

REVISED

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

MIDDLESEX COUNTY

2014 SITTING

NO. 2014-P-1804 SJC-11957

COMMONWEALTH OF MASSACHUSETTS,

APPELLEE,

v.

DAISY OBI,

APPELLANT

ON APPEAL FROM A JUDGMENT OF MIDDLESEX DISTRICT COURT

BRIEF OF THE APPELLANT

FOR THE APPELLANT

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ISSUES

I. Was Obi's constitutional right to a fair and unbiased jury denied when the judge denied her use of a peremptory challenge against a juror who was not a member of a discrete group?

II. Should the trial judge have recused himself from presiding over Obi's trial where his bias toward Obi deprived her of her Constitutional right to a fair trial?

III. Was Obi deprived of her right to fair sentencing because of the judge's bias and the unconstitutional probationary terms ordered upon her?

STATEMENT OF THE CASE

On April 28, 2012 Dr. Daisy Obi ("Dr. Obi", "the defendant") was arrested and charged with one (1) count of violating an abuse prevention order, in violation of M.G.L. c. 209A §7, and one (1) count of assault and battery in violation of M.G.L. c. 265, §13/A (a).^{1, 2} (R.2, 7, 8-10).

¹ For purposes of this brief, the record appendix is referred to as "(R.[pg])" and is reproduced post. The transcript of the trial is referred to as "(Tr1.[pg])". The transcript of the sentencing hearing is referred to as "(Tr2.[pg])." The transcript of the hearing is referred to as "(Tr3.[pg])."

On August 21, 2013 Dr. Obi was placed on pre-trial probation until February 19, 2014 with conditions that she not contact the victim or her family. (R.3-4). On November 15, 2013, pre-trial probation was revoked and the case was put back on the trial list. (R.4). A jury trial was held in the Somerville District Court on April 23, 2014. (R.3-4). The jury returned a verdict of guilty against Dr. Obi on the charge of assault and battery. (Tr1.138; R.3-4).

Dr. Obi was sentenced to two (2) years in the House of Correction, six (6) months to serve with the balance suspended until June 2, 2016. (Tr2.9-11; R.3,5). As part of her probationary conditions, the court ordered Dr. Obi to respect the rights of all people, respect the rights of people of the Muslim faith, and learn about the Muslim faith by enrolling and attending an introductory course on Islam. (Tr2.9-10; R.5). Dr. Obi was also ordered to give a written disclosure to all future prospective tenants of any property she may own and to state on the

² The violation of abuse protection order was dismissed at the Commonwealth's request prior to trial. (Tr1.10; R.2).

disclosure the following: "that Daisy Obi has been convicted of assaulting a tenant in the past, and has had several harassment prevention orders issued against her by the Court in the past." (Tr2.10-11; R.5.)

On June 3, 2014 Dr. Obi filed her Notice of Appeal, Motion to File Appeal from Sentence Late, Motion to Stay Sentence, and Motion to be Resentenced. (R.1, 5-6, 13-16). On June 10, 2014, the Court allowed Dr. Obi's Motion to File Appeal from Sentence Late, and denied her Motions to Stay Sentence and to be Resentenced. (R.6).

On July 11, 2014, Dr. Obi filed a Motion to Stay Sentence in the Appeals Court (No. 2014-J-279). On July 17, 2014, the Appeals Court allowed Dr. Obi's Motion to Stay Sentence. This case was entered in this Court on November 20, 2014.

STATEMENT OF FACTS

According to Gilhan Suliman's testimony at trial, on August 28, 2012, Dr. Obi pushed her down the stairs of the apartment building where both women resided. (Tr1. 57-58). Dr. Obi is the owner and landlord of 63 Pinckney Street, Somerville, Massachusetts. (Tr1.43, 78). She lives on the second floor. (Tr1. 44). She

is over 70 years old, and has been a landlord for almost twenty years. (Tr1. 78, 93). She is an ordained minister. (Tr1. 80-81).

Ms. Suliman moved into the third floor apartment on April 1, 2012. (Tr1.43). She lived there with her husband and five children. (Tr1. 43). Over the course of her tenancy, Ms. Suliman had numerous people come live in the apartment, as well as stay there while she and her family were away. (Tr1.44, 64, 80, 100-101). Dr. Obi complained to Ms. Suliman numerous times about the noise and served her with a notice to quit because the numerous people that lived there violated the terms of the lease. (Tr1.80, 84, 95, 108-109). Ms. Suliman claimed Dr. Obi tried to raise her rent because the increase water use in her apartment increased. (Tr1.64). Ms. Suliman testified she contacted Dr. Obi numerous times claiming there was no heat or electricity. (Tr1. 46-47, 48, 52, 64). She called the police numerous times to complain about Dr. Obi. (Tr1.54, 64, 93-94). She also claimed Dr. Obi used disparaging remarks about her Muslim faith on two prior occasions. (Tr1. 49, 51).

Ms. Suliman testified that on August 28, 2012, at 9:20 A.M. she was coming up the stairs in the

apartment building when Dr. Obi confronted her.

(Tr1.57). Ms. Suliman claimed Dr. Obi asked her why she was ringing her doorbell and began harassing her.

(Tr1. 57). Ms. Suliman claimed she tried to explain to Dr. Obi that it was not her. She claimed it was the gas company doing work on the street, and that they had rung her bell. (Tr1.57). She testified Dr. Obi pushed her down the stairs, and she fell, hitting her face on the railing. (Tr1.57-58). She claimed to suffer a cut lip and tear in her ligament. (Tr1. 57-58). No medical records were introduced. Ms. Suliman claimed Dr. Obi went back into her apartment and she called the police. (Tr1.58).

Dr. Obi denied the incident happened. (Tr1.86, 99). She testified she was inside her apartment praying when she heard a knock at the door, answered the door to the police, and she was arrested for this incident. (Tr1.86-87). Dr. Obi denied making anti-Muslim statements. (Tr1.96).

**Justice Paul Yee's Prior Court Involvement with
Dr. Obi and Ms. Suliman**

On January 17, 2013, Justice Yee extended restraining order 1210 RO 410 for one year against Dr. Obi with Ms. Suliman as the plaintiff. (R.8-10).

On April 8, 2103, Justice Yee issued a Small Claims judgment against Dr. Obi in favor of Ms. Suliman for a security deposit in the amount of \$2,162,52 regarding 63 Pinckney Street, Somerville. (R.11). On April 25, 2013, Justice Yee increased that judgment to \$9,173.70. (R.12).

Jury pool and selection process

The case was tried before a jury on April 23, 2014 with Justice Paul Yee presiding. (Tr1.3; R.3). During empanelment, defense counsel used his peremptory challenge for juror number two. (Tr1.21). The clerk excused that juror. (Tr1.21). The Commonwealth noted for the record that Ms. Suliman and the juror were both wearing headscarves. (Tr1.21). The Commonwealth asked the Court to confirm it was not for any "unjust reason." (Tr1. 21-22). There was no indication of a religious preference in the juror's questionnaire. (Tr1.22).³ The judge asked defense counsel if he was basing his peremptory challenge on the juror's religion. (Tr1.22). Defense counsel

³ It is the practice of the Somerville District Court to distribute copies of the juror questionnaires to the parties, have the parties return the questionnaires, and then destroy the questionnaires. Juror number two's questionnaire was destroyed in the Somerville District Court's usual course of business.

answered, "Absolutely not, your Honor." (Tr1.22). Defense counsel believed the juror would be sympathetic to the alleged victim. (Tr1.24). The judge demanded a reason from defense counsel, assumed it was religion based, and sat the juror over defense counsel's objection. (Tr1.24). No voir dire was conducted to ascertain the juror's religious affiliation or her potential bias, nor were counsel allowed to question her. (Tr1.24). Defense counsel objected to the jury selection. (Tr1.23-26).

Juror number two was made foreperson of the jury by the judge. (Tr1.127). During deliberations, two questions were sent to the judge, written and signed by the foreperson. (Tr1.132, 134; R.4).

Sentencing

Sentencing was addressed immediately after the verdict. (Tr1.139). The Commonwealth requested two years probation, with anger management counseling, no contact with Ms. Suliman, and abide by the harassment prevention order that was in place. (Tr1.139). Defense counsel recommended probation for six months to a year. (Tr1.142).

The judge then said,

I'm looking at her record, and she's appeared before me, personally, several times. And (indiscernible) charges (indiscernible) harassment prevention charges. And looking at her record, it's not Ms. Suliman. She has problems with people in general.

I'm looking at her record. It's all in apartment three at 63 Pinckney Street. So in July of 2011, it was Judy Wy (phonetic) taking out a 258E. In June of 2012, it was Ms. Suliman. After Ms. Suliman left, new people moved into apartment three. In October of 2013, Lewis Andrew Hoss (phonetic) and Katherine Andrewson (phonetic) took out harassment prevention orders against her, and they're still in existence, until September 2014.

So it's not the tenant from hell. It is the landlord from hell. Does Ms. Obi have mental health problems?"

MR. RUBINSTEIN: Not that I'm aware of, your Honor.

(Tr1.143).

The judge then ordered a mental health evaluation under Chapter 123, §15B for an aid in sentencing.

(Tr1.144). The judge went on to say:

I want to know her mental status. I want to know why she's harassing people when they live at her apartment. And it's not just Ms. Suliman. What she's called Ms. Suliman is inexcusable (sic). It's criminal and that's why she's (indiscernible). (Tr1.144).

Sentencing was continued to June 2, 2014.

(Tr2.1). At the sentencing hearing, the Commonwealth changed its position on its sentence recommendation, and left "it to the Court's judgment whether probation was suitable." (Tr2.3). Defense counsel argued to

the court that Dr. Obi has been a minister for over ten years, graduated from Princeton and divinity school, had no record, and is a permanent resident of the United States. (Tr2.3-4). He also presented a letter to the court from Dr. Obi's doctor stating she did not have a history of mental illness or aggression. (Tr2.4-5). Defense counsel asked for probation for eleven months. (Tr2.5).

Before sentencing, the judge stated the following:

... and this is for the record, I was really struck by the victim's testimony, Ms. Gilhan Suliman, that prior of this incident Ms. Obi was yelling at her in May and screaming that Muslims need to be in hell. That Muslims are wicked people. That was said to her and her children. This is in May, three months before this alleged incident. It just seems to me somewhat out of character and then, again, in June of 2012, Ms. Obi is yelling and at Ms. Suliman's children, screaming that they're wicked children, that they're evil since they're Muslim and clearly Ms. Suliman is Muslim. She does wear the cover over her head. She practices the Muslim faith.

It seems to me a woman of God would be respectful of another human being who is made in God's likeness. But she did not (Tr2.6).

The judge also stated:

Ms. Obi knew that when she shoved this person that she disrespected so deeply, and because this person did not leave her apartment. That's the way I see this matter. (Tr2.7).

So, I did want to note if there was some organic or some underlying illness that would mitigate her

behavior, and I don't see that. It seems that this is just an evil deed on your part, and that's how I treat someone who disrespects another human being. Disrespects another human being that she would push someone to cause them serious bodily injury or death. It's a very serious matter. It's not a shove. (Tr2.8).

The judge explained his sentence adhered to the four goals in sentencing. He stated:

I do not want to see you back in this Court, because another tenant has taken you to Court, all right. Three different tenants have taken you to court on harassment prevention orders. ... You're harassing these people and its continuous. There's existing harassment prevention orders against you now, contrary to what you told Mr. Simon (?) this has to stop. This has to stop, and it will stop. All right. It will stop even though you claim to be a woman of God, all right. It has to stop. (Tr2.8-9).

The judge then imposed a sentence of two years in the house of corrections, six months to serve, balance suspended for two years. (Tr2.9; R.5). The judge ordered Dr. Obi obey all discrimination and landlord/tenant laws. He instructed her if probation found out there was another case pending against her from a tenant, it would be a violation of her probation. (Tr2.9). He gave further conditions:

You have to respect the rights of people. You have to respect the rights of people of the Muslim faith. You have to respect all people. All right. That's the message I'm sending out to you. That is the message that I'm sending out to the community. All right. Even you, wanting to be a person of God, have to respect for all people. (Tr2.9-10).

Second condition is that I do want you to learn about the Muslim faith. I want you to learn about the Muslim faith. I want you to enroll and attend an introductory course on Islam. All right. I want you to at Harvard Divinity School when you went, the Harvard extension, or you can go to the Islamic Society of Boston here in Cambridge. All right. You have to give some kind of written documentation to the probation that you have in fact done that. I do want you to understand people of the Muslim faith, and they need to be respected. They may worship Allah, a God that's different from you, but they need to be respected. (Tr2.10).

