AC41499) including Exhibit List & Exhibits of Motion hearing 2/16/18
110	3/11/19	Defendant's Motion for Order
111	3/18/19	Defendant's Motion to Dismiss
112	3/18/19	Memorandum of Law in Support of Motion to Dismiss
113	3/22/19	Defendant's Motion in Limine
114	3/26/19	State's Motion to Maintain Confidentiality of Victims
115	3/27/19	Defendant's Memorandum in Opposition to Maintain Confidentiality of Victims
116	3/27/19	Defendant's Supplemental Memorandum in Support of Motion for Order (To Bar Discovery Sharing)
117	3/27/19	State's Motion in Limine to Preclude Civil Settlement Negotiations
118	03/27/19	State's Motion in Limine to Preclude Testimony Outside the Statute of Limitations
119	3/27/19	Request to Bring Items into the Courthouse
120	4/1/19	Appearance, Atty Philip Russell for victim John Doe #11

Docket Sheet

State of Connecticut vs. Bruce John Bemer
Docket # DBD-CR17-0155220-S

Number	Date	Description of Item
121	4/1/19	Motion to dismiss for violation of Brady v. Maryland
122	4/1/19	Supplemental witness list
123	4/1/19	Notice of filing substitute exhibit for supplemental memorandum in support of motion for order (to bar discovery sharing)
124	4/2/19	Appearance, Atty. Wesley W. Horton, for defendnat
125	4/5/19	Defendant's requests to charge
126	4/8/19	Defendant's supplemental requests to charge
127	4/8/19	Motion to strike testimony of Edward Barron, Justin Lewis and Michelle Weinstein
128	4/10/19	Criminal appearance bond and power of attorney
129	4/10/19	Order for investigation report
130	4/12/19	Motion for extension of time
131	5/10/19	Appearance, Atty. Trent A. LaLima Law Offices of Hubert J. Santos, for the defendant
132	5/13/19	Motion for extension of time
133	5/13/19	Objection to defendant's motion for extension of time
134	5/21/19	Motion to continue sentencing date
135	5/29/19	Motion for judgment of acquittal or for new trial

Docket Sheet

State of Connecticut vs. Bruce John Bemer Docket # DBD-CR17-0155220-S

Number	Date	Description of Item
136	6/7/19	State's objection to defendant's motion for judgment of acquittal or for new trial
137	6/10/19	Reply to state's objection to motion for judgment of acquittal or for new trial
138	6/11/19	Exhibit list, motion
139	6/14/19	Motion for permission to file supplemental memorandum of law in support of motion for judgment of acquittal or new trial
140	6/14/19	Supplemental memorandum of law in support of motion for judgment of acquittal or new trial
141	4/1/19 – 6/17/19	List of exhibits - TRIAL
142	6/17/19	Notice of right to appeal judgment of conviction
143	6/17/19	Criminal Appearance Bond and Power of Attorney
144	6/17/19	Excerpt of June 17, 2019 transcript
145		Order of probation, prepared 7/29/19
146	7/3/19	Appeal, form JD-SC-33, appeal from judgment of 6/17/19

Filed in Court
4/5/19
12:04 PM

IN THE SUPERIOR COURT OF THE STATE OF CONNECTICUT
JUDICIAL DISTRICT OF DANBURY AT DANBURY

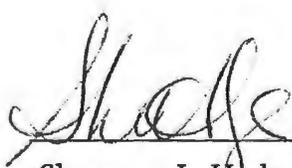
SHARMESE L. HODGE, ASSISTANT STATE'S ATTORNEY

4/8/19 COURT SB
EXHIBIT
Stake v. Bruce Bemmer
DBD-CR17-0155220-S
NO. III Full

ACCUSES BRUCE JOHN BEMER OF:

1. PATRONIZING A TRAFFICKED PERSON and charges that in and around 2014 – August 2016 BRUCE JOHN BEMER, pursuant to a prior understanding paid a fee to another person, to wit: John Doe #1, as compensation for having engaged in sexual conduct with him, in violation of Connecticut General Statute §53a-83(c).
2. AND FURTHER ACCUSES BRUCE JOHN BEMER, with the crime of PATRONIZING A TRAFFICKED PERSON and charges that in and around October 2013 – August 2016 BRUCE JOHN BEMER, pursuant to a prior understanding paid a fee to another person, to wit: John Doe #3, as compensation for having engaged in sexual conduct with him, in violation of Connecticut General Statute §53a-83(c).
3. AND FURTHER ACCUSES BRUCE JOHN BEMER, with the crime of PATRONIZING A TRAFFICKED PERSON and charges that in and around 2015 - August 2016 BRUCE JOHN BEMER, pursuant to a prior understanding paid a fee to another person, to wit: John Doe #8, as compensation for having engaged in sexual conduct with him, in violation of Connecticut General Statute §53a-83(c).
4. AND FURTHER ACCUSES BRUCE JOHN BEMER, with the crime of PATRONIZING A TRAFFICKED PERSON and charges that in and around October 2013 – February 2015 BRUCE JOHN BEMER, pursuant to a prior understanding paid a fee to another person, to wit: John Doe #11, as compensation for having engaged in sexual conduct with him, in violation of Connecticut General Statute §53a-83(c).
5. AND FURTHER ACCUSES BRUCE JOHN BEMER, with the crime of CRIMINAL LIABILITY FOR TRAFFICKING IN PERSONS and charges that during 2012 – August 2016 in and around the State of Connecticut, BRUCE JOHN BEMER intentionally aided ROBERT KING to engage in conduct which constituted Trafficking in Persons by compelling and inducing another person to engage in conduct involving sexual contact with one or more third persons by means of fraud and coercion in violation of Connecticut General Statute §53a-192a which violates Connecticut General Statute §53a-8.

Dated this 4th day of April, 2019.

By: 
Sharmese L. Hodge
Assistant State's Attorney

DOCKET NO: DBD-CR17-0155220S : SUPERIOR COURT
STATE OF CONNECTICUT : JUDICIAL DISTRICT
OF DANBURY
v. : DANBURY, CONNECTICUT
BRUCE BEMER : APRIL 08, 2019

BEFORE THE HONORABLE ROBIN PAVIA, JUDGE
WITH A JURY

A P P E A R A N C E S

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Kelly Ward
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Litchfield J.D. at Torrington
50 Field Street
Torrington, CT 06790

1 there's definitely evidence in the record, but I just
2 want to make it clear, you're not pursuing that
3 count?

4 ATTY. HODGE: Yes, Your Honor.

5 THE COURT: All right.

6 So I'm going to grant the defendant's Motion for
7 Judgment of Acquittal as to the counts, which have
8 now been omitted from the Long Form. And to be
9 clear, that's Count 2, Count 4 and Count 5 of the old
10 Long Form, the New Form - new Long Form does not have
11 that.

12 ATTY. SPINELLA: Thank you.

13 Judge, with respect to the remaining counts, I'm
14 going to ask Your Honor to enter Judgment of
15 Acquittals on all remaining counts for the following
16 reasons.

17 For the Patronizing Trafficked Person counts the
18 Court - the jury must find - and this is if we viewed
19 the light most favorable to the State - that not only
20 did my client pay a fee in exchange for sexual
21 conduct, which, I don't think, we're (unintelligible)
22 dispute. But that he knew or reasonably should have
23 known that the person was the victim of trafficking.
24 There's no evidence to suggest, at all, that my
25 client either knew or should have known that these
26 were trafficked people even if they were trafficked
27 people, which I'm not conceding.

1 I understand that my client's knowledge is a
2 matter of inference, based on all the facts, and
3 that's the Charge Your Honor is gonna give. But my
4 client gave a statement that was completely
5 consistent with all the evidence that you heard and I
6 don't think there's any evidence, at all, that he
7 knew or should have known that these people were
8 trafficked.

9 With respect to the Trafficking, itself, in that
10 being an element of that crime, I don't think - well,
11 we talked about this in chambers - but the
12 Trafficking Statute requires fraud, force or
13 coercion.

14 The State is not alleging force, I'm not sure if
15 they're still alleging coercion cause we really
16 didn't finalize any of that, but we did say that out
17 of the four sub-sections of coercion at least 3 of
18 them are not gonna be pursued. And I think,
19 probably, what that leaves us with is Fraud. And I
20 don't think - the definition of Fraud is to
21 deliberately plan purpose and attempt to cheat or
22 deceive or unlawfully deprive someone of some
23 advantaged benefit or property.

24 I don't think there's been any evidence to
25 support that.

26 Additionally, I don't think there's any evidence
27 to support that these people were somehow coerced.

1 There's no evidence that anyone threatened to commit
2 a criminal offense upon one of these individuals.
3 There's no evidence that any one was gonna accused
4 these individuals of crimes if they didn't comply or
5 didn't partake in the prostitution. I guess A3 and
6 A4 under the coercion we're not - the State's not
7 pursuing, so I'll just skip those.

8 But there's just no evidence of those things,
9 there's no evidence that these people were coerced to
10 do anything. All the evidence suggests that they did
11 this stuff willingly. And while they might have been
12 given drugs, initially, to do it I don't think that
13 satisfies any of the elements of Coercion or Fraud.

14 At the beginning of the case, when - when we
15 looked through the Warrant, I - I was nervous,
16 honestly, because there were allegations of threats
17 and force, but that never came out in evidence and
18 that's, I think, key because I think that's where the
19 State lost the case.

20 When they didn't get one of the witness's to
21 say, yeah, Bob King threatened me or Bruce Bemer
22 threatened me or one of them said, I'm gonna tell
23 everybody you're gay, if - you know, if you say
24 anything about it or if you don't comply with me. I
25 thought that was gonna be the evidence cause that's
26 how it was written. But none of that got into
27 evidence and I think that's where the Court should

1 enter a Judgment of Acquittal because I don't think
2 they've satisfied the elements of having a trafficked
3 person.

4 So assuming Your Honor agrees with that that
5 brings us to the Accessory. Well, the Accessory is a
6 little more tricky, I don't dispute that. But if
7 they're not trafficked it doesn't matter if he was an
8 accessory or not. And I submit they're not
9 trafficked because there's no force, there's no fraud
10 and there's no coercion.

11 Even a best case scenario, which the State is
12 arguing, somehow a debt can be considered - or be
13 used as coercion, I - I think that's weak, very weak
14 and I - I would - I understand you have to give them
15 the benefit of the doubt in view of most favorable to
16 them, but I don't think there's any evidence that
17 that debt was somehow being used to force these
18 people to do these things. That's a huge inference
19 we're asking them to make and I don't think Your
20 Honor should make it and think Your Honor should
21 enter a Judgment of Acquittal on all charges. Thank
22 you.

23 THE COURT: Thank you.

24 State?

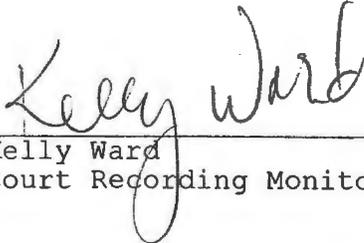
25 ATTY. HODGE: So we're done with the old Long
26 Form. With regard to Counts 1 through 4, on the new
27 Long Form, counsel indicated that they're not

DOCKET NO:
DBD-CR17-0155220S : SUPERIOR COURT
STATE OF CONNECTICUT : JUDICIAL DISTRICT
OF DANBURY
v. : DANBURY, CONNECTICUT
BRUCE BEMER : APRIL 08, 2019

C E R T I F I C A T I O N

I hereby certify the foregoing line 24, page 110 through line 19, page 154 are a true and correct transcription of the audio recording of the above-referenced case, heard in Danbury Superior Court, Danbury, Connecticut, before the Honorable Robin A. Pavia, Judge, on the 8th day of April, 2019.

Dated this 9th day of April, 2019 in Torrington,
Connecticut.



Kelly Ward
Court Recording Monitor

DOCKET NO: DBD-CR17-0155220S : SUPERIOR COURT
STATE OF CONNECTICUT : JUDICIAL DISTRICT
OF DANBURY
v. : DANBURY, CONNECTICUT
BRUCE BEMER : APRIL 08, 2019

BEFORE THE HONORABLE ROBIN PAVIA, JUDGE
WITH A JURY

A P P E A R A N C E S

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Court Recording Monitor
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50 Field Street
Torrington, CT 06790

1 mental force forcing them into a situation.

2 So I'd ask the Court to view the evidence in the
3 light most favorable to the State and allow all
4 counts, at this point, to go to the jury.

5 THE COURT: Anything additional from the defense?

6 ATTY. SPINELLA: No.

7 THE COURT: All right.

8 So, having already granted the Motion for
9 Judgment of Acquittal as to the counts that were
10 taken out, the Court rules as follows with regard to
11 the Motion for Judgment of Acquittal on the remaining
12 counts.

13 Based upon the evidence that has been presented,
14 the Court will deny the defendant's Motion for
15 Judgment of Acquittal as to all remaining counts.

16 There is a (unintelligible) deems to credit the
17 testimony, sufficient evidence by which the jury can
18 find each element beyond a reasonable doubt.

19 I appreciate counsels' arguments. I think that
20 - that there is an argument with regard to the
21 statute, the trafficking statute, which it all seems
22 to come down to this issue of the trafficking, fraud,
23 coercion. I know that we've spent time arguing it,
24 we've also spent time looking at the law and we can
25 all agree that this particular statute has not,
26 necessarily, been used with frequency in Connecticut,
27 but it has in other jurisdictions. Certainly, other

1 jurisdictions have clarified their position with
2 regard to this idea of debt, bondage or servitude
3 that the State argues now.

4 The issue of fraud. If the jury deems to credit
5 it, again, with regard to the testimony, they're
6 going to be provided the definitions, the statutory
7 definitions and it will be for the jury to determine,
8 based upon the facts of this particular case, whether
9 if it fits within the legal definitions. But if they
10 do credit the testimony the Court's position is that
11 there is sufficient evidence to allow this jury to
12 deliberate upon all of the counts and make their
13 determination as such.

14 So I'm going to deny the Motion for Judgment of
15 Acquittal.

16 The - that, I guess, brings us to having the
17 jury come in. We'll have the - hold on for one
18 second, Rocky.

19 ATTY. SPINELLA: Judge, I had to file that Motion
20 to Strike that I think Your Honor is probably gonna
21 deny, but, just for the record, we filed a Motion to
22 Strike testimony of Edward Barron, Justin Lewis and
23 Michelle Weinstein for the reasons set out in our
24 motion.

25 THE COURT: Okay.

26 So I - I know, again, this was talked about in
27 chambers, does the State want to be heard on it or -

DOCKET NO:
DBD-CR17-0155220S

: SUPERIOR COURT

STATE OF CONNECTICUT

: JUDICIAL DISTRICT
OF DANBURY

v.

: DANBURY, CONNECTICUT

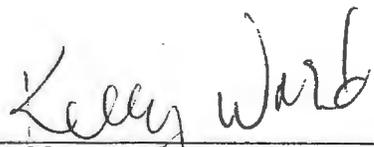
BRUCE BEMER

: APRIL 08, 2019

C E R T I F I C A T I O N

I hereby certify the foregoing line 24, page 110 through line 19, page 154 are a true and correct transcription of the audio recording of the above-referenced case, heard in Danbury Superior Court, Danbury, Connecticut, before the Honorable Robin A. Pavia, Judge, on the 8th day of April, 2019.

Dated this 9th day of April, 2019 in Torrington,
Connecticut.



Kelly Ward
Court Recording Monitor

NO: DBD CR17-0155220-S : SUPERIOR COURT
STATE OF CONNECTICUT : JUDICIAL DISTRICT OF
DANBURY
VS. : AT DANBURY, CONNECTICUT
BRUCE BEMER : APRIL 10, 2019

(AFTERNOON SESSION)

BEFORE THE HONORABLE ROBIN A. PAVIA
AND A JURY OF SIX

A P P E A R A N C E S :

Representing the State of Connecticut:

ATTORNEY SHARMESE L. HODGE
Office of the State's Attorney
Superior Court
146 White Street
Danbury, CT 06810

Representing the Defendant:

ATTORNEY ANTHONY SPINELLA
Barry, Barall & Spinella, LLC
202 W. Center Street, 1st Floor
Manchester, CT 06040

Recorded by:
Dena Laursen

Transcribed by:
Robin Mitchell
Court Monitor
Superior Court
50 Field Street
Torrington, CT 06790

Ordered by: Brendon P. Levesque, Esq.

1 (THE ROLE OF THE JURORS WAS DULY CALLED BY THE
2 CLERK.)

3 THE CLERK: Would the foreperson please identify
4 him or herself.

5 THE FOREPERSON: Elliot Snow. (Phonetic
6 spelling.)

7 THE CLERK: Ladies and gentlemen of the jury, have
8 you reached a verdict?

9 ALL JURORS: Yes.

10 THE CLERK: Will the defendant please rise and
11 face the jury.

12 Mr. Foreperson, what say yes -- you as to Count
13 One, the charge of Patronizing a Trafficked Person in
14 violation of Connecticut General Statute Section
15 53a-83c; is the defendant guilty or not guilty?

16 THE FOREPERSON: We the jury find the defendant
17 guilty.

18 THE CLERK: What say you as to Count Two, the
19 charge of Patronizing a Trafficked Person in violation
20 of Connecticut General Statutes Section 53a-83c; is the
21 defendant guilty or not guilty?

22 THE FOREPERSON: We the jury find the defendant
23 guilty.

24 THE CLERK: What say you as to Count Three, the
25 charge of Patronizing a Trafficked Person in violation
26 of Connecticut General Statutes Section 53a-83c; is the
27 defendant guilty or not guilty?

1 THE FOREPERSON: We the jury find the defendant
2 guilty.

3 THE CLERK: What say you as to Count Four, the
4 charge of Patronizing a Trafficked Person in violation
5 of Connecticut General Statutes Section 53a-83c; is the
6 defendant guilty or not guilty?

7 THE FOREPERSON: We the jury find the defendant
8 guilty.

9 THE CLERK: What say you as to Count Five, the
10 charge of Criminal Liability for Trafficking a Person,
11 the violation of Connecticut General Statutes Section
12 53a-8 and Section 53a-192a; is the defendant guilty or
13 not guilty?

14 THE FOREPERSON: We the jury find the defendant
15 guilty.

16 THE CLERK: Ladies and Gentlemen of the jury, is
17 this your verdict, so say you all?

18 ALL JURORS: Yes.

19 THE COURT: The verdict is accepted and recorded.

20 THE CLERK: Ladies and gentlemen of the jury,
21 please listen to your verdict as accepted and ordered
22 recorded by the Court.

23 You upon your oath say that the defendant is
24 guilty as to Count One of the crime of Patronizing a
25 Trafficked Person in violation of Connecticut General
26 Statute Section 53a-83c.

27 You upon your oath say that the defendant is

1 guilty as to Count Two of the crime of Patronizing a
2 Trafficked Person in violation of Connecticut General
3 Statutes Section 53a-83c.

4 You upon your oath say the defendant is guilty as
5 to Count Three of the crime of Patronizing a Trafficked
6 Person in violation of the Connecticut General Statutes
7 Section 53a-83c.

8 You upon your oath say the defendant is guilty as
9 to Count Four of the crime of Patronizing a Trafficked
10 Person in violation of Connecticut General Statute
11 Section 53a-83c.

12 You upon your oath say the defendant is guilty as
13 to Count Five of the crime of Criminal Liability for
14 Trafficking Persons in violation of Connecticut General
15 Statute Section 53-8 and Section 53a-182.

16 This is your verdict, so say you all?

17 ALL JURORS: Yes.

18 THE CLERK: Thank you. You may be seated.

19 THE COURT: Thank you.

20 Any requests from either side?

21 ATTY. HODGE: None from the State, your Honor.

22 ATTY. SPINELLA: No.

23 THE COURT: Nothing from the defense?

24 ATTY. SPINELLA: No.

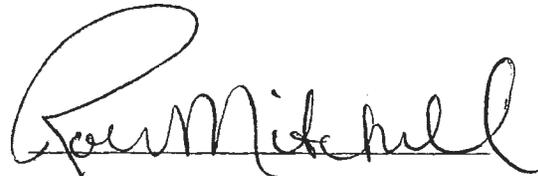
25 THE COURT: Then at this time I'm going to
26 officially discharge you from your service as jurors in
27 this particular case, which means that you are free to

NO: DBD CR17-0155220-S : SUPERIOR COURT
STATE OF CONNECTICUT : JUDICIAL DISTRICT OF
DANBURY
VS. : AT DANBURY, CONNECTICUT
BRUCE BEMER : APRIL 10, 2019

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the digital audio recording of the above-referenced case, heard in Superior Court, Judicial District of Danbury, Danbury, Connecticut, before the Honorable Robin A. Pavia, on the 10th day of April, 2019.

Dated this 11th day of April, 2019, in Torrington, Connecticut.



Robin Mitchell

DBD-CR17-0155220-S : SUPERIOR COURT

STATE OF CONNECTICUT :

VS. : DANBURY GA 3

BRUCE BEMER : May 29, 2019

MOTION FOR JUDGMENT OF ACQUITTAL OR FOR NEW TRIAL

Pursuant to the U.S. Const. amends. V and XIV, the Conn. Const. art. First, §§ 8, 9, and 20, and Practice Book §§ 42-51, *et seq.*, the Defendant, Bruce J. Bemmer, respectfully moves for a judgment of acquittal on all counts, as the evidence is not sufficient to permit a finding of guilt beyond a reasonable doubt. Specifically, the evidence is not sufficient to demonstrate that the Defendant *knew or reasonably should have known* that any of the alleged victims were “trafficked persons” under Conn. Gen. Stat. § 53a-83(c) at the time of the alleged offenses, where such knowledge is an essential element of the crimes charged. In addition, the Defendant’s conviction on both patronizing a trafficked person and as an accessory to trafficking violates the constitutional prohibition against double jeopardy, since, as charged here, both arise from the same transaction and patronizing cannot be accomplished without aiding or abetting trafficking.

In the alternative, the Defendant moves for a new trial because the Court’s instructions to the jury on “coercion”—the foundation of the State’s case—were incorrect as a matter of law and thus constitutionally defective. The relevant portion of the statute requires that the State prove beyond a reasonable doubt that the alleged trafficker, Robert King, threatened to “**expose [a] secret**” held by the complainants. Conn. Gen. Stat. § 53a-192(a)(3). The Court did not charge the jury on this essential element of the offense; the State never introduced any relevant evidence on it, and the jury therefore

never considered it. Although the Court also charged that coercion could be accomplished by fraud, a verdict cannot stand where the jury possibly relied on a legally inadequate theory of liability. *Griffin v. United States*, 502 U.S. 46, 59 (1991), *State v. Chapman*, 229 Conn. 529, 539-40 (1994). Moreover, the State failed to introduce evidence that the Defendant knew or reasonably should have known about coercion or fraud, so the Court, in any event, improperly charged the jury on crimes for which there was no evidence. Finally, the State's attorney engaged in harmful prosecutorial impropriety during her closing argument.

I. Motion for New Trial¹

a. Jury Instruction

In Counts 1 to 4 of the Substitute Long Form Information dated April 4, 2019 (Court Ex. III), the Defendant is charged with patronizing a trafficked person in violation of Conn. Gen. Stat. § 53a-83(c). In Count 5, he is charged with trafficking in persons, as an accessory, in violation of § 53a-192a. The applicable version of § 53a-83 provides, in relevant part:

§ 53a-83. Patronizing a prostitute: Class A misdemeanor

(a) A person is guilty of patronizing a prostitute when: (1) Pursuant to a prior understanding, he pays a fee to another person as compensation for such person or a third person having engaged in sexual conduct with him; or (2) he pays or agrees to pay a fee to another person pursuant to an understanding that in return therefor such person or a third person will engage in sexual conduct with him; or (3) he solicits or requests another person to engage in sexual conduct with him in return for a fee.

¹ The Defendant believes that a judgment of acquittal is required in this case and logically would discuss that issue first. Upon careful review of the evidence, the Court should conclude that the State failed to offer evidence that the Defendant had *any* knowledge that Robert King compelled or induced the complainants, and thus failed to prove beyond a reasonable doubt that he had or reasonably should have had knowledge of any conduct that could constitute trafficking. Because, however, the manner in which the Court charged the jury is directly relevant and adds clarity to the evidentiary insufficiency claim, the Defendant is presenting his jury charge claims first, along with other claims on which a new trial should be ordered.

(b) Except as provided in subsection (c) of this section, patronizing a prostitute is a class A misdemeanor.

(c) Patronizing a prostitute is a class C felony if such person knew or reasonably should have known at the time of the offense that such other person . . . (2) was the victim of conduct of another person that constitutes (A) trafficking in persons in violation of section 53a-192a, as amended by this act

Conn. Gen. Stat. § 53a-192a provides, in relevant part:

§ 53a-192a. Trafficking in persons: Class A felony

(a) A person is guilty of trafficking in persons when such person (1) compels or induces another person to engage in conduct involving sexual contact with one or more third persons, . . . , by means of (A) the use of force against such other person or a third person, or by the threat of use of force against such other person or a third person, (B) fraud, or (C) coercion, as provided in section 53a-192

The trafficking statute does not provide a relevant definition of "fraud." Section 53a-192 defines "coercion," in relevant part, as follows:

(a) A person is guilty of coercion when he compels or induces another person to engage in conduct which such other person has a legal right to abstain from engaging in, or to abstain from engaging in conduct in which such other person has a legal right to engage, by means of instilling in such other person a fear that, if the demand is not complied with, the actor or another will: (1) *Commit any criminal offense*; or (2) *accuse* any person of a criminal offense; or (3) *expose any secret* tending to subject any person to hatred, contempt or ridicule, or to impair any person's credit or business repute; or (4) *take or withhold action as an official*, or cause an official to take or withhold action.

(b) It shall be an affirmative defense to prosecution based on subdivision (2), (3) or (4) of subsection (a) of this section that the actor believed the *accusation* or *secret* to be true or the *proposed official action* justified and that his purpose was limited to compelling the other person to behave in a way reasonably related to the circumstances which were the subject of the accusation, exposure or proposed official action, as by desisting from further misbehavior or making good a wrong done.

(Emphasis added).

Based on this statutory scheme, the Court correctly charged the jury that in order to convict the Defendant on the charge of patronizing a trafficked person, it must first find beyond a reasonable doubt that "the Defendant paid a fee in exchange for an agreement to engage in sexual conduct with [an]other person." (Tr. 4/8/19 at 131). There is no dispute that this element was satisfied.

Next, the Court correctly charged that the jury must also find beyond a reasonable doubt that “the Defendant knew or reasonably should have known that at the time of the offense such other person or prostitute was a victim of the conduct by Robert King that constitutes trafficking in persons in violation of [Conn. Gen. Stat. §] 53a-192a.”² (*Id.* at 132). Having concluded that the State presented no evidence on the threat of use of force under § 53a-192a (a)(1)(A), the Court charged only on subsections (a)(1)(B) and (a)(1)(C): “A person is guilty of trafficking in persons when such person compels or induces another person to engage in conduct involving more than one occurrence of sexual contact with one or more third persons by means of fraud or coercion.” (*Id.* at 133).

The Court instructed that “[c]ompel’ means to force or constrain to do something,” and “[i]nduce’ means to move to action by persuasion or by influence.” (*Id.* at 133). The Court defined “fraud” as “a deliberately planned purpose and intent to cheat or deceive or unlawfully deprive someone of some advantage, benefit or property.”

With respect to coercion as defined in § 53a-192, the Court determined that the State had introduced no evidence that King had instilled fear concerning (1) the commission of a crime, (2) accusing a person of a criminal offense, or (4) taking or withholding official action. The Court thus determined that it should only charge on § 53a-192 (a)(3), and, on that section, charged that “[a] person is guilty of ‘coercion’ when he compels or induces another person to engage in conduct which such other person has a legal right to abstain from engaging in by means of instilling in such other person a fear that if the demand is not complied with, the actor or another will impair any person’s credit.” (*Id.* at 134).

This charge on coercion was incorrect as a matter of law, as it omitted an essential element of the crime—exposing a secret. The jury never considered whether the evidence

² There was no dispute at trial that, if trafficking occurred, King was the person doing the trafficking. The State did not charge the Defendant with trafficking in Counts 1-4, and although it charged him with trafficking in Count 5, it was strictly as an accessory to King’s primary conduct.

established the exposing of a secret, and the Defendant was thus deprived of his constitutional right to due process and a fair trial. As a result, the Court should order a new trial, limited (as explained below) to a consideration of whether the State proved trafficking by way of fraud.³

First, it is plain that the statutory definition of coercion is an essential element of the crimes with which the Defendant was charged. "Whether the existence of some fact is an essential element of a crime depends upon whether the existence of that fact forms a part of the conduct prohibited by the statute; that is, whether the fact in question is part of the corpus delicti." *State v. Januszewski*, 182 Conn. 142, 163 (1980), cert. denied sub nom., *Januszewski v. Connecticut*, 453 U.S. 922 (1981), overruling on other grounds recognized by *State v. Evans*, 329 Conn. 770 (2018), cert. denied sub nom., *Evans v. Connecticut*, 139 S. Ct. 1304 (2019). In order to convict under Counts 1 through 4, the State was required to prove beyond a reasonable doubt that the Defendant knew or should have known that the complainants were compelled or induced, through fraud or "coercion, as provided in section 53a-192." Conn. Gen. Stat. § 53a-192a(a). To convict under Count 5, the Defendant not only had to have knowledge, but also had to intend that

³ The Defendant acknowledges that he did not raise this precise issue (related to exposing a secret) with the Court at the time of the charge. The Defendant took an exception to the charge on coercion, arguing that no such charge should be given: "I don't think this applies. I think – I think Coercion should not be charged at all, Your Honor." (Tr. 4/8/19 at 51). This exception suffices to raise and preserve a challenge to the instruction.

A claim may be distinctly raised even if it is "not well articulated"; *Mather v. Griffin Hospital*, 207 Conn. 125, 138 (1988); or if it is "within the scope of the issue that was raised," as it is here; *Morgan v. Hartford Hospital*, 301 Conn. 388, 394 n.7 (2011); or even if the focus of the legal argument has "shifted"; *State v. Munoz*, 233 Conn. 106, 119 n.7 (1995); see also *Neuhaus v. DeCholnoky*, 280 Conn. 190, 216 n.18 (2006).

In any event, the error implicates the Defendant's fundamental constitutional rights. The record is clear and the Court has the power to correct the error now in order to protect both the Defendant's rights and the integrity of the trial process. Moreover, the question of a proper charge under this section appears to be one of first impression, and the Court should take the opportunity to make a clear and correct statement on the question from the start, in order to assist courts in the future. "Wisdom too often never comes, and so one ought not to reject it merely because it comes late." *State v. Miranda*, 274 Conn. 727, 746 n.11 (2005) (quoting *Henslee v. Union Planters National Bank & Trust Co.*, 335 U.S. 595, 600, reh'g denied, 336 U.S. 915 (1949) (Justice Frankfurter, on changing position he had taken in earlier case)).

trafficking take place.⁴ The Court was thus not free to supply any definition of coercion it felt was appropriate. The statutory definition set forth in § 53a-192 is mandatory. The Court recognized as much by determining that it could not charge on subsections (1), (2) and (4) of the statute, as they were unsupported by the evidence.

Second, as detailed above, Conn. Gen. Stat. § 53a-192, defines "coercion," in relevant part as a threat to "(3) *expose any secret tending to* subject any person to hatred, contempt or ridicule, or to impair any person's credit or business repute;" (Emphasis added). The Court charged that "[a] person is guilty of 'coercion' when he compels or induces another person to engage in conduct . . . by means of instilling in such other person a fear that if the demand is not complied with, *the actor or another will impair any person's credit.*" (Tr. 4/8/19 at 134) (emphasis added). The statute requires conduct that threatens to "expose [a] secret" that will impair a person's credit; Conn. Gen. Stat. § 531-192(a); but the Court's charge to the jury indicates that impairing credit alone, without the threat to expose a secret, will suffice. Because exposing a secret is the specifically prohibited conduct, and thus an essential element of the crime charged, the Court's instruction was constitutionally defective.

This is the only reasonable way to read subsection (a)(3). The phrase the trial court omitted, "(3) expose any secret tending", applies to all the remaining language of (3). The remaining language is "to subject any person to hatred, contempt or ridicule, or to impair any person's credit or business repute" The underlined "or" does not divide all of (3) in half for six reasons:

⁴ The Court charged: "A person acting with the mental state required for commission of an offense, who solicits, requests, commands, importunes or intentionally aids another person to engage in conduct which constitutes an offense shall be criminally liable for such conduct and may be prosecuted and punished as if he were the principal offender To establish the guilt of a Defendant as an accessory for assisting in the criminal act of another, the State must prove criminality of intent and community of unlawful purpose. That is, for the Defendant to be guilty as an accessory, it must be established that he acted with the mental state necessary to commit trafficking in persons and that in furtherance of that crime he solicited, requested, commanded, importuned or intentionally aided the principal to commit trafficking in persons." (Tr. 4/8/19 at 136, 137-38).

1. The four subdivisions of subsection (a) all follow the introductory language “the actor or another will” and start with a grammatically appropriate word to come after “will:” “(1) commit . . . (2) accuse . . . (3) expose . . . or (4) take or withhold”. The words immediately following the underlined “or” are “to impair”, which are not grammatically appropriate words to come after “will”.
2. On the other hand, “to subject . . . , or to impair” are grammatically appropriate words to follow “tending”.
3. The subject matter of both the “to subject” and the “to impair” clauses is logically related to the “expose any secret tending” language. They both concern adversely affecting a person’s reputation.
4. If “to impair” is unrelated to “expose any secret tending,” it is odd that that provision is the only one of the 4 not put in a separate subdivision. It would make little sense to lump unrelated provisions together. Had the legislature intended the “impair” language to be a separate basis for coercion, it reasonably would have listed it as the 4th or 5th numbered ground on which coercion may be found.
5. Subsection (a) must be read in the context of the remainder of the statute, namely, subsection (b). That subsection raises an affirmative defense to subdivisions (2), (3) and (4) of (a) that “the actor believed the [2] accusation or [3] secret to be true or the [4] proposed official action justified” Conn. Gen. Stat. § 53a-192(b). Brackets are inserted in the statutory language to show how (b) tracks the subject matter of each of the relevant subdivisions of (a). The subject matter of (a)(3) therefore is “secret.”⁵

⁵ In other words, to the extent that there is any doubt whether the statute requires the revealing of a secret, reference should be made to subsection (b) for further clarity. See *Wiseman v. Armstrong*, 269 Conn. 802, 810 (2004) (“A statute is enacted as a whole and must be read as a whole rather than as separate parts or sections.”). Subsection (b) provides, in relevant part, that “It shall be an affirmative defense to prosecution based on subdivision (2), (3) or (4) of subsection (a) of this section that the actor believed the *accusation* or *secret* to be true or the proposed *official action* justified” (Emphasis

6. Even if the above five points leave some ambiguity in meaning of their language, the rule of lenity in criminal cases supports the Defendant's reading of (3).

In short, "expose any secret tending" is an essential element in any charge under subsection (a)(3). Conn. Gen. Stat. § 53a-192(a)(3).

Our Appellate Court has similarly focused on the threat to expose a secret as the basis for criminal liability under § 53a-192(a)(3). In *State v. Reynolds*, 118 Conn. App. 278, 311 (2009), cert. denied, 294 Conn. 933 (2010), the trial court "instructed the jury that the State bore the burden of proving beyond a reasonable doubt that the defendant had demanded that the victim go to his apartment and had induced her to do so by instilling in her a fear that he would *expose a secret* about her that would expose her to ridicule." (Emphasis added). The Appellate Court affirmed the coercion conviction and held that the State had presented sufficient evidence where "the jury could find that the defendant invited the victim to go to his apartment and instilled a fear in her that, if she did not go to his apartment, he would expose the secret images of her." *Id.* at 313. "The evidence amply supported a finding that the victim was fearful that the defendant would expose the images and that this fear induced her to go to his apartment." *Id.* at 315.

The Appellate Division of the New Jersey Superior Court has taken a similar view. Referring to language that was identical in relevant part to § 53a-192(a)(3), the New Jersey court upheld a lower court's grant of a restraining order in a domestic case. The Appellate Division held that the lower court "correctly found that plaintiff proved defendant criminally coerced him when she threatened to release the videotapes of his sexual activities to his employer in order to embarrass him and to jeopardize his employment if he did not pay her the court ordered attorney's fees totaling \$30,000." *A.B.A. v. T.A.*, Docket No. A-5500-15T4, 2018 WL 564396, at *6 (N.J. Super. Ct. App. Div. Jan. 26, 2018). See also Model Penal Code § 212.5, criminalizing coercion, in part, as a threat

added). The statute is thus focused on the proscribed conduct, i.e., the accusation, secret, or official action, rather than the results of the conduct.

“to: . . . (c) expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business repute; . . .”; and Comment 3, p.267, describing the offenses as “a threat to arrest or to accuse of crime or to *expose a shameful secret . . .*” (Emphasis added).

Under subsection (a)(3), exposing any random secret will not suffice. The secret in question must tend to subject a person to hatred, contempt or ridicule, or tend to impair a person’s credit. Exposing a secret alone will not suffice. And subjecting a person to hatred, contempt or ridicule, or impairing credit, alone, also will not suffice. There must be both an exposed secret and a consequence.

“It is . . . constitutionally axiomatic that the jury be instructed on the essential elements of a crime charged.” *State v. Williamson*, 206 Conn. 685, 708 (1988). “The due process clause of the fourteenth amendment protects an accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.” *State v. Gabriel*, 192 Conn. 405, 413 (1984). Consequently, the trial court’s failure to instruct a jury on an essential element of a charged offense is a fundamental constitutional error “because it deprives the defendant of the right to have the jury told what crimes he is actually being tried for and what the essential elements of those crimes are.” *Id.* at 414 (internal quotation marks omitted); *Holloway v. Comm’r of Correction*, 145 Conn. App. 353, 366 (2013).

Moreover, a verdict cannot stand where the jury possibly relied upon an inadequate legal theory. “Jurors are not generally equipped to determine whether a particular theory of conviction submitted to them is contrary to law—whether, for example, the action in question is protected by the Constitution, is time barred, or *fails to come within the statutory definition of the crime*. When, therefore, jurors have been left the option of relying upon a legally inadequate theory, there is no reason to think that their own intelligence and expertise will save them from that error.” *Chapman*, 229 Conn. at 539 (quoting *Griffin*, 502 U.S. at 59) (emphasis added).

Where an instructional error is of constitutional magnitude, "the burden is on the state to prove harmlessness beyond a reasonable doubt." *State v. Spillane*, 255 Conn. 746, 757, denying relief on reconsideration, 257 Conn. 750 (2001). See, e.g., *United States v. Hasting*, 461 U.S. 499, 507-09 (1983); *State v. Grant*, 6 Conn. App. 24, 27-28 (1986).

[I]n reviewing a constitutional challenge to the trial court's instruction, [an appellate court] must consider the jury charge as a whole to determine whether it is reasonably possible that the instruction misled the jury.... *State v. Reynolds*, 264 Conn. 1, 106, (2003), cert. denied, 541 U.S. 908, 124 S.Ct. 1614, 158 L.Ed.2d 254 (2004). The test is whether the charge as a whole presents the case to the jury so that no injustice will result.... [The court] will reverse a conviction only if, in the context of the whole, there is a reasonable possibility that the jury was misled in reaching its verdict.... A jury instruction is constitutionally adequate if it provides the jurors with a clear understanding of the elements of the crime charged, and affords them proper guidance for their determination of whether those elements were present.... An instruction that fails to satisfy these requirements would violate the defendant's right to due process of law as guaranteed by the fourteenth amendment to the United States Constitution and Article First, § 8, of the Connecticut Constitution.... The test of a charge is whether it is correct in law, adapted to the issues and sufficient for the guidance of the jury.... The primary purpose of the charge is to assist the jury in applying the law correctly to the facts which they might find to be established.... The purpose of a charge is to call the attention of the members of the jury, unfamiliar with legal distinctions, to whatever is necessary and proper to guide them to a right decision in a particular case.... *State v. Lemoine*, 233 Conn. 502, 509-10 (1995).

State v. Griggs, 288 Conn. 116, 125-26 (2008) (quoting *State v. T.R.D.*, 286 Conn. 191, 214-16 (2008))

The failure of the Court here to charge on each element of the crime is a fundamental error requiring reversal. The Defendant either has been convicted without the jury finding that all of the elements of the crime have been established beyond a reasonable doubt—since the jury did not consider whether he knew or should have known that King threatened to reveal a secret; or convicted of conduct that does not constitute the crime at all—since the jury was permitted to convict based on a finding that the Defendant knew or should have known King threatened to impair complainants' credit,

which, standing alone, does not comprise the crime of trafficking in persons. As the Supreme Court has stated:

Of course, any such error is not cured just because an appellate court is satisfied after the fact of conviction that sufficient evidence was before the jury so that it would or could have found that the state proved the missing element had the jury been properly instructed. After all, "when [the Defendant] exercised his constitutional right to a jury, he put the [State] to the burden of proving the elements of the crimes charged to a jury's satisfaction, not to ours or [the trial judge's]."

State v. Gabriel, 192 Conn. 405, 414 (1984) (alternations in original) (quoting *United States v. Howard*, 506 F.2d 1131, 1134 (2d Cir.1974)).

And the issue of "credit" was the central theme of the State's case. The State's attorney made almost no mention of fraud in her closing. She instead pressed the idea that King had encouraged drug addiction and then coerced the complainants through a drug debt. She repeatedly told the jury that the "only way" the drug addicted complainants could get more drugs was through their "credit" and their "tab" with King. "They had to have it; they had to have these drugs; they had to have, okay, the access to these substances, and the only way to get access to these substances was through Robert King." (Tr. 4/8/19 at 68). "Robert King gives them a tab. He extends them this -- this credit, builds it up, builds it up, builds it up, and then says this is what you gotta do, there's only one option, there is no other way." (*Id.* at 69). "Bruce Bemer didn't hold a gun to their head. Well, no, no. That's not this case, and that's unfair to -- to characterize it in that way. In this case, it was much subtler, right. It's that debt, the building up of the debt, that no other options, that -- that ... that model that says these individuals have nowhere else to go but to Bruce Bemer." (*Id.* at 70). "[S]o it's just this constant cycle. They're not getting out of debt." (*Id.* at 71).

Moreover, the Defendant does not agree that these references to "credit" represent in any way the sort of "credit" the legislature intended to protect when it enacted the statute. Section 53a-192 is intended to prevent extortion by protecting the private details of an individual's credit or business affairs. Because the evidence did not demonstrate

that the complainants had attempted to protect any secret, or that King threatened to reveal any secret, it is not clear how the complainants' interactions with King allegedly affected their "credit or business repute." Nevertheless, it is not reasonable to understand that the legislature intended to criminalize the exposure of an illegal drug debt within the scope of "credit" that might be impaired through coercion.

Because the jury possibly convicted on a legally impermissible basis, because the Court failed to instruct the jury on the essential elements of the crime charged, and because the jury did not consider all of those essential elements, reversal for a new trial is required. During that new trial, however, it would be error for the court to give a proper instruction on § 53a-192 (a)(3), as there is no evidence in the record that King or anyone else ever threatened to reveal a secret concerning the complainants. See *Chapman*, 229 Conn. at 542 ("[S]ubmission of an instruction for which there was no basis in the evidence is [an error] subject to harmless error analysis.")⁶ There is no evidence that any of the complainants had any secret to reveal or that King ever discussed any secret with them. At most, the jury should be permitted to consider whether there was coercion accomplished through fraud. As described below, however, there is no evidence from which a jury could conclude beyond a reasonable doubt that the Defendant had any knowledge of conduct by King constituting coercion or fraud.

b. Prosecutorial Impropriety

During the rebuttal portion of her closing argument, the State's attorney offered the following, apparently in response to defense counsel's comments on the weakness of the

⁶ The *Chapman* Court distinguished between circumstances where a jury may have based a conviction on a legally impermissible ground and those where the jury may have based a conviction on a factually unsupported ground. It found error in both, but held that only the former presented a constitutional violation. The practical difference between the two is that a constitutionally invalid instruction is evaluated for harmlessness beyond a reasonable doubt, where a merely erroneous instruction is evaluated to determine whether it is more probable than not that the error affected the result. *Chapman*, 229 Conn. at 543-44.

State's case (including the withdrawal of several counts), and the State's failure to call the alleged trafficker, King:

In the state of Connecticut, the job of a prosecutor is to do justice. It's not to chase headlines, it's not to seek stats, it's not to elevate charges or bring people before a jury that don't deserve to be. It's to do justice. That's my job, and that's what I'm doing.

Yes, this case started with eight counts and now you will review five. Why? Because I'm not gonna submit to you something that I don't think you can return a verdict of guilty on. That's my job as a prosecutor. And so if the defense wants to argue, well, the prosecution doesn't have faith in their case, it's actually the exact opposite. I have so much faith in these five charges that they remain and they're going before you, okay.

(Tr. 4/8/19 at 97-98).

"A prosecutor may not appeal to the emotions, passions and prejudices of the jurors. Such appeals should be avoided because they have the effect of diverting the [jurors'] attention from their duty to decide the case on the evidence." *State v. Medrano*, 308 Conn. 604, 615 (2013). "When the prosecutor appeals to emotions, he invites the jury to decide the case, not according to a rational appraisal of the evidence, but on the basis of powerful and irrelevant factors which are likely to skew that appraisal." *State v. Alexander*, 254 Conn. 290, 307 (2000). "A prosecutor should not inject extraneous issues into the case that divert the jury from its duty to decide the case on the evidence." *State v. Ciullo*, 314 Conn. 28, 56 (2014).

Further,

A prosecutor may not express his or her own opinion, directly or indirectly, as to the credibility of the witnesses.... Such expressions of personal opinion are a form of unsworn and unchecked testimony, and are particularly difficult for the jury to ignore because of the prosecutor's special position.... Put another way, the prosecutor's opinion carries with it the imprimatur of the state and may induce the jury to trust the state's judgment rather than its own view of the evidence.... Moreover, because the jury is aware that the prosecutor has prepared and presented the case and consequently, may have access to matters not in evidence... it is likely to infer that such matters precipitated the personal opinions... However, it is not improper for the prosecutor to comment upon the evidence presented at trial and to argue the inferences that the jurors might draw therefrom.

State v. Carey, 187 Conn. App. 438, 461 (2019) (internal citations, parentheticals, and

quotation marks omitted). See *State v. Maguire*, 310 Conn. 535 (2013).

The distinguishing characteristic of impropriety in this circumstance is whether the prosecutor asks the jury to believe the testimony of the state's witnesses because the state thinks it is true, on the one hand, or whether the prosecutor asks the jury to believe it because logic reasonably thus dictates.

State v. Fauci, 282 Conn. 23, 48 (2007) (internal citations omitted).

Here, the prosecutor improperly expressed her “faith” in the five counts presented to the jury. (Tr. 4/8/19 at 97-98). “Faith” is a synonym of credence or belief. The jury was clearly being told that the prosecution, in its judgment, thinks the remaining five counts and, therefore, evidence supporting those counts is true. In doing so, the jury was informed of the prosecution's personal beliefs in the credibility of its case and its witnesses, imposing upon their fact-finding duty. The prosecutor not only had personal “faith” in the credibility of the five counts, but had “so much faith” in them, expressing her personal opinion as to the strength of the state's case.

The prosecutor also inserted her beliefs into the case by stating that by choosing only these five counts to present for conviction, she was “doing [justice].” *Id.* With the imposing inherent authority within the State and its representatives, the jurors were heavily disposed to trust the prosecutor's judgment on the credibility of its case. It would be natural for the jury to consider that any prosecutor who willingly drops three counts must *truly* believe in the remaining counts, and truly believe that convictions on those counts represented justice. The prosecutor's comments deliberately, clearly encouraged this conclusion and encouraged the jury to “trust the state's judgment rather than its own view of the evidence”. *Carey*, 187 Conn. App. at 461. See also *State v. Francione*, 136 Conn. App. 302, 323-24, cert. denied, 306 Conn. 903 (2012) (improper to argue that “justice” requires “*particular* result in a *particular* case, e.g. conviction of the Defendant”) (emphasis in original). The comments also turned a prospective not guilty verdict into a personal repudiation of the prosecutor; any jurors who voted “not guilty” would be rejecting her personal beliefs in the case and her quest for justice.

It is impossible to conclude that this impropriety did *not* affect the verdict and prejudice the Defendant. The prosecution was not expressing its opinion on a single witness or piece of evidence; the prosecution was vouching for conviction on all of the charges. A prosecutor may not express confidence in any witness even indirectly; these comments directly expressed confidence in all of the State's evidence on these charges. Any juror with a predisposition to believe the State would be irreversibly pushed into a guilty verdict.

Separately, the State attempted to shift the burden of proof to the Defendant by suggesting that he had somehow inappropriately failed to call Robert King to the stand. "Robert King, you didn't hear from Robert King. Robert King isn't the State's co-defendant. He's not a co-defendant of John Doe One, Three, Five — One, Three, Eight and Eleven. He's not a co-defendant to them. He's a co-defendant to Bruce Bemer. Defense put on a case. They called a witness. Why didn't they call him? He's not my witness." (Tr. 4/8/19 at 98).

Defense counsel immediately objected to this statement and the Court sustained that objection, but the Court did not remedy the prosecutor's statement. Of course, the State has the burden to prove the elements of the crimes charged beyond a reasonable doubt and may not shift the burden to the Defendant to disprove those elements. See *State v. Valinski*, 254 Conn. 107, 120 (2000); *In re Winship*, 397 U.S. 358, 364 (1970). By suggesting that the Defendant had and failed to meet an obligation to call King, the State improperly shifted the burden of proof, thus impairing the Defendant's Constitutional right to a fair trial.

II. Motion for Judgment of Acquittal

a. Counts 1, 2, 3 and 4

As outlined above, in order for the verdict to stand, the evidence must be sufficient to establish beyond a reasonable doubt first that the individuals who were being paid for

sex had been “trafficked,” meaning they had been “compelled” or “induced” by means of “fraud” or “coercion,” the latter limited by the Court to subsection (a)(3) of § 53a-192. Second, the evidence must establish beyond a reasonable doubt that the Defendant *knew* or *reasonably should have known* the individuals had been compelled or induced by means of fraud or coercion.

The State’s theory of the case was that Robert King took advantage of the complainants’ histories of drug addiction and mental health problems to leverage them into debt by providing them with drugs, and then somehow compelling them to attempt to satisfy that debt by performing sex acts with the Defendant for money. Neither the evidence nor the State’s argument was clear on how King allegedly compelled the complainants to take drugs or incur debt, but in any event the vast majority of evidence put on by the State concerned King, not the Defendant. While King’s conduct was opportunistic, there was no evidence that King engaged in “fraud,” as the Court defined that term – i.e., that he cheated or deceived the complainants, or that he unlawfully deprived them of some advantage, benefit or property. Nor was there evidence that King ever threatened to reveal any secret,⁷ or did anything to impact complainants’ credit. The evidence demonstrated that the complainants had problems with drugs prior to their interactions with King, that they were able to remove themselves from King’s circle of influence when they wanted to, and that they chose to continue to use drugs and to pay King for their purchases of illegal substances because they wanted to, not because King cheated them or revealed some secret or had any way to compel them to use drugs or to pay off an illegal and unenforceable drug debt.

⁷ As explained above, the Court did not charge on the issue of revealing a secret. The State obviously put on its case before the charge was given, and the State, ostensibly aware of the statutory requirements, introduced no evidence that complainants had any secrets to keep, that they shared any secrets with King, or that King threatened to expose any real or hypothetical secrets.

But King's conduct—despite its prominence in the State's case—is an aside. The larger flaw in the State's case comprises the State's failure to demonstrate that the Defendant ever knew anything about King inducing or compelling the complainants, or anything about their interactions with King, beyond the fact that King acted as their pimp, which is not enough. The evidence concerning Defendant's knowledge of the alleged trafficking is not merely insufficient, it is nonexistent. There was thus no basis from which the jury could have concluded that the Defendant knew or reasonably should have known about King's alleged trafficking of the complainants.

No witness offered evidence of anything more than a superficial conversation between the Defendant and King; none suggested they ever heard any conversation concerning fraud or coercion. No witness offered even a single piece of evidence to suggest that the Defendant knew anything about the complainants' alleged drug debt with King or knew that King allegedly took advantage of their mental or physical health histories. None suggested the Defendant himself ever engaged in any aggressive or threatening conduct. None testified to being threatened in any way. None testified to being defrauded. And none testified to having a secret, that King ever threatened to reveal any secret, or that the Defendant had any knowledge of any secrets or their threatened disclosure. None suggested that the Defendant knew anything about the manner in which King allegedly defrauded or coerced the complainants to participate in acts of prostitution with the Defendant or even knew about their conversations with King. The evidence established that the Defendant knew that the complainants were prostitutes, and knew that King had arranged for them to meet the Defendant for that purpose, but no more. If there was a plan between King and the Defendant, or even some knowledge by the Defendant about King's alleged tactics, the jury could only have guessed at it, because the evidence didn't show it.

While the State put on substantial evidence about King's activity as a pimp, that is insufficient. The case is not about soliciting prostitution (or the role of a pimp in that

process). The State readily conceded as much during closing argument: "It's not just prostitution. It's so much more than that." (Tr. 4/8/19 at 102).⁸ The State was required to prove beyond a reasonable doubt what the Defendant knew or should have known – in particular that he knew or should have known about trafficking. But when the State presented evidence of conduct by King that it believed was proof of trafficking, the Defendant was almost completely absent from the picture. What he knew was not established. Evidence upon which the jury could have concluded what he should have known was not introduced. So, while the State's case was centered on the idea that King had put the complainants in debt by fronting drugs and other items, there is not a single piece of evidence suggesting that the Defendant knew or should have known about any of that. Nothing suggests that the Defendant was aware that any of the complainants allegedly owed King money, or even that the complainants paid King for facilitating acts of prostitution with the Defendant.⁹ Without that evidence, the jury was left to rely on surmise and conjecture.

In particular, Dan T. (John Doe #1) testified about his problems with drug abuse, his relationship with King and the fact that King had arranged for him to meet the Defendant in order to exchange money for sex. (Tr. 4/4/19 at 11-17). He testified that he may have had the Defendant's telephone number at one point, but that "I don't remember speaking with him." (Tr. 4/4/19 at 23). He described the sex acts that he had engaged in

⁸ After making that statement, however, the state's attorney went on to describe the variety of unorthodox sex acts that were performed during the exchanges with the Defendant, as if to suggest that the variety of acts, alone, necessarily change prostitution to trafficking. While that premise may spark some sympathy or shock in jurors who are unaccustomed to hear a litany of sex acts described in open court, the premise is false, and the resulting sympathy or shock is an inappropriate basis for a verdict.

⁹ It could be reasonable for the jury to infer that since King was acting as a pimp, the Defendant might suspect that he was being paid as a pimp, but the point is that there is no evidence to prove that fact. Moreover, any such inference would only establish that King helped the Defendant patronize a prostitute, an act the Defendant readily admitted to – and an act which does not constitute trafficking. If being a pimp was sufficient to constitute trafficking, then every prostitution charge involving a pimp would include a trafficking charge, which simply is not the case.

with the Defendant (see, e.g., Tr. 4/4/19 at 17-20) and he described some conversations he had with the Defendant concerning cars and motorcycles. (Tr. 4/4/19 at 24-25). Nothing more.

Dan T. explained that when he went to see the Defendant he knew why he was going because King had explained it to him. (Tr. 4/4/19 at 71). But he never suggested that the Defendant knew anything about his personal life or his interactions with King. He did not describe any conversations between himself and the Defendant where he discussed his drug abuse, mental health issues or alleged debt to King. He did not offer any evidence that the Defendant had been aware of any of his history with King or any of his interactions with King, or any evidence from which the jury could conclude that he reasonably should have been aware.

Brian I. (John Doe #3) similarly testified to his history of drug abuse, his relationship with King and the fact that King had arranged for him to see the Defendant in order to exchange sex for money. He never described any conversation between King and the Defendant. He suggested he "kind of" felt forced to engage in prostitution because he was a drug addict and owed a debt to King and had no other way of getting money to repay the debt. (Tr. 4/2/19 at 77-78). But he never did or said anything to suggest that his debt was not self-induced or self-imposed. Further, he *never* suggested that the Defendant had known about his debt or had reason to know about his debt. He acknowledged that the debt was with King and not the Defendant. (Tr. 4/2/19 at 78). He never described any conversation or other communication where he explained any part of his situation or his relationship with King to the Defendant, or where King explained it, and he never suggested that the Defendant had been aware of that situation or relationship in any other way.

William W. (John Doe #8) testified that King saw him on the news after a local station had done a report on homeless persons. (Tr. 4/3/19 at 15-17). He described a relationship with King that was similar to the other complainants. He used drugs provided by King and incurred a debt that King ultimately suggested he could pay off by seeing the Defendant to exchange sex for money. (Tr. 4/3/19 at 20-21). He explained that King sent the Defendant a text message with his photograph in it, asking if the Defendant wanted to meet him. (Tr. 4/3/19 at 24-25). He was asked to testify about the Defendant's response to the text message, and the Defendant's response to a follow-up telephone conversation that King made to him, but after the Court explained that he could only testify about things he specifically had seen and heard, he testified that he could not recall Defendant's responses. (Tr. 4/3/19 at 25). Like the other complainants, he offered lengthy testimony on his interactions with King, including the statement that he felt "forced" into the encounters with the Defendant, (Tr. 4/3/19 at 51), but never suggested that the Defendant knew anything about that, or had known anything about his history or his relationship with King.

Michael F. (John Doe #11) offered testimony that was comparable to the others. He described a history of drug abuse and explained that he had incurred a debt with King that he ultimately agreed to pay off by providing sex for money. (Tr. 4/2/19 at 100, 110). He explained that King had arranged for him to see the Defendant for sex; (Tr. 4/2/19 at 117); and that he had agreed in order to pay debts he owed to King. Like the others, Michael F. did not offer any evidence suggesting that the Defendant had known about his relationship with King, any of his conversations with King or any of the things King may have done to encourage him to engage in prostitution. He did not testify to any substantive conversations between the Defendant and King and did not testify that he had ever discussed or explained his history or relationship with King with the Defendant.

Danbury police officer Daniel Trompetta and FBI agent Kurt Siuzdak also testified. Neither offered any evidence that the Defendant had been or reasonably should have been aware of the complainants' histories or of their relationships with King. Agent Siuzdak testified at several points that he worked on "human trafficking" investigations (see, e.g., Tr. 4/4/19 at 88), but explained to the jury that the purpose of his investigation was to determine whether trafficking was going on in the first place. Describing the complainants, he testified "it's possible that they are doing it [prostitution] of their own volition and it's possible that they are, actually, being forced to do it. So we had these names and we were trying to determine what was - what was, actually, going on here and, you know, how - how this - this worked." (Tr. 4/4/19 at 95). He testified that King was "leading" the sex for money operation (Tr. 4/4/19 at 101), but did not offer any testimony or other evidence indicating that the Defendant had been aware of King's financial arrangements with the complainants.

During Agent Siuzdak's testimony, the state offered an "extraction report" showing cell phone communications between King and the Defendant. (Ultimately admitted as Ex. 46B). The exhibit was not admitted for the truth of the statements contained therein, but only to demonstrate that there had been communication by cell phone between King and the Defendant – a fact that is neither in dispute nor relevant to the claims the Defendant is making in this motion. (Tr. 4/4/19 at 125-126). Even if it had been admitted for the truth, the exhibit offers no direct or circumstantial evidence that the Defendant had been aware of any acts that could constitute trafficking.

Agent Siuzdak attempted to testify that there was evidence of use of force by the Defendant. After various objections and interruptions, Agent Siuzdak clarified what he meant on redirect examination, explaining that he found during his investigation "that drugs were used to control an individual's behavior." (Tr. 4/4/19 at 159). Neither he nor any other witness testified that the Defendant had been aware of any drug sale or drug debt between King and any complainant (or other party) at any time. Nor did Agent

Siuzdak specify which "individuals'" behavior may have been "controlled" by drugs. This testimony is the closest the State comes to evidence of trafficking, but it is insufficient for that purpose and says nothing about Defendant's knowledge.

The Defendant did not testify. King originally was on the State's witness list, but he ultimately did not testify either. Neither the notes of the Defendant's FBI interview (Ex. A) nor the phone extraction report (Ex. 46B) say anything about whether the Defendant knew about King's methods or his relationships with the complainants. The complainants offered no evidence of the Defendant's knowledge, because none of them heard the Defendant say anything relevant on the issue to King, and none of them testified that they discussed the subject with the Defendant. The testimonies of the investigating officers were similarly silent on the question of knowledge. The Defendant paid the complainants, as would be the case with any patronizing charge, but there was no evidence that he had any idea what they did with the money after that.

In her closing, the State's attorney described what she believed to be acts of trafficking by King and repeatedly told the jury that the Defendant knew about it. (See Tr. 4/8/19 at 70-71; "Bruce Bemer knew about it. He knew about it.") But even in that context, the State could only offer the conclusory statement that he "knew." The prosecutor could not point to any actual evidence supporting this claim, or to evidence on which the jury could conclude (or even reasonably infer) that the Defendant reasonably should have known.

The State's attorney suggested that the prostitution had been going on for a long time and that the Defendant must have known about the "quality of these individuals." (Tr. 4/8/19 at 66). Whatever that means, and whatever the State believes the Defendant should have known about the complainants' qualities or deficiencies, that is not evidence that the Defendant knew or should have known something about King defrauding or coercing them. The passage of time is insufficient. And even if the Defendant had known

something about complainants' drug use or mental health issues, there was no evidence that he was aware King allegedly took advantage of those circumstances.

Ultimately, the State's attorney suggested to the jury that there was a "camaraderie" between the Defendant and King, based primarily on the few text messages set out in Ex. 46B. But the Defendant never denied knowing King. He never denied that King provided him with prostitutes. And those facts do not comprise the crime with which the Defendant was charged. The State alleged King was a trafficker and the Defendant knew or reasonably should have known about that. It offered no evidence on that score. "Camaraderie" will not suffice.

Even if there had been some evidence that the Defendant actually knew or should have known King had defrauded or coerced one of the complainants, it is crucial to remember that each count required independent proof on the issue of knowledge. It would not be enough for the State to prove, for example, that the Defendant was aware that John Doe #1 was trafficked in order to support a conviction on trafficking John Doe #8 (unless the evidence in question was somehow relevant to more than one complainant). That one or more of the complainants may have felt pressured by King because of a "debt" does not show that others were. In fact, another complainant (D.T.) also testified. He described a relationship with King that was almost identical to the relationship described by the other complainants – drug use, debt, prostitution. But he testified that he was "a friend" of King's (Tr. 4/3/19 at 3), and the State withdrew the count alleging that he had been trafficked. (Tr. 4/5/19 at 8-9).

It also is important to recognize that the Court here did not give the jury a unanimity charge. It is true, of course, that our courts "have not required a specific unanimity charge to be given in every case" *State v. VanDeusen*, 160 Conn. App. 815, 839 (2015) (citing *State v. Famiglietti*, 219 Conn. 605, 619-20 (1991)). But where the Court charged that the jury could find trafficking through either fraud or coercion, and did not provide a specific instruction that the jurors unanimously had to find fraud nor unanimously had to

find coercion, it is possible and even likely that some jurors believed that the evidence established fraud and some believed that it established coercion, with their combined votes improperly resulting in a trafficking conviction. Where the evidence established neither fraud nor coercion, this possibility should be of particular concern.¹⁰

“A claim of insufficient evidence implicates the constitutional right not to be convicted on inadequate proof.” *State v. Sitaras*, 106 Conn. App. 493, 498, cert. denied, 287 Conn. 906 (2008) (citing *State v. Morgan*, 70 Conn. App. 255, 281, cert. denied, 261 Conn. 919 (2002)). As the Court noted in its charge, evidence of the Defendant’s knowledge typically can be established through an inference from other proved facts and circumstances. See *State v. Nunes*, 58 Conn. App. 296, 301, cert. denied, 254 Conn. 944 (2000). And a finder of fact “may draw whatever inferences from the evidence or facts established by the evidence it deems to be reasonable and logical.” (Internal quotation marks omitted.) *State v. Ledbetter*, 275 Conn. 534, 542–43 (2005), cert. denied, 547 U.S. 1082 (2006). “Nevertheless, “[b]ecause [t]he only kind of an inference recognized by the law is a reasonable one ... any such inference cannot be based on possibilities, surmise or conjecture.... It is axiomatic, therefore, that [a]ny [inference] drawn must be rational and founded upon the evidence.” (Internal quotation marks omitted.) *State v. Na’im B.*, 288 Conn. 290, 296–97 (2008), citing *State v. Niemeyer*, 258 Conn. 510, 518 (2001).