... I do also want you to do a written disclosure for all prospective tenants for you yourself and for your broker, whether or not you have any legal or beneficial interest of any rental property the following: that Daisy Obi has been convicted of assaulting a tenant in the past, and has had several harassment prevention orders issued against her by the Court in the past. (Tr2.10).

There has to be a written disclosure to every tenant that you rent property to. I cannot take away your rental property, but any tenants or perspective tenants that are renting need to know the type of person you are. That you have been assaultive in the past, and that you have been violated of tenant rights in the past, people need to know that if they wish to rent from you. You can still rent, but if you do not give a written disclosure and we find that out, that's a violation on your probation, all right. (Tr2.11).

Defense Counsel's Subsequent Post-Trial Motions

Subsequent to trial, defense counsel filed and argued Dr. Obi's motion to be resentenced by another judge. (Tr3.4; R.4,13-16). He argued the judge should have recused himself prior to trial because he presided over other matters involving Dr. Obi, gave the appearance he was bias and impartial, relied on

improper considerations when sentencing Dr. Obi, and treated the assault and battery charge as a hate crime. (Tr3.4-5; 10-11). The judge stated:

I took into consideration -- and Ms. Obi was the one raised it, that the victim was the tenant from hell; and I had to correct the record that Ms. Obi was incorrect and she was, in fact, the landlord from hell because of all the harassment protection orders that came not just from this victim but from other tenants past and present." (Tr3.12).

The judge stated he imposed the sentence because of Dr. Obi's prior anti-Muslim statements. (Tr3.13).

THE COURT: I can consider uncharged conduct also. That's part of the consideration (indiscernible) this woman of the Muslim faith, Islamic faith (indiscernible) pushing down a flight of stairs. I also (indiscernible).

MR. RUBENSTEIN: I don't believe that that was before the Court. She certainly wasn't charged with it. The harassment prevention order was dismissed, your Honor.

THE COURT: Right, I dismissed that (indiscernible).

MR. RUBENSTEIN: I agree with you, --

THE COURT: So what is this?

MR. RUBENSTEIN: -- but I don't believe it was a proper consideration in sentencing in this case. On the day in question there was no allegation that she made any kind of statement that could be taken as anti-Muslim. This was a simple shove.

THE COURT: I just disagree with you there, and this is part of the reason she received the sentence she received. (Tr3.13).

The motion was denied. (Tr3.17; R.6).

ARGUMENT

I. THE JUDGE'S DENIAL OF THE DEFENDANT'S PREEMPTORY CHALLENGE OF A JUROR DEPRIVED THE DEFENDANT OF HER RIGHT TO A FAIR AND IMPARTIAL JURY UNDER THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, AND UNDER ARTICLES 12 AND 29 OF THE DECLARATION OF RIGHTS OF THE MASSACHUSETTS CONSTITUTION.

Article 12 and the Sixth Amendment, applied to the States through the due process clause of the Fourteenth Amendment, guarantee the right of a criminal defendant to a trial by an impartial jury. Commonwealth v. Vann Long, 419 Mass. 798, 801-802 (1995); Commonwealth v. Soares, 377 Mass. 461, 478-480, cert. denied, 444 U.S. 881 (1979). "The failure to grant a defendant a fair hearing before an impartial jury violates even minimal standards of due process." Commonwealth v. Susi, 394 Mass. 784, 786 (1985), citing Irvin v. Dowd, 366 U.S. 717, 722 (1961). The presence of even one juror who is not impartial violates a defendant's right to trial by an impartial jury. Commonwealth v. Vann Long, 419 Mass. at 802. Pursuant to M.G.L. c. 234, §28, the trial judge makes the initial determination whether a juror "may not stand indifferent." This Court affords the trial judge a large degree of discretion in the jury selection process. Id. In exercising discretion in determining

possible juror bias, however, the "trial court must be zealous to protect the rights of an accused."

Commonwealth v. Vann Long, 419 Mass. at 803, quoting Wainwright v. Witt, 469 U.S. 412, 430 (1985), and Dennis v. United States, 339 U.S. 162, 168 (1950). In this case, the judge's failure to conduct even a minimal line of questioning with the juror violated the defendant's right to trial by an impartial jury.

The purpose of peremptory challenges is to aid in assuring the constitutional right to a fair and impartial jury. Commonwealth v. Green, 420 Mass. 771, 776 (1995); Commonwealth v. Roche, 44 Mass. App. Ct. 372, 379 (1998). "Traditionally, the latitude allowed in the exercise of peremptory challenges is wide: 'The essential nature of the peremptory challenge is that it is one exercised without a reason stated, without inquiry and without being subject to the court's control.'" Commonwealth v. Wood, 389 Mass. 552, 560 (1983), quoting from Commonwealth v. Soares, 377 Mass. at 484. The exercise of a peremptory challenge is not without limitation because Article 12 of the Declaration of Rights does not allow "the use of peremptory challenges to exclude prospective jurors solely by virtue of their membership in, or

affiliation with, particular, defined groupings in the community." Commonwealth v. Wood, 389 Mass. at 560 (1983), quoting from Commonwealth v. Soares, 377 Mass. at 486. The exercise of certain peremptory challenges may be challenged and thus come under the scrutiny of the trial judge. Commonwealth v. Roche, 44 Mass. App. Ct. at 376.

In order to "minimize the necessity for lengthy appellate examinations and retrials springing from confusion over jury selection," Commonwealth v. Curtiss, 424 Mass. 78, 81 (1997), the court in Commonwealth v. Soares, established a procedure, later refined in Commonwealth v. Burnett, 418 Mass. 769, 770 (1994), that must be followed in those cases where the exercise of a peremptory challenge is the subject of an objection. Commonwealth v. Roche, 44 Mass. App. Ct. at 376. Peremptory challenges are presumed to be proper but the presumption is rebuttable on a showing that (1) there is a pattern of excluding *members of a discrete group* and (2) it is likely that individuals are being excluded solely on the basis of their *membership within a group*. Commonwealth v. Soares, 377 Mass at 490 (emphasis added). The challenge of a single prospective juror within a protected class

could, in some circumstances, constitute a prima facie case of impropriety. Commonwealth v. Fryar, 414 Mass. 732, 738 (1993), S.C., 425 Mass. 237 (1997).

"Confronted with a claim that a peremptory challenge is being used to exclude members of a discrete group, the judge must 'determine whether to draw the reasonable inference that peremptory challenges have been exercised so as to exclude individuals on *account of their group affiliation*.'" (emphasis added) Commonwealth v. Curtiss, 424 Mass. at 80-81, quoting from Commonwealth v. Soares, 377 Mass. at 490.

A trial judge is given substantial deference in determining that a prima facie showing of discriminatory intent has been made if supported by the record. Commonwealth v. Carleton, 36 Mass. App. Ct. 137, 143 (1994), affirmed 418 Mass. 773 (1994). Here, there was no support in the record that the juror was a member of a discrete group. The female juror simply wore a headscarf. (Tr1.21-22). The juror's questionnaire did not mention any religion affiliation. (Tr1.22). There is no indication her surname was ethnically related to an Islamic nationality. Compare Commonwealth v. Carleton, 418 at

775 (court relied on Irish surnames of prospective jurors to determine discriminatory intent when nothing in the record indicated their religion was Roman Catholicism). Women for fashion as well as medical reasons, such as chemotherapy, wear headscarves. Here, however, the court prematurely assumed the juror was a Muslim, and enacted the Soares test. The assumption was based solely on what the juror wore. It was not based on characteristics of a discrete group, such as physical appearance or surname. Compare Commonwealth v. Rodriguez, 431 Mass. 804, 808 (2000) (exclusion of women jurors improper); Commonwealth v. Carleton, 418 Mass. at 775-776 (challenge of arguably all the jurors with Irish-sounding surnames was enough to satisfy the defendant's burden of showing that the challenges were based on the jurors' membership in a discrete ethnic group, not their religious group); Commonwealth v. Soares, 377 Mass. at 473 (exclusion of black jurors improper). The trial judge failed to conduct a simple voir dire to determine if the juror had any discrete group affiliation. The judge required defense counsel to verbalize a credible reason for his challenge when he was not required to. Compare Commonwealth v. Carleton, 36 Mass. App. Ct. at

147, n. 11 (non-moving party could have requested an inquiry by judge to determine whether the prospective jurors were members of the Roman Catholic church). Conversely, the judge conducted an extensive voir dire of juror number four (Mary Stefanelli) to determine her potential bias because of her relationship to numerous police officers in her family. (Tr1.16-19). Compare Commonwealth v. Bourgeois, 391 Mass. 869, 886, n. 12 (1984) ("Allegations of Soares violations based on national origin permit a trial judge to obtain information as to the national origin of members of the jury pool in order to create a record that enables the judge to rule on the claim that peremptory challenges are being abused and allows appellate review on an adequate record").

In Commonwealth v. Burns, this Court held that the trial judge was correct in not invoking the Soares test because the non-moving party asserted a conclusion that excluded jurors were members of a discrete ethnic group, but did not make the showing needed to establish the applicability of the factors set forth in Soares or the fact-specific holding of Commonwealth v. Carleton. Commonwealth v. Burns, 43 Mass. App. Ct. 263, 270 (1997); Commonwealth v.

Carlton, 418 Mass. at 775-776. Here, the judge incorrectly concluded the juror was Muslim. If the juror wore a cross, the judge could have concluded she was a Christian. If she wore a red string bracelet, he may have assumed she was a follower of Kabbalah. However, crosses and red bracelets are worn by many people as fashion styles, and do not place that person in a discrete group. Such unfounded assumptions block the accused from using their peremptory challenges and receiving an impartial jury. See Commonwealth v. Burns, 43 Mass. App. Ct. at 270. Such was the case here.

The right to be tried by an impartial jury is so basic to a fair trial that an infraction can never be treated as harmless error. Thus, despite any effort by the judge to be sensitive toward the juror's possible religious affiliation, the erroneous denial of the right to exercise a proper peremptory challenge is reversible error without a showing of prejudice. See Commonwealth v. Wood, 389 Mass. at 564; Commonwealth v. Soares, 377 Mass. at 492. The conviction must be reversed because the trial judge failed to be zealous in protecting the rights of Dr. Obi. See Commonwealth v. Vann Long, 419 Mass. at 803.

II. THE JUDGE'S FAILURE TO RECUSED HIMSELF CREATED A BIAS THAT DEPRIVED THE DEFENDANT OF A FAIR TRIAL.

Dr. Obi had a right to a fair trial and due process under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution, and Article Twelve of the Massachusetts Declaration of Rights. The touchstone for the principle of judicial impartiality are the words memorialized in Article 29 of the Massachusetts Declaration of Rights, requiring that judges be "as free, impartial and independent as the lot of humanity will admit." Commonwealth v. Gogan, 389 Mass. 255, 259 (1983); Commonwealth v. Campbell, 5 Mass. App. Ct. 571, 586 (1977). The Code of Judicial Conduct provides that "[a] judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned." S.J.C. Rule 3:09, Canon 3(E)(1), as appearing in 440 Mass. 1319 (2003). Commonwealth v. Morgan RV, 84 Mass. App. Ct. 1, 9 (2013). In order to preserve and protect the integrity of the judiciary and the judicial process, and the necessary public confidence in both, even the appearance of partiality must be avoided. Id.

Recusal is a matter left to the discretion of the

judge. Commonwealth v. Adkinson, 442 Mass. 410, 415 (2004), citing Commonwealth v. Coyne, 372 Mass. 599, 602 (1977). See Commonwealth v. O'Connor, 7 Mass. App. Ct. 314, 320 (1979) (decision to withdraw from case is within judge's discretion); Lawrence Savings Bank v. Levenson, 59 Mass. App. Ct. 699, 712 (2003). In order "[t]o sustain an appellate claim that a judge committed an abuse of discretion, it must be demonstrated that 'no conscientious judge, acting intelligently, could honestly have taken the view expressed by him.'" Commonwealth v. Goodreau, 442 Mass. 341, 348 (2004), quoting from Commonwealth v. Ira I., 439 Mass. 805, 809 (2003).

There is a two-prong analysis for determining recusal. "When faced with 'a question of his capacity to rule fairly, the judge [must] consult first his own emotions and conscience.'" Haddad v. Gonzalez, 410 Mass. 855, 862 (1991), quoting Lena v. Commonwealth, 369 Mass. 571, 575 (1976). "If he pass[es] the internal test of freedom from disabling prejudice, he must next attempt an objective appraisal of whether this [is] 'a proceeding in which his impartiality might reasonably be questioned.'" Commonwealth v. Gogan, 389 Mass. at 259, quoting Lena v. Commonwealth,

369 Mass. at 575.

Turning to the first prong of the recusal analysis, here, the judge did not search his conscience prior to hearing the trial. See Commonwealth v. Eddington, 71 Mass. App. Ct. 138, 143-144 (2008). It was only after a momentary reflection after trial and during the defendant's motion for resentencing did the judge search his conscience. (Tr3.8). Compare Commonwealth v. Gogan, 389 Mass at 259 (judge conducted internal and external test during two hours and forty-five minutes recess). Furthermore, the judge placed the responsibility on Dr. Obi to specifically identify his bias after he has already presided over the trial. (Tr3.7). He excused his bias as by-product of being a judge in the First Session and being familiar with people that come through the courthouse in different cases. (Tr3.7). The judge fails the first prong on the test.

The second prong also fails. Here, an objective, knowledgeable member of the public would find a reasonable basis for doubting the judge's impartiality. See Commonwealth v. Morgan RV, 84 Mass. App. Ct at 10. During the course of the judge's tenure at the courthouse, he was exposed to numerous cases involving

Dr. Obi as a landlord. (Tr3.5-8; R.8-12). This type of exposure required recusal. To establish that a judge should recuse himself, a "defendant ordinarily must show that the judge demonstrated a bias or prejudice arising from an extrajudicial source, and not from something learned from participation in the case." Commonwealth v. Adkinson, 442 Mass. at 415 (emphasis added). See Haddad v. Gonzalez, 410 Mass. at 862; Kennedy v. Justice of the Dist. Ct. of Dukes County, 356 Mass. 367, 379 (1969). This bias was formed from the judge's participation in a host of cases involving Dr. Obi and Ms. Suliman in different court matters, not the same proceeding. (Tr1.143). He awarded a Small Claims judgment against Dr. Obi in favor of Ms. Suliman in their landlord/tenant dispute. (R.11). He increased that judgment to treble damages against Dr. Obi. (R.12). He had extended a restraining order against Dr. Obi with Ms. Suliman as the plaintiff. (R.8-10). The judge's bias was highlighted when he labeled Dr. Obi the "landlord from hell because of all the harassment protection orders that came not just from this victim but from other tenants past and present". (Tr.3.12). Compare Parenteau v. Jacobson, 32 Mass. App. Ct. 97, 104 (1992)

(judge's impartiality questioned where defendant owned many residential properties in area and, in his capacity as landlord, had often appeared as a party and as a witness in the Court, and defendant's credibility as a witness had been questioned numerous times over the years by the trial judge and by the other courthouse judges); with Haddad v. Gonzalez, 410 Mass. at 864 (no doubt that judge in course of proceedings below formed negative impression of defendant based on his appraisal of him, but that is not ground for disqualifying bias) (emphasis added). The judge should have recused himself prior to trial. Because Dr. Obi was well known in this courthouse, an impartial judge from another court should have presided over the defendant's trial. Parenteau v. Jacobson, 32 Mass. App. Ct. at 104, FN 6. (even if all the judges from Housing Court recused themselves, a judge from another court could preside). Further, the Chief Administrative Justice of the Trial Court could have been requested to assign a judge appointed to a different department of the Trial Court to hear the case. See M.G.L. c. 211B, §9. See id. In any event, concerns for administrative efficiency are entitled to no weight in determining recusal motions. See id. In

the alternative, the judge should have allowed defendant's motion to resentence the defendant. Because he did not, the judge's bias extended to the defendant's sentencing. See id at 104.

III. THE JUDGE IMPOSED AN UNCONSTITUTIONAL SENTENCE AND PROBATIONARY TERMS UPON THE DEFENDANT.

This Court will consider a sentence to determine if it is illegal or unconstitutional. Commonwealth v. Molino, 411 Mass. 149, 156 (1991); Commonwealth v. Sanchez, 405 Mass. 369, 379-380, n. 7 (1989). In determining a sentence, a judge is authorized to place a defendant on probation and to impose any conditions that the judge deems proper. M.G.L. c. 276, § 87. Judges are permitted significant latitude in imposing conditions of probation. Commonwealth v. Pike, 428 Mass. 393, 402 (1998), citing Commonwealth v. Power, 420 Mass. 410, 413-414 (1995), cert. denied, 516 U.S. 1042 (1996). "A probation condition is not necessarily invalid simply because it affects a probationer's ability to exercise constitutionally protected rights." Commonwealth v. Power, 420 Mass at 415. "A probation condition that infringes on constitutional rights must, however, be 'reasonably related' to the goals of sentencing and probation,"

Commonwealth v. Pike, 428 Mass. at 403, which are rehabilitation of the probationer and protection of the public. Commonwealth v. Rousseau, 465 Mass. 372, 389 (2013). When imposing a sentence, the judge should consider several goals: Punishment, deterrence, protection of the public, and rehabilitation.

Commonwealth v. Power, 420 Mass. at 414. These goals are best served if the conditions of probation are tailored to address the particular characteristics of the defendant and the crime. Commonwealth v. Pike, 428 Mass. at 403.

Here, the judge prescribed a punishment so disproportionate to the offense as to constitute cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution, and Article 26, the parallel provision of the Massachusetts Declaration of Rights. See Commonwealth v. Sanchez, 405 Mass. at 379-380; Commonwealth v. Jackson, 369 Mass. 904, 909 (1976). Dr. Obi was convicted of simple assault and battery. At the time of sentencing, she was a 71-year-old woman with no criminal record. (Tr3.5). She is an ordained Episcopal minister and pastor at the Adonai Bible Church in Somerville. She graduated from Princeton

University. The incident happened two years prior to trial. Moreover, the evidence showed Dr. Obi pushed Ms. Suliman, which resulted in minor injuries.

(Tr3.5-6). Dr. Obi was not charged with a hate crime or with assault and battery with serious bodily injury. The sentence of two years in the house of correction, six months to serve, and the balance to be suspended for two years was disproportionate to the offense.

See id.

The probationary terms violated Dr. Obi's rights under the First, Fourth, Fifth and Fourteenth Amendments to the Constitution, and Articles One, Two and Twelve of the Massachusetts Declaration of Rights.

A. The condition that Dr. Obi respect the rights of people of the Muslim faith is overly broad and unconstitutionally vague.

The first condition imposed states:

You have to respect the rights of people. You have to respect the rights of people of the Muslim faith. (Tr2.10).

As in criminal statutes, ambiguities in probation conditions are construed in favor of the defendant.

See Commonwealth v. Power, 420 Mass. at 421. ("The constitutional rule against vague laws applies as equally to probation conditions as it does to legislative enactments"). Thus, probationers are

entitled to reasonably specific conditions that provide clear guidelines as to what and when their actions or omissions will constitute a violation of their probation. Commonwealth v. Lally, 55 Mass. App. Ct. 601, 603 (2002). Here, the probation condition ordering "respect the right of people ... respect the rights of people of the Muslim faith" is ambiguous. This condition is not adequately clear so as to inform Dr. Obi of what conduct is prohibited. See Commonwealth v. Bynoe, 85 Mass App. Ct. 13, 19 (2014). Clearly, any further criminal offenses could be used to violate Dr. Obi's probation. However, "respect" cannot be construed consistently. A snide remark or misconstrued look could be disrespectful to some people. This condition is too vague to provide Dr. Obi clear guidelines. Commonwealth v. Lally, 55 Mass. App. Ct. at 603.

B. The condition that Dr. Obi learn about the Muslim faith and people burdens Dr. Obi's free exercise of religion.

The second condition imposed states:

Second condition is that I do want you to learn about the Muslim faith. I want you to learn about the Muslim faith. I want you to enroll and attend an introductory course on Islam. All right. I want you to at Harvard Divinity School when you went, the Harvard extension, or you can go to the Islamic Society of Boston here in

Cambridge. All right. You have to give some kind of written documentation to the probation that you have in fact done that. I do want you to understand people of the Muslim faith, and they need to be respected. They may worship Allah, a God that's different from you, but they need to be respected. (Tr2.10).

Government pressure to participate in a religious activity is an obvious indication that the government is endorsing or promoting religion. Lee v. Weisman, 505 U.S. 557, 604 (2002). It is beyond dispute that the Constitution guarantees that the government may not coerce anyone to support or participate in religion or its exercise. Kerr v. Farrey, 95 F.3d 472, 479 (7th Cir. 1996). In general, a coercion-based claim indisputably raises an Establishment Clause question. Id. In analyzing cases where the state requires an individual to partake in a program with a religious element, courts applied what is called the "coercion test." There are three crucial points: first, has the state acted; second, does the action amount to coercion; and third, is the object of the coercion religious or secular?" Id.

The state acted when the judge imposed the sentence with probation conditions on Dr. Obi. This probation condition amounts to coercion because if Dr. Obi does not learn about the Muslim faith, she will be

in violation of her probation, with jail time as a possible punishment. Lastly, the object of the coercion is religious. The judge singles out the Muslim faith for Dr. Obi to learn about. The judge singled out Muslim people that "need to be respected." The judge imposed the Muslim religion on Dr. Obi, a Christian minister. See Kerr v. Farrey, 95 F.3d at 479 (state impermissibly coerced inmates to participate in Narcotics Anonymous, a religious program with explicit religious content); Cox v. Miller, 296 F.3d 89, 108 n. 11 (2nd Cir. 2002) (finding Alcoholics Anonymous activities must be treated as religious for purposes of such Establishment Clause analysis, with cited cases).

This issue appears to be one of first impression to Massachusetts courts. However, it appears the Court has extended protections when government burdens a citizen's free exercise of religion. In Attorney General v. Desilets, the Court formulated a balancing test: The claimant must show (1) a sincerely held religious belief, which (2) conflicts with, and thus is burdened by, the state requirement. Once the claimant has made that showing, the burden shifts to the state. The state can prevail only by

demonstrating both that (3) the requirement pursues an unusually important governmental goal, and that (4) an exemption would substantially hinder the fulfillment of the goal. 418 Mass. 316, 322-323 (1994).

Regulations and policies set by the judge must advance compelling state interests and be tailored narrowly in pursuit of those interests. See Rasheed v. Commissioner of Correction, 446 Mass. 463, 472-473, (2006); Attorney General v. Desilets, 418 Mass. at 322-323.

Here, Dr. Obi, an ordained Episcopal minister and pastor at the Adonai Bible Church in Somerville holds a sincere Christian belief, which conflicts with the burden imposed by the state to learn about the Muslim faith and "respect" Muslims. The state cannot show this probationary condition pursues an unusually important government goal. See Rasheed v.

Commissioner of Correction, 446 Mass. at 472-473

(Muslim prisoner allowed religious diet and items);

Attorney General v. Desilets, 418 Mass. at 322-323

(Roman Catholics not in violation of anti-

discrimination housing laws for not renting to

unmarried couple).

Additionally, this probation condition is against public policy. Commonwealth v. Pike, 428 Mass. at 402.

This Court should consider the ramifications if courts order a Jewish person to "learn" about and "respect" Christians or Muslims, or a Muslim was ordered to "learn" and "respect" the Jewish or Christian religion. See Lee v. Weisman, 505 U.S. at 604 (government pressure to participate in a religious activity is an obvious indication that the government is endorsing or promoting religion).

- C. The condition that Dr. Obi disclose her misdemeanor conviction and civil restraining orders issued against her to potential tenants deprives Dr. Obi of her right to possess and protect her property.**

The third condition imposed states:

... I do also want you to do a written disclosure for all prospective tenants for you yourself and for your broker, whether or not you have any legal or beneficial interest of any rental property the following: that Daisy Obi has been convicted of assaulting a tenant in the past, and has had several harassment prevention orders issued against her by the Court in the past. (Tr2.10).

There has to be a written disclosure to every tenant that you rent property to. I cannot take away your rental property, but any tenants or perspective tenants that are renting need to know the type of person you are. That you have been assaultive in the past, and that you have been violated of tenant rights in the past, people need to know that if they wish to rent from you. You can still rent, but if you do not give a written disclosure and we find that out, that's a violation on your probation, all right. (Tr2.11).

The goals of probation are best served if the conditions of probation are tailored to address the particular characteristics of the defendant and the crime. Commonwealth v. Rousseau, 465 Mass. at 389-390; Commonwealth v. Pike, 428 Mass. at 403. Here, however, depriving Dr. Obi of her right to make a living is not rehabilitative. The judge may have believed these probationary conditions may be reasonably related to the goal of curtailing Dr. Obi's behavior. However, the practical effect was to by force or threat of force, i.e., probation and the threat of violation of probation, interfere with Dr. Obi's right or privilege of Article 1 of the Massachusetts Declaration of Rights to acquire, possess and protect her property. See Art. 1 of the Massachusetts Declaration of Rights; 42 U.S.C. §1981; M.G.L. c. 265, §37. Compare Commonwealth v. Rousseau, 465 Mass. at 389-390 (judge's probation condition denying defendants computer access based on concern defendants might "use prison facilities, such as computers, to enhance the image of themselves or their past acts of arson" had practical effect of denying defendants access to the courts); Commonwealth v. LaFrance, 402 Mass. 789, 793-796 (1988) (probation

condition permitting warrantless searches of defendant and her possessions was unconstitutional in absence of reasonable suspicion that probation had been violated); Commonwealth v. Power, 420 Mass. at 415-416 (probation condition denying defendant profits from book deals did not deny her Freedom of Speech but merely prohibited her from profiting financially from speech about her crime or her experience as a fugitive); Commonwealth v. Lapoint, 435 Mass. 455, 460 (2001) (residency restrictions did not deprive defendant of any "parenting right" or impermissibly infringe on his constitutional rights because terms strike appropriate balance between facts of case and goals of sentencing and probation). Dr. Obi's forced disclosure and loss of her income is not reasonably related to the goals of sentencing and probation. Commonwealth v. Pike, 428 Mass. at 403.