With this standard in mind, many convictions have been overturned in recent years due to insufficient evidence, including based on the absence of evidence concerning the defendant’s mental state. See, e.g. *State v. Carpenter*, 214 Conn. 77 (1990) (murder conviction overturned due to insufficient evidence of intent to kill and judgment modified to manslaughter in the first degree); *State v. Maurice M.*, 303 Conn. 18, 29 (2011) (evidence was insufficient to prove violation of probation based on risk of injury to a child

¹⁰ And Count 5 fails to allege conduct with respect to any particular victim, raising the possibility that the jurors could have amalgamated their findings of conduct across various complainants to convict on that Count.

because defendant did not willfully permit his two year old child to exit his home where he was found by passersby; willfulness not proven because defendant did not know that injury would occur or recklessly disregard that potential consequence); *State v. Kalphat*, 134 Conn. App. 232, 241 (2012) (although evidence supported inference that defendant would sell marijuana in his possession, jury could only speculate that he intended to do so within 1500 feet of a school despite being arrested with the marijuana within 1500 feet of a school); *State v. Hedge*, 297 Conn. 621, 659-60 (2010) (large quantity of drugs in defendant's vehicle supported inference that he intended to sell drugs somewhere, but evidence was insufficient to prove that he intended to do so within 1500 of a public housing project despite being arrested within 1500 feet of one; coincidental stoppage of defendant while passing through a location does not permit inference that he intended to sell there); *State v. Jordan*, 314 Conn. 354, 388 (2014) (evidence insufficient to prove tampering with physical evidence because jury had to speculate that when defendant discarded his clothing and mask after bank robbery in an attempt to avoid capture, he believed it was probable that he would be arrested).

Convictions have also been reversed due to insufficient evidence in cases involving allegations of sexual misconduct. See, e.g., *State v. Fournin*, 307 Conn. 186, 188-89 (2012) (convictions of attempt to commit sexual assault in the second degree and sexual assault in the fourth degree vacated due to insufficiency of evidence that victim was physically helpless despite suffering from cerebral palsy, mental retardation and hydrocephalus, and was nonverbal and could communicate only by gesturing, including with kicks, bites and scratches, and vocalizing by, for example, groaning and screeching when she and defendant engaged in sexual activity); *State v. Atkins*, 118 Conn. App. 520, 525 (2009), cert. denied, 295 Conn. 906 (2010) (evidence insufficient to prove "sexual contact" in relation to charge of sexual assault in the fourth degree because only evidence of sexual contact was introduced as uncharged misconduct, not substantively).

The Court in *Hedge* rejected a similar rationale to the speculative one that the State advanced in this case. The Court concluded that the defendant's possession of narcotics in an area known for heavy drug trafficking did not permit an inference that the defendant intended to sell his narcotics in that location as opposed to elsewhere. *Hedge*, 297 Conn. at 660. The frequency of drug sales in that location may have made it more likely that the defendant intended to sell drugs there, but speculation remained the sole basis to draw that conclusion. *Id.* at 660-61.

Here, there was no direct evidence that the Defendant had any knowledge that King compelled or induced the complainants or that any of them owed him a debt. There was no evidence that the Defendant knew about complainants' issues, and even if the evidence was sufficient to establish that the Defendant knew or should have known about their issues, the State was required to prove that the Defendant knew or should have known that King had used fraud or coercion to compel or induce the complainants to meet with the Defendant. Nor was there evidence to establish beyond a reasonable doubt that the Defendant reasonably should have known. While the jury would be permitted to draw all reasonable inferences to conclude that the State had established the Defendant's knowledge beyond a reasonable doubt, there was no evidence upon which any inference could have been based.

On the crucial question of knowledge, the jury knew only that King acted as a pimp, providing prostitutes to the Defendant. The jury knew King and the Defendant communicated, but they heard almost no evidence showing what was discussed. They knew that King provided drugs and collected money from the complainants, but they never heard any direct or circumstantial evidence that King and the Defendant (or one or more of the complainants and the Defendant) discussed that. Even if they had evidence that the Defendant knew King was providing drugs (which they did not), the State was required to prove that the Defendant knew or should have known that complainants were compelled or induced through fraud or coercion. Nothing about a possible drug

transaction between King and the complainants establishes fraud or coercion, much less establishes beyond a reasonable doubt any knowledge of such by the Defendant. In the absence of such evidence, the jury could only conclude that the Defendant solicited prostitutes. It could not find that the Defendant knew or should have known that the complainants had been trafficked. If this quantum of evidence would be sufficient to infer trafficking, then every prostitution case would become a trafficking claim, at least where a pimp was involved.

But prostitution alone is not enough. King supplying drugs without the Defendant's knowledge is not enough. The complainants' debt, without the Defendant's knowledge, is not enough. The crux of the State's case is the manner in which King allegedly compelled the complainants to engage in prostitution – through fraud and coercion. The jury had no evidence of King's interactions with the Defendant, beyond the selection and coordination of individuals to meet with the Defendant. They had no evidence that the Defendant participated in or ever even discussed the methods that King allegedly used to defraud or coerce individuals to participate. The jury therefore could only have guessed about whether the Defendant was aware or should have been aware of King's alleged fraud or coercion with regard to one or more of the complainants, or the means King employed to get them to engage in prostitution.

b. Count 5

In Count 5, the Defendant was charged with trafficking in persons in violation of Conn. Gen. Stat. §§ 53a-192a and 53a-8. The Court instructed the jury that the Defendant was charged on this count as an accessory only and properly instructed that, in order to find him guilty, the jury must find beyond a reasonable doubt that he acted with the mental state necessary to commit the crime of trafficking. (Tr. 4/8/19 at 137). Thus, for this count, the State was required to prove that the Defendant not only was aware of the alleged trafficking, but that he specifically intended that it occur and specifically intended to aid in

that endeavor. Because the evidence does not establish that the Defendant was aware of any activity by King that could have constituted trafficking, the State could not prove that he intentionally engaged in trafficking and intentionally acted to aid or abet King's efforts.

c. Double Jeopardy

A judgment of acquittal also must be entered on Count 5 because the Defendant's conviction on Count 5 violates federal and state prohibitions against double jeopardy.

The fifth amendment to the United States Constitution provides in relevant part: No person shall ... be subject for the same offense to be twice put in jeopardy of life or limb The double jeopardy clause of the fifth amendment is made applicable to the states through the due process clause of the fourteenth amendment.... Although the Connecticut constitution has no specific double jeopardy provision, we have held that the due process guarantees of [the Connecticut constitution] include protection against double jeopardy.... We have further recognized that the [d]ouble [j]eopardy [c]ause consists of several protections: It protects against a second prosecution for the same offense after acquittal. It protects against a second prosecution for the same offense after conviction. And it protects against multiple punishments for the same offense." (Internal quotation marks omitted.) [*State v. Underwood*, 142 Conn. App. 666, 681, cert. denied, 310 Conn. 927 (2013)].

State v. Bumgarner-Ramos, 187 Conn. App. 725, 747-48 (2019).

"Double jeopardy analysis in the context of a single trial is a [two step] process, and, to succeed, the defendant must satisfy both steps.... First, the charges must arise out of the same act or transaction [step one]. Second, it must be determined whether the charged crimes are the same offense [step two]. Multiple punishments are forbidden only if both conditions are met" *Id.* at 748. In step two of the process, our courts have applied the *Blockburger*¹¹ test to determine whether the offenses are the same:

¹¹ *Blockburger v. United States*, 284 U.S. 299, 52 S. Ct. 180, 181, 76 L. Ed. 306 (1932).

'[W]here the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not.' (Citations omitted; footnote omitted; internal quotation marks omitted.) [*State v. Porter*, 328 Conn. 648, 655 (2018)]. 'The test used to determine whether one crime is a lesser offense included with in another crime is whether it is not possible to commit the greater offense, in the manner described in the information ... without having first committed the lesser This ... test is satisfied if the lesser offense does not require any element which is not needed to commit the greater offense.... Therefore, a lesser included offense of a greater offense exists if a finding of guilt of the greater offense necessarily involves a finding of guilt of the lesser offense.' (Citation omitted; internal quotation marks omitted.) [*State v. Carlos P.*, 171 Conn. App. 530, 538, cert. denied, 325 Conn. 912 (2017)].

Id. at 748.

Here, as charged by the Court, the State was required to prove under Counts 1 through 4 that the alleged victims were "trafficked persons," that the defendant patronized them as prostitutes and that he knew they were trafficked persons when he did so. Under Count 5, the State was required to prove that the alleged victims were trafficked and that the Defendant intentionally aided in that trafficking. The only conduct that the State attempted to prove on the part of the Defendant was his exchange of money for sex with the complainants. If he patronized prostitutes, it was this conduct that constituted patronizing. If he "aided" in King's alleged trafficking of those individuals, it could only have been the conduct of patronizing the individuals that constituted "aid." The evidence simply demonstrated no other conduct on the Defendant's part.

Thus, as charged here, the Defendant's alleged acts of patronizing and alleged acts of aiding in trafficking arise, if at all, from the same transaction, the Defendant's patronizing of prostitutes.

They constitute a single crime, since the State could not prove patronizing without also proving the only factual basis that it alleged as "aiding" trafficking—the Defendant's exchange of money for sex with the complainants.

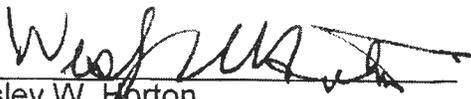
In other words, the Defendant in this case could not have knowingly patronized a trafficked person without necessarily intentionally aiding in the trafficking.

d. Fundamental Fairness

Finally, on Counts 1 to 4, the Defendant was convicted of a decriminalized offense. Counts 1 to 4 charged violations of § 53a-83(c). Subsection (c) was added to the patronizing statute on October 1, 2013, pursuant to Public Act 13-166 § 4, making the patronizing of a “trafficked person” a class C felony, where patronizing in general is a class A misdemeanor under (a). Subsection (c) was repealed by Public Act 17-32 § 3, effective October 1, 2017. While patronizing remains the same misdemeanor offense it was prior to PA 13-166, subsection (c) has not been replaced. No statute today criminalizes the patronizing of a trafficked person as a separate crime or to any greater extent than patronizing generally.

Under General Statutes § 54-142d, “[w]henver any person has been convicted of an offense . . . and such offense has been decriminalized subsequent to the date of such conviction,” the person may petition the superior court for an order of erasure, which shall result in the destruction of all public records pertaining to the conviction. It would be an odd construction of the statute, at best, and fundamentally unfair to the Defendant, if a conviction could stand where the crime no longer exists and the Defendant is entitled to have the record of the conviction erased.

DEFENDANT, BRUCE J. BEMER

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NO. DBD-CR17-0155220-S : SUPERIOR COURT
STATE OF CONNECTICUT : JUDICIAL DISTRICT OF DANBURY
V. : AT DANBURY – PART A
BRUCE BEMER : JUNE 7, 2019

**STATE'S OBJECTION TO DENDANT'S MOTION FOR
JUDGMENT OF ACQUITTAL OR FOR NEW TRIAL**

The Defendant has filed a Motion For Judgment of Acquittal or for New Trial following the jury's guilty verdicts in the above captioned case on April 10, 2019. The Defendant makes, essentially, six (6) claims of error including sufficiency of the evidence, double jeopardy, fundamental fairness, defective jury instruction, a second claim of sufficiency of the evidence, and prosecutorial impropriety contrary to the defendant's assertions, there was sufficient evidence for the case to go to the jury and for the jury to return a verdict of guilty, there is no double jeopardy violation as one charge is not a lesser included of the other, the jury instruction was requested and agreed to by the defense raising the issue of waiver, and there was no impropriety in the closing remarks. Additionally, all the claims set forth by the defense are appropriate for appellate review and do not warrant the extraordinary remedy of vacating a jury verdict. As more fully set out below, the State objects to a judgment of acquittal or for a new trial on the Defendant's motion.

Background:

The defendant was arrested on March 28, 2017 and a jury trial commenced on April 1, 2019. The jury returned a verdict on April 9, 2019. The defendant filed a motion for extension of time to file post-trial motions on April 12th and May 13, 2019. The Motion for Judgment of Acquittal or For New Trial (hereinafter MJOA) was ultimately filed on May 29, 2019. At the defendant's request, the sentencing originally set for June 6, 2019 was postponed so that a separate hearing on the defendant's MJOA could occur before sentencing. The MJOA hearing is set for June 11, 2019 at 3pm and sentencing, if necessary, is set for June 14, 2019.

Law:

Practice Book § 42-51 sets forth that,

“If the jury returns a verdict of guilty, the judicial authority, upon motion of the defendant or upon its own motion, shall order the entry of a judgment of acquittal as to any offense specified in the verdict, or any lesser included offense, for which the evidence does not reasonably permit a finding of guilty beyond a reasonable doubt. ...”

“With respect to guilty verdict ... for which defendant sought judgment of acquittal, trial court was obliged to determine only whether jury could reasonably have concluded, upon facts established and inferences reasonably drawn therefrom, that cumulative effect of evidence established guilt beyond reasonable doubt.” State v. James, 247 Conn. 662, 725 A.2d 316 (1999), appeal after new trial 793 A.2d 1200, 69 Conn.App. 130, certification denied 802 A.2d 89, 260 Conn. 936, habeas corpus dismissed 2003 WL 23192032, appeal dismissed 870 A.2d 482, 88 Conn.App. 554, certification denied 876 A.2d 11, 274 Conn. 903, habeas corpus denied 535 F.Supp.2d 300.

In ruling on a motion for judgment of acquittal this Court must determine whether a rational trier of fact could find the crimes proven beyond a reasonable doubt. State v. Green, 186 Conn. App. 534, 549 (2018) A trial court should not set aside a verdict where there is some evidence upon which the jury could reasonably have based its verdict. State v. Griffin, 253 Conn. 195, 200 (2000) A trial court should only set aside a verdict “where the manifest injustice of the verdict is so plain and palpable as clearly to denote” that the jury made some mistake in application of legal principle or that the jurors were influenced by prejudice, corruption, or partiality. State v. Griffin, 253 Conn. at 200-01

I. Motion for Judgment of Acquittal

The defendant sets forth three claims requesting a judgment of acquittal: (1) that the evidence presented at trial was insufficient to support proof beyond a reasonable doubt, (2) that double jeopardy should attach, and (3) fundamental fairness. They are addressed in turn below.

1. The Evidence is sufficient to support the jury's verdict

Contrary to the defendant's assertion in his MJOA at pages 15-27, a rationale juror could find the defendant guilty of all counts. P.B. §42-51 is, in essence, a second motion for judgment of acquittal following the defense case, if they choose to put on a case, that tests the sufficiency of the State's evidence after attacked by the defense. Here, the defense put forth one witness, a counselor with the department of corrections, who testified that Robert King was incarcerated in the State of Connecticut and has been incarcerated since August 2016.

The defendant had moved for a judgment of acquittal at the conclusion of the State's case.

The court made the following findings:

"Based upon the evidence that has been presented, the Court will deny the defendant's Motion for Judgment of Acquittal as to all remaining counts. There is a (unintelligible) deems to credit the testimony, sufficient evidence by which the jury can find each element beyond a reasonable doubt. I appreciate counsels' arguments. I think that - that there is an argument with regard to the statute, the trafficking statute, which it all seems to come down to this issue of the trafficking, fraud, coercion. I know that we've spent time arguing it, we've also spent time looking at the law and we can all agree that this particular statute has not, necessarily, been used with frequency in Connecticut, but it has in other jurisdictions. Certainly, other jurisdictions have clarified their position with regard to this idea of debt, bondage or servitude that the State argues now. The issue of fraud[:] If the jury deems to credit it, again, with regard to the testimony, they're going to be provided the definitions, the statutory definitions and it will be for the jury to

determine, based upon the facts of this particular case, whether if it fits within the legal definitions. But if they do credit the testimony the Court's position is that there is sufficient evidence to allow this jury to deliberate upon all of the counts and make their determination as such. So I'm going to deny the Motion for Judgment of Acquittal."

Trial Transcript April 8, 2019 page 16, line 13 - page 17, line 15.

If the evidence was sufficient to go to the jury at the close of the State's case, the evidence is sufficient to support the jury's verdict finding proof beyond a reasonable doubt. The defendant's case did not undermine the facts laid before the jury during the State's case in chief. Therefore, the Court's denial of the motion for judgment of acquittal should not change.

2. There is no double jeopardy violation

The defendant argues in his MJOA at pages 28-29 that this Court should grant an acquittal on Count 5 based on a double jeopardy violation. The defendant was charged in a 5 count information stemming from his conduct where he directly patronized a trafficked person and from his conduct of aiding and abetting Robert King in the business of Trafficking Persons. Looking solely at the statutes charged; State v. Wright, 319 Conn. 684, 690-91 (2015); although they have similar elements they are not the same for purposes of Blockburger. It is possible for a person to be charged with Trafficking Persons without violating the Patronizing statute and vice versa. Most obvious, is that the Patronizing statute requires sexual contact with the defendant and the exchange of money whereas the Trafficking in Persons statute does not. Based solely on the evidence, the defendant takes a self-serving leap in asserting that the only conduct that he engaged in that could constitute aiding and abetting was the act of patronizing. This argument circles back to the sufficiency of evidence claim which is addressed above and, moreover, is improperly based on the evidence. The question of whether the same act or transaction constitutes a violation of two distinct

statutory provisions "is a technical one and examines only the statutes, charging instruments, and bill of particulars, as opposed to the evidence at trial." State v. Wright, 319 Conn. at 609-1

3. Fundamental Fairness

Finally, in the motion for acquittal the defendant for the first time argues fundamental fairness based on what he characterizes as the decriminalization of the General Statutes § 53a-83(c). This issue was not raised via a motion to dismiss prior to the trial or even during the trial and the defendant cannot prevail on this claim. The defendant relies on General Statutes § 54-142d, this statute, however, pertains to erasure of a record of conviction and does not excuse criminal liability for conduct.

Rather, because the defendant committed the crimes of which he was accused before the repeal of subsection (c) of § 53a-83, he has been properly tried and convicted for the offenses and his convictions do not undermine fundamental fairness, especially with regard to the victim. In accordance with General Statutes § 54-194, "the repeal of any statute defining or prescribing the punishment for any crime shall not affect any pending prosecution or any existing liability to prosecution and punishment therefore, unless expressly provided in the repealing statute that such repeal shall have that effect." General Statutes § 1-1(t), provides that "the repeal of an act shall not affect any punishment, penalty or forfeiture incurred before the repeal takes effect, or any suit, or prosecution, or proceeding pending at the time of the repeal, for any offense committed, or for the recovery of a penalty or forfeiture incurred under the act repealed." State v. Kalil, 314 Conn. 529, 552, 555-59 (2014) Therefore, consistent with these savings statutes, that the defendant might one day be able to seek erasure of these convictions does not render them fundamentally unfair.

Regardless, Patronizing a Trafficked Person has not been eliminated in its entirety. The history of General Statutes § 53a-83(c) is greater than provided. Effective October 1, 2016 the

requirement to show that the defendant "knew or should have known" the person was trafficked was removed. Essentially, the legislature eliminated an element of the offense. Then in 2017, with the expansion of General Statutes § 53a-192a to add a subsection (3), which allowed for a broader range of conduct under the Trafficking in Persons statute and an increase in the penalty for subsection (2) to an A felony, subsection (c) of General Statutes § 53a-83 was moved in part; not decriminalized. In fact, the legislature created a new statute in General Statutes § 53a-83b titled Commercial Sexual Abuse of a Minor and designated it a B felony, and an A felony if the child is under fifteen.

The patronizing of a trafficked person is still a very serious crime in the State of Connecticut as is human trafficking as a whole. As the legislature strives to find the proper place for the crimes associated with trafficking in persons it is an oversimplification to argue that the conduct has been decriminalized. Fundamental fairness requires the jury verdict to stand. The defendant was charged and convicted under a statute that had the police delayed a mere 30 days in disrupting this trafficking ring would have resulted in no requirement to show that he knew or should have known. Moreover, the imputed knowledge of the defendant was charged as an element of the crime, contrary to the pattern jury instructions, which added an element that the state was required to prove beyond a reasonable doubt. The defendant was tried under a more rigorous statute and the jury's verdict of guilty should stand.

II. MOTION FOR NEW TRIAL

The defendant asserts three claims in the motion for a new trial. None of the bases provided raise claims that automatically warrant a new trial. Each claim is addressed below.

1. The Court's jury instruction was proper as given

The argument that the Court's jury instruction was erroneous is raised for the first time in this motion despite the numerous opportunities for review, conferences on charging, language suggested by the defendant, and ultimate agreement to the charge. The defendant's claim is at best waived by the defendant and at worst invited error but is an issue for appeal and subject to harmless error analysis.

The defense claims in his MJOA pages 2-12 that a phrase that is not part of the specific subsection charged should have been used by the court; the state disagrees. The language used by the court to charge the jury is the exact language requested by the defense and agreed to by the state during pretrial charge conferences, on the record charging conferences, and documented in the written charge provided to all sides. The defendant, ostensibly aware of the statutory requirements, made a specific request to eliminate the phrase at issue of "expose any secret tending to subject any person to hatred, contempt or ridicule" from all counts with the exception of count 3 relating to John Doe #3. The defense argued that the only language that could apply to all charges is "to impair any person's credit." The State agreed with the defense that having a different definition for different charges was not the clearest way to charge and that the applicable language would be "to impair any person's credit." Now the defense claims that the language is erroneous. This claim does not provide a basis for a new trial because the claim raises the questions of (1) was there an error, which the State asserts there was not, and (2) if there was an error did the defense induce the error or waive the claim. See State v. Kitchens, 299 Conn 447, 462-500 (2011) (Overruling the requirement that the error could only be invited by the defense attorney and reinstating the concept of implied waiver; also sets out the factors to be considered for a *Golding* review); see also State v. Bellamy, 323 Conn. 400 (2016) (Court declined to overrule Kitchens and held that the defendant implicitly waived claim of instructional error by accepting the trial court's

proposed instruction at trial. The defendant was not entitled to review under Golding; concurring Justices conceded even if Golding review, claim would fail).

On the issue of an error, the defense omits the numerous discussions regarding the coercion statute. During in-chamber discussions regarding the applicable sections of the coercion instruction, defense counsel noted that he¹ did not think any of them apply, however, that with regard to number (3) the only portion applicable was "to impair any person's credit." The language given was the exact language requested by defense counsel and all other language was excluded. In fact, in the transcript pages attached hereto as exhibit A, it is clear that the defense raises the issue of charging the first part of the language in General Statutes § 53a-192(a)(3) of "expose any secret tending to subject any person to hatred, contempt or ridicule" would only apply to John Doe #3 and not the others, but that the language "to impair any person's credit" would apply to all. It was then agreed to not include the "expose any secret tending to subject any person to hatred, contempt or ridicule" and to only use the language of "to impair any person's credit." Inherent in that discussion was the recognition that they are two separate and distinct ways of violating subsection (3). In fact, the defense agreed that even the language, "or business repute" did not apply and should not be used.

ATTY. HORTON: Yep, Your Honor, that would leave for all of them - the rest of them would be - the only language that would apply, in that case, to impair any persons credit, that's all that's left for the rest of them.

THE COURT: Is that what the State's position is?

ATTY. HODGE: Yeah. Yes.

¹ Present for the in-chambers discussion were defendant's attorneys Spinella, Barry, and Horton.

THE COURT: Okay. All right. Based upon that, I am going to Charge with regard to that one - that one aspect of Coercion. I'm going to take out "expose any secret, tending to subject any person to hatred, contempt or ridicule." And just leave in "to impair any persons' credit." All right. Then, same would apply when you come down to -

ATTY. HORTON: The next page, Your Honor.

Excerpt transcript 4/8/2019 page 52, lines 7 - 23.

As for the defendant's request for a plain error review, such a review is most appropriately untaken at the appellate level. See Kitchens, Bellamy, State v. Herring, 323 Conn. 526 (2016) (Court declined to overturn Kitchens, cited Bellamy, and declined to review the claim for plain error.) State v. McClain, 324 Conn. 802 (2017) (Clarified Golding review and plain error review. Held that Kitchens does not preclude plain error review but the defendant's claim was not plain error).

2. There was no prosecutorial impropriety

The defendant alleges in his MJOA pages 12-15 that two statements in the state's rebuttal argument constitute an impropriety warranting a new trial. Whether an impropriety occurred does not automatically indicate that a due process violation occurred warranting a new trial. The defendant appears to suggest that, the State's first argument to which he now objects was invited by his closing argument and his failure to object suggests that it was not improper. See State v. Payne, 303 Conn. 538, 560-61 (2012) (Analysis for claims of prosecutorial impropriety). Here, the defense claims that the use of the word "faith" was improper but made no objection during trial. For the entirety of the trial the defense team consisted of no less than 4-5 attorneys, and at times up to 6. The failure of the defense to raise an objection during the trial indicates that there was no impropriety.

As to the second statement to which there was an objection raised by the defense, it appears that the Court sustaining the objection was a satisfactory remedy. The Court inquired whether it should give a curative instruction.

On the issue of the State's argument having been invited by the defendant, the defendant made the following closing argument:

"The State initially presented a much bigger case to you. There's no getting around that. They put up Mr. Tp. Apparently, they have no faith in Mr. Tp. because they dropped the charge, right. There were other counts that you heard when the Information was read at the beginning of this case. They are no longer there. They don't even believe in their own case. The main trafficker, Robert King, who ninety percent of the testimony was about, ninety percent of her argument was about, where is he? Where is he? I didn't hear from him. He's -- he's available. So where is he? They don't believe in their own case. They couldn't even put on their own -- the witnesses to prove their case, and that -- that should cause some pause in you, because this case not only needs to be proven but beyond a reasonable doubt. That means if you believe every single thing she says and you have a reasonable doubt, it's still not guilty. You have to believe every single element beyond a reasonable doubt, and you have to hold her to that standard. You said you would, and I'm gonna ask you to do that. The other thing you said in jury selection when I asked every one of you, if you end up hating my client because you hear a lot of bad things about him, can you still judge this case just based on the facts and put any of your emotions aside, and you said you could. And I'm again gonna ask you all to do that, because I think that played out probably like I thought it would. You did hear some very what I think you all determine is negative stuff about my client and things he did, but you cannot use emotion or hatred for my client to find him guilty. You must find that the facts fit the law, and they do not in this case."

Trial transcript 4/8/19 page 84, line 27 - page 86, line 3.

In improperly arguing facts not in evidence to suggest that the State itself did not have "faith" in the strength of its case, the defendant invited the State's rebuttal argument. At no time did the

State indicate a lack of belief in its case. A response that simply stated the function of a prosecutor is proper under the all the circumstances. See Rule of Professional Conduct 3.8(1). The comment at issue was not an appeal to emotions, passions, or prejudices, did not improperly insert beliefs, and was not an attempt to shift any burden. Nonetheless, if error is found it should be subject to a determination of whether a due process violation exists.

With regard to the defendant's allegation that the State engaged in burden sifting, defendant's motion at page 15, the defendant objected, the Court sustained the objection, and thereafter the following occurred:

ATTY. HORTON: Judge, at one point when I objected to the State's comments, I believe, they did in fact shift the burden on Mr. King on being here to the defense, which I thought we agreed they couldn't do so I do think it's prosecutorial misconduct and I would ask for a mistrial in light of that. Thank you.

THE COURT: State want to be heard?

ATTY. HODGE: I disagree, your Honor. I don't think that there was a burden shift. We had discussed that if the defense was arguing that the State should have called Mr. King without first proven that -- shown that it was natural -- that --that -- that he was a natural witness that the State should have called but that the -- because they put on a case that the -- that the responses -- is - is -- is that the defense could have called him as well.

THE COURT: So, I did sustain the objection. I don't believe that it rises to the level of prosecutorial misconduct warranting a mistrial. If the defense is asking that the Court add some cautionary instruction that the Defendant is not obligated to present any evidence as you have no burden of proof, I am happy to do that. Otherwise, I am denying the motion for mistrial.

ATTY. SPINELLA: Can I have a minute, your Honor.

THE COURT: Absolutely.

ATTY. SPINELLA: We would ask for an additional instruction.

THE COURT: An additional instruction?

ATTY. SPINELLA: Yes, please.

Transcript 4/8/19 Page 117, line 24 – 119, line 2. As a result, the Court gave the following instruction:

"Now, the burden to prove the Defendant guilty of the crimes with which he is charged is upon the State. The Defendant does not have to prove his innocence. This means that the State must prove beyond a reasonable doubt each and every element necessary to constitute the crimes charges. Now, I know that you heard argument in terms of which witness and who didn't call which witness. Remember that the defense is under no obligation to call any witnesses at all so you cannot use that as any basis in your deliberations on this case. ..."

Trial Transcript 4/8/2019 Page 121 Line 20 – 122 Line 2.

Therefore, the curative measure given insured that a due process violation did not occur and no basis exists for granting defendant's request for a new trial.

Conclusion:

The Defendant in the instant case is not entitled to a judgment of acquittal or for a new trial. The evidence was sufficient for the jury to return a verdict of guilty on all counts, the double jeopardy claim fails as a matter of law, the fundamental fairness argument fails, the prosecutor's comments were not improper, and there is no error in the jury instructions.

Respectfully submitted,
STATE OF CONNECTICUT

By: Sharmese L. Hodge

Sharmese L. Hodge
Assistant State's Attorney

DBD-CR17-0155220-S : SUPERIOR COURT
STATE OF CONNECTICUT :
VS. : DANBURY GA 3
BRUCE BEMER : June 10, 2019

**REPLY TO STATE'S OBJECTION TO MOTION FOR JUDGMENT OF
ACQUITTAL OR FOR NEW TRIAL**

The Defendant replies to the State's Objection filed on Friday, June 7 as follows:

1.

The State does not address the merits of the Defendant's argument that (a) the charge on C.G.S. § 53a-192(a)(3) was wrong and (b) in omitting an essential element of the crime charged, the Court committed a fundamental constitutional error under cases the Defendant cited in his Motion at page 9; see also *State v. Devalda*, 306 Conn. 494, 501 (2012); *State v. Thompson*, 305 Conn. 806, 815 (2012), and *State v. Gabriel*, 192 Conn. 405, 413-14 (1984). The State's argument rather is that the Defendant implicitly waived the claim under *State v. Kitchens*, 299 Conn. 447 (2011).

Kitchens concerns the following situation:

We conclude that, when the trial court provides counsel with a copy of the proposed jury instructions, allows a meaningful opportunity for their review, solicits comments from counsel regarding changes or modifications and counsel affirmatively accepts the instructions proposed or given, the defendant may be deemed to have knowledge of any potential flaws therein and to have waived implicitly the constitutional right to challenge the instructions on direct appeal. Such a determination by the reviewing court must be based on a close examination of the record and the particular facts and circumstances of each case.²³

[Footnote 23] The standard that we describe would not allow waiver to be presumed from a silent record or from defense counsel's mere acquiescence in, or failure to object to, the jury instructions. A silent record, by definition, would not satisfy the standard because there would be no factual basis from which the court could infer a waiver, and mere acquiescence or failure to object, without more, would provide an insufficient basis for a finding of waiver because there would be no evidence from which the court could determine whether counsel had been given a meaningful opportunity to review, comment on and express satisfaction with the instructions, or whether counsel had, in fact, expressed such satisfaction before or after the instructions were given.

Id. at 482-83.

In short, *Kitchens* concerns the situation where the defense made a strategic decision not to object rather than simply overlooked the issue, and is sandbagging the Court and the State. The State excerpts snippets from the colloquy with the Court about the charge on § 53a-192(a). If the colloquy is read as a whole (tr. 4/8, at pages 46-52), it shows (i) that defense counsel was focusing on two things, the lack of evidence on exposing any secret, and the meaning of "credit"; (ii) that what the Court was going to charge and not charge on (a)(3) was evolving at a high speed; (iii) that defense counsel did not want a charge at all on (a)(3), as noted also in footnote 3 of the Defendant's Motion; (iv) that the prosecutor first wanted a charge on "expose a secret" and then changed her mind; (v) that there was no time for calm reflection on the changes made in the draft charge; (vi) that the charge was given the same day as the charge conference; and (vii) thus, that the significance of taking out the "exposing any secret" language on page 52 was missed. There was, and is, no sandbagging going on. *Kitchens* does not apply.