This condition also violates the Criminal Offender Record Information (CORI) statute. M.G.L. c. 6, §172(d) states, "Except as authorized by this section, it shall be unlawful to request or require a person to provide a copy of his criminal offender record information. Violation of this subsection is punishable by the penalties set forth in section 178."

This condition does not fall under any exceptions to CORI. Therefore, the judge is not authorized to force Dr. Obi to disclose her simple misdemeanor or prior civil restraining order actions to potential tenants.

Moreover, this probationary condition is against public policy. See id at 404-405. Infringing and possibly negating Dr. Obi's ability to financially support herself from income from her rental property fails to serve a deterrent purpose. Being unable to support herself "would be a galling reminder to [Dr. Obi] of [her] misdeeds, and that is not enough." Quoting id (banishment prohibited by public policy). Dr. Obi was convicted of simple assault and battery. She had civil restraining orders issued against her. Such probationary terms depriving her of potential tenants, and essentially a living, is a harsh penalty compared to the crime. Commonwealth v. Pike, 428 Mass. at 403. Additionally, this is a shame punishment that violates the fundamental goal of probation -- Rehabilitation of the offender. See id at 403.

CONCLUSION

For the foregoing reasons, the convictions should
be vacated.

Respectfully submitted,
For the Defendant,
DAISY OBI,

BY:



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Dated: December 24, 2014

CERTIFICATION

I certify that this brief complies with the rules of court pertaining to the filing of briefs, including but not limited to: Mass. R. A. P. 16 (a) (6); Mass. R. A. P. 16(e) (references to the record); Mass. R. A. P. 16 (f) (reproduction of statutes, rules and regulations); Mass. R. A. P. 16 (h) (length of briefs); Mass. R. A. P. 18 (appendix to the brief); and Mass. R. A. P. 20 (form of brief, appendices, and other papers).



Kimberly M. Peterson

CERTIFICATE OF SERVICE

I, Kimberly M. Peterson, hereby certify that on December 24, 2014, I served two true copies of the within, together with two copies of the Record Appendix by first class mail, postage prepaid, upon the Middlesex District Attorney's Office, 15 Commonwealth Avenue, Woburn, MA 01801.



Kimberly M. Peterson

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Commonwealth of Massachusetts

MIDDLESEX, SS.

DISTRICT COURT DEPARTMENT
SOMERVILLE DIVISION
COMPLAINT NO.: 1210CR2072

COMMONWEALTH

v.

DAISY OBI,

Defendant

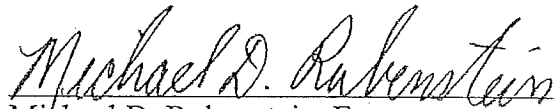
DEFENDANT'S NOTICE OF APPEAL

NOW COMES DEFENDANT, Daisy Obi, (hereinafter "Defendant"), in the above-captioned matter and, pursuant to Mass. R. App. P. 3, hereby gives notice of her intent to appeal certain opinions, rulings, directions, findings and judgments of this Honorable Court in connection with said matter.

Dated: June 2, 2014

Respectfully submitted,

Daisy Obi,,
By her Attorney,



Michael D. Rubenstein, Esq.
Attorney for Defendant
1725 Revere Beach Parkway
Everett, MA 02149
(617) 387-3548
B.B.O. #545358

CRIMINAL DOCKET		DOCKET NUMBER 1210CR002072	NO. OF COUNTS 2	Trial Court of Massachusetts District Court Department	
DEFENDANT NAME AND ADDRESS Daisy Obi 63 PINCKNEY ST #2 SOMERVILLE MA Somerville, MA 02145		DOB 07/04/1948	GENDER Female	COURT NAME & ADDRESS Somerville District Court 175 Felloway Somerville, MA 02145	
		DATE COMPLAINT ISSUED 08/28/2012		INTERPRETER REQUIRED	
		PRECOMPLAINT ARREST DATE 08/28/2012			
FIRST FIVE OFFENSE COUNTS					
COUNT	CODE	OFFENSE DESCRIPTION		OFFENSE DATE	
1	209A/7	ABUSE PREVENTION ORDER, VIOLATE c209A §7		08/28/2012	
2	265/13A/B	A&B c265 §13A(a)		08/28/2012	
DEFENSE ATTORNEY Rubenstein Anosike Yalla		OFFENSE CITY/TOWN Somerville		POLICE DEPARTMENT Somerville PD	
DATE & JUDGE		DOCKET ENTRY		DATE & JUDGE	
AUG 28 2012 WALKER		<input type="checkbox"/> Attorney appointed (SJC R. 3:10) <input type="checkbox"/> Atty denied & Deft. Advised per 211 D §2A <input type="checkbox"/> Waiver of Counsel found after colloquy Terms of release set: <input checked="" type="checkbox"/> Bail <input type="checkbox"/> See Docket for special condition <input type="checkbox"/> Held (276 §58A)		FEB 15 2013 YEE Counsel Fee (211D § 2A(2)) \$ 150 ✓ <input type="checkbox"/> WAIVED Counsel Contribution (211D § 2) \$ <input type="checkbox"/> WAIVED Default Warrant Fee (276 § 30(1)) \$ <input type="checkbox"/> WAIVED Default Warrant Arrest Fee (276 § 30(2)) \$ <input type="checkbox"/> WAIVED	
AUG 28 2012 WALKER		Arraigned and advised: <input checked="" type="checkbox"/> Potential of bail revocation (276 §58) <input checked="" type="checkbox"/> Right to bail to review (276 §58) <input type="checkbox"/> Right to drug exam (111E § 10)		Probation Supervision Fee (276 § 67A) \$ <input type="checkbox"/> WAIVED Bail Order Forfeited	
		Advised of right to jury trial <input type="checkbox"/> Waiver of jury found after colloquy <input type="checkbox"/> Does not waive			
		Advised of trial rights as pro se (Dist. Ct. Supp.R.4)			
		Advised of right of appeal to Appeals Ct. (M.R. Crim P.R. 28)			
SCHEDULING HISTORY					
NO.	SCHEDULED DATE	EVENT	RESULT	JUDGE	TAPE START/STOP
1	08/28/2012	Arraignment	<input checked="" type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd	10-12-12	WALKER
2	10-12-12	PT	<input checked="" type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd	10-12-12	CLE 9AM
3	FEB 15 2013	dec	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input checked="" type="checkbox"/> Cont'd	4-5-13	PTH 9AM
4	APR 5 2013	PT	<input checked="" type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd	4-11-13	9AM
5	6-4-13	C/E	<input checked="" type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd	8-21-13	PTM Station
6	11-15-13	status	<input checked="" type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd	12-16-13	9AM PTH
7	2-27-14	DR	<input checked="" type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd	3-4-14	9AM C/E
8	MAR - 4 2014	C/E	<input checked="" type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd	4-23-14	9AM JT
9	5-15-14		<input checked="" type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd	6-2-14	9AM Scheduling
10	JUN 2 2014	DISPO	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd	YEE, J.	2ND
APPROVED ABBREVIATIONS					
ARR = Arraignment PTH = Pretrial hearing DCE = Discovery compliance & jury selection DTR = Bench trial JTR = Jury trial PCH = Probable cause hearing MOT = Motion hearing BRE = Status review BRP = Status review of payments FAT = First appearance in jury session SEN = Sentencing CWF = Continuance without finding scheduled to terminate PRO = Probation scheduled to terminate DFTA = Defendant failed to appear & was defaulted WAR = Warrant issued WARD = Default warrant issued WR = Warrant of default warrant recalled PVH = probation revocation hearing.					
A TRUE COPY ATTEST:		CLERK-MAGISTRATE / ASST CLERK		TOTAL NO. OF PAGES	
X					
				ON (DATE)	



CRIMINAL DOCKET - OFFENSES		DEFENDANT NAME Daisy Obl		DOCKET NUMBER 1210CR002072		
COUNT / OFFENSE 1 ABUSE PREVENTION ORDER, VIOLATE c209A §7		DISPOSITION DATE AND JUDGE <i>Kanstellor 8-21-13</i>				
DISPOSITION METHOD <input type="checkbox"/> Guilty Plea or <input type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and 278 §29D warning <input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input type="checkbox"/> Dismissed upon: <input checked="" type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Defendant's consent <input checked="" type="checkbox"/> Nolle Prosequi APR 23 2014 <input type="checkbox"/> Decriminalized (277 §70 C)		FINE/ASSESSMENT	SURFINE	COSTS	OUI §24D FEE	OUI VICTIMS ASMT
		HEAD INJURY ASMT	RESTITUTION	VW ASSESSMENT	BATTERER'S FEE	OTHER
		SENTENCE OR OTHER DISPOSITION <input type="checkbox"/> Sufficient facts found but continued without a finding until: <input type="checkbox"/> Defendant placed on probation until: <input type="checkbox"/> Risk/Need or OUI <input checked="" type="checkbox"/> Administrative Supervision <input checked="" type="checkbox"/> Defendant placed on pretrial probation (276 §87) until: 2-19-2014 <input type="checkbox"/> To be dismissed if court costs / restitution paid by: SA NOT CONTACT VICTIM Had Family				
FINDING <input type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Responsible <input type="checkbox"/> Not Responsible <input type="checkbox"/> Probable Cause <input type="checkbox"/> No Probable Cause		FINAL DISPOSITION <input type="checkbox"/> Dismissed on recommendation of Probation Dept. <input type="checkbox"/> Probation terminated; defendant discharged <input type="checkbox"/> Sentence or disposition revoked (see cont'd page)		JUDGE	DATE	
COUNT / OFFENSE 2 A&B c265 §13A(a)		DISPOSITION DATE AND JUDGE <i>Kanstellor 8-21-13</i>				
DISPOSITION METHOD <input type="checkbox"/> Guilty Plea or <input type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and 278 §29D warning <input type="checkbox"/> Bench Trial <input checked="" type="checkbox"/> Jury Trial APR 23 2014 <input type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Defendant's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70 C)		FINE/ASSESSMENT	SURFINE	COSTS	OUI §24D FEE	OUI VICTIMS ASMT
		HEAD INJURY ASMT	RESTITUTION	VW ASSESSMENT	BATTERER'S FEE	OTHER
		SENTENCE OR OTHER DISPOSITION <input type="checkbox"/> Sufficient facts found but continued without a finding until: <input type="checkbox"/> Defendant placed on probation until: <input type="checkbox"/> Risk/Need or OUI <input type="checkbox"/> Administrative Supervision <input checked="" type="checkbox"/> Defendant placed on pretrial probation (276 §87) until: convicted under CT 2 <input type="checkbox"/> To be dismissed if court costs / restitution paid by:				
FINDING <input checked="" type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Responsible <input type="checkbox"/> Not Responsible <input type="checkbox"/> Probable Cause <input type="checkbox"/> No Probable Cause		FINAL DISPOSITION <input type="checkbox"/> Dismissed on recommendation of Probation Dept. <input type="checkbox"/> Probation terminated; defendant discharged <input type="checkbox"/> Sentence or disposition revoked (see cont'd page)		JUDGE	DATE	
COUNT / OFFENSE		DISPOSITION DATE AND JUDGE				
DISPOSITION METHOD <input type="checkbox"/> Guilty Plea or <input type="checkbox"/> Admission to Sufficient Facts accepted after colloquy and 278 §29D warning <input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input type="checkbox"/> Dismissed upon: <input type="checkbox"/> Request of Commonwealth <input type="checkbox"/> Request of Victim <input type="checkbox"/> Request of Defendant <input type="checkbox"/> Failure to prosecute <input type="checkbox"/> Other: <input type="checkbox"/> Filed with Defendant's consent <input type="checkbox"/> Nolle Prosequi <input type="checkbox"/> Decriminalized (277 §70 C)		FINE/ASSESSMENT	SURFINE	COSTS	OUI §24D FEE	OUI VICTIMS ASMT
		HEAD INJURY ASMT	RESTITUTION	VW ASSESSMENT	BATTERER'S FEE	OTHER
		SENTENCE OR OTHER DISPOSITION <input type="checkbox"/> Sufficient facts found but continued without a finding until: <input type="checkbox"/> Defendant placed on probation until: <input type="checkbox"/> Risk/Need or OUI <input type="checkbox"/> Administrative Supervision <input type="checkbox"/> Defendant placed on pretrial probation (276 §87) until: <input type="checkbox"/> To be dismissed if court costs / restitution paid by:				
FINDING <input type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input type="checkbox"/> Responsible <input type="checkbox"/> Not Responsible <input type="checkbox"/> Probable Cause <input type="checkbox"/> No Probable Cause		FINAL DISPOSITION <input type="checkbox"/> Dismissed on recommendation of Probation Dept. <input type="checkbox"/> Probation terminated; defendant discharged <input type="checkbox"/> Sentence or disposition revoked (see cont'd page)		JUDGE	DATE	



CRIMINAL DOCKET DOCKET ENTRIES	DEFENDANT NAME Daisy Obi	DOCKET NUMBER 1210CR002072
DATE	DOCKET ENTRIES	
8-21-13	Kunstedt, J - ADA DOXTADER - AHJ	
	Robenstein - A placed on PTP until	
	2-19-14 -	
	Conditions: STAY AWAY FROM VICTIMS	
	and Family.	
	LCF - 15000	
	PSF W-DWNU - 50.00 per month.	
	COUNTS 2 + 2	
11-5-13	ed by probation 11-15-13 9:00 AM	
11-15-13	PTP Revoled, Case put back on PTP list.	
	Summons defendant in for PTT 12-16-13 9am - Flynn	
	(CREATE PTP fees + waf) ✓	
12-16-13	C.A. 20-14 SPC	
FEB 20 2014	WARRANT-DEF/STRAIGHT WARRER	
FEB 27 2014	DR BSO WARRER F-4	
	CONT 3-4-14 9:00 AM WARRER	
APR 23 2014	Jury Trial - 2nd Session Judge Yee	
	- Commonwealth Motion to prohibit D	
	from offering evidence & statements witnesses	
	- Motion to introduce certified documents - denied yee	
	documents - denied yee	
APR 23 2014	Motion for Required finding	
	of Not Guilty after Commonwealth rests	
	denied ~ Judge Yee	
	1) Question from Jury -	
	2) Question from Jury -	
4-23-14	Guilty finding after JT - Stay Sentence to 5/23/14	

APPROVED ABBREVIATIONS
 ARR = Arraignment PTH = Pretrial hearing DCE = Discovery compliance & Jury selection BTR = Bench trial JTR = Jury trial PCH = Probable cause hearing MOT = Motion hearing GRE = Grievance review
 SRP = Status review of payments FAT = First appearance in Jury selection BEN = Sentencing CWF = Continuance without finding scheduled to terminate PRO = Probation scheduled to terminate
 DFTA = Defendant failed to appear & was defaulted WAR = Warrant issued WARD = Default warrant issued WR = Warrant or default warrant recalled PVH = Probation revocation hearing.



Mental Health Evaluation Chp. 123/15E

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CRIMINAL DOCKET DOCKET ENTRIES	DEFENDANT NAME Daisy Obi	DOCKET NUMBER 1210CR002072
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DATE	DOCKET ENTRIES
JUN 2 2014	ATTY. ANUSIK E. and YEE, J ADA O'NEILL ATTY. ROSENSTEIN HEARING ON DISPOSITION
	C. 123, § 15(e) AID IN SENTENCING REPORT OF L. R. SIMON LICSW filed
	AFTER HEARING, DISPOSITION:
	COUNT 1 NOW PROSECUTED APRIL 23, 2014
	COUNT 2 GUILTY, 2 years HoP (- 6 months)
	to serve balance susp to 6-2-16.
	PSF #65 VWF #50
	obey all 258 laws, discrimination laws landlord tenant laws, abide by all other conditions as recorded by Judge
6-3-14	Defendants notice of appeal 6-3-14 J. E.
6-3-14	Defendants notice of appeal 6-3-14
6-3-14	Defendants Attorneys motion to withdraw 6-3-14
6-3-14	affidavit of Defense Counsel in support of Defendants
6-3-14	Attorneys motion to withdraw
6-3-14	Defendants motion for appointment of appellate Counsel
6-3-14	affidavit of Defense Counsel in support of Defendants
6-3-14	Attorneys motion to withdraw
6-3-14	Defendants motion for appointment of appellate Counsel
6-3-14	affidavit of defendant in support of Defendants Motion
6-3-14	for appointment of appellate Counsel.
6-3-14	Defendants motion to be resentenced
6-3-14	affidavit of Defense Counsel in support of
6-3-14	Defendants motion to be resentenced
6-3-14	Defendants motion to file appeal from sentence later
6-3-14	affidavit of defense Counsel in support of
6-3-14	Defendants motion to file appeal from sentence later

APPROVED ABBREVIATIONS
 ARR = Arraignment PT = Pretrial hearing CE = Discovery compliance & Jury selection T = Bench trial JT = Jury trial PC = Probable cause hearing M = Motion hearing SR = Status review
 SRP = Status review of payments FA = First appearance in July session B = Bonding CW = Continuance-without-finding scheduled to terminate P = Probation scheduled to terminate
 DFTA = Defendant failed to appear & was defaulted WAR = Warrant issued WARD = Default warrant issued WR = Warrant or default warrant recalled PR = probation revocation hearing



CRIMINAL COMPLAINT ORIGINAL		DOCKET NUMBER 1210CR002072	NO. OF COUNTS 2	Trial Court of Massachusetts District Court Department
DEFENDANT NAME & ADDRESS Daisy Obi 63 PINCKNEY ST #2 SOMERVILLE MA Somerville, MA 02145				COURT NAME & ADDRESS Somerville District Court 175 Fellsway Somerville, MA 02145 (617)666-8000
DEFENDANT DOB 07/04/1948	COMPLAINT ISSUED 08/28/2012	DATE OF OFFENSE 08/28/2012	ARREST DATE 08/28/2012	
OFFENSE CITY / TOWN Somerville	OFFENSE ADDRESS Somerville, MA		NEXT EVENT DATE & TIME 08/28/2012 11:30 AM	
POLICE DEPARTMENT Somerville PD	POLICE INCIDENT NUMBER 12034376		NEXT SCHEDULED EVENT Arraignment	
OBTN TSOE201200687			ROOM / SESSION Arraignment Session	
The undersigned complainant, on behalf of the Commonwealth, on oath complains that on the date(s) indicated below the defendant committed the offense(s) listed below and on any attached pages.				

COUNT	CODE	DESCRIPTION
1	209A/7	ABUSE PREVENTION ORDER, VIOLATE c209A §7
<p>On 08/28/2012 did fail to comply with a court order to refrain from abuse, to vacate the household, multiple family dwelling or workplace, to have no contact with the plaintiff or the plaintiff's minor child(ren), or to surrender any license to carry firearms and/or firearms identification cards which the defendant held, or to surrender all firearms, rifles, shotguns, machine guns and ammunition which the defendant then controlled, owned or possessed, issued under the provisions of G.L. c.208, §18§34B-§34C, G.L. c.209, §32, G.L. c.209A, §3-§5 or G.L. c.209C, §15 and §20, or a protection order issued by another jurisdiction, as defined in G.L. c.209A, §1, in violation of G.L. c.209A, §7 and/or §3B.</p> <p>(PENALTY: house of correction not more than 2½ years; or not more than \$5000; or both; court shall order completion of certified batterer's intervention program (§10: plus \$350 assessment in addition to cost of program) or make written findings why it should not be ordered; court may order payment of damages to victim. "In addition to, but not in lieu of, the forgoing penalties and any other sentence, fee or assessment, . . . the court shall order persons convicted of a crime under this statute to pay a fine of \$25 that shall be transmitted to the treasurer for deposit into the General Fund.")</p>		
2	265/13A/B	A&B c265 §13A(a)
<p>On 08/28/2012 did assault and beat Gihan Suliman, in violation of G.L. c.265, §13A(a).</p> <p>PENALTY: house of correction not more than 2½ years; or not more than \$1000 fine.</p>		

SIGNATURE OF COMPLAINANT 	SWORN TO BEFORE CLERK/MAGISTRATE/ASST. CLERK/DEP. ASST. CLERK <input checked="" type="checkbox"/>	DATE 8-28-2012
NAME OF COMPLAINANT William J. Harkness	A TRUE COPY ATTEST <input checked="" type="checkbox"/>	DATE

Notice to Defendant: 42 U.S.C. § 3796gg-4(e) requires this notice: If you are convicted of a misdemeanor crime of domestic violence you may be prohibited permanently from purchasing and/or possessing a firearm and/or ammunition pursuant to 18 U.S.C. § 922 (g) (9) and other applicable related Federal, State, or local laws.

HARASSMENT PREVENTION ORDER G.L. c. 258E		DOCKET NO. 1210 RO 410	Massachusetts Trial Court
PLAINTIFF'S NAME Gihan Suliman		COURT NAME & ADDRESS Somerville District Court 175 Fellsway Somerville, MA. 02145	
DEFENDANT'S NAME AND ADDRESS Obi Daisy Obi 63 Pinckney St #2 Somerville, Ma 02145	ALIAS, IF ANY		MOTHER'S MAIDEN NAME (FIRST & LAST)
	DATE OF BIRTH	SEX <input type="checkbox"/> Male <input checked="" type="checkbox"/> Female	
	PLACE OF BIRTH Nigira		FATHER'S NAME (FIRST & LAST)
	SOCIAL SECURITY NO.	DAYTIME PHONE NO.	

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

- A. THE COURT HAS ISSUED THE FOLLOWING ORDERS TO THE DEFENDANT:** *(only those items checked shall apply)*
- This Order was issued without advance notice because the Court determined that there is a substantial likelihood of immediate danger of harassment. This Order was communicated by telephone from the Judge named below to:
Police Dept. _____ Police Officer _____
1. **YOU ARE ORDERED NOT TO ABUSE THE PLAINTIFF** by harming or attempting to harm the Plaintiff physically or by placing the Plaintiff in fear of imminent serious physical harm. **YOU ARE ALSO ORDERED NOT TO HARASS THE PLAINTIFF** (1) by any willful and malicious conduct aimed at the Plaintiff and intended to cause fear, intimidation, abuse or damage to property, or (2) by using force, threat or duress to make the Plaintiff engage in sexual relations unwillingly, or (3) by committing any of the following: indecent assault and battery, rape, statutory rape, assault with intent to rape (G.L. c. 265, §§ 13B, 13F, 13H, 22, 22A, 23, 24, 24B), enticing a child (§ 26C), criminal stalking (§ 43), criminal harassment (§ 43A), or drugging for sexual intercourse (G.L. c.272, §3).
2. **YOU ARE ORDERED NOT TO CONTACT THE PLAINTIFF** either in person, by telephone, in writing or otherwise, either directly or through someone else, and to stay at least 20 yards from the Plaintiff even if the Plaintiff seems to allow or request contact. The only exception to this Order is that you may send to the Plaintiff by mail or by sheriff or other authorized officer copies of papers filed with the court when that is required by statute or court rule.
3. **YOU ARE ORDERED TO REMAIN AWAY FROM THE PLAINTIFF'S RESIDENCE** located at ~~63 Pinckney St #3~~
WHEREVER SITUATED. ~~Somerville~~
and wherever else you have reason to know the Plaintiff may reside.
 If this box is checked, you are also **ORDERED** to remain away from the entire apartment building or other multiple family dwelling in which the Plaintiff's residence is located.
4. **YOU ARE ORDERED TO REMAIN AWAY FROM THE PLAINTIFF'S WORKPLACE** located at _____
and wherever else you have reason to know the Plaintiff may work.
5. **YOU ARE ORDERED TO COMPENSATE THE PLAINTIFF** for \$ _____ in losses suffered as a direct result of the harassment, to be paid in full on or before _____, 20____, by mailing directly to the Plaintiff. through the Court.
6. *You are ordered to refrain from interfering w/ the P's quiet enjoyment of her premises.*

B. NOTICE TO LAW ENFORCEMENT

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

2. Defendant Information Form accompanies this Order. 3. Police reports are on file at the _____ P.D.

4. Outstanding warrants for the Defendant's arrest: PCF No. _____ Docket No(s). _____

5. An imminent threat exists of bodily injury to the Plaintiff. _____ P.D. notified by telephone other: _____

DATE OF THIS ORDER 6-29-12	TIME OF THIS ORDER 3:15 <input type="checkbox"/> A.M. <input checked="" type="checkbox"/> P.M.	EXPIRATION DATE OF THIS ORDER 7-9-12 at 4 P.M.	SIGNATURE/NAME OF JUDGE Maurice R. Flynn
NEXT HEARING DATE 7-9-12	at 9 <input checked="" type="checkbox"/> A.M. <input type="checkbox"/> P.M. in Courtroom 2		
FIRST OR CHIEF JUSTICE WITNESS: MAURICE R. FLYNN III		A TRUE COPY ATTEST: X	CLERK-MAGISTRATE/ASST. CLERK


The Plaintiff must appear at scheduled hearings, or this Order will expire. The Defendant may appear, with or without an attorney, to oppose any extension or modification of this Order. If the Defendant does not appear, the Order may be extended or modified as determined by the Judge. For good cause, either the Plaintiff or the Defendant may request the Court to modify this Order before its scheduled expiration date. NOTICE TO DEFENDANT: If the Plaintiff is your spouse or former spouse, or you are the parent of a child of the Plaintiff, or you cohabit or have cohabited with the Plaintiff, the purchase and/or possession of a firearm and/or ammunition while this order is in effect is a federal crime, subject to certain exceptions. 18 U.S.C. §§ 922(g)(8) and 925.