2.

While *Kitchens* applies to a *Golding* claim, it does not apply to a plain error claim. *State v. McClain*, 324 Conn. 802, 807-15 (2017). A failure to charge on an essential element of a crime is plain error. *State v. Thompson*, 305 Conn. 806, 815 (2012); *State*

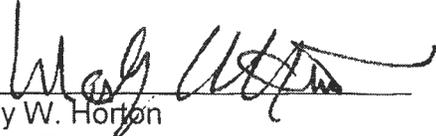
v. Cotton, 69 Conn. App. 505 (2002); *State v. Hamilton*, 30 Conn. App. 68, 74-78 (1993), *aff'd*, 228 Conn. 234 (1994); see plain error cases collected in *McClain*, 324 Conn. at 814, especially *State v. Ruocco*, 322 Conn. 796, 803 (2016) (failure to give statutorily mandated instruction is plain error); *State v. Marrero*, 66 Conn. App. 709, 719-20 (2001) (failure to instruct on statutory definition was plain error). A failure to charge on an essential element of the offense is plain error.

3.

If this Court agrees that there is a fundamental constitutional error, or that there is plain error, this Court should not simply defer to appellate review. Practice Book § 42-53 states: "Upon motion of the defendant, the judicial authority may grant a new trial if it is required in the interests of justice."

The interests of justice would require that this Court grant a motion that it concludes would otherwise lead to a successful appeal. It would not be in the interests of justice to sentence the Defendant; to require a higher bond; to disrupt his personal life and the affairs of his and his employees' businesses that a felony conviction would clearly disrupt; and to require him to wait a year or two in order to attain the redress that he is entitled to now.

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DOCKET NO: DBD-CR17-0155220-S : SUPERIOR COURT
STATE OF CONNECTICUT : G.A. #3
v. : AT DANBURY, CONNECTICUT
BRUCE JOHN BEMER : JUNE 17, 2019

(EXCERPT)

BEFORE THE HONORABLE ROBIN PAVIA, JUDGE

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Dena Laursen

Transcribed By:
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Court Recording Monitor
146 White Street
Danbury, CT 06810

FILED
SEP 05 2019
APPELLATE CLERK'S OFFICE
231 CAPITOL AVENUE
HARTFORD, CT 06108

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(Excerpt begins)

THE COURT: I will indicate that for the record, but the document speaks for itself. All right. So, done with the motions that are outstanding. In terms of the renewed motion for judgment of acquittal, that argument really addressed and incorporated arguments that had been made at the time of trial and at the close of -- of various -- of the State's case and then again at the close of the defendant's case. So, for the most part, those issues had been addressed. The Court stands by it's previous ruling in denying the defendant's motion for judgment of acquittal in that the issues that were addressed were largely that of a factual nature that the jury needed to address in their deliberations, that there was sufficient evidence on the record if the jury deemed to credit that evidence by which they could find the elements of the charged offenses, and so, that motion for judgment of acquittal is, once again, denied.

The issue with regard to the motion for a new trial based on the interpretation of the particular statute at issue, mainly that of the jury's instruction on Coercion and the elements of Coercion, you know, I have, obviously, done all the research as you, I'm sure, have both done. There's not a lot of legislative guidance in -- when you look at all the

1 legislative history, they don't go into detail on
2 this. The only case that I think the -- is -- that
3 really kind of dealt with it was State versus
4 Reynolds, which was an Appellate Court case decided
5 in 2009 where they really do more of a sufficiency of
6 the evidence as it relates to the charge of coercion.

7 I went back and listened to all of the
8 arguments that were made at the time that we were
9 drafting the charge to the jury, and in those
10 arguments, we had much discussion in terms of the
11 defendant's contesting that the jury be charged in
12 general, all right, and I think we can all agree on
13 that. Once we moved into the specifics of then how
14 the jury would be charged on Coercion, what was
15 apparent was that the Court, in it's original draft
16 to both sides -- in providing my draft version of the
17 charge, had incorporated the language that counsel is
18 now indicating should have been charged, and the
19 discussion -- when it came down to the wording to be
20 used, the State requested that that part be omitted
21 and gave a sample of what the State felt was
22 appropriate and the defendant agreed to that, and the
23 only reason that I say this -- and I totally
24 understand the defendant's argument in terms of
25 Kitchens. I -- I -- I'm not suggesting that this was
26 done purposefully in -- in a manipulative manner in
27 order to be able to have this appellate issue. All

1 right.

2 So, moving beyond that, what I think counsel
3 does agree is that this issue was not raised at the
4 time that we did the jury charge, but argues that
5 Kitchens is not applicable because now it goes into a
6 constitutional argument. The reason that I think the
7 discussion on the manner and the wording should be
8 used for purposes of the jury charge on this
9 particular element is important in this case is
10 because it's not simply a matter in which everybody
11 overlooked this and there was no discussion on it and
12 it just happened that it -- it -- it was charged that
13 way. This was an area that I originally indicated I
14 was going to charge with the language that counsel's
15 now -- now asking for or now suggesting that should
16 have been provided, that then there was a request to
17 omit that, the Court omitted it based on that
18 request, and therefore, there was -- there was
19 absolute discussion and purposeful charging in this
20 particular instance, and I think that's important to
21 note for the record. Nonetheless, it does -- the
22 constitutional aspect is still, obviously, imperative
23 and -- and needs to be addressed.

24 In this Court's opinion, after review of the
25 evidence in this case, after review of the statute,
26 the legislative interpretation and analysis and the
27 case law on it, I am of the opinion that the evidence

1 as presented, when analyzed in accordance with this
2 statute, provided a fair guidance by which the jury
3 could deliberate and that the charge as given fairly
4 comports and did comport and does comport with the
5 law which was appropriate with regard to the
6 timeframe in which the defendant was charged and did
7 not mislead the jury in it's deliberations on this
8 matter, and for that reason, I deny the defendant's
9 motion for a new trial. Okay. With that, we, I
10 believe, move into issues of sentencing. Does
11 anybody have anything additional to be said on that?

12 (Excerpt ends)

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22 _____
23 THE HONORABLE ROBIN PAVIA, JUDGE
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DOCKET NO: DBD-CR17-0155220-S : SUPERIOR COURT
STATE OF CONNECTICUT : G.A. #3
v. : AT DANBURY, CONNECTICUT
BRUCE JOHN BEMER : JUNE 17, 2019

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct excerpt of the audio recording of the above-referenced case, heard in Superior Court, G.A. #3, Danbury, Connecticut, before the Honorable Robin Pavia, Judge, on the 17th day of June, 2019.

Dated this 14th day of August, 2019 in Danbury,
Connecticut.



Dena Laussen
Court Recording Monitor

STATE OF CONNECTICUT

STATE OF CONNECTICUT

SUPERIOR COURT

VS.

J.D. OF DANBURY

BRUCE JOHN BEMER

AT DANBURY

DBD-CR170155220-S

JUNE 17, 2019

PRESENT: HON. ROBIN PAVIA

J U D G M E N T

This matter commenced with a warrant served on March 28, 2017, in which the defendant was charged with Patronizing Trafficked Persons in violation of C.G.S. § 53a-83(c)(2)(A). The defendant was detained.

The matter came thence to March 29, 2017, when the defendant was arraigned. Attorney John F. Droney filed an appearance on behalf of the defendant. The Court (Shaban, J.) set bond at five hundred thousand dollars.

The matter came thence to March 30, 2017, when the defendant posted a professional surety bond in the amount of five hundred thousand dollars.

The matter came thence to April 5, 2017, when Attorney Joel T. Faxon filed an appearance on behalf of victims.

The matter came thence to June 16, 2017, when the state filed a substitute information charging the defendant with Patronizing Trafficked Person in violation of C.G.S. § 53a-83(c)(2)(A) and Conspiracy to commit Human Trafficking in violation of C.G.S. §§ 53a-48 and 53a-192a.

The matter came thence to June 20, 2017, when the defendant pleaded not guilty to all counts of the substitute information.

The matter came thence to August 8, 2017, when Attorney Anthony Spinella filed an appearance on behalf of the defendant.

The matter came thence to January 31, 2018, when the defendant rejected the state's offer and elected a trial by jury.

The matter came thence to February 16, 2018, when the Court (Shaban, J.) held a hearing on various motions.

The matter came thence to March 2, 2018, when the Court (Shaban, J.) issued rulings on motions argued on February 16, 2018.

The matter came thence to March 20, 2018, when the defendant commenced an appeal of the Court's (Shaban, J.) rulings of March 2, 2018. The appeal is pending as docket S.C. 20195.

The matter came thence to February 22, 2019, when the state filed an eight count long form information charging the defendant with seven counts of Patronizing a trafficked person in violation of C.G.S. § 53a-83(a)(1), and one count of Criminal liability for trafficking in persons in violation of C.G.S. §§ 53a-192a and 53a-8. Jury selection commenced before the Court (Pavia, J.)

The matter came thence to February 26, 2019, when jury selection continued.

The matter came thence to February 28, 2019, when the state filed a substitute long form information charging the defendant with seven counts of Patronizing a trafficked person in violation of C.G.S. § 53a-83(c) and one count of Criminal liability for trafficking in persons in violation of C.G.S. §§ 53a-192a and 53a-8. The defendant entered not guilty pleas and elected a trial by jury. Jury selection concluded.

The matter came thence to March 7, 2019, when the Court (Pavia, J.) heard trial motions.

The matter came thence to March 19, 2019, when the Court (Pavia, J.) heard trial motions.

The matter came thence to April 1, 2019, when the state filed a substitute long form information charging the defendant with seven counts of Patronizing a trafficked person in violation of C.G.S. § 53a-83(c) and one count of Criminal liability for trafficking in persons in violation of C.G.S. §§ 53a-192a and 53a-8. A jury trial commenced before the Court (Pavia, J.)

The jury trial continued on April 2nd, April 3rd, and April 4, 2019.

The matter came thence to April 5, 2019, when the Court (Pavia, J.) heard trial motions and held a charging conference. The state filed a five count substitute long form information charging the defendant with four counts of Patronizing a trafficked person in violation of C.G.S. § 53a-83(c) and one count of Criminal liability for trafficking in persons in violation of C.G.S. §§ 53a-192a and 53a-8.

The matter came thence to April 8, 2019, when a jury trial resumed. Jury deliberations commenced.

The matter came thence to April 9, 2019, when jury deliberations continued.

The matter came thence to April 10, 2019, when the Court (Pavia, J.) accepted the jury's verdict of guilty on each count of the information. The Court ordered a pre-sentence investigation and increased the bond by seven hundred and fifty thousand dollars. The defendant posted a professional surety bond.

The matter came thence to June 11, 2019, when the Court (Pavia, J.) heard the defendant's motion for judgment of acquittal and motion for new trial.

The matter came thence to the present date, June 17, 2019, for sentencing. The Court (Pavia, J.) denied the defendant's motions for judgment of acquittal and a new trial. The defendant posted an appeal bond in the amount of seven hundred and fifty thousand dollars by professional surety bond.

WHEREUPON IT IS ADJUDGED:

That as to count one, Patronizing a trafficked person in violation of C.G.S. § 53a-83(c), the defendant is committed to the custody of the Commissioner of Correction for a term of 10 years to serve.

That as to count two, Patronizing a trafficked person in violation of C.G.S. § 53a-83(c), the defendant is committed to the custody of the Commissioner of Correction for a term of 10 years to serve.

That as to count three, Patronizing a trafficked person in violation of C.G.S. § 53a-83(c), the defendant is committed to the custody of the Commissioner of Correction for a term of 10 years to serve.

That as to count four, Patronizing a trafficked person in violation of C.G.S. § 53a-83(c), the defendant is committed to the custody of the Commissioner of Correction for a term of 10 years to serve.

That as to count five, Criminal liability for trafficking in persons in violation of C.G.S. §§ 53a-192a and 53a-8, the defendant is committed to the custody of the Commissioner of Correction for a term of 20 years execution suspended after 10 years; 5 years probation with special conditions.

All counts are concurrent with each other, for a total effective sentence of 20 years execution suspended after 10 years; 5 years probation. Sex offender registration is required. Court fees and probation costs are imposed.

THE COURT: (Pavia, J.)

By: 
Maria F. Dorso, Assistant Clerk

APPEAL **JOINT APPEAL** **CROSS APPEAL** **AMENDED APPEAL** **CORRECTED FORM**

JD-SC-33 Rev. 7-16
 P.B. Sections 3-8, 60-7, 60-8, 62-7, 62-8, 63-3, 63-4, 63-10
 C.G.S. Sections 31-301b, 51-197f, 52-470

All appeals must be filed electronically unless an exemption from the requirements of electronic filing has been granted or you are an incarcerated self-represented party. For further information about e-filing or this form, see the Appeal Instructions, form JD-SC-34.

To Supreme Court To Appellate Court

Name of case (State full name of case)

STATE OF CONNECTICUT v BRUCE JOHN BEMER

Type of appellate matter

Appeal

Trial Court History	Tried to Jury		Trial court location DANBURY JD COURTHOUSE 146 WHITE STREET DANBURY CT 06810	
	Trial court judges being appealed HON. ROBIN PAVIA		List all trial court docket numbers, including location prefixes DBD-CR-17-0155220-S	
	All other trial court judges who were involved with the case		Judgment for (Where there are multiple parties, specify those for whom judgment was rendered) STATE OF CONNECTICUT	
	Date of judgment(s) or decision(s) being appealed 06/17/2019		Date of issuance of notice on any order on any motion that would render judgment ineffective	Date for filing appeal extended to
	Case type Criminal		For Juvenile Cases <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Order of Temporary Custody	
	For Civil/Family Case Types, Major/Minor code: CR		<input type="checkbox"/> Other _____	

Appeal	Appeal filed by (Party name(s)) BRUCE JOHN BEMER		
	From (the action that constitutes the appealable judgment or decision) Judgment of the trial court imposing sentence		
	If this appeal is taken by the State of Connecticut, provide the name of the judge who granted permission to appeal and the date of the order		
	Statutory Basis for Appeal to Supreme Court		
	By (Signature of counsel of record) ▶	Telephone number 860-522-8338	Fax number 860-728-0401 Juris number (If applicable)

Appearance	Type name and address of counsel of record filing this appellate matter (This is your appearance; see Practice Book Section 62-8) HORTON DOWD BARTSCHI & LEVESQUE PC 90 GILLETT STREET HARTFORD CT 06105		E-mail address jnye@hdblfirm.com
	"X" one if applicable <input type="checkbox"/> Counsel or self-represented party who files this appeal will be deemed to have appeared in addition to counsel of record who appeared in the trial court. <input type="checkbox"/> Counsel or self-represented party who files this appeal is appearing in place of:		Name of counsel of record Juris number (If applicable)

Certification	I certify that a copy of the appeal form I am filing will immediately be delivered to each other counsel of record and I have included their names, addresses, e-mail addresses and telephone and facsimile numbers; the appeal form has been redacted or does not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law; and the appeal form complies with all applicable rules of appellate procedure in accordance with Practice Book Sections 62-7 and 63-3. Date to be delivered _____	
	If you have an exemption from e-filing under Practice Book Section 60-8, attach a list with the name, address, e-mail address, telephone number, and facsimile number of each counsel of record and the address where the copy was delivered.	If this appeal is a criminal or habeas corpus matter, I certify that a copy of this appeal form will immediately be delivered to the Office of the Chief State's Attorney Appellate Bureau. Date to be delivered _____ Signed (Counsel of record) Date signed

Required Documents	To be filed with the Appellate Clerk within ten days of the filing of the appeal, if applicable. See Practice Book Section 63-4.	
	1. Preliminary Statement of the Issues 2. Court Reporter's Acknowledgment or Certificate that no transcript is necessary 3. Docketing Statement	4. Statement for Preargument Conference (form JD-SC-28A) 5. Constitutionality Notice 6. Sealing Order form, if any

Entry Fee Paid No Fees Required Fees, Costs, and Security waived by Judge (enter Judge's name below)

Court Use Only
Date and time filed

Judge _____ Date waived _____

Appeal Form (continued)

CASE NAME:

STATE OF CONNECTICUT v BRUCE JOHN BEMER

Parties & Appearances

PARTY/PARTIES INITIATING THE APPEAL

BRUCE JOHN BEMER

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ALL OTHER PARTIES AND APPEARANCES

STATE OF CONNECTICUT - Judgment For

Juris: 427393 STATE ATTORNEY
Phone: Fax:
Email:

A.C. 43138

(DBD CR17-0155220-S)

STATE OF CONNECTICUT

vs.

BRUCE BEMER

:
:
:
:

APPELLATE COURT

JULY 3, 2019

DOCKETING STATEMENT

Pursuant to Practice Book § 63-4(a)(3), the Defendant provides the following information:

(A) Parties to the Appeal

Plaintiff:

State of Connecticut

Plaintiff's Counsel:

Sharmese L. Hodge
Assistant State's Attorney
State's Attorney's Office
Geographical Area No. 3
146 White Street
Danbury, CT 06810
sharmese.hodge@ct.gov

Defendant:

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Defendant's Counsel:

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Wesley W. Horton
Brendon P. Levesque
Horton, Shields & Knox, P.C.
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Non-Parties having an interest in the cause on appeal:

Unnamed Victims represented by Attorney Joel T. Faxon
Faxon Law Group, LLC
59 Elm St
New Haven, CT 06510

Victims John Doe, Bob Doe and Adam Doe, represented by Attorney Kevin C. Ferry
Law Office of Kevin C. Ferry, LLC
77 Lexington St
New Britain, CT 06052

- (B) State v. Bemer, S.C. 20195
- (C) There were exhibits in the trial court.
- (D) Convictions:
 - Count 1: 10 years in prison;
 - Count 2: 10 years in prison;
 - Count 3: 10 years in prison;
 - Count 4: 10 years in prison;
 - Count 5: 20 years in prison, suspended after 10 years.All terms to run concurrently.
The Defendant is not incarcerated.

DEFENDANT, BRUCE BEMER

By 

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Appendix Part II

Connecticut General Statutes Annotated
Title 46a. Human Rights (Refs & Annos)
Chapter 814F. Trafficking in Persons Council

This section has been updated. [Click here for the updated version.](#)

C.G.S.A. § 46a-170

§ 46a-170. Trafficking in Persons Council. Membership. Duties. Report

Effective: July 1, 2016 to September 30, 2016

(a) There is established a Trafficking in Persons Council that shall be within the Commission on Women, Children and Seniors for administrative purposes only.

(b) The council shall consist of the following members: (1) The Chief State's Attorney, or a designee; (2) the Chief Public Defender, or a designee; (3) the Commissioner of Emergency Services and Public Protection, or the commissioner's designee; (4) the Labor Commissioner, or the commissioner's designee; (5) the Commissioner of Social Services, or the commissioner's designee; (6) the Commissioner of Public Health, or the commissioner's designee; (7) the Commissioner of Mental Health and Addiction Services, or the commissioner's designee; (8) the Commissioner of Children and Families, or the commissioner's designee; (9) the Child Advocate, or the Child Advocate's designee; (10) the Victim Advocate, or the Victim Advocate's designee; (11) the chairperson of the Commission on Women, Children and Seniors or the chairperson's designee; (12) one representative of the Office of Victim Services of the Judicial Branch appointed by the Chief Court Administrator; (13) a municipal police chief appointed by the Connecticut Police Chiefs Association, or a designee; and (14) nine public members appointed as follows: The Governor shall appoint three members, one of whom shall represent Connecticut Sexual Assault Crisis Services, Inc., one of whom shall represent victims of commercial exploitation of children, and one of whom shall represent sex trafficking victims who are children, the president pro tempore of the Senate shall appoint one member who shall represent an organization that provides civil legal services to low-income individuals, the speaker of the House of Representatives shall appoint one member who shall represent the Connecticut Coalition Against Domestic Violence, the majority leader of the Senate shall appoint one member who shall represent an organization that deals with behavioral health needs of women and children, the majority leader of the House of Representatives shall appoint one member who shall represent an organization that advocates on social justice and human rights issues, the minority leader of the Senate shall appoint one member who shall represent the Connecticut Immigrant and Refugee Coalition, and the minority leader of the House of Representatives shall appoint one member who shall represent the Motor Transport Association of Connecticut, Inc.

(c) The chairperson of the Commission on Women, Children and Seniors, or a designee, shall serve as chairperson of the council. The members of the council shall serve without compensation but shall be reimbursed for necessary expenses incurred in the performance of their duties.

(d) The council shall: (1) Hold meetings to provide updates and progress reports, (2) identify criteria for providing services to adult trafficking victims, (3) identify criteria for providing services to children of trafficking victims, and (4) consult with governmental and nongovernmental organizations in developing recommendations to strengthen state and local efforts to prevent trafficking, protect and assist victims of trafficking and prosecute traffickers. The council shall meet at least three times per year.

(e) The council may request data and other information from state and local agencies to carry out its duties under this section.

(f) Not later than January 1, 2008, and annually thereafter, the council shall submit a report of its activities, including any recommendations for legislation, to the General Assembly in accordance with section 11-4a.

(g) For the purposes of this section, “trafficking” means all acts involved in the recruitment, abduction, transport, harboring, transfer, sale or receipt of persons, within national or across international borders, through force, coercion, fraud or deception, to place persons in situations of slavery or slavery-like conditions, forced labor or services, such as forced prostitution or sexual services, domestic servitude, bonded sweatshop labor or other debt bondage.

Credits

(2007, P.A. 07-107, § 1, eff. June 11, 2007; 2011, P.A. 11-51, § 134(a), eff. July 1, 2011; 2013, P.A. 13-166, § 9, eff. June 24, 2013; 2015, P.A. 15-195, § 2; 2016, May Sp.Sess., P.A. 16-3, § 163, eff. July 1, 2016.)

C. G. S. A. § 46a-170, CT ST § 46a-170

The statutes and Constitution are current with enactments of Public Acts enrolled and approved by the Governor on or before July 23, 2019 and effective on or before July 23, 2019. Some statute sections may be more current, see credits for details.

End of Document

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Connecticut General Statutes Annotated Title 53a. Penal Code (Refs & Annos) Chapter 951. Penal Code: Statutory Construction; Principles of Criminal Liability (Refs & Annos)
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C.G.S.A. § 53a-8

§ 53a-8. Criminal liability for acts of another

Currentness

(a) A person, acting with the mental state required for commission of an offense, who solicits, requests, commands, importunes or intentionally aids another person to engage in conduct which constitutes an offense shall be criminally liable for such conduct and may be prosecuted and punished as if he were the principal offender.

(b) A person who sells, delivers or provides any firearm, as defined in subdivision (19) of section 53a-3, to another person to engage in conduct which constitutes an offense knowing or under circumstances in which he should know that such other person intends to use such firearm in such conduct shall be criminally liable for such conduct and shall be prosecuted and punished as if he were the principal offender.

Credits

(1969, P.A. 828, § 8, eff. Oct. 1, 1971; 1971, P.A. 871, § 2; 1992, June Sp.Sess., P.A. 92-2.)

C. G. S. A. § 53a-8, CT ST § 53a-8

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Connecticut General Statutes Annotated
Title 53a. Penal Code (Refs & Annos)
Chapter 952. Penal Code: Offenses (Refs & Annos)
Part VI. Sex Offenses (Refs & Annos)

This section has been updated. [Click here for the updated version.](#)

C.G.S.A. § 53a-83

§ 53a-83. Patronizing a prostitute: Class A misdemeanor or class C felony

Effective: October 1, 2013 to September 30, 2016

(a) A person is guilty of patronizing a prostitute when: (1) Pursuant to a prior understanding, he pays a fee to another person as compensation for such person or a third person having engaged in sexual conduct with him; or (2) he pays or agrees to pay a fee to another person pursuant to an understanding that in return therefor such person or a third person will engage in sexual conduct with him; or (3) he solicits or requests another person to engage in sexual conduct with him in return for a fee.

(b) Except as provided in subsection (c) of this section, patronizing a prostitute is a class A misdemeanor.

(c) Patronizing a prostitute is a class C felony if such person knew or reasonably should have known at the time of the offense that such other person (1) had not attained eighteen years of age, or (2) was the victim of conduct of another person that constitutes (A) trafficking in persons in violation of section 53a-192a, or (B) a criminal violation of 18 USC Chapter 77, as amended from time to time.

Credits

(1969, P.A. 828, § 84, eff. Oct. 1, 1971; 2013, P.A. 13-166, § 4.)

C. G. S. A. § 53a-83, CT ST § 53a-83

The statutes and Constitution are current with enactments of Public Acts enrolled and approved by the Governor on or before July 23, 2019 and effective on or before July 23, 2019. Some statute sections may be more current, see credits for details.

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Connecticut General Statutes Annotated
Title 53a. Penal Code (Refs & Annos)
Chapter 952. Penal Code: Offenses (Refs & Annos)
Part XIX. Coercion (Refs & Annos)

C.G.S.A. § 53a-192

§ 53a-192. Coercion: Class A misdemeanor or class D felony

Currentness

(a) A person is guilty of coercion when he compels or induces another person to engage in conduct which such other person has a legal right to abstain from engaging in, or to abstain from engaging in conduct in which such other person has a legal right to engage, by means of instilling in such other person a fear that, if the demand is not complied with, the actor or another will: (1) Commit any criminal offense; or (2) accuse any person of a criminal offense; or (3) expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair any person's credit or business repute; or (4) take or withhold action as an official, or cause an official to take or withhold action.

(b) It shall be an affirmative defense to prosecution based on subdivision (2), (3) or (4) of subsection (a) of this section that the actor believed the accusation or secret to be true or the proposed official action justified and that his purpose was limited to compelling the other person to behave in a way reasonably related to the circumstances which were the subject of the accusation, exposure or proposed official action, as by desisting from further misbehavior or making good a wrong done.

(c) Coercion is a class A misdemeanor except, if the threat is to commit a felony, coercion is a class D felony.

Credits

(1969, P.A. 828, § 194, eff. Oct. 1, 1971; 1971, P.A. 871, § 48; 1992, P.A. 92-260, § 75.)

C. G. S. A. § 53a-192, CT ST § 53a-192

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Connecticut General Statutes Annotated
Title 53a. Penal Code (Refs & Annos)
Chapter 952. Penal Code: Offenses (Refs & Annos)
Part XIX. Coercion (Refs & Annos)

This section has been updated. [Click here for the updated version.](#)

C.G.S.A. § 53a-192a

§ 53a-192a. Trafficking in persons: Class B felony

Effective: October 1, 2015 to September 30, 2016

(a) A person is guilty of trafficking in persons when such person (1) compels or induces another person to engage in conduct involving more than one occurrence of sexual contact with one or more third persons, or provide labor or services that such person has a legal right to refrain from providing, by means of (A) the use of force against such other person or a third person, or by the threat of use of force against such other person or a third person, (B) fraud, or (C) coercion, as provided in section 53a-192, or (2) compels or induces another person who is under eighteen years of age to engage in conduct involving more than one occurrence of sexual contact with one or more third persons that constitutes (A) prostitution, or (B) sexual contact for which such third person may be charged with a criminal offense. For the purposes of this subsection, "sexual contact" means any contact with the intimate parts of another person.

(b) Trafficking in persons is a class B felony.

Credits

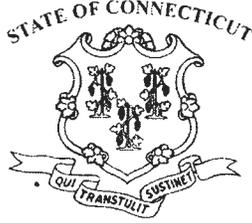
(2006, P.A. 06-43, § 1, eff. July 1, 2006; 2010, P.A. 10-36, § 26, eff. July 1, 2010; 2013, P.A. 13-166, § 2; 2015, P.A. 15-195, § 4.)

C. G. S. A. § 53a-192a, CT ST § 53a-192a

The statutes and Constitution are current with enactments of Public Acts enrolled and approved by the Governor on or before July 23, 2019 and effective on or before July 23, 2019. Some statute sections may be more current, see credits for details.

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Substitute House Bill No. 7309

Public Act No. 17-32

AN ACT CONCERNING HUMAN TRAFFICKING.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 46a-170 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2017*):

(a) There is established a Trafficking in Persons Council that shall be within the Commission on Women, Children and Seniors for administrative purposes only.

(b) The council shall consist of the following members: (1) The Chief State's Attorney, or a designee; (2) the Chief Public Defender, or a designee; (3) the Commissioner of Emergency Services and Public Protection, or the commissioner's designee; (4) the Labor Commissioner, or the commissioner's designee; (5) the Commissioner of Social Services, or the commissioner's designee; (6) the Commissioner of Public Health, or the commissioner's designee; (7) the Commissioner of Mental Health and Addiction Services, or the commissioner's designee; (8) the Commissioner of Children and Families, or the commissioner's designee; (9) the Commissioner of Consumer Protection, or the commissioner's designee; (10) the director of the Basic Training Division of the Police Officer Standards and Training Council, or the director's designee; (11) the Child Advocate,

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or the Child Advocate's designee; (12) the Victim Advocate, or the Victim Advocate's designee; (13) the chairperson of the Commission on Women, Children and Seniors or the chairperson's designee; (14) one representative of the Office of Victim Services of the Judicial Branch appointed by the Chief Court Administrator; (15) a municipal police chief appointed by the Connecticut Police Chiefs Association, or a designee; (16) the Commissioner of Education, or the commissioner's designee; (17) an adult victim of trafficking, appointed by the Governor; and ~~[(16)]~~ (18) ten public members appointed as follows: The Governor shall appoint two members, one of whom shall represent victims of commercial exploitation of children and one of whom shall represent sex trafficking victims who are children, the president pro tempore of the Senate shall appoint two members, one of whom shall represent the Connecticut Alliance to End Sexual Violence and one of whom shall represent an organization that provides civil legal services to low-income individuals, the speaker of the House of Representatives shall appoint two members, one of whom shall represent the Connecticut Coalition Against Domestic Violence and one of whom shall represent the Connecticut Lodging Association, the majority leader of the Senate shall appoint one member who shall represent an organization that deals with behavioral health needs of women and children, the majority leader of the House of Representatives shall appoint one member who shall represent an organization that advocates on social justice and human rights issues, the minority leader of the Senate shall appoint one member who shall represent the Connecticut Immigrant and Refugee Coalition, and the minority leader of the House of Representatives shall appoint one member who shall represent the Motor Transport Association of Connecticut, Inc.

(c) The chairperson of the Commission on Women, Children and Seniors, or a designee, shall serve as chairperson of the council. The members of the council shall serve without compensation but shall be

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reimbursed for necessary expenses incurred in the performance of their duties.

(d) The council shall: (1) Hold meetings to provide updates and progress reports, (2) coordinate the collection, analysis and dissemination of data regarding human trafficking, and (3) consult with governmental and nongovernmental organizations in developing recommendations to strengthen state and local efforts to prevent trafficking, protect and assist victims of trafficking and prosecute traffickers. The council shall meet at least three times per year.

(e) The council may request data and other information from state and local agencies to carry out its duties under this section.

(f) (1) The council shall:

(A) Develop a list of key indicators that a person is a victim of trafficking;

(B) Develop a standardized curriculum and conduct training for doctors, nurses, pharmacists, pharmacy technicians, emergency medical services personnel, teachers, school counselors, school administrators and personnel from the Department of Children and Families and the Department of Public Health to identify victims of human trafficking, using the list of key indicators developed under subparagraph (A) of this subdivision, and assist such victims;

(C) Develop and conduct training for personnel from the Departments of Children and Families and Public Health on methods for identifying children in foster care who may be at risk of becoming victims of trafficking;

(D) Develop a plan for mental health, support and substance abuse programs for individuals identified as victims of trafficking and those arrested for prostitution in violation of section 53a-82. The plan shall

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provide for (i) the diversion of victims of trafficking and prostitution offenders into community-based treatment and support services, including, but not limited to, substance abuse recovery, housing, healthcare, job training, treatment and mental health support, and (ii) after the successful completion of the program, the dismissal of any related criminal charges against the accused.

(2) The council shall include such plan and any recommendations for legislation to implement the plan as part of any report submitted pursuant of subsection (h) of this section not later than January 1, 2018.

(g) The council shall examine the challenges faced by victims of trafficking who are persons without legal immigration status. The council may recommend services that such persons could benefit from and legislation to provide such services as part of any report submitted pursuant to subsection (h) of this section.

[(f)] (h) Not later than January 1, 2008, and annually thereafter, the council shall submit a report of its activities, including any recommendations for legislation, to the General Assembly in accordance with section 11-4a.

[(g)] (i) For the purposes of this section, "trafficking" means all acts involved in the recruitment, abduction, transport, harboring, transfer, sale or receipt of persons, within national or across international borders, through force, coercion, fraud or deception, to place persons in situations of slavery or slavery-like conditions, forced labor or services, such as forced prostitution or sexual services, domestic servitude, bonded sweatshop labor or other debt bondage.

Sec. 2. Section 53a-192a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2017*):

(a) A person is guilty of trafficking in persons when such person (1) compels or induces another person to engage in conduct involving

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sexual contact with one or more third persons, or provide labor or services that such person has a legal right to refrain from providing, by means of (A) the use of force against such other person or a third person, or by the threat of use of force against such other person or a third person, (B) fraud, or (C) coercion, as provided in section 53a-192, [or] (2) compels or induces another person who is under eighteen years of age to engage in conduct involving sexual contact with one or more third persons that constitutes sexual contact for which such third person may be charged with a criminal offense, or (3) otherwise commits an act that constitutes sex trafficking. For the purposes of this subsection, "sexual contact" means any contact with the intimate parts of another person, and "sex trafficking" means the recruitment, harboring, transportation or provision of a person for the purpose of engaging in sexual conduct with another person for a fee.

(b) Trafficking in persons is a class [B] A felony.

Sec. 3. Section 53a-83 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2017*):

(a) A person is guilty of patronizing a prostitute when: (1) Pursuant to a prior understanding, [he] such person pays a fee to another person as compensation for such person or a third person having engaged in sexual conduct with [him] such person; [or] (2) [he] such person pays or agrees to pay a fee to another person pursuant to an understanding that in return [therefor] for such fee such other person or a third person will engage in sexual conduct with [him] such person; or (3) [he] such person solicits or requests another person to engage in sexual conduct with [him] such person in return for a fee.

(b) [Except as provided in subsection (c) of this section, patronizing] Patronizing a prostitute is a class A misdemeanor and any person found guilty shall be fined two thousand dollars.

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[(c) Patronizing a prostitute is a class C felony if such other person (1) had not attained eighteen years of age, or (2) was the victim of conduct of another person that constitutes (A) trafficking in persons in violation of section 53a-192a, or (B) a criminal violation of 18 USC Chapter 77, as amended from time to time.]

Sec. 4. (NEW) (*Effective October 1, 2017*) (a) A person is guilty of commercial sexual abuse of a minor when: (1) Such person pays a fee to a minor or third person as compensation for a minor having engaged in sexual conduct with such person; (2) such person pays or agrees to pay a fee to a minor or a third person pursuant to an understanding that in return for such fee the minor will engage in sexual conduct with such person; or (3) such person solicits or requests to engage in sexual conduct with a minor, or any other person that such person reasonably believes to be a minor, in return for a fee.

(b) Except as provided in subsection (c) of this section, commercial sexual abuse of a minor is a class B felony.

(c) Commercial sexual abuse of a minor is a class A felony if the minor has not attained fifteen years of age.

(d) For purposes of this section, "minor" means a person who has not attained eighteen years of age.

Sec. 5. Section 54-234a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2017*):

(a) (1) The operator of any (A) establishment that provides massage services for a fee; (B) publicly or privately operated highway service plaza; [, any]. (C) hotel, motel, inn or similar lodging; [or any] (D) public airport, as defined in section 15-74a; (E) acute care hospital emergency room; (F) urgent care facility; (G) station offering passenger rail service or passenger bus service; (H) business that sells or offers for sale materials or promotes performances intended for an adult-only

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audience; (I) employment agency, as defined in section 31-129, that offers personnel services to any other operator described in this subdivision; or (J) establishment that provides services performed by a nail technician, as defined in section 19a-231, and (2) each person who holds an on-premises consumption permit for the retail sale of alcoholic liquor pursuant to title 30, shall post the notice developed pursuant to subsection (b) of section 54-222 in plain view in a conspicuous location where [sales] labor and services are provided or performed, tickets are sold and other transactions, including sales, are to be carried on.

(b) The provisions of subsection (a) of this section shall not apply to any person who holds an on-premises consumption permit for the retail sale of alcoholic liquor pursuant to title 30 that consists of only one or more of the following: (1) A caterer, [railroad,] boat, [airline,] military, charitable organization, special club, temporary liquor or temporary beer permit, or (2) a manufacturer permit for a farm winery, a manufacturer permit for beer, manufacturer permits for beer and brew pubs, or any other manufacturer permit issued under title 30.

(c) Any operator or person who fails to comply with the provisions of subsection (a) of this section shall be fined one hundred dollars for a first offense and two hundred fifty dollars for any subsequent offense, in addition to any proceedings for suspension or revocation of a license, permit or certificate that the appropriate authority may initiate under any other provision of law.

Sec. 6. (NEW) (Effective October 1, 2017) (a) The Commissioner of Children and Families, in consultation with the Commissioner of Emergency Services and Public Protection, shall develop an initial educational training program and refresher training program for the accurate and prompt identification and reporting of suspected human trafficking.

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(b) The training program shall include a video presentation, developed and approved by said commissioners, that offers awareness of human trafficking issues and guidance to law enforcement personnel, judges of the Superior Court, prosecutors, public defenders and other attorneys who represent criminal defendants, hospital emergency room staff and urgent care facility staff who have contact with patients and persons employed by a local or regional board of education or a constituent unit, as defined in section 10a-1 of the general statutes, who have contact with students.

(c) Any person described in subsection (b) of this section shall complete the initial educational training program not later than July 1, 2018, and shall complete the refresher training program annually thereafter, provided any person being employed as such a person shall complete such initial educational training program not later than six months after beginning such employment or July 1, 2018, whichever is later.

Sec. 7. (*Effective from passage*) (a) The Attorney General, in consultation with the Commissioner of Administrative Services, the Secretary of the Office of Policy and Management and any other state agencies or interested parties the Attorney General deems necessary, shall develop a proposed certification for inclusion in state contracts that conforms, to the extent legally feasible, with the provisions of the federal Executive Order 13627 Strengthening Protections Against Trafficking in Persons in Federal Contracts.

(b) Not later than January 1, 2018, the Attorney General shall submit a report reflecting the proposed certification described in subsection (a) of this section, along with any recommendations concerning the proposed certification, to the joint standing committees of the General Assembly having cognizance of matters relating to the judiciary and government administration, in accordance with the provisions of section 11-4a of the general statutes.

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Sec. 8. Section 53a-84 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2017*):

(a) In any prosecution for prostitution in violation of section 53a-82 or patronizing a prostitute in violation of section 53a-83, as amended by this act, [or 53a-83a,] the sex of the two parties or prospective parties to the sexual conduct engaged in, contemplated or solicited is immaterial, and it shall be no defense that: (1) Such persons were of the same sex; or (2) the person who received, agreed to receive or solicited a fee was a male and the person who paid or agreed or offered to pay such fee was a female.

(b) In any prosecution for patronizing a prostitute in violation of section 53a-83, as amended by this act, [or 53a-83a,] promoting prostitution in violation of section 53a-86, 53a-87 or 53a-88 or permitting prostitution in violation of section 53a-89, it shall be no defense that the person engaging or agreeing to engage in sexual conduct with another person in return for a fee could not be prosecuted for a violation of section 53a-82 on account of such person's age.

Sec. 9. Subsection (a) of section 54-36p of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2017*):

(a) The following property shall be subject to forfeiture to the state pursuant to subsection (b) of this section:

(1) All moneys used, or intended for use, in a violation of subdivision (3) of subsection (a) of section 53-21 or section 53a-86, 53a-87, 53a-88, 53a-90a, 53a-189a, 53a-189b, 53a-192a, 53a-196a, 53a-196b, 53a-196c or 53a-196i;

(2) All property constituting the proceeds obtained, directly or indirectly, from a violation of subdivision (3) of subsection (a) of

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section 53-21 or section 53a-86, 53a-87, 53a-88, 53a-90a, 53a-189a, 53a-189b, 53a-192a, 53a-196a, 53a-196b, 53a-196c or 53a-196i;

(3) All property derived from the proceeds obtained, directly or indirectly, from a violation of subdivision (3) of subsection (a) of section 53-21 or section 53a-86, 53a-87, 53a-88, 53a-90a, 53a-189a, 53a-189b, 53a-192a, 53a-196a, 53a-196b, 53a-196c or 53a-196i;

(4) All property used or intended for use, in any manner or part, to commit or facilitate the commission of a violation of subdivision (3) of subsection (a) of section 53-21 or section 53a-83, as amended by this act, [53a-83a,] 53a-86, 53a-87, 53a-88, 53a-90a, 53a-189a, 53a-189b, 53a-192a, 53a-196a, 53a-196b, 53a-196c or 53a-196i.

Sec. 10. Sections 53a-83a and 54-36m of the general statutes are repealed. (*Effective October 1, 2017*)

Approved June 8, 2017

West's Annotated California Codes

Penal Code (Refs & Annos)

Part 1. Of Crimes and Punishments (Refs & Annos)

Title 8. Of Crimes Against the Person

Chapter 8. False Imprisonment and Human Trafficking (Refs & Annos)

West's Ann.Cal.Penal Code § 236.1

§ 236.1. Human trafficking; punishment; provisions regarding
minors; definitions; consideration of total circumstances

Effective: January 1, 2017

Currentness

(a) A person who deprives or violates the personal liberty of another with the intent to obtain forced labor or services, is guilty of human trafficking and shall be punished by imprisonment in the state prison for 5, 8, or 12 years and a fine of not more than five hundred thousand dollars (\$500,000).

(b) A person who deprives or violates the personal liberty of another with the intent to effect or maintain a violation of Section 266, 266h, 266i, 266j, 267, 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, or 518 is guilty of human trafficking and shall be punished by imprisonment in the state prison for 8, 14, or 20 years and a fine of not more than five hundred thousand dollars (\$500,000).

(c) A person who causes, induces, or persuades, or attempts to cause, induce, or persuade, a person who is a minor at the time of commission of the offense to engage in a commercial sex act, with the intent to effect or maintain a violation of Section 266, 266h, 266i, 266j, 267, 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, or 518 is guilty of human trafficking. A violation of this subdivision is punishable by imprisonment in the state prison as follows:

(1) Five, 8, or 12 years and a fine of not more than five hundred thousand dollars (\$500,000).

(2) Fifteen years to life and a fine of not more than five hundred thousand dollars (\$500,000) when the offense involves force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person.

(d) In determining whether a minor was caused, induced, or persuaded to engage in a commercial sex act, the totality of the circumstances, including the age of the victim, his or her relationship to the trafficker or agents of the trafficker, and any handicap or disability of the victim, shall be considered.

(e) Consent by a victim of human trafficking who is a minor at the time of the commission of the offense is not a defense to a criminal prosecution under this section.

(f) Mistake of fact as to the age of a victim of human trafficking who is a minor at the time of the commission of the offense is not a defense to a criminal prosecution under this section.

(g) The Legislature finds that the definition of human trafficking in this section is equivalent to the federal definition of a severe form of trafficking found in Section 7102(9) of Title 22 of the United States Code.

(h) For purposes of this chapter, the following definitions apply:

(1) "Coercion" includes a scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; the abuse or threatened abuse of the legal process; debt bondage; or providing and facilitating the possession of a controlled substance to a person with the intent to impair the person's judgment.

(2) "Commercial sex act" means sexual conduct on account of which anything of value is given or received by a person.

(3) "Deprivation or violation of the personal liberty of another" includes substantial and sustained restriction of another's liberty accomplished through force, fear, fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person, under circumstances where the person receiving or apprehending the threat reasonably believes that it is likely that the person making the threat would carry it out.

(4) "Duress" includes a direct or implied threat of force, violence, danger, hardship, or retribution sufficient to cause a reasonable person to acquiesce in or perform an act which he or she would otherwise not have submitted to or performed; a direct or implied threat to destroy, conceal, remove, confiscate, or possess an actual or purported passport or immigration document of the victim; or knowingly destroying, concealing, removing, confiscating, or possessing an actual or purported passport or immigration document of the victim.

(5) "Forced labor or services" means labor or services that are performed or provided by a person and are obtained or maintained through force, fraud, duress, or coercion, or equivalent conduct that would reasonably overbear the will of the person.

(6) "Great bodily injury" means a significant or substantial physical injury.

(7) "Minor" means a person less than 18 years of age.

(8) "Serious harm" includes any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing labor, services, or commercial sexual acts in order to avoid incurring that harm.

(i) The total circumstances, including the age of the victim, the relationship between the victim and the trafficker or agents of the trafficker, and any handicap or disability of the victim, shall be factors to consider in determining the presence of "deprivation or violation of the personal liberty of another," "duress," and "coercion" as described in this section.

Credits

(Added by Stats.2005, c. 240 (A.B.22), § 7. Amended by Stats.2010, c. 219 (A.B.1844), § 3, eff. Sept. 9, 2010; Initiative Measure (Prop. 35, § 6, approved Nov. 6, 2012, eff. Nov. 7, 2012); Stats.2016, c. 86 (S.B.1171), § 223.5, eff. Jan. 1, 2017.)

§ 236.1. Human trafficking; punishment; provisions regarding..., CA PENAL § 236.1

West's Ann. Cal. Penal Code § 236.1, CA PENAL § 236.1

Current with urgency legislation through Ch. 161 of the 2019 Reg.Sess. Some statute sections may be more current, see credits for details.

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West's Idaho Code Annotated
Title 18, Crimes and Punishments
Chapter 86, Human Trafficking (Refs & Annos)

I.C. § 18-8602

§ 18-8602. Definitions

Effective: July 1, 2019

Currentness

(1)(a) "Human trafficking" means:

(i) Sex trafficking in which commercial sexual activity is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained eighteen (18) years of age; or

(ii) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion, for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(b) Human trafficking may include, but is not limited to, the use of the following types of force, fraud, or coercion:

(i) Threatening serious harm to, or physical restraint against, that person or a third person;

(ii) Destroying, concealing, removing, or confiscating any passport, immigration document, or other government-issued identification document;

(iii) Abusing or threatening abuse of the law or legal process against the person or a third person;

(iv) Using a condition of a person being a debtor due to a pledge of the debtor's personal services or the personal services of a person under the control of the debtor as a security for debt where the reasonable value of the services is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined; or

(v) Using a condition of servitude by means of any scheme, plan, or pattern intended to cause a reasonable person to believe that if the person did not enter into or continue in a condition of servitude, that person or a third person would suffer serious harm or physical restraint or would be threatened with abuse of legal process.

(c) "Sex trafficking" includes all forms of commercial sexual activity, which may include the following conduct:

(i) Sexual conduct, as defined in section 18-5610(2)(a), Idaho Code;

(ii) Sexual contact, as defined in section 18-5610(2)(b), Idaho Code;

(iii) Sexually explicit performance;

(iv) Prostitution; or

(v) Participation in the production of pornography.

(2) "Commercial sexual activity" means sexual conduct or sexual contact in exchange for anything of value, as defined in section 18-5610(2)(c), Idaho Code, illicit or legal, given to, received by, or promised to any person.

Credits

Added by S.L. 2006, ch. 85, § 1, eff. July 1, 2006. Redesignated from § 18-8502 by S.L. 2007, ch. 90, § 5, eff. July 1, 2007. Amended by S.L. 2019, ch. 143, § 2, eff. July 1, 2019.

Codifications: I.C.A., § 18-8502.

I.C. § 18-8602, ID ST § 18-8602

Statutes and Constitution are current with all legislation of the 2019 First Regular Session of the 65th Idaho Legislature, which adjourned sine die on April 11, 2019.

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KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Minnesota Statutes Annotated
Public Welfare and Related Activities (Ch. 245-267)
Chapter 256J. Minnesota Family Investment Program

M.S.A. § 256J.08

256J.08. Definitions

Effective: July 1, 2017
Currentness

Subdivision 1. Scope of definitions. The terms used in this chapter have the following meanings unless otherwise provided for by text.

Subd. 2. Absent parent. "Absent parent" means a minor child's parent who does not live in the same home as the child.

Subd. 2a. Agency. "Agency" has the meaning given in section 256P.01, subdivision 2.

Subd. 3. Agency error. "Agency error" means an error that results in an overpayment or underpayment to an assistance unit and is not caused by an applicant's or participant's failure to provide adequate, correct, or timely information about income, property, household composition, or other circumstances.

Subd. 4. Appeal. "Appeal" means a written statement from an applicant or participant who requests a hearing under section 256J.31.

Subd. 5. Applicant. "Applicant" means a person who has submitted to a county agency an application and whose application has not been acted upon, denied, or voluntarily withdrawn.

Subd. 6. Application. "Application" means the submission by or on behalf of a family to a county agency of a completed, signed, and dated form, prescribed by the commissioner, that indicates the desire to receive assistance.

Subd. 7. Assistance unit or MFIP assistance unit. "Assistance unit" or "MFIP assistance unit" means a group of mandatory or optional people receiving or applying for MFIP benefits together.

Subd. 8. Authorized representative. "Authorized representative" means a person who is authorized, in writing, by an applicant or participant to act on the applicant's or participant's behalf in matters involving the application for assistance or participation in MFIP.



Subd. 89. Verification. “Verification” means the process a county agency uses to establish the accuracy or completeness of information from an applicant, participant, third party, or other source as that information relates to program eligibility or an assistance payment.

Subd. 90. Severe forms of trafficking in persons. “Severe forms of trafficking in persons” means: (1) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform the act has not attained 18 years of age; or (2) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion for the purposes of subjection to involuntary servitude, peonage, debt bondage, or slavery.

Credits

Laws 1997, c. 85, art. 1, § 4. Amended by Laws 1998, c. 398, art. 5, § 55, eff. Dec. 31, 1999; Laws 1998, c. 407, art. 6, §§ 20 to 34; Laws 1999, c. 107, § 66; Laws 1999, c. 139, art. 4, § 2; Laws 1999, c. 245, art. 6, §§ 6 to 13; Laws 2000, c. 488, art. 10, § 7, eff. Jan. 1, 2001; Laws 2000, c. 343, § 4, eff. April 7, 2000; Laws 2001, 1st Sp., c. 9, art. 10, § 6; Laws 2001, 1st Sp., c. 9, art. 10, § 7, eff. Oct. 1, 2001; Laws 2001, 1st Sp., c. 9, art. 10, § 66; Laws 2003, c. 130, § 12; Laws 2003, 1st Sp., c. 14, art. 1, §§ 11 to 24; Laws 2004, c. 206, § 37, eff. May 19, 2004; Laws 2004, c. 288, art. 4, §§ 29, 30; Laws 2005, c. 56, § 1; Laws 2005, c. 147, art. 1, § 68, eff. Jan. 1, 2006; Laws 2007, c. 147, art. 2, § 26, eff. July 1, 2007; Laws 2009, c. 79, art. 7, § 24, eff. July 1, 2009; Laws 2012, c. 216, art. 8, § 1, eff. Aug. 1, 2012; Laws 2013, c. 107, art. 1, § 9, eff. Aug. 1, 2013; Laws 2013, c. 108, art. 3, § 24; Laws 2014, c. 291, art. 4, § 58, par. (b), eff. July 1, 2014; Laws 2014, c. 312, art. 28, § 14, eff. July 1, 2014; Laws 2014, c. 312, art. 28, § 15, eff. June 1, 2016; Laws 2014, c. 312, art. 28, § 16, eff. July 1, 2014; Laws 2014, c. 312, art. 28, § 17, eff. Oct. 1, 2015; Laws 2015, c. 71, art. 5, §§ 15, 16, eff. Aug. 1, 2016; Laws 2016, c. 158, art. 1, § 146, eff. July 1, 2016; Laws 2017, 1st Sp., c. 5, art. 10, §§ 4, 5, eff. July 1, 2017.

Footnotes

1 42 U.S.C.A. § 1396 et seq.

2 42 U.S.C.A. § 601 et seq.

3 42 U.S.C.A. § 1381 et seq.

M. S. A. § 256J.08, MN ST § 256J.08

Current with legislation effective through October 1, 2019 from the 2019 Regular and First Special Sessions. Some statute sections may be more current, see credits for details. The statutes are subject to change as determined by the Minnesota Revisor of Statutes. (These changes will be incorporated later this year.)

 KeyCite Red Flag - Severe Negative Treatment
Enacted Legislation Amended by 2019 Okla. Sess. Law Serv. Ch. 250 (S.B. 318) (WEST).

 KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Oklahoma Statutes Annotated
Title 10a. Children and Juvenile Code
Article 1. Oklahoma Children's Code
Chapter 1. General Provisions and Definitions

10A Okl.St. Ann. § 1-1-105

§ 1-1-105. Definitions

Effective: May 8, 2018
Currentness

When used in the Oklahoma Children's Code, unless the context otherwise requires:

1. "Abandonment" means:

- a. the willful intent by words, actions, or omissions not to return for a child, or
- b. the failure to maintain a significant parental relationship with a child through visitation or communication in which incidental or token visits or communication are not considered significant, or
- c. the failure to respond to notice of deprived proceedings;

2. "Abuse" means harm or threatened harm to the health, safety, or welfare of a child by a person responsible for the child's health, safety, or welfare, including but not limited to nonaccidental physical or mental injury, sexual abuse, or sexual exploitation. Provided, however, that nothing contained in the Oklahoma Children's Code shall prohibit any parent from using ordinary force as a means of discipline including, but not limited to, spanking, switching, or paddling.

- a. "Harm or threatened harm to the health or safety of a child" means any real or threatened physical, mental, or emotional injury or damage to the body or mind that is not accidental including but not limited to sexual abuse, sexual exploitation, neglect, or dependency.
- b. "Sexual abuse" includes but is not limited to rape, incest, and lewd or indecent acts or proposals made to a child, as defined by law, by a person responsible for the health, safety, or welfare of the child.
- c. "Sexual exploitation" includes but is not limited to allowing, permitting, encouraging, or forcing a child to engage in prostitution, as defined by law, by any person eighteen (18) years of age or older or by a person responsible for



b. the individual would have been considered a sibling under state law but for a termination or other disruption of parental rights, such as the death of a parent;

66. "Specialized foster care" means foster care provided to a child in a foster home or agency-contracted home which:

a. has been certified by the Developmental Disabilities Services Division of the Department of Human Services,

b. is monitored by the Division, and

c. is funded through the Home- and Community-Based Waiver Services Program administered by the Division;

67. "Successful adulthood program" means a program specifically designed to assist a child to enhance those skills and abilities necessary for successful adult living. A successful adulthood program may include, but shall not be limited to, such features as minimal direct staff supervision, and the provision of supportive services to assist children with activities necessary for finding an appropriate place of residence, completing an education or vocational training, obtaining employment, or obtaining other similar services;

68. "Temporary custody" means court-ordered custody of an adjudicated deprived child;

69. "Therapeutic foster family home" means a foster family home which provides specific treatment services, pursuant to a therapeutic foster care contract, which are designed to remedy social and behavioral problems of a foster child residing in the home;

70. "Trafficking in persons" means sex trafficking or severe forms of trafficking in persons as described in Section 7102 of Title 22 of the United States Code:

a. "sex trafficking" means the recruitment, harboring, transportation, provision, obtaining, patronizing or soliciting of a person for the purpose of a commercial sex act, and

b. "severe forms of trafficking in persons" means:

(1) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained eighteen (18) years of age, or

(2) the recruitment, harboring, transportation, provision, obtaining, patronizing or soliciting of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery;

71. "Transitional living program" means a residential program that may be attached to an existing facility or operated solely for the purpose of assisting children to develop the skills and abilities necessary for successful adult living. The program may include, but shall not be limited to, reduced staff supervision, vocational training, educational services, employment and employment training, and other appropriate independent living skills training as a part of the transitional living program; and

72. "Voluntary foster care placement" means the temporary placement of a child by the parent, legal guardian or custodian of the child in foster care pursuant to a signed placement agreement between the Department or a child-placing agency and the child's parent, legal guardian or custodian.

Credits

Laws 1968, c. 282, § 101, eff. Jan. 13, 1969; Laws 1970, c. 86, § 1, emerg. eff. March 27, 1970; Laws 1972, c. 122, § 1, emerg. eff. April 4, 1972; Laws 1977, c. 79, § 1; Laws 1979, c. 257, § 1, eff. Oct. 1, 1979; Laws 1980, c. 242, § 1, eff. Oct. 1, 1980; Laws 1982, c. 312, § 13, operative Oct. 1, 1982; Laws 1984, c. 120, § 1, emerg. eff. April 10, 1984; Laws 1987, c. 88, § 1, operative July 1, 1987; Laws 1988, c. 76, § 1, emerg. eff. March 25, 1988; Laws 1988, c. 238, § 1, emerg. eff. June 24, 1988; Laws 1990, c. 238, § 1, emerg. eff. May 21, 1990; Laws 1990, c. 337, § 1; Laws 1991, c. 335, § 1, emerg. eff. June 15, 1991; Laws 1992, c. 298, § 14, eff. July 1, 1993; Laws 1993, c. 342, § 1, eff. July 1, 1993; Laws 1994, c. 2, § 1, emerg. eff. March 2, 1994; Laws 1994, c. 290, § 3, eff. July 1, 1994. Renumbered from Title 10, § 1101 and amended by Laws 1995, c. 352, §§ 3, 199, eff. July 1, 1995. Laws 1996, c. 47, § 1, emerg. eff. April 8, 1996; Laws 1996, c. 200, § 3, eff. Nov. 1, 1996; Laws 1996, c. 353, § 15, eff. Nov. 1, 1996; Laws 1997, c. 386, § 19, emerg. eff. June 10, 1997; Laws 1998, c. 5, § 2, emerg. eff. March 4, 1998; Laws 1998, c. 421, § 2, emerg. eff. June 11, 1998; Laws 2000, c. 374, § 5, eff. July 1, 2000; Laws 2001, c. 434, § 4, emerg. eff. June 8, 2001; Laws 2002, c. 327, § 15, eff. July 1, 2002; Laws 2004, c. 422, § 3, eff. July 1, 2004; Laws 2006, c. 258, § 1, emerg. eff. June 7, 2006. Renumbered from Title 10, § 7001-1.3 and amended by Laws 2009, c. 233, §§ 11, 211, emerg. eff. May 21, 2009. Laws 2009, c. 338, § 3, eff. July 1, 2009; Laws 2012, c. 91, § 1, eff. Nov. 1, 2012; Laws 2012, c. 353, § 3, emerg. eff. June 8, 2012; Laws 2015, c. 55, § 1, eff. Nov. 1, 2015; Laws 2015, c. 173, § 1, eff. Nov. 1, 2015; Laws 2016, c. 210, § 1, emerg. eff. April 26, 2016; Laws 2017, c. 254, § 1, eff. Nov. 1, 2017; Laws 2017, c. 342, § 1, eff. Nov. 1, 2017; Laws 2018, c. 256, § 1, emerg. eff. May 8, 2018.

Footnotes

- 1 Title 10, § 401 et seq.
- 2 Title 10, § 40 et seq.
- 3 Title 43A, § 5-501 et seq.

10A Okl. St. Ann. § 1-1-105, OK ST T. 10A § 1-1-105

Current with legislation effective through September 1, 2019 of the First Regular Session of the 57th Legislature (2019)

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

West's Revised Code of Washington Annotated
Title 19. Business Regulations--Miscellaneous (Refs & Annos)
Chapter 19.320. Human Trafficking (Refs & Annos)

West's RCWA 19.320.010

19.320.010. Definitions

Effective: June 9, 2016
Currentness

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) "Any person" means adults and children of any nationality.
- (2) "Domestic employers of foreign workers" or "domestic employer" means a person or persons residing in the state of Washington who recruit or employ a foreign worker to perform work in Washington state.
- (3) "Forced labor" means all work or service which is exacted from any person under the menace of any penalty and to which the person has not offered himself or herself voluntarily.
- (4) "Foreign worker" or "worker" means a person who is not a citizen of the United States, who comes to Washington state based on an offer of employment, and who holds a nonimmigrant visa for temporary visitors.
- (5) "Human trafficking" or "trafficking" means an act conducted for the purpose of exploitation, including forced labor, by particular means, for example threat of use of force or other forms of coercion, abduction, fraud or deception, abuse of power, or abuse of position of vulnerability.
- (6) "International labor recruitment agency" means a corporation, partnership, business, or other legal entity, whether or not organized under the laws of the United States or any state, that does business in the United States and offers Washington state entities engaged in the employment or recruitment of foreign workers, employment referral services involving citizens of a foreign country or countries by acting as an intermediary between these foreign workers and Washington employers.
- (7) "Menace of any penalty" means all forms of criminal sanctions and other forms of coercion, including threats, violence, retention of identity documents, confinement, nonpayment or illegal deduction of wages, or debt bondage.
- (8) "Work or service" means all types of work, employment, or occupation, whether legal or not.

Credits

[2016 c 4 § 1, eff. June 9, 2016; 2010 c 142 § 1, eff. June 10, 2010; 2009 c 492 § 1, eff. July 26, 2009.]

West's RCWA 19.320.010, WA ST 19.320.010

Current with all currently effective legislation from the 2019 Regular Session of the Washington Legislature.

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MODEL PENAL CODE
AND
COMMENTARIES
(Official Draft and Revised Comments)

With text of Model Penal Code as adopted
at the 1962 Annual Meeting of
The American Law Institute
at Washington, D.C., May 24, 1962

PART II
DEFINITION OF SPECIFIC CRIMES
§§ 210.0 to 213.6

PHILADELPHIA, PA.
THE AMERICAN LAW INSTITUTE
1980

ARTICLE 212. KIDNAPPING AND RELATED OFFENSES; COERCION

- 212.0 Definitions
- 212.1 Kidnapping
- 212.2 Felonious restraint
- 212.3 False imprisonment
- 212.4 Interference with custody
- 212.5 Criminal coercion

INTRODUCTORY NOTE

Article 212 is primarily designed to effect a major restructuring of the law of kidnapping as it existed at the time the Model Code was drafted. Many prior kidnapping statutes combined severe sanctions with extraordinarily broad coverage, to the effect that relatively trivial restraints carried authorized sanctions of death or life imprisonment. Sections 212.1, 212.2, and 212.3 not only narrow the definition of the most serious forms of unlawful restraint but propose an integrated grading structure designed to remove this anomaly from the law.

Section 212.1 confines the most serious offenses to instances of substantial removal or confinement for a series of specified purposes, such as to hold for ransom or reward or to interfere with the performance of a governmental function. The removal or confinement must be accomplished by force, threat, or deception, or in the case of underage children or incompetents, without the consent of a parent or other appropriate person. The offense is graded as a felony of the first degree unless the actor voluntarily releases the victim alive and in a safe place prior to trial. Otherwise, it is a felony of the second degree.

Sections 212.2 and 212.3 state the lesser included offenses of felonious restraint and false imprisonment. The former offense includes unlawful restraint in circumstances exposing the victim to risk of serious bodily injury and holding another in a condition of involuntary servitude. The latter offense covers one who restrains another unlawfully so as to interfere substantially with his liberty. Both offenses require knowledge of the unlawful nature of the restraint. Felonious restraint is a felony of the third degree, while false imprisonment is a misdemeanor.

Section 212.4 defines the offense of interference with custody, extending to situations where the actor takes or entices a child under 18 from the custody of its parent, guardian, or other law-

ful custodian and where the actor engages in similar conduct with a person committed to the custody of another person or institution. Section 212.4 is both a lesser included offense to kidnapping in cases where the custodial relationship is infringed but the kidnapping purposes cannot be shown and an independent protection of the custodial relationship from unwarranted interference by persons who have no legal privilege to do so. It is designed in part to restrain the criminal law from undue intrusion into child custody disputes but at the same time to permit criminal intervention in appropriate cases.

Finally, Section 212.5 defines the offense of criminal coercion. This is designed as a residual offense, punishing threats to take specified action with a purpose unlawfully to restrict the freedom of action of another person to his detriment. An affirmative defense is provided in order to assure that the offense does not intrude upon legitimate bargaining and other situations where one is privileged to assume a posture that could be characterized as a threat. The offense is graded as a misdemeanor, unless the threat is to commit a felony or the actor's purpose is to accomplish a result that would constitute the commission of a felony. The grading scheme is designed to integrate this offense with other situations where the Model Code punishes threatening behavior, such as physical menacing of another or threats designed to extort property from another.

§ 212.0 Definitions *

In this Article, the definitions given in Section 210.0 apply unless a different meaning plainly is required.