MODIFICATION, EXTENSION OR TERMINATION OF HARASSMENT PREVENTION ORDER G.L. c. 258E	DOCKET NO. 1210 RO- 0410	Massachusetts Trial Court COURT NAME & ADDRESS Somerville District Court 175 Fellsway Somerville, MA. 02145
	PLAINTIFF'S NAME Gihan Suliman	
DEFENDANT'S NAME Daisy Dee Obi		

C. PRIOR COURT ORDER (ATTACHED) MODIFIED/EXTENDED: This modification was issued after a hearing at which the Plaintiff appeared did not appear and the Defendant appeared did not appear.

The Court has **ORDERED** that the prior order issued on 6-29, 2012 be **MODIFIED** as follows:

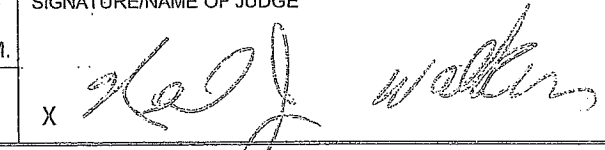
The expiration date of this order has been **EXTENDED** (see below). **OTHER MODIFICATION(S)**
order extended for hearing to 7-17-12 @ 9AM (upon defendant's showing of good cause for needed date change)

DATE OF THIS ORDER <u>7-2-12</u>	TIME OF THIS ORDER <u>11:15</u> <input checked="" type="checkbox"/> A.M. <input type="checkbox"/> P.M.	EXPIRATION DATE OF THIS ORDER <u>7-17-12</u> at 4 P.M.	SIGNATURE/NAME OF JUDGE 
NEXT HEARING DATE <u>7-17-12</u> at <u>9:00</u> <input checked="" type="checkbox"/> A.M. <input type="checkbox"/> P.M. in Courtroom			

D. PRIOR COURT ORDER (ATTACHED) MODIFIED/EXTENDED: This modification was issued after a hearing at which the Plaintiff appeared did not appear and the Defendant appeared did not appear.

The Court has **ORDERED** that the prior order issued on _____, 20____ be **MODIFIED** as follows:


The expiration date of this order has been **EXTENDED** (see below). **OTHER MODIFICATION(S)**

DATE OF THIS ORDER <u>7/17/12</u>	TIME OF THIS ORDER <u>11:50</u> <input checked="" type="checkbox"/> A.M. <input type="checkbox"/> P.M.	EXPIRATION DATE OF THIS ORDER <u>4/22/13</u> at 4 P.M.	SIGNATURE/NAME OF JUDGE 
NEXT HEARING DATE <u>7-17-13</u> at <u>9:00</u> <input checked="" type="checkbox"/> A.M. <input type="checkbox"/> P.M. in Courtroom			

E. PRIOR COURT ORDER (ATTACHED) MODIFIED/EXTENDED: This modification was issued after a hearing at which the Plaintiff appeared did not appear and the Defendant appeared did not appear.

The Court has **ORDERED** that the prior order issued on 7/17, 2012 be **MODIFIED** as follows:

The expiration date of this order has been **EXTENDED** (see below). **OTHER MODIFICATION(S)**
#2 yardage changed to "100 yards"
#3 address changed to "wherever the plaintiff may live"
#6 terminated as plaintiff is no longer present



DATE OF THIS ORDER <u>1/17/13</u>	TIME OF THIS ORDER <u>10:30</u> <input checked="" type="checkbox"/> A.M. <input type="checkbox"/> P.M.	EXPIRATION DATE OF THIS ORDER <u>1/17/14</u> at 4 P.M.	SIGNATURE/NAME OF JUDGE 
NEXT HEARING DATE <u>1/17/14</u> at <u>9:00</u> <input checked="" type="checkbox"/> A.M. <input type="checkbox"/> P.M. in Courtroom			


F. PRIOR COURT ORDER (ATTACHED) TERMINATED
 This Court's prior Order has been terminated. Law enforcement shall destroy all records of such Order. Terminated at Plaintiff's request

DATE OF PRIOR ORDER	DATE TERMINATION EFFECTIVE	SIGNATURE/NAME OF JUDGE X
DATE OF TERMINATION ORDER	TIME TERMINATION EFFECTIVE <input type="checkbox"/> A.M. <input type="checkbox"/> P.M.	

A TRUE COPY ATTEST: CLERK-MAGISTRATE/ASST. CLERK

MODIFICATION, EXTENSION OR TERMINATION OF HARASSMENT PREVENTION ORDER G.L. c. 258E		DOCKET NO. 1210 RO 0410	Massachusetts Trial Court COURT NAME & ADDRESS Somerville District Court 175 Fellsway Somerville, MA. 02145
PLAINTIFF'S NAME Gihan Suliman			
DEFENDANT'S NAME XXXXXX Daisy Obi			
<input checked="" type="checkbox"/> C. PRIOR COURT ORDER (ATTACHED) MODIFIED/EXTENDED: This modification was issued after a hearing at which the Plaintiff <input type="checkbox"/> appeared <input type="checkbox"/> did not appear and the Defendant <input type="checkbox"/> appeared <input type="checkbox"/> did not appear. The Court has ORDERED that the prior order issued on _____, 20__ be MODIFIED as follows: <input checked="" type="checkbox"/> The expiration date of this order has been EXTENDED (see below). <input checked="" type="checkbox"/> OTHER MODIFICATION(S) <div style="text-align: center; font-style: italic; font-size: 1.2em;">Address ordered impounded</div>			
DATE OF THIS ORDER 1/12/14	TIME OF THIS ORDER 9:50 <input checked="" type="checkbox"/> A.M. <input type="checkbox"/> P.M.	EXPIRATION DATE OF THIS ORDER 1/15/15 at 4 P.M.	SIGNATURE/NAME OF JUDGE
NEXT HEARING DATE at 9 <input checked="" type="checkbox"/> A.M. <input type="checkbox"/> P.M. in Courtroom 2		X	
<input type="checkbox"/> D. PRIOR COURT ORDER (ATTACHED) MODIFIED/EXTENDED: This modification was issued after a hearing at which the Plaintiff <input type="checkbox"/> appeared <input type="checkbox"/> did not appear and the Defendant <input type="checkbox"/> appeared <input type="checkbox"/> did not appear. The Court has ORDERED that the prior order issued on _____, 20__ be MODIFIED as follows: <input type="checkbox"/> The expiration date of this order has been EXTENDED (see below). <input type="checkbox"/> OTHER MODIFICATION(S)			
DATE OF THIS ORDER	TIME OF THIS ORDER <input type="checkbox"/> A.M. <input type="checkbox"/> P.M.	EXPIRATION DATE OF THIS ORDER at 4 P.M.	SIGNATURE/NAME OF JUDGE
NEXT HEARING DATE at _____ <input type="checkbox"/> A.M. <input type="checkbox"/> P.M. in Courtroom _____		X	
<input type="checkbox"/> E. PRIOR COURT ORDER (ATTACHED) MODIFIED/EXTENDED: This modification was issued after a hearing at which the Plaintiff <input type="checkbox"/> appeared <input type="checkbox"/> did not appear and the Defendant <input type="checkbox"/> appeared <input type="checkbox"/> did not appear. The Court has ORDERED that the prior order issued on _____, 20__ be MODIFIED as follows: <input type="checkbox"/> The expiration date of this order has been EXTENDED (see below). <input type="checkbox"/> OTHER MODIFICATION(S)			
DATE OF THIS ORDER	TIME OF THIS ORDER <input type="checkbox"/> A.M. <input type="checkbox"/> P.M.	EXPIRATION DATE OF THIS ORDER at 4 P.M.	SIGNATURE/NAME OF JUDGE
NEXT HEARING DATE at _____ <input type="checkbox"/> A.M. <input type="checkbox"/> P.M. in Courtroom _____		X	
<input type="checkbox"/> F. PRIOR COURT ORDER (ATTACHED) TERMINATED This Court's prior Order has been terminated. Law enforcement shall destroy all records of such Order. <input type="checkbox"/> Terminated at Plaintiff's request			
DATE OF PRIOR ORDER	DATE TERMINATION EFFECTIVE	SIGNATURE/NAME OF JUDGE	
DATE OF TERMINATION ORDER	TIME TERMINATION EFFECTIVE <input type="checkbox"/> A.M. <input type="checkbox"/> P.M.	X	
A TRUE COPY ATTEST:	CLERK-MAGISTRATE/ASST. CLERK X		

JUDGMENT FOR PLAINTIFF(S)		DOCKET NUMBER 1210SC001316	Trial Court of Massachusetts District Court Department Small Claims Session	
CASE NAME Gihan Suliman v. Daisy Obi				
PLAINTIFF(S) WHO ARE PARTIES TO THIS JUDGMENT Gihan Suliman			COURT NAME & ADDRESS Somerville District Court 175 Fellsway Somerville, MA 02145	
DEFENDANT(S) WHO ARE PARTIES TO THIS JUDGMENT Daisy Obi			NEXT COURT EVENT (IF ANY)	
PARTY (OR ATTORNEY FOR PARTY) TO WHOM THIS COPY OF JUDGMENT IS ISSUED Daisy Obi 63 Pinckney St., #2 Somerville, MA 02145			PAYMENT ORDER TERMS Pay Total Amount By: 05/08/2013	
			FURTHER ORDERS OF THE COURT CLERK'S FINDING IS ADJUDICATED// PAYMENT REVIEW SCHEDULED 5/16/13 @ 8:30 AM	
JUDGMENT FOR PLAINTIFF(S)				
On the above claim, after trial by a judge, the Court (Hon. Paul M Yee) has entered JUDGMENT IN FAVOR OF THE PLAINTIFF(S) listed above. The defendant(s) must pay the plaintiff(s) the "Judgment Total" shown below, plus additional postjudgment interest under General Laws c. 235 § 8 at the "Annual Interest Rate" shown below from the "Date Judgment Entered" shown below until the date of payment. The defendant(s) is required by law to pay the plaintiff(s) that total amount. Unless the defendant(s) failed to appear, the defendant(s) has a right of appeal within 10 days after receiving notice of this judgment. See the enclosed instructions for additional information.				
If the court has scheduled this matter for a next court event, both parties must appear unless excused. The defendant(s) is subject to arrest for failing to appear.				
1. Date of Breach, Demand or Complaint			10/19/2012	
2. Date Judgment Entered			04/08/2013	
3. Number of Days of Prejudgment Interest (line 2 - Line1)			171	
4. Annual Interest Rate of .12/365.25 = Daily Interest rate			.000329	
5. Single Damages			\$2,000.00	
6. Prejudgment Interest (lines 3x4x5)			\$112.52	
7. Double or Treble Damages Awarded by Court (where authorized by law)			\$	
8. Costs Awarded by Court			\$50.00	
9. Attorney Fees Awarded by Court (where authorized by law)			\$	
10. JUDGMENT TOTAL PAYABLE TO PLAINTIFF(S) (Lines 5+6+7+8+9)			\$2,162.52	
DATE JUDGMENT ENTERED 04/08/2013	CLERK-MAGISTRATE/ASST. CLERK X 			