Comment

This section incorporates the definitions of Section 210.0 for application to the offenses in this Article. The definitions are discussed in the commentary to the sections in which the terms are employed.

§ 212.1 Kidnapping **

A person is guilty of kidnapping if he unlawfully removes another from his place of residence or business, or a substantial

* *History.* Presented to the Institute in the Proposed Official Draft and approved at the May 1962 meeting. See ALI Proceedings 226-27 (1962).

** *History.* Presented to the Institute in Tentative Draft No. 11 and considered at the May 1960 meeting. See ALI Proceedings 416-27 (1960). Ap-



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4. *Interference with Custody of Committed Persons.* Subsection (2) of Section 212.4 establishes misdemeanor sanctions for persons who interfere with the custody of committed persons. That category is defined broadly to include not only persons governed by court order but also all dependent or incompetent persons committed to the custody of another by or through a recognized social agency. This provision is designed to achieve comprehensive protection against outside interference with lawful custodial relationships.

Subsection (2) generally parallels the Subsection (1) offense of interference with custody of children. The chief difference is that Subsection (2) allows neither of the special defenses stated in Subsection (1). The rationale for omitting the defenses is that removing a person from any form of official authority should be sufficient to put the actor on notice that his conduct is wrongful. In many cases, however, it seems plain that the reasons supporting inclusion of the defenses in Subsection (1) would apply with equal force to Subsection (2).³¹ At a minimum such cases should be viewed as prime candidates for the exercise of discretion to forego criminal prosecution.

§ 212.5 Criminal Coercion *

(1) Offense Defined. A person is guilty of criminal coercion if, with purpose unlawfully to restrict another's freedom of action to his detriment, he threatens to:

- (a) commit any criminal offense; or
- (b) accuse anyone of a criminal offense; or
- (c) expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business repute; or
- (d) take or withhold action as an official, or cause an official to take or withhold action.

³¹ In some cases, the actor's conduct may be covered both under Subsection (1) and under Subsection (2). Such overlapping coverage might occur, for example, where the natural mother of a foster child, believing that the conditions of foster care constitute an imminent danger to the child's welfare, acts without privilege to remove the child from its foster home.

* *History.* Presented to the Institute as part of Section 211.3 and considered at the May 1960 meeting. See ALI Proceedings 416 (1960). Presented again to the Institute in the Proposed Official Draft and approved at the May 1962 meeting. See ALI Proceedings 226-27 (1962). Detailed commentary was originally included in Tentative Draft No. 11 at 8-9 (1960).

It is an affirmative defense to prosecution based on paragraphs (b), (c) or (d) that the actor believed the accusation or secret to be true or the proposed official action justified and that his purpose was limited to compelling the other to behave in a way reasonably related to the circumstances which were the subject of the accusation, exposure or proposed official action, as by desisting from further misbehavior, making good a wrong done, refraining from taking any action or responsibility for which the actor believes the other disqualified.

(2) Grading. Criminal coercion is a misdemeanor unless the threat is to commit a felony or the actor's purpose is felonious, in which cases the offense is a felony of the third degree.

Comment †

1. *Antecedent Statutory Variations.* The common law did not reach verbal threats apart from threats of violence incidental to such crimes as rape, robbery, and kidnapping.¹ Statutes dealing with extortion and blackmail greatly expanded the range of prohibited threats. Generally, such laws proscribed use of threat to obtain property to which the actor was not entitled.² Other statutes assigned penal sanctions to broad categories of threats when they were employed to accomplish specified illicit ends—e. g., coercion of official action or improper influencing of witnesses.³ A few states enacted laws proscribing efforts by threat of intimidation to compel marriage⁴ or to coerce employers or employees in their labor relations.⁵ The broadest criminal coercion statutes of prior law purported to reach the use of threats to compel another "to do or to abstain from doing an act

† Except where otherwise noted, the abbreviated citation of statutes refers to enactments prior to November 1, 1978. However, the subsequently enacted New Jersey statute has been included throughout. As used in an abbreviated citation, the symbol (p) refers to a proposed code for the indicated jurisdiction. A full explanation of all abbreviated citations appears at p. XXXIX *supra*.

¹ R. Perkins, *Criminal Law* 162-63, 176-83, 282-83 (2d ed. 1969); 4 W. Blackstone, *Commentaries* *209-19, 241-43; 4 J. Stephen, *Commentaries on the Laws of England* 66, 101 (21st ed., L. Warmington 1950).

² Examples are discussed in the commentary to Section 223.4 *infra*.

³ Examples are discussed in the commentary to Sections 240.2 and 241.6 *infra*.

⁴ See, e. g., Cal. § 265; Idaho § 18-501; W.Va. § 61-2-14.

⁵ See, e. g., La. § 23:824; Mass. ch. 149, § 20; Mich. § 423.16; N.J. § 2A:12-2 (repealed 1979).

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which such other person has a legal right to do or to abstain from doing.”⁶

2. *Elements of Offense.* Section 212.5 prohibits specified categories of threats made with the purpose of unlawfully restricting another's freedom of action to his detriment. This section defines a residual offense designed to prohibit impermissible threats not proscribed elsewhere. Of course, the Model Code contains many provisions dealing with threat and intimidation in narrower contexts. For example, physical menacing is prohibited by Section 211.1 (assault), and threat of violence is proscribed by Section 211.3 (terroristic threats). Use of threats to accomplish various sexual impositions is condemned by Sections 213.1, 213.2, and 213.4. Obtaining the property of another by means of threat or intimidation may constitute robbery under Section 222.1, extortion under Section 223.4, or theft of services under Section 223.7. Causing another to suffer pecuniary loss by threat may be punished as criminal mischief under Section 220.3. Finally, attempts by threat to obtain improper influence over public servants or over private persons involved in the administration of justice are dealt with under Sections 240.2 and 241.6. Criminal coercion is a residual offense included to complement and supplement these more specific provisions.

The rationale for a criminal coercion offense argues for comprehensive coverage. Threats to do many things not in themselves illegal may appropriately be covered if they are used wrongfully to confine another's freedom of action. At the same time, analysis and experience confirm the wisdom of assigning definite limits to criminal liability for threats. Such constraints are an inevitable part of a society where individuals are free to confer or to withhold benefits desired by others. Thus, absent improper purpose, a person who has a legal right to take a certain action is also free to threaten to do so. Indeed, threat is implicit in the idea of bargain. Threats to cut an expectant legatee out of a will, or to sell or use one's land in a lawful manner deemed undesirable by neighbors, or to cease patronizing a merchant, or to foreclose a mortgage are all permissible tactics in

⁶See, e. g., N.Y. § 530 (repealed 1967). Cf. Idaho §§ 18-2801, -2802; Tenn. § 39-4301 (threatening injury to person, reputation, or property). New York's revision retained the broad language of its earlier law but added an affirmative defense similar to that stated in Section 212.5 of the Model Code. Compare N.Y. § 530 (repealed 1967) with N.Y. §§ 135.60, .65. A few revised codes now have similar statutes. Ariz. § 13-1304; Del. tit. 11, § 791; Haw. § 707-724; Ore. § 163.275. Cf. Mich. (p) § 2125.

striking a bargain, whether for money or for other concession not in itself unlawful.⁷

The Model Code definition of criminal coercion limits the reach of this offense in two ways. First, liability requires proof of improper purpose. Specifically, Section 212.5 covers certain threats when made "with purpose unlawfully to restrict another's freedom of action to his detriment."⁸ The word "unlawfully" means that the actor must intend to coerce conduct that he has no legal right to require. Thus, efforts to force another to pay a just debt or to perform his obligations under a contract are not punished under this provision. The expansive phrase "freedom of action" is intended to include anything which the other person does not wish to do or to refrain from doing.⁹ Section 212.5 also requires that the restriction to which the actor intends to subject the other person work to his detriment. Of course, "detriment" is an elusive term whose content depends in part on the values and preferences of the individual concerned. Thus, unwelcome sexual contact is a detriment even if many other persons would not be offended by the experience. The requirement of detriment nevertheless excludes from this offense threats intended to induce another to do something that is manifestly for his own good. An example might be a threat of embarrassment or ridicule used to force another to seek needed

⁷ It was on this basis that the New York courts, notwithstanding the broad terms of then N.Y. § 530 (repealed 1967), dismissed a prosecution where defendants, by threatening to discharge a workman, caused him to return part of his wages each week, thus secretly undercutting the union pay scale. *People v. Cuddihy*, 151 Misc. 318, 271 N.Y.S. 450 (Ct.Gen. Sess. 1934), *aff'd*, 243 App.Div. 694, 277 N.Y.S. 960 (1935). Cf. *Thorne v. Motor Trade Ass'n*, [1937] A.C. 797, 811, 821, *disavowing* *Rex v. Denyer*, [1926] 2 K.B. 258. The *Denyer* case had sustained a conviction for extorting property "by menaces" (Section 29 of the British Larceny Act) where a trade official had threatened to cut off supplies from a price-cutting trader unless the latter indemnified the association in a specified amount. British law at that time did not make concerted commercial boycotts unlawful.

⁸ A few of the revised codes apparently require no proof of purpose but do require that the actor successfully coerce action from which the victim has a legal right to abstain. Del. tit. 11, § 791; Minn. § 609.27; N.Y. §§ 135.60, .65; Ore. § 103.275; Wash. § 9A.36.070. Of course, an unsuccessful effort unlawfully to coerce action by the victim would be punishable as an attempt. Cf. N.Y. § 135.60, Comment at 512.

⁹ Compare recently revised codes which purport to include coercion designed to make the victim perform or omit "any act." Ill. ch. 38, § 12-6; Mont. § 94-5-203.

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medical care. Most cases of this sort will also fall within the affirmative defense discussed in Comment 3 below.

Second, Section 212.5 proscribes only certain threats. The categories of restricted threats are identified in four paragraphs. Paragraphs (a) and (b) prohibit, respectively, threats to commit any criminal offense and threats to accuse anyone of having done so. Paragraph (c) punishes threats to "expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business repute." The word "person" as it appears here means natural persons whether living or dead and does not include corporations or associations. The final paragraph restricts threats to "take or withhold action as an official, or cause an official to take or withhold action."

The list of restricted threats stops short of the more comprehensive list in Section 223.4 of the Model Code, which defines theft by extortion. In that offense the essential wrong is obtaining property to which the actor knows he is not entitled. Three kinds of threats proscribed for that purpose are omitted from the criminal-coercion offense. These include threats to bring about or continue a strike, boycott, or other collective action to achieve an end "not demanded or received for the benefit of the group in whose interest the actor purports to act;" threats to provide or to withhold testimony or information regarding another's legal claim or defense; and a residual category of threats to "inflict any other harm which would not benefit the actor."

It is arguable that these categories of threat should be included in the offense of criminal coercion. One might think that the considerations deemed controlling for the offense of extortion would also apply here, and some jurisdictions have so concluded.¹⁰ The judgment underlying the Model Code, however, is that the underlying wrong in extortion—obtaining property to which the actor knows that he is not entitled—provides a more reliable basis for punishment than does the Section 212.5 requirement of a "purpose unlawfully to restrict another's freedom of action to his detriment." The use of threat to obtain another's property is more likely to alert the actor to the wrongfulness of his conduct than is use of threat to coerce another to do or to refrain from doing anything at all. Under this rationale, the criminal

¹⁰ See, e. g., Del. tit. 11, §§ 791, 846; Haw. §§ 707-724, 708-800(8); Ore. §§ 163.275, 164.075. See also N.Y. § 135.60, Comment at 511.

coercion offense is limited to specified instances of threats that are especially indicative of blameworthiness and quite generally regarded as illegitimate. Section 223.4, on the other hand, focuses narrowly on an unequivocally wrongful goal and therefore appropriately includes a broader range of threats.

In addition to acting "with purpose unlawfully to restrict another's freedom of action to his detriment," the defendant must have the required culpability for threatening to do any of the things described in Paragraphs (a) through (d). Since Section 212.5 does not specify the requisite state of mind, the defendant must act purposely, knowingly, or recklessly with respect to that conduct.¹¹ At a minimum, therefore, the actor must perceive and consciously disregard a substantial and unjustifiable risk that his communication constitutes a threat to engage in the specified conduct. Whether his communication has that character is, of course, an objective determination. It is inconsequential whether the defendant actually intends to carry out his threat.

3. *Defense of Benign Purpose.* Even where a threat falls outside the permissible context of private bargain—*e. g.*, a threat to arrest or to accuse of crime or to expose a shameful secret—the law ought to exclude criminality where the actor's purpose is benign. An illustration might be an effort to cause an alcoholic to stay away from taverns or to induce a spendthrift to refrain from gambling. Use of threats for such purposes does not mark the actor as a danger to the community. Neither should the law condemn a threat to expose the shady past of a prospective political candidate in order to dissuade him from running for office. These considerations are reflected in the requirement that the actor's purpose be detrimental to the person threatened and in the affirmative defense set forth in Section 212.5. This defense exculpates a defendant even where the constraint imposed by threat is arguably detrimental to the person threatened if the defendant sought in good faith to compel him to take a course of action that was reasonable in the circumstances.¹²

The defense is denominated affirmative, which under the Model Code means that the defendant bears the burden of injecting

¹¹ See Section 2.02(3) *supra*.

¹² Cf. Danish Crim. Code 260 (1) (G.E.C. Gad. 1958) ("provided such coercion is not deemed to be duly justified by virtue of the circumstances to which the threat relates").

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the issue into the case by some evidence but that the risk of non-persuasion remains on the prosecution.¹³ It applies only to Paragraphs (b), (c), and (d) and does not exculpate a threat to commit a criminal offense. The defense consists of two conjunctive requirements. First, the actor must believe the "accusation or secret to be true or the proposed official action justified." Threatening to make a false accusation or to defame another or to take or cause another to take unjustified official action is sufficiently wrongful to be penalized even if the actor's ultimate purpose is benign. Second, the actor's purpose must be "limited to compelling the other to behave in a way reasonably related to the circumstances which were the subject of the accusation, exposure or proposed official action." Of course, the motives behind any action are often mixed, and the Section 212.5 defense should be construed to require that, absent benign purpose, the actor would not have made the otherwise actionable threat. The defense does not exculpate an attempt to coerce another which only incidentally operates to the other's benefit.

The content of the notion of benign purpose is explicated by three illustrative clauses. First, the actor may use a threat in order to induce another to desist from further misbehavior. For example, a passenger in a speeding vehicle may threaten to report the driver to the police if he does not slow down. Similarly, a parent may threaten to expose the reputation of a daughter's suitor if he does not desist from attempting to seduce her. The word "misbehavior" includes any kind of conduct that is immoral or unreasonable in the circumstances and is not limited to criminal activity. Second, one may use threats to induce another to make good a wrong done. Thus, for example, one who believes himself the victim of theft may threaten the perpetrator with criminal complaint unless he returns the goods. This aspect of the defense focuses on the idea of restitution. Additional demands, such as sexual favor or treble recovery for theft or damage to property, are not protected. The actor must establish his belief in the past misdeeds for which he seeks redress. If he has no honest basis for seeking restitution from another, the use of specified threats will constitute criminal coercion even if he casts his demands in terms of reparations or compensation. The third illustration is the use of threats to induce another to "refrain from taking any action or responsibility for which the actor believes the other disqualified." This clause refers chiefly to threats of exposure used to dissuade someone from seeking

¹³ See Section 1.12 *supra*.

public office or appointment. It also encompasses efforts to stop another from doing something for which he lacks training or expertise. Thus, for instance, a threat of exposure of past mistakes may be used to prevent an aging physician from continuing to operate after his abilities have diminished. These three clauses illustrate the meaning of the general requirement that the actor's purpose "was limited to compelling the other to behave in a way reasonably related to the circumstances" which were the subject of the threat but do not exhaust the content of that language. The defense is stated in these general terms in order to preserve its applicability in circumstances that cannot be anticipated and specifically identified.

It is worth repeating that both branches of the defense must be satisfied. It is not alone sufficient that the actor believe the threatened accusation or exposure to be true or the official action to be justified. True accusations or secrets may be just as coercive as false ones. Of course, publication of true facts, however damaging, is not in itself criminal, and this statute does not seek to punish such conduct. Rather, the offense aims at threat of such action in order to coerce another into doing something which the actor has no right to require. Similarly, it is the impermissible purpose of unlawful coercion that renders a threat to take justifiable official action punishable, unless it is done with benign purpose.

4. *Grading.* Subsection (2) of Section 212.5 is designed to prevent grading inconsistency between this crime and other offenses involving coercion. To this end, it is provided that violation of this offense constitutes a misdemeanor unless one of two conditions obtains. First, Section 212.5 is a felony if the actor threatens to commit a felony. Thus, unlawful coercion by threat of simple assault is a misdemeanor, but coercion by threat of homicide is a felony. Second, felony sanctions apply if the actor's purpose is felonious. This provision accomplishes a flexible accommodation between Section 212.5 and other offenses. Thus, for example, extortion of petty sums is only a misdemeanor under Section 223.1(2)(b). Therefore, it is not possible to punish such conduct as a felony under this section. On the other hand, if the actor's purpose is to extort more than \$500, a completed extortion would constitute a felony under Section 223.1(2)(a), and criminal coercion would also be a felony.

5. *Impact of the Model Code.* The response to the Model Code has been significant. Several revised codes have followed

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the Model Code in adopting a broad criminal coercion statute.¹⁴ Others, while enacting a general coercion offense, have elected to omit an affirmative defense equivalent to the "benign purpose" defense of Section 212.5.¹⁵ As discussed in Comment 2 *supra*, the rationale of such an offense argues for extensive coverage. However, extremely broad coverage is likely to inject the criminal law into areas beyond its appropriate scope. Presumably, it is the premise of the broader statutes that have recently been enacted that the courts will be able to draw the necessary lines.¹⁶

¹⁴ Ariz. § 13-1304; Del. tit. 11, §§ 791, 792; Haw. §§ 707-724, -725; Ky. § 509.080; N.J. § 2C:13-5; N.Y. §§ 135.60 to .75; N.D. § 12.1-17-06; Ohio § 2905.12; Ore. §§ 163.275, .285; Pa. tit. 18, § 2906. Cf. Mich. (p) § 2125; W. Va. (p) § 61-5-29.

¹⁵ Ala. § 13A-6-25; Ark. § 41-1609; Minn. § 609.27; Mont. § 94-5-203; Wash. § 9A.36.070. Cf. Mass. (p) ch. 265, § 12.

¹⁶ Cf. note 7 *supra*. This result appears to have been foreclosed in at least one state where the Model Code defense was rejected as "too restrictive." See Ark. § 41-1609, comment at 122.

2018 WL 564396

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK
COURT RULES BEFORE CITING.

Superior Court of New Jersey, Appellate Division.

A.B.A.,¹ Plaintiff–Respondent,

v.

T.A., Defendant–Appellant.

¹ We use the parties' initials because this case concerns domestic violence.

DOCKET NO. A–5500–15T4

Argued October 24, 2017

Decided January 26, 2018

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Essex County, Docket No. FV–07–3677–16.

Attorneys and Law Firms

Keith G. Oliver argued the cause for appellant (Marshall, Bonus, Proetta & Oliver, attorneys; Keith G. Oliver, on the brief; Jeff Thakker, of counsel and on the brief).

Daniel M. Serviss argued the cause for respondent (Greenbaum, Rowe, Smith & Davis, LLP, attorneys; Daniel M. Serviss, of counsel and on the brief).

Before Judges Fasciale and Summers.

Opinion

PER CURIAM

*1 Following a hearing in which both parties testified, the Family court granted plaintiff's application for a final restraining order (FRO) against defendant, his former spouse, under the Prevention of Domestic Violence Act of 1991 (PDVA), N.J.S.A. 2C:25–17 to –35. The court found that, following the parties' divorce, defendant committed two predicate acts of domestic violence (DV), criminal coercion

and harassment, against plaintiff in repeatedly sending him text messages and emails threatening to jeopardize his employment by releasing to his employer videotapes of plaintiff engaging in sex with defendant and other women. The court also granted plaintiff's request to transfer copyrights to the tape from defendant to plaintiff.

On appeal, defendant argues the court lacked jurisdiction to determine ownership of the videotapes. Defendant contends the court erred in issuing a FRO because there was no proof that plaintiff had committed criminal coercion and harassment, and her due process rights were violated. Defendant further argues the entire controversy doctrine should have barred plaintiff's DV complaint, as ownership of the videotapes was previously litigated at the parties' divorce proceedings. We affirm as to the issuance of the FRO, but reverse regarding the transfer of defendant's copyrights to the videotapes.

I

Approximately nine years prior to the parties' divorce, they made an intimate video of themselves engaging in sex. Without plaintiff's knowledge, defendant also surreptitiously recorded plaintiff engaging in sex with her and other women in their marital home. Defendant testified that she made at least one hundred recordings, which she kept on approximately five or six videotapes. Although defendant explained she never "released" or published the videos, she stated that she gave several copies of the recordings to an undetermined number of friends to hold for her "protection."

Plaintiff testified that beginning in August 2014, prior to entry of their final judgment of divorce (FJOD), defendant began threatening him with the release of the videos in response to their disagreements over parenting of their two children. As proof, plaintiff presented several text message exchanges and email conversations between the parties.

For example, defendant texted plaintiff, stating, "I am happy to give your sex record to your president. Screw [] you." Ten minutes later, defendant texted, "[r]emember, [] I have your sex internet record. [] I am not the [only one who] has it, there are [a] few people [who have it].... It shows your face." Three minutes later, defendant texted, "[y]our

sex internet stuff, I think your one of top guy care! [sic] Ha! You [cannot] work there. If your [employer²] don't care maybe broadcasting care." Plaintiff testified that defendant's reference to "broadcasting" meant that she would contact a Wall Street Journal reporter, whom she admittedly referenced in a subsequent text, to distribute the explicit videotapes in the event his employer did not take interest in her proposal.

² To protect the parties' identities we do not disclose plaintiff's employer.

*² Plaintiff also testified regarding a text defendant sent him a year and a half later stating, "[d]id [your attorney] tell you I contact FBI[?] I know exactly who you are. Remember, you started this. You kill, we kill. You do, I do." Plaintiff testified he believed these words to be a threat of violence unless he cooperated with defendant.

Plaintiff further presented an email he received from defendant less than two months later, which provided, "[p]ick up the [sic] my kids camp check[.] [D]eposit the 31k thousand [sic] dollars, if you don't[,] we will publish your dam[n] sex tape." The money was in reference to an unsatisfied court order requiring plaintiff to pay defendant approximately \$30,000 in attorney's fees. Plaintiff testified he felt threatened and reported this email to the police because his employment required a background check due to his access to "confidential supervisory information," in order to avoid being targeted in a blackmail scheme.

In its oral decision, the court found plaintiff proved by a preponderance of the evidence that defendant committed predicate acts of domestic violence, criminal coercion and harassment, under N.J.S.A. 2C:25-19(a)(15) and -19(a)(13), and issued a FRO. In support, the court determined plaintiff's testimony was credible because he had a reasonable and realistic concern for his job security in light of defendant's threats to release the videotapes. Conversely, when evaluating defendant's testimony, the judge explained:

I think [defendant] has a very, very good command of the English language, except when she doesn't want to answer a question.³ That's the only time when she's evasive. I

didn't find her testimony to be credible at all. I don't know what her story is with the tape. I am absolutely positive in my mind that she knows exactly how many tapes and exactly what the numbers are and knows exactly when they were made and knows all about that and knows whose got them and knows where she sent them. This isn't something that you use repeatedly over a course of years and then, oh, I don't know how many tapes or what I have. I mean, I ... think that's, you know, ridiculous.

³ Defendant became a naturalized United States' citizen approximately four years prior to the FRO hearing. The court explained to her the potential immigration implications of a FRO. The court also informed her that she maintained a right to counsel; however, as this was not a criminal matter, she was not entitled to appointed counsel. Defendant indicated that she understood this right, yet wished to represent herself.

Finally, the court reasoned defendant utilized the videotapes in an effort to coerce plaintiff to pay her the \$30,000 court ordered attorney's fees, as opposed to filing "a simple post judgment motion to enforce" the court's order. Highlighting defendant's continued reference to the \$30,000 in her testimony, along with her explicit verbal threats contained in the texts and emails, the court found her conduct constituted repeated acts. While the court did not think the release of the videotapes would result in plaintiff losing his job, it commented, "there are subtle ways where embarrassing situations ... may place you in a position where promotion, improvements, and other ... benefits of the job can be extremely limited."

In addition to placing restrictions on defendant's contacts with plaintiff, the court, citing N.J.S.A. 2C:25-29(b), ordered that copyrights to the videotapes be transferred to plaintiff, and the videotapes possessed by defendant or her friends be immediately returned to plaintiff's counsel for proper destruction.

II

*3 Defendant contends the trial court erred as a matter of law because it did not have jurisdiction under N.J.S.A. 2C:25–29(b) to order assignment of copyrights to the videotapes as such authority is limited to the federal courts. We agree and reverse.

We owe no special deference to the trial court's "interpretation of the law and the legal consequences that flow from established facts." Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995).

Here, the Copyright Act of 1976, 17 U.S.C. § 301, guides us:

(a) On and after January 1, 1978, all legal or equitable rights that are equivalent to any of the exclusive rights within the general scope of copyright as specified by section 106 [17 USCS § 106] in works of authorship that are fixed in a tangible medium of expression and come within the subject matter of copyright as specified by sections 102 and 103 [17 USCS §§ 102 and 103], whether created before or after that date and whether published or unpublished, are governed exclusively by this title. Thereafter, no person is entitled to any such right or equivalent right in any such work under the common law or statutes of any State.

[(emphasis added).]

The intent of the law "is to preempt and abolish any rights under the common law or statutes of a state that are equivalent to copyright and that extend to works within the scope of the Federal copyright law." Harper & Row, Publishers, Inc. v. Nation Enters., 501 F. Supp. 848, 850 (S.D.N.Y. 1980) (quoting H.R. Rep. No. 94–1476, 94th Cong., 2d Sess. at 130 (1976)) aff'd 723 F.2d 195 (2d Cir. 1983), rev'd on other grounds, 471 U.S. 539 (1985). A state court action will be preempted by the Copyright Act where: (1) the nature of the work of authorship in which rights are claimed come within the subject matter of copyright as defined in §§ 102 and 103; and (2) the rights granted under state law are equivalent to any of the exclusive rights within the general scope of copyright as specified by § 106. Ibid.

In this matter, the first prong is met because under 17 U.S.C. § 102, the Copyright Act governs motion pictures and other

audiovisual works. Likewise, the second prong is satisfied because 17 U.S.C. § 201 states:

(d) Transfer of ownership.

(1) The ownership of a copyright may be transferred in whole or in part by any means of conveyance or by operation of law, and may be bequeathed by will or pass as personal property by the applicable laws of intestate succession.

(2) Any of the exclusive rights comprised in a copyright, including any subdivision of any of the rights specified by section 106 [17 USCS § 106], may be transferred as provided by clause (1) and owned separately. The owner of any particular exclusive right is entitled, to the extent of that right, to all of the protection and remedies accorded to the copyright owner by this title.

Here, without any reference to the Copyright Act, the court ordered transfer of defendant's copyright in the videotapes. Although N.J.S.A. 2C:25–29(b) allows a court evaluating a DV claim to grant any relief necessary to prevent further abuse, it does not expressly deal with the transfer of copyrights, which is controlled by the Copyright Act. Therefore, the transfer of copyrights to the videotapes was beyond the court's jurisdiction. However, for the reasons expressed later, we do not disturb any order barring defendant's release of the videotapes to harass or coerce plaintiff.

III

*4 Defendant argues that the FRO hearing violated her due process rights to a fair hearing. In particular, she contends: (1) the DV complaint did not sufficiently apprise defendant of what was being alleged and the trial court did not ascertain whether defendant understood what was being alleged; (2) the second amended complaint was not served properly and harassment was not a predicate offense alleged in the third amended complaint; (3) the court erred in not asking defendant if she needed a translator; (4) the court erroneously permitted plaintiff's counsel to testify in the FRO proceeding; and (5) defendant was not afforded the same rights at the FRO hearing as plaintiff. We conclude there is no merit to these contentions.

Although there may have been some confusion due to the three amendments to the DV complaint and the Temporary Restraining Order (TRO), the record evinces defendant was well aware of the allegations she faced at the FRO hearing. It is apparent there was a clerical error when plaintiff attempted to amend the TRO to include the predicate offense of harassment and to provide further details regarding the parties' prior DV history. These errors resulted in the issuance of a second TRO. When plaintiff realized the second TRO failed to include the intended details about the parties' prior history, he asked the court to issue a third TRO with the appropriate corrections. However, in doing so, the court mistakenly failed to check the box in the third TRO indicating "harassment" as a predicate offense as was checked in the second TRO. Nevertheless, the third TRO did provide that there was "[p]rior history of criminal coercion/harassment," and the complaint specified dates of the numerous text messages and emails exchanged between defendant and plaintiff to support the allegations of the predicate offenses—harassment and criminal coercion.

Moreover, at the outset of the FRO hearing, plaintiff's counsel established the basis for the FRO complaint and referenced the alleged predicate offenses, along with mention of defendant's text messaging and emailing. For example, counsel declared, "[t]his is a pattern by this defendant, a course of annoying and alarming conduct. There's only one purpose, [it] is to annoy or alarm him. Under harassment, Judge, respectfully, plaintiff is entitled to a restraining order, also under criminal coercion." At no point did defendant object, express surprise, or question counsel's comments regarding the allegations against her. Since defendant raises this argument for the first time on appeal, we reverse only if the unchallenged error was "clearly capable of producing an unjust result." R. 2:10–2.

Based upon the totality of circumstances—the clerical error of the court, the specific assertions in the final amended complaint and TRO, and counsel's comments at the FRO hearing—there is no question that defendant was adequately apprised of the allegations made against her and that despite the court's clerical error, the outcome would have remained the same. Meaning, even if harassment was not adequately pled, there was still sufficient findings for the predicate offense of criminal coercion for the reasons we discuss later.

Defendant next argues that the trial court erred in not asking her if she needed a translator. Again, we view her contention under the lens of plain error, as she did not raise this argument at the initial protective order hearing or the FRO hearing.

We must initially point out that the record does not demonstrate that defendant asked the court for a translator. As noted earlier, the court in assessing defendant's credibility determined she had sufficient command of English to understand the proceedings. The record further reveals that during the nineteen-day divorce hearing in which defendant's request for a translator was honored, the judge there stated she did not need a translator because

*5 [s]he has a strong command of English and an articulate, easy to understand speaking voice.... She would often answer before the interpreter spoke. The interpreter's presence allowed her to hear questions twice before answering if she chose to wait before answering. When rattled or angry, she reflexively spoke English.

Significantly, given that the divorce court honored defendant's request for a translator during the divorce proceedings, and she did not request one for the proceedings at issue, her argument before us that she needed a translator is disingenuous, at best. Hence, there was no unjust result in defendant not having a translator.

Defendant's remaining due process arguments that plaintiff's counsel improperly testified by commenting on her credibility by comparing her demeanor at the divorce trial and the FRO trial, and that she was not afforded the same rights as plaintiff, are without sufficient merit to warrant discussion. R. 2:11–3(e)(1)(E).

IV

Defendant attacks the court's issuance of the FRO on several grounds. She argues the court did not make findings of any prior history of abuse. She also asserts that the only

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predicate DV offense alleged in the third amended complaint is criminal coercion under N.J.S.A. 2C:25-19(a)(15), which was not proven. Finally, assuming a harassment claim was pled, defendant contends there was no legal and factual support for harassment. We disagree.

We begin with a review of the applicable legal principles that guide our analysis. We limit our review when considering a FRO issued by the family court following a bench trial. A trial court's findings are binding on appeal "when supported by adequate, substantial, and credible evidence." N.J. Div. of Youth & Family Servs. v. R.G., 217 N.J. 527, 552 (2014) (citation omitted). This deference is particularly appropriate where the evidence at trial is largely testimonial and hinges upon a court's ability to assess credibility. Gnall v. Gnall, 222 N.J. 414, 428 (2015). We also keep in mind the expertise of judges who routinely hear domestic violence cases in the family court. J.D. v. M.D.F., 207 N.J. 458, 482 (2011). Consequently, we will not disturb the "factual findings and legal conclusions of the trial judge unless [we are] convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." Cesare v. Cesare, 154 N.J. 394, 412 (1998) (quoting Rova Farms Resort, Inc. v. Inv'rs Ins. Co., 65 N.J. 474, 484 (1974)); see also S.D. v. M.J.R., 415 N.J. Super. 417, 429 (App. Div. 2010).

Domestic violence occurs when an adult commits one or more acts upon a person covered by the PDVA. N.J.S.A. 2C:25-19(a). When determining whether to grant a FRO, a trial judge must engage in a two-step analysis. Silver v. Silver, 387 N.J. Super. 112, 125-27 (App. Div. 2006). "First, the judge must determine whether the plaintiff has proven, by a preponderance of the credible evidence, that one or more of the predicate acts set forth in N.J.S.A. 2C:25-19[(a)] has occurred." Id. at 125; see also N.J.S.A. 2C:25-29(a) (providing that a FRO may only be granted "after a finding or an admission is made that an act of domestic violence was committed"). Second, the court must determine that a restraining order is necessary to provide protection for the victim. Silver, 387 N.J. Super. at 126. As part of that second step, the judge must assess "whether a restraining order is necessary, upon an evaluation of the factors set forth in N.J.S.A. 2C:25-29[(a)](1) to -29[(a)](6), to protect the victim from an immediate danger or to prevent further abuse." Id. at 127.

*6 Applying these principles, we are convinced that the court properly issued a FRO based upon predicate acts of criminal coercion and harassment.

In August 2015, our Legislature amended the PDVA to include coercion as defined by N.J.S.A. 2C:13-5(a), as a predicate act of domestic violence. Among the categories of threats defined as criminal coercion is a threat made to unlawfully restrict freedom of action, with a purpose to coerce a course of conduct from a victim which defendant has no legal right to require, by threatening to "[e]xpose any secret which would tend to subject any person to hatred, contempt or ridicule, or to impair credit or business repute." N.J.S.A. 2C:13-5(a)(3).

The court correctly found that plaintiff proved defendant criminally coerced him when she threatened to release the videotapes of his sexual activities to his employer in order to embarrass him and to jeopardize his employment if he did not pay her the court ordered attorney's fees totaling \$30,000. The court noted the proper course of action was to file a post-judgement motion to enforce the order. Furthermore, and for the same reasons, defendant committed coercion under N.J.S.A. 2C:13-5(a)(7), by threatening an "act which would not in itself substantially benefit the [defendant] but which is calculated to substantially harm another person with respect to his health, safety, business, calling, career, financial condition, reputation or personal relationships."

Turning to the predicate act of harassment, which as mentioned earlier was properly pled, the court determined that two provisions of the harassment statute were satisfied. N.J.S.A. 2C:33-4 provides:

[A] person commits a petty disorderly persons offense if, with purpose to harass another, he:

a. Makes, or causes to be made, a communication or communications anonymously or at extremely inconvenient hours, or in offensively coarse language, or any other manner likely to cause annoyance or alarm;

....

c. Engages in any other course of alarming conduct or of repeatedly committed acts with purpose to alarm or seriously annoy such other person.

The court's finding of harassment based upon subsections (a) and (c) is well supported by credible evidence in the record. Defendant's numerous text messages and emails sent before and after the divorce proceedings supported plaintiff's testimony that the communications caused him to fear physical harm and that the release of the videotapes could jeopardize his employment. Moreover, the communications were unilaterally initiated by defendant and were not responsive to any combative messages from plaintiff. See R.G. v. R.G., 449 N.J. Super. 208, 225 (App. Div. 2017). Thus, defendant's actions show a "pattern of abusive and controlling behavior" of the kind intended to be prevented by the PDVA. Peranio v. Peranio, 280 N.J. Super. 47, 52 (App. Div. 1995); see also Cesare, 154 N.J. at 397.

We next address defendant's contention that the court failed to make any specific findings as to the parties' previous DV history. We disagree. Defendant's texts and emails to plaintiff, which span approximately two years, are relevant not only with defendant's intent, but also pertain to their prior DV history. See Cesare, 154 N.J. at 401–02 (finding a defendant's past history is relevant in a DV proceeding regarding the nature of parties' relationship).

*7 Defendant makes no argument concerning the second prong of Silver. Nonetheless, we see no reason to disturb the court's finding that a FRO was necessary to protect plaintiff from immediate danger or to prevent further abuse.

V.

Lastly, defendant argues that her ownership of the videotapes were implicitly addressed in the FJOD and therefore plaintiff's DV complaint concerning the release of the videotapes was barred by the entire controversy doctrine under Rule 4:30A. This argument is without sufficient merit to warrant discussion. R. 2:11–3(e)(1)(E). We only add that defendant's threats to release the videotapes came after the divorce hearing and entry of the FJOD.

Affirmed as to the issuance of the FRO, but reversed as to the transfer of copyrights to the videotapes.

All Citations

Not Reported in Atl. Rptr., 2018 WL 564396



Extraction Report

Cellbrite UFED Reports

Summary

UFED Physical Analyzer version	5.4.0.203
Report creation time	12/7/2016 12:59:32 PM -05:00
Time zone settings (UTC)	(UTC-05:00) New_York (America)
Case number	1800045216
Evidence number	15078-4
Examiner Name	Ofc. Michelle Cattuti #545

Source Extraction

Logical	
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Extraction end date/time	12/7/2016 12:49:45 PM
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Internal Version	4.3.14.853
Selected Manufacturer	LG GSM
Selected Device Name	H901 V10
Connection Type	Cable No. 100
Extraction Type	Logical [Android Backup]
Extraction ID	7C132F0C-A224-43A2-B2C1-1EDB7EB83D33
Report type	Phone
Unit Identifier	2008014770

Device Information

Name	Value
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Detected model	LG-H901
Phone revision	6.0 MRA56K 180761427c301
IMEI	354017071842062
ICCID	8901260455795319096
MSISDN	18609974245
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Client Used for Extraction	Yes
Time Zone	America/New_York
Extraction Notes	
Generic	+ZZ - Extracted phone time stamp time zone is expressed in quarters of an hour



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Missed (11)

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334	From [REDACTED]	7/13/2016 6:14:18 PM(UTC-4)		+140547200 57	Read	[REDACTED]
335	From [REDACTED]	7/13/2016 3:59:18 PM(UTC-4)		+140547200 57	Read	[REDACTED]

367	From [REDACTED]	7/8/2016 7:39:36 PM(UTC-4)		+140547200 57	Read	[REDACTED]
368	From [REDACTED]	7/8/2016 6:26:26 PM(UTC-4)		+140547200 57	Read	[REDACTED]
369	From [REDACTED]	7/8/2016 6:25:22 PM(UTC-4)		+140547200 57	Read	[REDACTED]
370	From [REDACTED]	7/8/2016 2:07:06 PM(UTC-4)		+140547200 57	Read	[REDACTED]
371	From [REDACTED]	7/8/2016 2:05:12 PM(UTC-4)		+140547200 57	Read	[REDACTED]
372	From [REDACTED]	7/7/2016 7:39:16 PM(UTC-4)		+140547200 57	Read	[REDACTED]
373	From [REDACTED]	7/7/2016 7:38:15 PM(UTC-4)		+140547200 57	Read	[REDACTED]
374	From [REDACTED]	7/7/2016 10:36:16 AM(UTC-4)		+140547200 57	Read	[REDACTED]
375	From [REDACTED]	7/7/2016 10:30:15 AM(UTC-4)		+140547200 57	Read	[REDACTED]
376	From [REDACTED]	7/7/2016 10:03:19 AM(UTC-4)		+140547200 57	Read	[REDACTED]
377	From [REDACTED]	7/7/2016 9:55:39 AM(UTC-4)		+140547200 57	Read	[REDACTED]
378	From [REDACTED]	7/7/2016 9:42:03 AM(UTC-4)		+140547200 57	Read	[REDACTED]
379	From [REDACTED]	7/7/2016 9:40:31 AM(UTC-4)		+140547200 57	Read	[REDACTED]
380	From [REDACTED]	7/7/2016 9:06:55 AM(UTC-4)		+140547200 57	Read	[REDACTED]
381	From [REDACTED]	7/8/2016 7:16:13 PM(UTC-4)		+140547200 57	Read	[REDACTED]
382	From [REDACTED]	7/6/2016 7:09:22 PM(UTC-4)		+140547200 57	Read	[REDACTED]
383	From [REDACTED]	7/5/2016 8:06:32 PM(UTC-4)		+140547200 57	Read	[REDACTED]
384	From [REDACTED]	7/5/2016 6:08:07 PM(UTC-4)		+140547200 57	Read	[REDACTED]
385	From [REDACTED]	7/5/2016 6:04:22 PM(UTC-4)		+140547200 57	Read	[REDACTED]
386	From +18805085083 Bruce Bemer *	7/4/2016 8:31:34 PM(UTC-4)		+140547200 57	Read	Thanks happy 4th to u also
387	From [REDACTED]	7/3/2016 9:10:51 PM(UTC-4)		+140547200 57	Read	[REDACTED]
388	From +18805085083 Bruce Bemer *	7/2/2016 11:00:54 PM(UTC-4)		+140547200 57	Read	Which one is it
389	From +18805085083 Bruce Bemer *	7/2/2016 11:00:47 PM(UTC-4)		+140547200 57	Read	Ok
390	From [REDACTED]	7/1/2016 12:14:19 PM(UTC-4)		+140547200 57	Read	[REDACTED]
391	From [REDACTED]	6/30/2016 8:21:31 PM(UTC-4)		+140547200 57	Read	[REDACTED]
392	From [REDACTED]	6/30/2016 5:54:20 PM(UTC-4)		+140547200 57	Read	[REDACTED]
393	From [REDACTED]	6/30/2016 5:51:07 PM(UTC-4)		+140547200 57	Read	[REDACTED]
394	From +18805085083 Bruce Bemer *	6/30/2016 11:15:19 AM(UTC-4)		+140547200 57	Read	Thanks
395	From +18805085083 Bruce Bemer *	6/29/2016 10:56:54 PM(UTC-4)		+140547200 57	Read	Nice
396	From +18805085083 Bruce Bemer *	6/29/2016 10:44:15 PM(UTC-4)		+140547200 57	Read	Can u check new Milford before u come
397	From +18805085083 Bruce Bemer *	6/29/2016 10:43:43 PM(UTC-4)		+140547200 57	Read	That is cool just find a place to park with the other rv s

1490	SMS Messages	Outgoing		7/17/2016 11:24:25 AM(UTC-4)	[REDACTED]	[REDACTED]	
1491	SMS Messages	Incoming		7/17/2016 11:26:13 AM(UTC-4)	[REDACTED]	[REDACTED]	
1492	SMS Messages	Outgoing		7/17/2016 11:26:36 AM(UTC-4)	[REDACTED]	[REDACTED]	
1493	SMS Messages	Incoming		7/17/2016 11:35:12 AM(UTC-4)	[REDACTED]	[REDACTED]	
1494	SMS Messages	Incoming		7/17/2016 12:39:30 PM(UTC-4)	[REDACTED]	[REDACTED]	
1495	SMS Messages	Outgoing		7/17/2016 12:44:35 PM(UTC-4)	[REDACTED]	[REDACTED]	
1496	SMS Messages	Outgoing		7/17/2016 12:45:13 PM(UTC-4)	[REDACTED]	[REDACTED]	
1497	MMS Messages	Incoming	1	7/17/2016 12:47:07 PM(UTC-4)	[REDACTED]	[REDACTED]	
1498	SMS Messages	Outgoing		7/17/2016 12:48:26 PM(UTC-4)	[REDACTED]	[REDACTED]	
1499	SMS Messages	Incoming		7/17/2016 12:51:30 PM(UTC-4)	[REDACTED]	[REDACTED]	
1500	SMS Messages	Incoming		7/17/2016 12:51:37 PM(UTC-4)	[REDACTED]	[REDACTED]	
1501	SMS Messages	Incoming		7/17/2016 12:51:57 PM(UTC-4)	[REDACTED]	[REDACTED]	
1502	MMS Messages	Incoming	1	7/17/2016 12:52:19 PM(UTC-4)	[REDACTED]	[REDACTED]	
1503	SMS Messages	Outgoing		7/17/2016 12:52:48 PM(UTC-4)	[REDACTED]	[REDACTED]	
1504	SMS Messages	Incoming		7/17/2016 12:55:05 PM(UTC-4)	[REDACTED]	[REDACTED]	
1505	SMS Messages	Outgoing		7/17/2016 4:45:43 PM(UTC-4)	[REDACTED]	[REDACTED]	
1506	SMS Messages	Incoming		7/17/2016 4:48:24 PM(UTC-4)	[REDACTED]	[REDACTED]	
1507	SMS Messages	Incoming		7/17/2016 4:48:27 PM(UTC-4)	[REDACTED]	[REDACTED]	
1508	SMS Messages	Outgoing		7/17/2016 5:22:25 PM(UTC-4)	[REDACTED]	[REDACTED]	
1509	MMS Messages	Outgoing	1	7/17/2016 5:32:41 PM(UTC-4)	To: 18605085083 Bruce Bemer	Zoom in and see what I see 20160717_125646.jp 	
1510	Images			7/17/2016 5:43:15 PM	[REDACTED]	[REDACTED]	
1511	MMS Messages	Incoming	1	7/17/2016 5:44:29 PM(UTC-4)	[REDACTED]	[REDACTED]	
1512	SMS Messages	Incoming		7/17/2016 5:45:47 PM(UTC-4)	[REDACTED]	[REDACTED]	
1513	SMS Messages	Outgoing		7/17/2016 5:45:58 PM(UTC-4)	[REDACTED]	[REDACTED]	
1514	SMS Messages	Incoming		7/17/2016 6:08:52 PM(UTC-4)	From: +18605085083 Bruce Bemer	Mmmm	
1515	SMS Messages	Incoming		7/17/2016 6:12:23 PM(UTC-4)	From: +18605085083 Bruce Bemer	Let's meet him	
1516	SMS Messages	Outgoing		7/17/2016 6:15:32 PM(UTC-4)	To: 18605085083 Bruce Bemer	I tried to get a frontal pic but there were people behind me! BIG!!	
1517	SMS Messages	Outgoing		7/17/2016 6:21:14 PM(UTC-4)	To: 18605085083 Bruce Bemer	I'm going to bring two cuties (from Danbury) to the track (in the RV) on the 6th of August (Wings & Wheels)!	
1518	SMS Messages	Incoming		7/17/2016 6:21:42 PM(UTC-4)	From: +18605085083 Bruce Bemer	Cool	
1519	SMS Messages	Incoming		7/17/2016 6:22:35 PM(UTC-4)	[REDACTED]	[REDACTED]	

1520	MMS Messages	Outgoing	1		7/17/2016 6:23:50 PM(UTC-4)	[REDACTED]	[REDACTED]
1521	SMS Messages	Incoming			7/17/2016 6:25:07 PM(UTC-4)	[REDACTED]	[REDACTED]
1522	SMS Messages	Outgoing			7/17/2016 6:27:14 PM(UTC-4)	[REDACTED]	[REDACTED]
1523	SMS Messages	Outgoing			7/17/2016 6:28:08 PM(UTC-4)	[REDACTED]	[REDACTED]
1524	SMS Messages	Incoming			7/17/2016 6:33:10 PM(UTC-4)	[REDACTED]	[REDACTED]
1525	SMS Messages	Outgoing			7/17/2016 6:38:40 PM(UTC-4)	[REDACTED]	[REDACTED]
1526	SMS Messages	Incoming			7/17/2016 6:45:47 PM(UTC-4)	[REDACTED]	[REDACTED]
1527	SMS Messages	Incoming			7/17/2016 6:46:52 PM(UTC-4)	[REDACTED]	[REDACTED]
1528	SMS Messages	Outgoing			7/17/2016 6:47:27 PM(UTC-4)	[REDACTED]	[REDACTED]
1529	SMS Messages	Outgoing			7/17/2016 6:49:44 PM(UTC-4)	[REDACTED]	[REDACTED]
1530	SMS Messages	Incoming			7/17/2016 6:55:37 PM(UTC-4)	[REDACTED]	[REDACTED]
1531	SMS Messages	Outgoing			7/17/2016 6:56:07 PM(UTC-4)	[REDACTED]	[REDACTED]
1532	SMS Messages	Incoming			7/17/2016 6:56:30 PM(UTC-4)	[REDACTED]	[REDACTED]
1533	SMS Messages	Outgoing			7/17/2016 6:57:21 PM(UTC-4)	[REDACTED]	[REDACTED]
1534	SMS Messages	Outgoing			7/17/2016 6:59:45 PM(UTC-4)	[REDACTED]	[REDACTED]
1535	SMS Messages	Incoming			7/17/2016 7:12:33 PM(UTC-4)	[REDACTED]	[REDACTED]
1536	SMS Messages	Outgoing			7/17/2016 7:13:15 PM(UTC-4)	[REDACTED]	[REDACTED]
1537	SMS Messages	Incoming			7/17/2016 9:51:26 PM(UTC-4)	[REDACTED]	[REDACTED]
1538	SMS Messages	Outgoing			7/17/2016 9:51:42 PM(UTC-4)	[REDACTED]	[REDACTED]
1539	SMS Messages	Incoming			7/17/2016 9:51:59 PM(UTC-4)	[REDACTED]	[REDACTED]
1540	SMS Messages	Incoming			7/17/2016 9:52:28 PM(UTC-4)	[REDACTED]	[REDACTED]
1541	SMS Messages	Outgoing			7/17/2016 9:52:51 PM(UTC-4)	[REDACTED]	[REDACTED]
1542	MMS Messages	Outgoing	1		7/17/2016 10:16:35 PM(UTC-4)	To: 18605085083 Bruce Bemer	Yummi Screenshot 2016-07-17-22-15-28-1.jpg
1543	SMS Messages	Incoming			7/17/2016 10:17:11 PM(UTC-4)	[REDACTED]	[REDACTED]
1544	SMS Messages	Outgoing			7/17/2016 10:18:43 PM(UTC-4)	[REDACTED]	[REDACTED]
1545	SMS Messages	Incoming			7/17/2016 10:30:22 PM(UTC-4)	From: +18605085083 Bruce Bemer	Boy friends ?
1546	SMS Messages	Incoming			7/17/2016 10:30:37 PM(UTC-4)	From: +18605085083 Bruce Bemer	U r bringing them to the races ?
1547	SMS Messages	Outgoing			7/17/2016 10:33:22 PM(UTC-4)	To: 18605085083 Bruce Bemer	those unfortunately, are not the two that'll be joining me to the races, no
1548	SMS Messages	Outgoing			7/17/2016 10:45:50 PM(UTC-4)	To: 18605085083 Bruce Bemer	the two that are joining me are cute in their own right however

FEDERAL BUREAU OF INVESTIGATION

Date of entry 09/22/2016

On August 5, 2016, Bruce Bemer, 210 Commerce Street, Glastonbury, CT 06033, (860) 659-3515, (860) 508-5083, was interviewed by Special Agent Kurt Siuzdak and Danbury Police Department Detective Daniel Trompetta. After being advised of the identity of the interviewers and nature of the interview, Bemer provided the following information:

Bemer is the owner of Bemer Propane, a multi-facility propane and gas distribution company, and the Waterford Speedbowl racetrack. Bemer's office is located at 210 Commerce Street, Glastonbury, CT.

Bemer has known Robert King (King) for between 20 and 25 years. Bemer met King through a man named Richard LNU (Last Name Unknown) who lived in Vernon, CT. King previously lived in the Hartford/Vernon area. Bemer believed Richard LNU was dead. Both King and Richard LNU were heavy users of crack cocaine.

King was arrested several times for narcotics related offenses. Bemer believed King did not currently use cocaine or other illegal drugs. Bemer stated that he was not involved with illicit narcotics.

For the last 20 to 25 years, King has arranged for younger adult males to have sex with Bemer. Bemer stated that over the years King has provided Bemer with approximately eight to ten different men for sex. Recently, Bemer paid King's "kids" approximately \$200.00 each time he would have sex with them. Although, Bemer referred to King's prostitutes as "kids," Bemer reiterated that all the young men that King provided to Bemer were in fact young adult males who were over the age of 18.

Bemer stated King arranged his men to have sex at various hotels, his house, and even at his company's office. Bemer also travelled to King's mobile home and had sex there once or twice. King's mobile home was dirty; Bemer was not interested in being inside King's trailer.

Once, King asked Bemer to come to Danbury to help fix a dirt motorcycle for one of King's young men "Danny" (Danny LNU [Last Name Unknown]); however, the dirt bike was a cheap Chinese version which Bemer could not fix. The dirt bike was probably still located in King's shed.

Investigation on 08/05/2016 at Glastonbury, Connecticut, United States (In Person)

File# 50A-NH-6806317, 50A-NH-6806317-302s

Date drafted 08/05/2016

by SIUZDAK KURT

50A-NH-6806317

(U) August 5, 2016 interview of Bruce
Continuation of FD-302 of Bemer, On 08/05/2016, Page 2 of 3

King routinely solicited Bemer to have sex with his young men. Bremer did not know King to have any job other than working his prostitutes.

Bemer advised that he did not really know the names of King's prostitutes and had no interest in learning their names. However, Bemer knew the name of one man whom he had sex with eight or ten times, Danny LNU. The last time Bemer had sex with Danny LNU was during the winter of 2015/2016; however, Bemer did not remember the exact date.

Bemer stopped having sex with Danny LNU because there was something wrong with Danny LNU. Bemer believed Danny LNU had a mental issue, so Bemer told King he was not interested in having sex with him anymore. Bemer stated that Danny LNU did not drive, and King drove the young man to Bemer so they could have sex.

Bemer had sex with another of King's men named Connetta; however, Connetta became too old to appeal to Bemer. For the last few years, soliciting for Danny LNU was King's primary focus. Bemer stated King always tried to push Danny LNU.

King also solicited Bemer with another man, Brian LNU. Brian LNU would be a good source of information for law enforcement. Brian LNU was a tall kid with a girlfriend. Bemer advised he would look at photographs to identify both Brian LNU and Danny LNU.

Recently, King started driving a Winnebago recreational vehicle to the Waterford Speedbowl and staying at speedbowl. King solicited Bemer to have sex with Brian while at the speedbowl, but Bemer did not want to mix business and pleasure. He also did not want to condone the prostitution at the facility, so Bemer rejected King's solicitations.

Other than the prostitution business, King does other work for Bemer's propane business. Bemer Propane has customers in the Danbury area; and occasionally, Bemer pays King approximately \$40.00 to read the meters of Bemer's customers. This allowed Bemer not to make an employee drive to the Danbury area.

Bemer checked his text messages and advised that King checked meters as recently as July 20, 2016. Bemer advised he had numerous text messages from King stored in his cellphone, telephone number (860) 508-5083.

The last time that King brought Bemer a "kid" for sex was with Brian LNU in June of 2016. In early 2016, Bemer had sex with one of King's men in Tolland, CT. Bemer advised, Dan Topping was another of King's young adult males who would have information about King's activities.

50A-NH-6806317

(U) August 5, 2016 interview of Bruce
Continuation of FD-302 of Bemer, On 08/05/2016, Page 3 of 3

In total, Bemer would have sex with King's young men, approximately four or five times a year. One issue with King was that he occasionally dropped out of sight and then all of a sudden "pops back up" again..

Bemer did not have sex with Danny LNU on June 11, 2016, nor was Bemer aware Danny LNU was hospitalized at CVH. Bemer owns a home at 768 Glastonbury Turnpike, Portland, CT which is across the river from Middletown. However, Bemer did not believe that either King or Danny LNU had visited the property. If someone had visited the property, then the next door neighbor would have reported it to Bemer.

For the avoidance of doubt,
Would you please provide the list
of John Does in Courts 1-4:

John Doe # 1

3

9

11

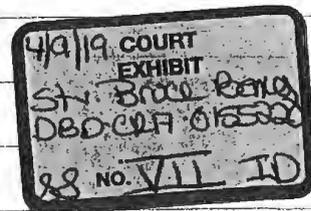


⑥ COPIES OF

COURT EX SB# IV
CHARGE TO JURY

FROM PATRONIZING A TRAFFICKED
PERSON TO END
OF DOC.

⑥ COURT EX SB III
CHARGE



[Full Name Redacted]

Would you please provide
the full transcript of
Dan II's testimony.



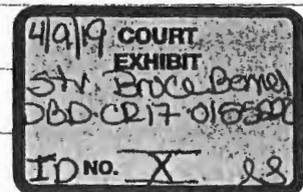
[Full Name Redacted]

Would you please provide the
relevant excerpts from Don

T.'s testimony which relate
to his direct interactions with
Bruce Beemer.



Can any additional information
be provided regarding the
Winnebago - who is the
vehicle registered to?



Would you please provide
the following testimony for

WW and MF:

- Direct interaction with BB
- Drug usage
- mental health (including references to conservators)
- key word "~~standoff~~": "standoff-ish"



Would you please provide
Brien I's testimony as it
specifically relates to his
direct interactions with
Bruce B.

4/19 COURT
EXHIBIT
Stv. B. Bomas
080 CRT 05688
88 NO. XII IO



Yale Law School

WILLIAM N. BSKRIDGE, JR. · *John A. Garver Professor of Jurisprudence*

June 13, 2019

The Honorable Robin Pavia
Superior Court for the State of Connecticut
Danbury, Connecticut

Re: *State v. Bemer*, No. DBD-CR17-0155220 (Superior Court, Danbury)—Required Elements of Proof for the Criminal Coercion Statute, C.G.A. § 53a-192(a)(3)

Dear Judge Pavia,

I am the John A. Garver Professor of Jurisprudence at the Yale Law School. Since 1987, my main area of specialization has been statutory interpretation. I have been the co-author of two leading casebooks on Legislation, have written two monographs published by Harvard and Yale University Presses, and have written several dozen law review articles on the topic.

Lawyers for defendant Bruce Bemer in the above-captioned case have retained me for an opinion on the proper interpretation of the criminal coercion statute, C.G.A. § 53a-192(a)(3).¹ Section 192(a) defines the crime of “coercion”:

A person is guilty of coercion when he compels or induces another person to engage in conduct which such other person has a legal right to abstain from engaging in, or to abstain from engaging in conduct in which such other person has a legal right to engage, by means of instilling in such other person a fear that, if the demand is not complied with, the actor or another will: (1) Commit any criminal offense; or (2) accuse any person of a criminal offense; or (3) *expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair any person's credit or business repute*; or (4) take or withhold action as an official, or cause an official to take or withhold action.

The italicized language represents the only part of the coercion statute that the State was charging.

¹ As I understand it, Mr. Bemer has been charged with violating C.G.A. § 53a-192a(a)(1), which defines the crime of “trafficking in persons” when the state can prove that the defendant “compels or induces another person to engage in conduct involving sexual contact with one or more third persons * * * by means of * * * (B) fraud, or (C) coercion, as provided in section 53a-192.” This letter focuses only on the coercion-linked charge described in § 53a-192a(a)(1)(C).

As I understand it, Mr. Bemmer was found guilty of engaging in coercion only pursuant to § 192(a)(3). The “coercion” charge to the jury was as follows:

A person is guilty of “coercion” when he compels or induces another person to engage in conduct which such other person has a legal right to abstain from engaging in by means of instilling in such other person a fear that if the demand is not complied with, the actor or another will impair any person’s credit.

In my opinion, this charge did not accurately state the requirements of § 192(a)(3). To satisfy the statutory requirements, the charge should have read, with the necessary language in italics:

A person is guilty of ‘coercion’ when he compels or induces another person to engage in conduct which such other person has a legal right to abstain from engaging in by means of instilling in such other person a fear that if the demand is not complied with, the actor or another *will expose any secret tending to* impair any person’s credit.

The italicized language sets forth an essential element of the crime, that the defendant threatens to “expose any secret.” Section 192(a)(3) would then require that the exposure of any secret “tend[] to impair any person’s credit.”

It is a standard principle of statutory interpretation that judges must follow the text enacted by the legislature and must implement every word and phrase. In criminal cases, this is especially important, because of the rule of lenity, which requires judges to hold the State to the strict letter of the law and to every element of a statutory criminal offense. Relatedly, the Due Process Clause requires that criminal statutes give the population precise notice of what constitutes criminal conduct. In the federal and most state constitutional systems, judges are careful not to expand the criminal penalty beyond what has been enacted by the legislature.

Judges must give effect to every word of a statute, especially for criminal statutes. To find that a defendant has engaged in “coercion” as defined by § 192(a)(3), the state must establish the following elements beyond a reasonable doubt:

- #1. The defendant threatened to “expose any secret,” AND
- #2. Exposing that secret “tend[ed]” EITHER (a) “to subject any person to hatred, contempt or ridicule,” OR (b) “to impair any person’s credit or business repute.”

The State disclaimed any reliance on or evidence that could satisfy #2(a), so a jury finding of “coercion” would require the jury to find the facts entailed in both #1 and #2(b) beyond a reasonable doubt. Because the jury was only charged to consider #2(b) and was unaware of #1, the jury charge was not only erroneous, but was a miscarriage of justice. In my view, the Due Process Clause does not tolerate a criminal conviction based upon a jury charge that leaves out a fundamental element of the crime.

It is easy to see how element #1, “expose a secret,” might be dropped in a hurried conversation where the State was disclaiming reliance on element #2(a), the possibility that exposing the secret would “subject any person to hatred, contempt, or ridicule.” But it is clear

that “expose any secret” is an essential element of the crime. There is no other legitimate way to read the statute.

Grammatically, § 192(a)(3) requires (among other things) that the defendant instilled in the victim a fear that if the victim does not do what defendant demands, the defendant or a third party will:

- (1) *Commit* any criminal offense; or
- (2) *accuse* any person of a criminal offense; or
- (3) *expose* any secret tending to subject any person to hatred, contempt or ridicule, or to impair any person's credit or business repute; or
- (4) *take or withhold* action as an official, or *cause* an official to take or withhold action.

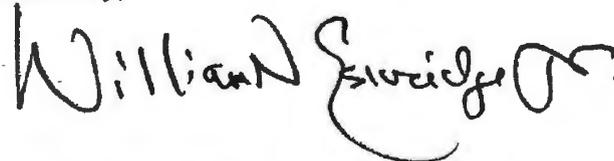
Each of the four possible grounds of coercive behavior is identified by an *action verb*, each italicized in the foregoing block quotation. The actions suggested by those verbs are essential to the statutory finding. This is confirmed by § 192(b), which focuses the affirmative defense for § 192(a)(3) on the defendant's belief that “the secret was true.”

The concept in the previous paragraph is a standard one in statutory interpretation. It is based on the widely acknowledged “convention of parallel usage” described in the *Chicago Manual of Style* § 5.212 (10th ed. 2010), and in *O'Connor v. Oakhurst Dairy*, 851 F.3d 69 (1st Cir. 2017). Thus, central to each of the four § 192(a) subsections is the action verb identified above. And within § 192(a)(3), the parallel usage is the two *infinitive phrases*, namely, “to subject any person to hatred, contempt or ridicule” and “to impair any person's credit or business repute.” Each of the two infinitive phrases is the object of the participle “tending.”

In short, § 192(a)(3) has a plain meaning, and the plain meaning requires the State to prove that the defendant threatened to “expose any secret,” as well as that exposing the secret “tend[ed] to impair any person's credit or business repute.” Because the jury was told otherwise, it would be a miscarriage of justice to allow the coercion-based verdicts to stand.

If I may be of further assistance to the Court, please let me know.