JUDGMENT FOR PLAINTIFF(S)		DOCKET NUMBER 1210SC001316	Trial Court of Massachusetts District Court Department Small Claims Session	
CASE NAME Gihan Suliman v. Daisy Obi				
PLAINTIFF(S) WHO ARE PARTIES TO THIS JUDGMENT Gihan Suliman			COURT NAME & ADDRESS Somerville District Court 175 Fellsway Somerville, MA 02145	
DEFENDANT(S) WHO ARE PARTIES TO THIS JUDGMENT Daisy Obi			NEXT COURT EVENT (IF ANY) Payment Review 05/23/2013 8:30 AM Small Claims Magistrate Session	
PARTY (OR ATTORNEY FOR PARTY) TO WHOM THIS COPY OF JUDGMENT IS ISSUED Daisy Obi 63 Pinckney St., #2 Somerville, MA 02145			PAYMENT ORDER TERMS None	
			FURTHER ORDERS OF THE COURT CORRECTED JUDGMENT//PAYMENT REVIEW SCHEDULED 5/16/13 @ 8:30 AM	
JUDGMENT FOR PLAINTIFF(S)				
On the above claim, after trial by a judge, the Court (Hon. Paul M Yee) has entered JUDGMENT IN FAVOR OF THE PLAINTIFF(S) listed above. The defendant(s) must pay the plaintiff(s) the "Judgment Total" shown below, plus additional postjudgment interest under General Laws c. 235 § 8 at the "Annual Interest Rate" shown below from the "Date Judgment Entered" shown below until the date of payment. The defendant(s) is required by law to pay the plaintiff(s) that total amount. Unless the defendant(s) failed to appear, the defendant(s) has a right of appeal within 10 days after receiving notice of this judgment. See the enclosed instructions for additional information.				
If the court has scheduled this matter for a next court event, both parties must appear unless excused. The defendant(s) is subject to arrest for failing to appear.				
1. Date of Breach, Demand or Complaint		10/19/2012		
2. Date Judgment Entered		04/25/2013		
3. Number of Days of Prejudgment Interest (line 2 - Line1)		188		
4. Annual Interest Rate of .12/365.25 = Daily Interest rate		.000329		
5. Single Damages		\$2,000.00		
6. Prejudgment Interest (lines 3x4x5)		\$123.70		
7. Double or Treble Damages Awarded by Court (where authorized by law)		\$4,000.00		
8. Costs Awarded by Court		\$50.00		
9. Attorney Fees Awarded by Court (where authorized by law)		\$3,000.00		
10. JUDGMENT TOTAL PAYABLE TO PLAINTIFF(S) (Lines 5+6+7+8+9)		\$9,173.70		
DATE JUDGMENT ENTERED	CLERK-MAGISTRATE/ASST. CLERK			
04/25/2013	X			

Commonwealth of Massachusetts

MIDDLESEX, SS.

**DISTRICT COURT DEPARTMENT
SOMERVILLE DIVISION
COMPLAINT NO.: 1210CR2072**

COMMONWEALTH

v.

DAISY OBI,

Defendant

DEFENDANT'S MOTION TO BE RESENTENCED

NOW COMES DEFENDANT, Daisy Obi (hereinafter "Defendant"), in the above-captioned matter and, pursuant to *Commonwealth v. LeBlanc*, 370 Mass. 217, 221 (1976), respectfully moves this Honorable Court to order that Defendant be resentenced before another judge for the reasons hereinafter set forth.

As grounds therefor, Defendant hereby submits as follows:

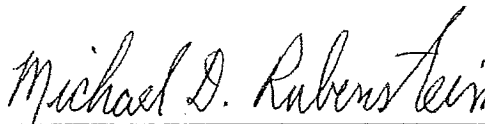
1. On April 23, 2014, Defendant was convicted of a simple assault and battery and sentenced to 2 years in the House of Correction, 6 months to serve, balance suspended for 2 years by this Court;
2. Improper sentencing considerations were taken into account by this Court, to wit, the court treated this matter as if it were a hate crime, even though the Defendant was not charged with any such crime;
3. Further, the judge who presided over the trial failed to disclose prior to trial that he had presided over several harassment prevention hearings involving the Defendant and the alleged victim, and upon information and belief, demonstrated a clear bias and/or prejudice against the Defendant as a result of same.

WHEREFORE, based upon the foregoing arguments, authorities and accompanying affidavit, Defendant hereby requests that this Honorable Court allow Defendant's Motion to Be Resentenced.

Dated: June 3, 2014

Respectfully submitted,

Daisy Obi,
By her Attorney,



Michael D. Rubenstein, Esq.
Attorney for Defendant
1725 Revere Beach Parkway
Everett, MA 02149
(617) 387-3548
B.B.O. #545358

Commonwealth of Massachusetts

MIDDLESEX, SS.

DISTRICT COURT DEPARTMENT
SOMERVILLE DIVISION
COMPLAINT NO.: 1210CR2072

COMMONWEALTH

v.

DAISY OBI,

Defendant

AFFIDAVIT OF DEFENSE COUNSEL IN SUPPORT OF
DEFENDANT'S MOTION TO BE RESENTENCED

In support of the within Defendant's Motion to Be Resentenced, I, Michael D. Rubenstein, Esq., Attorney for Defendant in the above-captioned matter, under oath and upon information and belief, do hereby state and depose as follows:

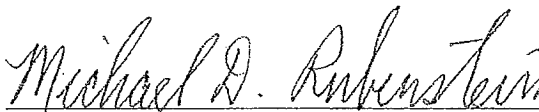
1. The sentencing judge failed to inform the Defendant and counsel prior to trial that he had previously presided over several harassment prevention order hearings involving the Defendant and the alleged victim, and that he had a bias/prejudice against this Defendant.

WHEREFORE, Defendant, through her Attorney, does hereby request that this Honorable Court allow Defendant's Motion as aforesaid.

SIGNED this date under the penalties of perjury.

Dated: June 3, 2014

Respectfully submitted,



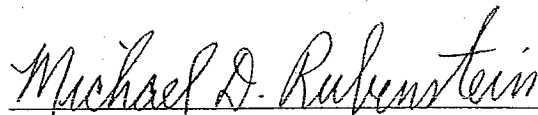
Michael D. Rubenstein, Esq.
Attorney for Defendant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the within Defendant's Motion to Be Resentenced and Affidavit in support thereof were this day served upon all parties to this action by mailing same, first class postage prepaid, to the following:

ADA Mary O'Neil, Office of the District Attorney, Somerville District Court, 175 Fellsway,
Somerville, MA 02145
SIGNED under the penalties of perjury.

Dated: June 3, 2014



Michael D. Rubenstein, Esq.

cc: Daisy Obi

STATUTORY ADDENDUM:

United States Constitution:

Amendment I:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment IV:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment VIII:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment XIV:

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Massachusetts Declaration of Rights:

Article I:

All people are born free and equal and have certain natural, essential and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing and protecting property; in fine, that of seeking and obtaining their safety and happiness. Equality under the law shall not be denied or abridged because of sex, race, color, creed or national origin.

Article II:

It is the right as well as the duty of all men in society, publicly, and at stated seasons to worship the Supreme Being, the great Creator and Preserver of the universe. And no subject shall be hurt, molested, or restrained, in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience; or for his religious profession or sentiments; provided he doth not disturb the public peace, or obstruct others in their religious worship.

Article XII:

No subject shall be held to answer for any crime or offence,

until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse, or furnish evidence against himself. And every subject shall have a right to produce all proofs, that may be favorable to him; to meet the witnesses against him face to face, and to be fully heard in his defence by himself, or his council, at his election. And no subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled, or deprived of his life, liberty, or estate; but by the judgment of his peers, or the law of the land.

And the legislature shall not make any law, that shall subject any person to a capital or infamous punishment, excepting for the government of the army and navy, without trial by jury.

Article XXVI:

No magistrate or court of law shall demand excessive bail or sureties, impose excessive fines, or inflict cruel or unusual punishments.

Article XXIX:

It is essential to the preservation of the rights of every individual, his life, liberty, property, and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as free, impartial and independent as the lot of humanity will admit. It is, therefore, not only the best policy, but for the security of the rights of the people, and of every citizen, that the judges of the supreme judicial court should hold their offices as long as they behave themselves well; and that they should have honorable salaries ascertained and established by standing laws.

42 U.S.C. §1981:

(a) Statement of equal rights
All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like

punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b) "Make and enforce contracts" defined
For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

(c) Protection against impairment
The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

M.G.L. c. 6 §172:

(a) The department shall maintain criminal offender record information in a database, which shall exist in an electronic format and be accessible via the world wide web. Except as provided otherwise in this chapter, access to the database shall be limited as follows:

(1) Criminal justice agencies may obtain all criminal offender record information, including sealed records, for the actual performance of their criminal justice duties. Licensing authorities, as defined in section 121 of chapter 140, may obtain all criminal offender record information, including sealed records, for the purpose of firearms licensing in accordance with sections 121 to 131P, inclusive, of chapter 140. The criminal record review board may obtain all criminal offender record information, including sealed records, for the actual performance of its duties.

(2) A requestor authorized or required by statute, regulation or accreditation requirement to obtain criminal offender record information other than that available under clause (3) may obtain such information to the extent and for the purposes authorized to comply with said statute, regulation or accreditation requirement.

(3) A requestor or the requestor's legally designated representative may obtain criminal offender record information for any of the following purposes: (i) to evaluate current and prospective employees including full-time, part-time, contract, internship employees or volunteers; (ii) to evaluate applicants for rental or lease of housing; (iii) to evaluate volunteers for services; and (iv) to evaluate applicants for a professional or occupational license issued by a state or municipal entity. Criminal offender record information made available under this section shall be limited to the following: (i) felony

convictions for 10 years following the disposition thereof, including termination of any period of incarceration or custody, (ii) misdemeanor convictions for 5 years following the disposition thereof, including termination of any period of incarceration or custody, and (iii) pending criminal charges, which shall include cases that have been continued without a finding until such time as the case is dismissed pursuant to section 18 of chapter 278; provided, however, that prior misdemeanor and felony conviction records shall be available for the entire period that the subject's last available conviction record is available under this section; and provided further, that a violation of section 7 of chapter 209A and a violation of section 9 of chapter 258E shall be treated as a felony for purposes of this section.

(4) Any member of the general public may upon written request to the department and in accordance with regulations established by the department obtain the following criminal offender record information on a subject: (i) convictions for any felony punishable by a term of imprisonment of 5 years or more, for 10 years following the disposition thereof, including termination of any period of incarceration or custody; (ii) information indicating custody status and placement within the correction system for an individual who has been convicted of any offense and sentenced to any term of imprisonment, and at the time of the request: is serving a sentence of probation or incarceration, or is under the custody of the parole board; (iii) felony convictions for 2 years following the disposition thereof, including any period of incarceration or custody; and (iv) misdemeanor convictions for 1 year following the disposition thereof, including any period of incarceration or custody.

(5) A subject who seeks to obtain his own criminal offender record information and the subject's legally designated representative may obtain all criminal offender record information from the department pertaining to the subject under section 175.

(6) The commissioner may provide access to criminal offender record information to persons other than those entitled to obtain access under this section, if the commissioner finds that such dissemination to such requestor serves the public interest. Upon such a finding, the commissioner shall also determine the extent of access to criminal offender record information necessary to sustain the public interest. The commissioner shall make an annual report to the governor and file a copy of the report

with the state secretary, the attorney general, the clerk of the house of representatives and the clerk of the senate documenting all access provided under this paragraph, without inclusion of identifying data on a subject. The annual report shall be available to the public upon request.

(7) Housing authorities operating pursuant to chapter 121B may obtain from the department conviction and pending criminal offender record information for the sole purpose of evaluating applications for housing owned by such housing authority, in order to further the protection and well-being of tenants of such housing authorities.

(8) The department of telecommunications and cable and the department of public utilities may obtain from the department all available criminal offender record information for the purpose of screening applicants for motor bus driver certificates and applicants who regularly transport school age children or students under chapter 71B in the course of their job duties. The department of public telecommunications and cable and the department of public utilities shall not disseminate such information for any purpose other than to further the protection of children.

(9) The department of children and families and the department of youth services may obtain from the department data permitted under section 172B.

(10) A person providing services in a home or community-based setting for any elderly person or disabled person or who will have direct or indirect contact with such elderly or disabled person or access to such person's files may obtain from the department data permitted under section 172C.

(11) The IV-D agency as set forth in chapter 119A may obtain from the department data permitted under section 172D and section 14 of chapter 119A.

(12) A long-term care facility, as defined in section 72W of chapter 111, an assisted living residence as defined in section 1 of chapter 19D, and any continuing care facility as defined in section 1 of chapter 40D may obtain from the department data permitted under section 172E.

(13) The department of early education and care may obtain from the department data permitted under section 172F.

(14) Operators of camps for children may obtain from the department data permitted under section 172G.

(15) An entity or organization primarily engaged in providing activities or programs to children 18 years of age or younger that accepts volunteers may obtain from the department data permitted under section 172H.

(16) School committees or superintendents that have

contracted with taxicab companies to provide for the transportation of pupils pursuant to section 7A of chapter 71 may obtain from the department data permitted under section 172I.

(17) The commissioner of banks may obtain from the department data permitted under section 172J, section 3 of chapter 255E and section 3 of chapter 255F.