Sincerely,



William N. Eskridge Jr.
John A. Garver Professor of Jurisprudence
Yale Law School

IN THE SUPERIOR COURT OF THE STATE OF CONNECTICUT
JUDICIAL DISTRICT OF DANBURY AT DANBURY

SHARMESE L. HODGE, ASSISTANT STATE'S ATTORNEY

ACCUSES BRUCE JOHN BEMER

OF

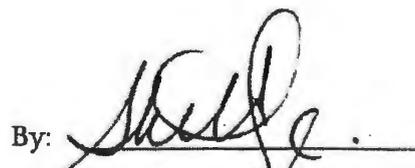
1. AND FURTHER ACCUSES BRUCE JOHN BEMER, with the crime of PATRONIZING A TRAFFICKED PERSON and charges that in and around 2014-2016 BRUCE JOHN BEMER, pursuant to a prior understanding paid a fee to another person, to wit: John Doe #1, as compensation for having engaged in sexual conduct with him, in violation of Connecticut General Statute §53a-83(a)(1).
2. AND FURTHER ACCUSES BRUCE JOHN BEMER, with the crime of PATRONIZING A TRAFFICKED PERSON and charges that in and around 2014-2015 BRUCE JOHN BEMER, pursuant to a prior understanding paid a fee to another person, to wit: John Doe #2, as compensation for having engaged in sexual conduct with him, in violation of Connecticut General Statute §53a-83(a)(1).
3. AND FURTHER ACCUSES BRUCE JOHN BEMER, with the crime of PATRONIZING A TRAFFICKED PERSON and charges that in and around 2012-2016 BRUCE JOHN BEMER, pursuant to a prior understanding paid a fee to another person, to wit: John Doe #3, as compensation for having engaged in sexual conduct with him, in violation of Connecticut General Statute §53a-83(a)(1).
4. AND FURTHER ACCUSES BRUCE JOHN BEMER, with the crime of PATRONIZING A TRAFFICKED PERSON and charges that in and around 2012-2016 BRUCE JOHN BEMER, pursuant to a prior understanding paid a fee to another person, to wit: John Doe #5, as compensation for having engaged in sexual conduct with him, in violation of Connecticut General Statute §53a-83(a)(1).
5. AND FURTHER ACCUSES BRUCE JOHN BEMER, with the crime of PATRONIZING A TRAFFICKED PERSON and charges that in and around 2014-2016 BRUCE JOHN BEMER, pursuant to a prior understanding paid a fee to another person, to wit: John Doe #6, as compensation for having engaged in sexual conduct with him, in violation of Connecticut General Statute §53a-83(a)(1).

6. AND FURTHER ACCUSES BRUCE JOHN BEMER, with the crime of PATRONIZING A TRAFFICKED PERSON and charges that in and around 2015-2016 BRUCE JOHN BEMER, pursuant to a prior understanding paid a fee to another person, to wit: John Doe #8, as compensation for having engaged in sexual conduct with him, in violation of Connecticut General Statute §53a-83(a)(1).

7. AND FURTHER ACCUSES BRUCE JOHN BEMER, with the crime of PATRONIZING A TRAFFICKED PERSON and charges that in and around February 2013 – February 2015 BRUCE JOHN BEMER, pursuant to a prior understanding paid a fee to another person, to wit: John Doe #11, as compensation for having engaged in sexual conduct with him, in violation of Connecticut General Statute §53a-83(a)(1).

8. AND FURTHER ACCUSES BRUCE JOHN BEMER, with the crime of CRIMINAL LIABILITY FOR TRAFFICKING IN PERSONS and charges that during 2012 – 2017 in and around the State of Connecticut, BRUCE JOHN BEMER intentionally aided ROBERT KING to engage in conduct which constituted Trafficking in Persons by compelling and inducing another person to engage in conduct involving sexual contact with one or more third persons by means of fraud and coercion in violation of Connecticut General Statute §53a-192a which violates Connecticut General Statute §53a-8.

Dated this 28th day of January, 2019.

By: 
Sharmese L. Hodge
Assistant State's Attorney



Thursday,
August 22, 2019
Docket Search
by Court Location

Criminal/Motor Vehicle Conviction Case Detail

Information is accurate as of August 22, 2019 05:09 AM

Thursday,
August 22, 2019
Docket Search
by Defendant

Defendant Information

Last, First: KING ROBERT

Represented By: 434478 DUBY C L O O LLC

Birth Year: 1965

Pending Cases
Search by Defendant

Docket Information

Pending Cases
Search by Docket Number

Docket No: DBD-CR17-0155231-S

Original Arresting Agency: LOCAL POLICE DANBURY

Court: Danbury GA 3 and JD

Convictions Search
by Defendant

Costs:

Original Arrest Date: 3/31/2017

Sentenced Date: 6/19/2019

Convictions Search
by Docket Number

Overall Sentence Information

Committed to Department of Corrections and Probation Ordered

Attorney/Firm Case List

Attorney/Firm Look-up
Numbers

Statute	Description	ClassType	Occ	Offense Date	Plea	Verdict FindingDate	Verdict	Fine	Fee(s)
53a-192a	Conspiracy To Commit Trafficking In Persons	B	Felony 1	1/1/2012	Guilty	Guilty	8/24/2018	\$0.00	\$0.00

Sentenced: 20 Years Jail, Execution Suspended After 54 Months, Probation 5 Years

GA Court Phone
Numbers

[Back](#)

JD Court Phone
Numbers

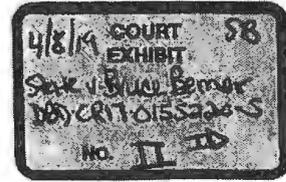
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Court's Draft Charge – Excerpt



INTRODUCTION

MEMBERS OF THE JURY, YOU HAVE HEARD THE EVIDENCE PRESENTED IN THIS CASE. IT NOW BECOMES

MY DUTY TO INSTRUCT YOU ON THE LAW WHICH IS TO BE APPLIED TO THE FACTS IN THIS CASE.

PATRONIZING A TRAFFICKED PERSON

THE DEFENDANT IS CHARGED IN COUNTS 1-4 WITH PATRONIZING A PROSTITUTE. THE STATUTE DEFINING THIS OFFENSE READS IN PERTINENT PART AS FOLLOWS:

A PERSON IS GUILTY OF PATRONIZING A PROSTITUTE WHEN PURSUANT TO A PRIOR UNDERSTANDING, HE PAYS A FEE TO ANOTHER PERSON AS COMPENSATION FOR SUCH PERSON HAVING ENGAGED IN SEXUAL CONDUCT WITH HIM.

FOR YOU TO FIND THE DEFENDANT GUILTY OF THIS CHARGE, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT:

1ST ELEMENT: PAID A FEE IN EXCHANGE FOR SEXUAL CONDUCT:

THE DEFENDANT PAID A FEE IN EXCHANGE FOR AN AGREEMENT TO ENGAGE IN SEXUAL CONDUCT WITH HIM. GRATUITOUS SEX IS NOT WITHIN THE PURVIEW OF THE STATUTE.

THIS LAW APPLIES TO SITUATIONS IN WHICH THE DEFENDANT MAKES PAYMENT EITHER TO A PROSTITUTE OR TO A PROCURER OR A "PIMP" PURSUANT TO A PRIOR UNDERSTANDING. THIS UNDERSTANDING MUST BE THAT SOME PERSON EITHER HAS ENGAGED OR WILL ENGAGE IN SEXUAL

CONDUCT WITH THE DEFENDANT. THE PHRASE "SEXUAL CONDUCT" IS NOT DEFINED IN THE LAW AND HAS ITS ORDINARY MEANING. ANY CONDUCT OF A SEXUAL NATURE INTENDED TO GRATIFY ANOTHER PERSON'S SEXUAL DESIRE OR SEXUAL PLEASURE IS INCLUDED WITHIN THE TERMS OF THIS STATUTE. ACTUAL SEXUAL CONDUCT IS NOT NECESSARY FOR A CONVICTION. AN OFFER OR SOLICITATION OR AGREEMENT TO ENGAGE IN SEXUAL CONDUCT WITH ANOTHER PERSON IN RETURN FOR A FEE IS SUFFICIENT. ALSO, GRATUITOUS SEX IS NOT WITHIN THE PURVIEW OF THE STATUTE. IT DOES NOT MATTER THAT THE PARTICIPATING PERSONS WERE OF THE SAME SEX.

2ND ELEMENT: KNEW OR REASONABLY SHOULD HAVE KNOWN THAT PERSON WAS VICTIM OF TRAFFICKING:

THE SECOND ELEMENT THAT THE STATE MUST PROVE BEYOND A REASONABLE DOUBT IS THAT THE DEFENDANT KNEW OR REASONABLY SHOULD HAVE KNOWN THAT AT THE TIME OF THE OFFENSE SUCH OTHER PERSON/PROSTITUTE WAS A VICTIM OF CONDUCT BY MR KING THAT CONSTITUTES TRAFFICKING IN PERSONS IN VIOLATION OF CGS 53A-192A.

(A PERSON ACTS "KNOWINGLY" WITH RESPECT TO CONDUCT OR TO A CIRCUMSTANCE DESCRIBED BY A STATUTE DEFINING AN OFFENSE WHEN HE IS AWARE THAT HIS CONDUCT IS OF SUCH NATURE OR THAT SUCH CIRCUMSTANCE EXISTS. AN ACT IS DONE KNOWINGLY IF DONE

**VOLUNTARILY AND PURPOSELY, AND NOT BECAUSE OF MISTAKE,
INADVERTENCE OR ACCIDENT.)**

ORDINARILY, KNOWLEDGE CAN BE ESTABLISHED ONLY THROUGH AN
INFERENCE FROM OTHER PROVEN FACTS AND CIRCUMSTANCES. THE
INFERENCE MAY BE DRAWN IF THE CIRCUMSTANCES ARE SUCH THAT A
REASONABLE PERSON OF HONEST INTENTION, IN THE SITUATION OF THE
DEFENDANT, WOULD HAVE CONCLUDED THAT SUCH OTHER PERSON WAS
THE VICTIM OF CONDUCT THAT CONSTITUTES TRAFFICKING IN PERSONS. THE
DETERMINATIVE QUESTION IS WHETHER THE CIRCUMSTANCES IN THE
PARTICULAR CASE FORM A BASIS FOR A SOUND INFERENCE AS TO THE
KNOWLEDGE OF THE DEFENDANT IN THE TRANSACTION UNDER INQUIRY.

TRAFFICKING IN PERSONS -- § 53A-192A (A) (1)

A PERSON IS GUILTY OF TRAFFICKING IN PERSONS WHEN SUCH PERSON
COMPELS OR INDUCES ANOTHER PERSON TO ENGAGE IN CONDUCT
INVOLVING MORE THAN ONE OCCURRENCE OF SEXUAL CONTACT WITH ONE
OR MORE THIRD PERSONS BY MEANS OF BY FRAUD OR COERCION.

FOR YOU TO FIND THE DEFENDANT GUILTY OF THIS CHARGE, THE STATE
MUST PROVE THE FOLLOWING ELEMENTS BEYOND A REASONABLE DOUBT:

ELEMENT 1 - COMPELLED OR INDUCED

THE FIRST ELEMENT IS THAT THE DEFENDANT COMPELLED OR INDUCED ANOTHER PERSON TO ENGAGE IN CONDUCT INVOLVING MORE THAN ONE OCCURRENCE OF SEXUAL CONTACT WITH ONE OR MORE THIRD PERSONS.

“COMPEL” MEANS TO FORCE OR CONSTRAIN TO DO SOMETHING.

“INDUCE” MEANS TO MOVE TO ACTION BY PERSUASION OR BY INFLUENCE.

“SEXUAL CONTACT” MEANS ANY CONTACT WITH THE INTIMATE PARTS OF ANOTHER PERSON.

THE DEFENDANT MUST HAVE SPECIFICALLY INTENDED TO COMPEL OR INDUCE THE OTHER PERSON. A PERSON ACTS “INTENTIONALLY” WITH RESPECT TO A RESULT WHEN HIS OR HER CONSCIOUS OBJECTIVE IS TO CAUSE SUCH RESULT. SPECIFIC INTENT IS THE INTENT TO ACHIEVE A SPECIFIC RESULT. WHAT THE DEFENDANT INTENDED IS A QUESTION OF FACT FOR YOU TO DETERMINE.

ELEMENT 2 - BY MEANS OF

THE SECOND ELEMENT IS THAT THE DEFENDANT DID THIS BY

- FRAUD. THE MEANING OF “FRAUD,” BOTH IN IS LEGAL USAGE AND ITS COMMON USAGE, IS THE SAME: A DELIBERATELY PLANNED PURPOSE AND INTENT TO CHEAT OR DECEIVE OR UNLAWFULLY DEPRIVE SOMEONE OF SOME ADVANTAGE, BENEFIT OR PROPERTY.

- COERCION:

A PERSON IS GUILTY OF COERCION WHEN HE COMPELS OR INDUCES ANOTHER PERSON TO ENGAGE IN CONDUCT WHICH SUCH OTHER PERSON

HAS A LEGAL RIGHT TO ABSTAIN FROM ENGAGING IN BY MEANS OF
INSTILLING IN SUCH OTHER PERSON A FEAR THAT, IF THE DEMAND IS NOT
COMPLIED WITH, THE ACTOR OR ANOTHER WILL

- § 53A-192 (A) (1): COMMIT ANY CRIMINAL OFFENSE.
- § 53A-192 (A) (2): ACCUSE ANY PERSON OF A CRIMINAL OFFENSE.
- § 53A-192 (A) (3): EXPOSE ANY SECRET TENDING TO SUBJECT ANY PERSON
TO HATRED, CONTEMPT OR RIDICULE, OR TO IMPAIR ANY PERSON'S
CREDIT OR BUSINESS REPUTE.
- § 53A-192 (A) (4): TAKE OR WITHHOLD ACTION AS AN OFFICIAL, OR CAUSE
AN OFFICIAL TO TAKE OR WITHHOLD ACTION.

ELEMENT 1 (OF COERCION) - COMPELLED OR INDUCED

THE DEFENDANT MUST HAVE COMPELLED OR INDUCED ANOTHER PERSON
TO DO SOMETHING THAT PERSON HAD A RIGHT NOT TO DO. I HAVE
ALREADY PROVIDED DEFINITIONS FOR COMPEL AND INDUCE AND I
INSTRUCT YOU TO APPLY THEM TO THIS ELEMENT AS WELL. THE
DEFENDANT MUST HAVE SPECIFICALLY INTENDED TO COMPEL OR INDUCE
THE OTHER PERSON. A PERSON ACTS "INTENTIONALLY" WITH RESPECT TO A
RESULT WHEN HIS CONSCIOUS OBJECTIVE IS TO CAUSE SUCH RESULT. I
REFER YOU BACK TO MY INSTRUCTION ON SPECIFIC INTENT.

ELEMENT 2 (OF COERCION) - BY MEANS OF FEAR

THE SECOND ELEMENT IS THAT THE DEFENDANT DID THIS BY INSTILLING IN
THE PERSON A FEAR THAT, IF THE DEMAND WAS NOT COMPLIED WITH, THEN
THE DEFENDANT OR ANOTHER PERSON WOULD

- § 53A-192 (A) (1): COMMIT ANY CRIMINAL OFFENSE.
- § 53A-192 (A) (2): ACCUSE ANY PERSON OF A CRIMINAL OFFENSE.
- § 53A-192 (A) (3): EXPOSE ANY SECRET TENDING TO SUBJECT ANY PERSON TO HATRED, CONTEMPT OR RIDICULE, OR TO IMPAIR ANY PERSON'S CREDIT OR BUSINESS REPUTE.
- § 53A-192 (A) (4): TAKE OR WITHHOLD ACTION AS AN OFFICIAL, OR CAUSE AN OFFICIAL TO TAKE OR WITHHOLD ACTION.

CONCLUSION

IN SUMMARY, IN ORDER TO FIND THE GUILTY OF PATRONIZING A TRAFFICKED PERSON THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THE DEFENDANT PAID A FEE IN EXCHANGE FOR AN AGREEMENT TO ENGAGE IN SEXUAL CONDUCT AND THAT THE DEFENDANT KNEW OR SHOULD HAVE KNOWN THAT AT THE TIME OF THE OFFENSE SUCH OTHER PERSON/PROSTITUTE WAS THE VICTIM OF CONDUCT BY MR KING THAT CONSTITUTES TRAFFICKING IN PERSONS.

IF YOU UNANIMOUSLY FIND THAT THE STATE HAS PROVED BEYOND A REASONABLE DOUBT EACH OF THE ELEMENTS OF THE CRIME OF PATRONIZING A PROSTITUTE, THEN YOU SHALL FIND THE DEFENDANT GUILTY. ON THE OTHER HAND, IF YOU UNANIMOUSLY FIND THAT THE STATE HAS FAILED TO PROVE BEYOND A REASONABLE DOUBT ANY OF THE ELEMENTS, YOU SHALL THEN FIND THE DEFENDANT NOT GUILTY.

DOCKET NO: DBD-CR17-0155220S : SUPERIOR COURT
STATE OF CONNECTICUT : JUDICIAL DISTRICT
OF DANBURY
v. : DANBURY, CONNECTICUT
BRUCE BEMER : APRIL 08, 2019

"CORRECTED VERSION"

BEFORE THE HONORABLE ROBIN PAVIA, JUDGE
WITH A JURY

A P P E A R A N C E S

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Hartford, CT 06105

Recorded By:
Dena Laursen

Transcribed By:
Karen Videtto
Marlene F. Matteau
Kelly Ward
Court Recording Monitor
Litchfield J.D. at Torrington
50 Field Street
Torrington, CT 06790

1 ATTY. HORTON: Yes. Yes, Your Honor.

2 You've already ruled, (unintelligible), on the
3 fraud issue on the Motion for Acquittal. So I will
4 mention the other four.

5 Starting at the end A4, my understanding is, by
6 agreement, that's out. I - I didn't think there was
7 any discussion of that in chambers other than that
8 should come out.

9 THE COURT: I think we all agree that that would
10 come out.

11 ATTY. HORTON: Yes.

12 THE COURT: And, just for the sake of the record,
13 what we're talking about now is the Coercion aspect
14 and we have taken out, by agreement, 192(a)(4).

15 ATTY. HORTON: Yes.

16 And my understanding is the State is only
17 proceeding in 3, but I don't want to put words in
18 their mouth -

19 THE COURT: So, you know what, let's find that
20 out, right now, before we even continue with
21 argument.

22 Is - is it the State's position that A1 and 2
23 come out and that what remains is A3?

24 ATTY. HODGE: Yes, Your Honor.

25 THE COURT: Okay.

26 So those come out right now.

27 And that leaves us with argument as to A3.

1 ATTY. HORTON: Right.

2 So my point is - first of all, if A3 comes out,
3 then there should be no charge on Coercion at all
4 because that's the only subsection that's left. And
5 the - the language here talks about, expose any
6 secret tending to subject any person to hatred,
7 contempt or ridicule or to impair any persons credit
8 or business repute. I - I don't think there was
9 evidence sufficient for that. The State focuses on
10 any persons credit, but, it seems to me, you've got
11 to read that in the context of what they're talking
12 about. They're talking about business - business
13 repute and they're talking about secret tending to
14 submit any person. I don't believe there's any
15 evidence that support a charge on that, Your Honor.

16 THE COURT: State?

17 ATTY. HODGE: Yes, Your Honor.

18 The State would argue that there is evidence to
19 support subsection A3. That section, when read, the
20 first part of it, it - it has a few portions to it.
21 The first part is, expose any secret tending to
22 subject any person to hatred or contempt or ridicule.

23 There was testimony, in this case, I believe it
24 was Brian - John Doe number 3, where he stated that
25 if - if the alternative presented to him, if he did
26 not go to Bruce Bemer to - to - to - to engage in
27 this sexual activity, then he was taken to his mother

1 and - and - and King attempted to have his mother pay
2 the debt. And that that had been something that had
3 happened in the past.

4 Now, he was not specific as to what - what was -
5 what the conversation was, what King said, a lot of
6 that was kept out under hearsay. I - I,
7 respectfully, disagree with - with - with some of the
8 items of - of Kings statements that - that were kept
9 out.

10 But we did not get the - the full nature of
11 that, but the allegations and - and the base
12 inferences were there and the jury is able to draw
13 inferences.

14 As to after the "or" it says, to impair any
15 persons credit. And I think that's a huge part of
16 this case. The idea of debt bondage is - is - is
17 recognized as an actual method of trafficking
18 persons. These individuals were - were - were
19 subject to a situation where King allowed them to -
20 or extended them credit, okay, he built a tab for
21 them and, then, said, well, payment is due, payment
22 is due. The men have no money, no access to
23 anything. Some of them have nowhere to go, they're
24 dependent upon him for shelter, dependent upon him
25 for food, dependent upon him for - for - for these -
26 for drugs. And what he says is, payment is due. And
27 if you can't pay it you don't get any more drugs.

1 You don't get anymore of - of - of the things that
2 he's giving. Their credit is shut down.

3 And, so, that phrase "to impair any person's
4 credit" - and then it says, "or business repute" I
5 don't agree that - that they have to be read
6 together, otherwise it would say "and" credit "and"
7 business repute.

8 So argue that somehow credit can only be
9 extended by the major credit card companies, Visa,
10 Master Card, would be to ignore the reality of how
11 some individuals live. These males were dependent
12 upon the credit extended to them by King for - for -
13 for their survival. And when he demanded that - that
14 it's payment and payment only comes with - with a
15 trip to Bruce Bemer, that qualifies as coercion under
16 this A3 subsection.

17 I'd like to also -

18 THE COURT: Can I just ask the State, so is - in
19 that argument would you say that the business repute
20 would come out?

21 ATTY. HODGE: I'd say that business repute can
22 come out.

23 THE COURT: Okay.

24 Sorry.

25 ATTY. HODGE: And, Your Honor, just for - just so
26 - just, for the record, there are other states that
27 have recognized, again, the bondage, the abuse of

1 power, under the trafficking rubric as it fits.
2 Right now, in Connecticut, there's no cases or law
3 that says it doesn't apply. Quite frankly, the - the
4 cases are - are silent and we're left with this
5 section of statute that appears consistent with -
6 with its applicability.

7 Before we leave the trafficking - well, does the
8 Court want me to make a - just my statements, for the
9 record, on - on the Patronizing a Trafficked Person
10 and the word "prostitute" at the start of it now or
11 save it for -

12 THE COURT: No, let's -

13 ATTY. HODGE: - later?

14 THE COURT: - you know what, let's finish through
15 these and then - then we'll address that, if that's
16 okay.

17 ATTY. HODGE: Okay.

18 ATTY. HORTON: I have two responses on that. The
19 first is, even if you Charge on it it's obvious that
20 you're going to have to have different Charges for
21 different counts. You know, she mentioned - she's
22 speaking of this evidence having to do with
23 somebody's mother and that doesn't apply to the
24 others. So that's a complication even if you go down
25 that road.

26 But the real problem with A3 is that she is -
27 when she talks about out of state and she talks about

1 what's really going on is debt bondage. Well, if we
2 were talking about today's statute it would be
3 something else, but we're not talking - we're talking
4 about a statute that was enacted several years ago
5 and she's trying to fit debt bondage into this
6 statute, but - which is a much narrower statute than
7 that. So I don't think - I don't think this applies.
8 I think - I think Coercion should not be charged at
9 all, Your Honor.

10 ATTY. HODGE: Your Honor, just so it's clear, my
11 position is that to impair any persons credit would
12 apply to every - all 4 John Does in all 5 counts. So
13 I'm not asking for a split, I'm asking that the - the
14 language to impair any persons credit be used and
15 Charged.

16 THE COURT: So think what they're referencing is
17 the secret or -

18 ATTY. HORTON: Yes, Your Honor.

19 ATTY. HODGE: Right.

20 And just for ease of - to avoid any, sort of,
21 confusion, I - I - I would not ask for - for that to
22 be -

23 THE COURT: So it would read, then, the actor or
24 another will expose any secret tending to subject any
25 person to hatred, contempt or ridicule.

26 So which part are you claiming or not claiming
27 of that?

1 ATTY. HODGE: I guess, to - to claim that the
2 Court would have to include that it's specific to
3 John Doe 3. Is that -

4 THE COURT: That's what the defense - that is
5 what the argument is.

6 ATTY. HODGE: That's a -

7 ATTY. HORTON: Yep, Your Honor, that would leave
8 for all of them - the rest of them would be - the
9 only language that would apply, in that case, to
10 impair any persons credit, that's all that's left for
11 the rest of them.

12 THE COURT: Is that what the State's position is?

13 ATTY. HODGE: Yeah. Yes.

14 THE COURT: Okay.

15 All right. Based upon that, I am going to
16 Charge with regard to that one - that one aspect of
17 Coercion. I'm going to take out "expose any secret,
18 tending to subject any person to hatred, contempt or
19 ridicule." And just leave in "to impair any persons'
20 credit."

21 All right. Then, same would apply when you come
22 down to -

23 ATTY. HORTON: The next page, Your Honor.

24 THE COURT: Right.

25 All right. Then, anything else on that
26 particular count?

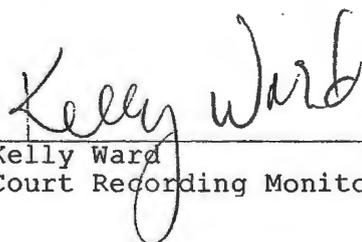
27 Oh, the one thing that we did talk about, we

DOCKET NO: DBD-CR17-0155220S : SUPERIOR COURT
STATE OF CONNECTICUT : JUDICIAL DISTRICT
OF DANBURY
v. : DANBURY, CONNECTICUT
BRUCE BEMER : APRIL 08, 2019

C E R T I F I C A T I O N

I hereby certify the foregoing line 24, page 110 through line 19, page 154 are a true and correct transcription of the audio recording of the above-referenced case, heard in Danbury Superior Court, Danbury, Connecticut, before the Honorable Robin A. Pavia, Judge, on the 8th day of April, 2019.

Dated this 9th day of April, 2019 in Torrington, Connecticut.



Kelly Ward
Court Recording Monitor

NO: DBD-CR17-0155220 S : SUPERIOR COURT
STATE OF CONNECTICUT : JUDICIAL DISTRICT
OF DANBURY
v. : AT DANBURY, CONNECTICUT
BRUCE BEMER : APRIL 8, 2019

C E R T I F I C A T I O N

I hereby certify the foregoing line 1, page 1 through line 22, page 63 are a true and correct transcription of the audio recording of the above-referenced case, heard in Danbury Superior Court, Danbury, Connecticut, before the Honorable Robin A. Pavia, Judge, on the 8th day of April, 2019.

Dated this 4th day of June, 2019 in Torrington,
Connecticut.


Karen Videtto
Court Recording Monitor

DOCKET NO:
DBD-CR17-0155220S : SUPERIOR COURT
STATE OF CONNECTICUT : JUDICIAL DISTRICT
OF DANBURY
v. : DANBURY, CONNECTICUT
BRUCE BEMER : APRIL 08, 2019

BEFORE THE HONORABLE ROBIN PAVIA, JUDGE
WITH A JURY

A P P E A R A N C E S

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Transcribed By:
Karen Videtto
Marlene F. Matteau
Kelly Ward
Court Recording Monitor
Litchfield J.D. at Torrington
50 Field Street
Torrington, CT 06790

1 question is whether the circumstances in the particular case
2 form a basis for a sound inference as to the knowledge of
3 the Defendant in the transaction under inquiry.

4 Now, a person is guilty of trafficking in
5 persons. So understand that within the context of Counts
6 One through Four, all right, you also have to find the
7 trafficking in persons in violation of 53a-192a. So now I'm
8 going to jump and give you the elements of that offense.

9 A person is guilty of trafficking in persons
10 when such person compels or induces another person to engage
11 in conduct involving more than one occurrence of sexual
12 contact with one or more third persons by means of fraud or
13 coercion. For you to find the Defendant guilty of this
14 charge, the State must prove the following elements beyond a
15 reasonable doubt. Now again, these are the elements of
16 trafficking in persons. All right.

17 The first element is that the Defendant
18 compelled or induced another person to engage in conduct
19 involving more than one occurrence of sexual contact with
20 one or more third persons. "Compel" means to force or
21 constrain to do something. "Induce" means to move to action
22 by persuasion or by influence. "Sexual contact" means any
23 contact with the intimate parts of another person.

24 The Defendant must have specifically intended to
25 compel or induce the other person. A person acts
26 "intentionally" with respect to a result when his or her
27 conscious objective is to cause such a result. Specific

1 intent, again, is the intent to achieve a specific result.
2 What the Defendant intended is a question of fact for you
3 the jury to determine.

4 Second element is that the Defendant did this,
5 did this conduct by fraud or coercion. "Fraud" is defined
6 -- let me start that -- the meaning of "fraud," both in its
7 legal usage and its common usage is the same. A
8 deliberately planned purpose and intent to cheat or
9 deceive or unlawfully deprive someone of some advantage,
10 benefit or property. A person is guilty of "coercion" when
11 he compels or induces another person to engage in conduct
12 which such other person has a legal right to abstain from
13 engaging in by means of instilling in such other person a
14 fear that if the demand is not complied with, the actor or
15 another will impair any person's credit.

16 Now, the Defendant must have compelled or
17 induced another person to do something that person had a
18 right not to do. I have already provided you the
19 definitions of compel and induce and I instruct you to apply
20 them when you're deliberating on this element as well. The
21 Defendant must have intended to compel or induce another
22 person. Again, a person acts intentionally with respect to
23 a result when its conscious objective is to cause such a
24 result. I again refer you back to the instruction that I
25 just gave on specific intent.

26 Now, and again, this is now within the confines
27 of trafficking and then again within the confines of

1 coercion. The second element of coercion is that the
2 Defendant did this by instilling in the person a fear, that
3 is, if the demand was not complied with, then the Defendant
4 or another person would impair any person's credit. All
5 right.

6 So I do understand -- what you're doing is that
7 there's definitions for offenses and elements within the
8 confines of the larger one. So first is the patronizing of
9 trafficked person. Then that moves into the elements of
10 trafficking in persons which moves into the elements of
11 coercion. All right. Understood.

12 And in summary, in order to find the Defendant
13 guilty of patronizing a trafficked person, the State must
14 prove beyond a reasonable doubt the Defendant paid a fee in
15 exchange for an agreement to engage in sexual conduct and
16 that the Defendant knew or should have known that at the
17 time of the offense such other person or prostitute was the
18 victim of conduct by Robert King that constitutes
19 trafficking in persons.

20 If you unanimously find that the State has
21 proved beyond a reasonable doubt each of the elements of the
22 crime of patronizing a trafficked person, then you shall
23 find the Defendant guilty. On the other hand, if you
24 unanimously find that the State has failed to prove beyond a
25 reasonable doubt any of the elements, you shall then find
26 the Defendant not guilty.

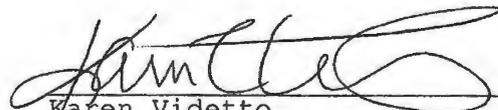
27 All right. Now, that Accounts for one through

NO: DBD-CR17-0155220 S : SUPERIOR COURT
STATE OF CONNECTICUT : JUDICIAL DISTRICT
OF DANBURY
V. : AT DANBURY, CONNECTICUT
BRUCE BEMER : APRIL 8, 2019

C E R T I F I C A T I O N

I hereby certify the foregoing line 1, page 1 through line 22, page 63 are a true and correct transcription of the audio recording of the above-referenced case, heard in Danbury Superior Court, Danbury, Connecticut, before the Honorable Robin A. Pavia, Judge, on the 8th day of April, 2019.

Dated this 9th day of April 2019 in Torrington,
Connecticut.

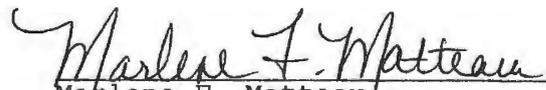

Karen Videtto
Court Recording Monitor

DOCKET NO: DBD-CR17-0155220S : SUPERIOR COURT
STATE OF CONNECTICUT : JUDICIAL DISTRICT OF DANBURY
v. : DANBURY, CONNECTICUT
BRUCE BEMER : APRIL 08, 2019

C E R T I F I C A T I O N

I hereby certify the foregoing line 23, page 63 through line 23, page 110 are a true and correct transcription of the audio recording of the above-referenced case, heard in Danbury Superior Court, Danbury, Connecticut, before the Honorable Robin A. Pavia, Judge, on the 8th day of April, 2019.

Dated this 9th day of April, 2019 in Torrington, Connecticut.

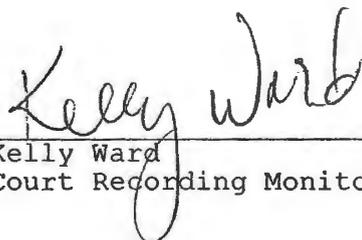

Marlene F. Matteau
Court Recording Monitor

DOCKET NO:
DBD-CR17-0155220S : SUPERIOR COURT
STATE OF CONNECTICUT : JUDICIAL DISTRICT
OF DANBURY
v. : DANBURY, CONNECTICUT
BRUCE BEMER : APRIL 08, 2019

C E R T I F I C A T I O N

I hereby certify the foregoing line 24, page 110 through line 19, page 154 are a true and correct transcription of the audio recording of the above-referenced case, heard in Danbury Superior Court, Danbury, Connecticut, before the Honorable Robin A. Pavia, Judge, on the 8th day of April, 2019.

Dated this 9th day of April, 2019 in Torrington, Connecticut.



Kelly Ward
Court Recording Monitor