(18) A children's camp or school that plans to employ a person or accept a volunteer for a climbing wall or challenge course program may obtain from the department data permitted under section 172K.

(19) A victim of a crime, a witness or a family member of a homicide victim, as defined in section 1 of chapter 258B, may obtain from the department data permitted under section 178A.

(20) The motor vehicle insurance merit rating board may obtain from the department data permitted under section 57A of chapter 6C.

(21) The department of early education and care, or its designee, may obtain from the department data permitted under sections 6 and 8 of chapter 15D.

(22) The district attorney may obtain from the department data permitted under section 2A of chapter 38.

(23) A school committee and superintendent of any city, town or regional school district and the principal, by whatever title the position be known, of a public or accredited private school of any city, town or regional school district, may obtain from the department data permitted under section 38R of chapter 71.

(24) The Massachusetts Port Authority may obtain from the department data permitted under section 61 of chapter 90.

(25) The department of children and families may obtain from the department data permitted under section 26A of chapter 119, section 3B of chapter 210 (26) The state racing commission may obtain from the department data permitted under section 9A of chapter 128A.

[There is no clause (26) of subsection (a).]

(27) A court, office of jury commissioner, and the clerk of court or assistant clerk may obtain from the department data permitted under section 33 of chapter 234A.

(28) The pension fraud unit within the public employee retirement administration commission may obtain from the department data permitted under section 1 of chapter 338 of the acts of 1990.

(29) Special education school programs approved under chapter 71B may obtain from the department all criminal offender record information provided for in paragraph (3)

of subsection (a).

(30) The department shall configure the database to allow for the exchange, dissemination, distribution and direct connection of the criminal record information system to criminal record information systems in other states and relevant federal agencies including the Federal Bureau of Investigation and Immigration and Customs Enforcement that utilize fingerprint or iris scanning and similar databases.

(b) Notwithstanding the foregoing, convictions for murder, voluntary manslaughter, involuntary manslaughter, and sex offenses as defined in section 178C of chapter 6 that are punishable by a term of incarceration in state prison shall remain in the database permanently and shall be available to all requestors listed in paragraphs (1) through (3), inclusive, of subsection (a) unless sealed under section 100A of chapter 276.

(c) The department shall specify the information that a requestor shall provide to query the database, including, but not limited to, the subject's name, date of birth and the last 4 digits of the subject's social security number; provided, however, that a member of the public accessing information under paragraph (4) of subsection (a) shall not be required to provide the last four digits of the subject's social security number. To obtain criminal offender record information concerning a subject pursuant to subsection (a)(2) or (a)(3), the requestor must certify under the penalties of perjury that the requestor is an authorized designee of a qualifying entity, that the request is for a purpose authorized under subsection (a)(2) or (a)(3), and that the subject has signed an acknowledgement form authorizing the requestor to obtain the subject's criminal offender record information. The requestor must also certify that he has verified the identity of the subject by reviewing a form of government-issued identification. Each requestor shall maintain acknowledgement forms for a period of 1 year from the date the request is submitted. Such forms shall be subject to audit by the department. The department may establish rules or regulations imposing other requirements or affirmative obligations upon requestors as a condition of obtaining access to the database; provided, however, that such additional rules and regulations are not in conflict with the state and federal Fair Credit Reporting Acts. In connection with any decision regarding employment, volunteer opportunities, housing or professional licensing, a person in possession of an applicant's criminal offender record information shall provide the applicant with the

criminal history record in the person's possession, whether obtained from the department or any other source, (a) prior to questioning the applicant about his criminal history and (b) if the person makes a decision adverse to the applicant on the basis of his criminal history; provided, however, that if the person has provided the applicant with a copy of his criminal offender record information prior to questioning the person is not required to provide the information a second time in connection with an adverse decision based on this information. Failure to provide such criminal history information to the individual in accordance with this section may subject the offending person to investigation, hearing and sanctions by the board.

(d) Except as authorized by this section, it shall be unlawful to request or require a person to provide a copy of his criminal offender record information. Violation of this subsection is punishable by the penalties set forth in section 178.

(e) No employer or person relying on volunteers shall be liable for negligent hiring practices by reason of relying solely on criminal offender record information received from the department and not performing additional criminal history background checks, unless required to do so by law; provided, however, that the employer made an employment decision within 90 days of obtaining the criminal offender record information and maintained and followed policies and procedures for verification of the subject's identifying information consistent with the requirements set forth in this section and in the department's regulations.

No employer shall be liable for discriminatory employment practices for the failure to hire a person on the basis of criminal offender record information that contains erroneous information requested and received from the department, if the employer would not have been liable if the information had been accurate; provided, however, that the employer made an employment decision within 90 days of obtaining the criminal offender record information and maintained and followed policies and procedures for verification of the individual's information consistent with the requirements set forth in this section and the department's regulations.

Neither the board nor the department shall be liable in any civil or criminal action by reason of any criminal offender record information or self-audit log that is disseminated by the board, including any information that is false, inaccurate or incorrect because it was erroneously entered by the court or the office of the commissioner of probation.

(f) A requestor shall not disseminate criminal offender record information except upon request by a subject; provided, however, that a requestor may share criminal offender record information with individuals within the requesting entity that have a need to know the contents of the criminal offender record information to serve the purpose for which the information was obtained; and provided further, that upon request, a requestor shall share criminal offender record information with the government entities charged with overseeing, supervising, or regulating them. A requestor shall maintain a secondary dissemination log for a period of one year following the dissemination of a subject's criminal offender record information. The log shall include the following information: (i) name of subject; (ii) date of birth of the subject; (iii) date of the dissemination; (iv) name of person to whom it was disseminated; and (v) the purpose for the dissemination. The secondary dissemination log shall be subject to audit by the department.

Unless otherwise provided by law or court order, a requestor shall not maintain a copy, electronic or otherwise, of requested criminal offender record information obtained from the department for more than 7 years from the last date of employment, volunteer service or residency or from the date of the final decision of the requestor regarding the subject.

(g) The department shall maintain a log of all queries that shall indicate the name of the requestor, the name of the subject, the date of the query, and the certified purpose of the query. A self-audit may be requested for no fee once every 90 days. The commissioner may impose a fee in an amount as determined by the secretary of public safety and security, for self-audit requests made more than once every 90 days. Upon request, the commissioner may transmit the self-audit electronically. Further, if funding is available and technology reasonably allows, the department shall establish a mechanism that will notify a subject, or an advocate or agent designated by the subject, by electronic mail or other communication mechanism whenever a query is made regarding the subject. The self-audit log and query log shall not be considered a public record.

(h) Notwithstanding the provisions of this section, the motor vehicle insurance merit rating board may disseminate information concerning convictions of automobile law violations as defined in section 1 of chapter 90C, or information concerning a charge of operating a motor vehicle while under the influence of intoxicating liquor

that results in assignment to a driver alcohol program as described in section 24D of chapter 90, directly or indirectly, to an insurance company doing motor vehicle insurance business within the commonwealth, or to such insurance company's agents, independent contractors or policyholders to be used exclusively for motor vehicle insurance purposes.

(i) Notwithstanding any other provisions of this section, information indicating custody status and placement within the correction system shall be available to any person upon request; provided, however that no information shall be disclosed that identifies family members, friends, medical or psychological history, or any other personal information unless such information is directly relevant to such release or custody placement decision, and no information shall be provided if its release would violate any other provisions of state or federal law.

(j) The parole board, subject to sections 130 and 154 of chapter 127, the department of correction, a county correctional authority or a probation officer with the approval of a justice of the appropriate division of the trial court may, in its discretion, make available a summary, which may include references to criminal offender record information or evaluative information, concerning a decision to release an individual on a permanent or temporary basis, to deny such release, or to change the individual's custody status.

(k) Notwithstanding any other provision of this section or any other general or special law to the contrary, members of the public who are in fear of an offender may obtain from the department advance notification of the temporary or permanent release of an offender from custody, including but not limited to expiration of a sentence, furlough, parole, work release or educational release. An individual seeking access to advance notification shall verify by a written declaration under the penalties of perjury that the individual is in fear of the offender and that advance notification is warranted for physical safety reasons.

(l) Any individual or entity that receives or obtains criminal offender record information from any source in violation of sections 168 through 175 of this chapter, whether directly or through an intermediary, shall not collect, store, disseminate, or use such criminal offender record information in any manner or for any purpose.

(m) Notwithstanding this section or chapter 66A, the following shall be public records: (1) police daily logs, arrest registers, or other similar records compiled

chronologically; (2) chronologically maintained court records of public judicial proceedings; (3) published records of public court or administrative proceedings, and of public judicial administrative or legislative proceedings; and (4) decisions of the parole board as provided in section 130 of chapter 127.

(n) The commissioner, upon the advice of the board, shall promulgate rules and regulations to carry out the provisions of this section.

M.G.L. c. 211B, §9:

The chief justice of the trial court, in addition to his judicial duties and subject to the superintendence power of the supreme judicial court as provided in section 3 of chapter 211, shall have general superintendence of the judicial policy of the trial court, including, without limitation, the improvement of the administration of such courts and the securing of their proper and efficient administration.

The chief justice shall be the policy and judicial head of the trial court of the commonwealth.

In order to achieve the ends stated in this section, the chief justice of the trial court shall be responsible for planning, development, promulgation, and evaluation of trial court policies, standards, and practices and shall have the authority necessary to carry out these responsibilities including, but not limited to, the following:-

- (i) the responsibility to provide planning and policy-making functions, including the implementation of such planning and policy-making decisions;
- (ii) the responsibility to monitor and to assist in the case processing and case flow management capabilities of the trial court departments;
- (iii) the power, upon request by the supreme judicial court, to review the record and make recommendations in any appeals by justices against whom disciplinary actions have been taken by any chief justice;
- (iv) the responsibility to hear, for final determination, appeals by justices claiming to be aggrieved by an order of a chief justice assigning or transferring said justice to a particular court other than that to which he was appointed;
- (v) the responsibility to hear, for final determination, appeals by first justices who have been removed by chief justices;

(vi) the responsibility to establish, manage and implement a mandatory emergency judicial response system for all judges, except when the chief justice of the trial court determines that the participation by a particular judge would create a hardship for such judge;

(vii) the responsibility to provide recommendations regarding management of the judicial recall process;

(viii) the responsibility to supervise the implementation of the continuing education programs for judicial personnel;

(ix) the power to appoint such personnel as the chief justice of the trial court may deem necessary for the office of the chief justice of the trial court; the power to discipline, supervise and define the duties of such personnel, and the power to dismiss such personnel;

(x) the power, where in different departments of the trial court there are pending cases involving the same party or the same issue, and where a request for consolidation is made to the chief administrative justice to consolidate such cases for hearing by 1 justice, and to assign said justice to sit as a justice of other departments and exercise the powers of justices of other departments, in order to dispose of such cases with efficient use of judicial resources;

(xi) the power to assign a justice appointed to any department of the trial court to sit in any other department of the court, for such period or periods of time as he deems will best promote the speedy dispatch of judicial business; provided, however, that:

(a) prior to making such assignments, said chief justice of the trial court shall ascertain the respective preferences of the justices of the trial court as to the department or departments, if any, including the department to which he is appointed, to which each such justice desires to be assigned and, in making such assignments to any department of said court shall, to the extent consistent with the effective administration of justice, including the maintenance of the respective specialized functions of the land, housing, probate and family, and juvenile court departments, the administrative responsibilities of any justice, and the speedy dispatch of judicial business in each of the several departments of the trial court, assign to any department on a basis of first priority justices who have expressed as aforesaid their preferences for assignment thereto;

(b) a justice, if aggrieved for cause by an order of the chief justice of the trial court assigning him to sit in a

particular location or department of the court other than that to which he was appointed may appeal the order of said chief justice of the trial court to the supreme judicial court, which shall forthwith hear and determine the matter;

(c) a chief justice shall notify the chief justice of the trial court of, and may report to the supreme judicial court, any order made by said chief justice of the trial court pursuant to this paragraph which, in the opinion of such chief justice, impairs the orderly operation of his department;

(xiii) upon the joint request of the chief justices of 2 or more departments of the trial court, authorize the transfer of cases from one department to another;

(xiv) establish procedures, subject to the rule-making power of the justices of the supreme judicial court, for the assignment of matters coming before the trial court which do not warrant the use of a judge to other appropriate personnel, including clerk-magistrates, mediators, and arbitrators, and authorize such personnel to review, hear, and dispose of such matters, subject to appropriate judicial review;

(xv) the chief justice of the trial court shall be provided with offices that are proximate to the supreme judicial court at the expense of the commonwealth but only after said chief justice of the trial court has not found sufficient office space in any facility owned by the commonwealth and proximate to the supreme judicial court;

(xvi) the chief justice of the trial court shall be authorized to visit any department or any division or any place for holding court within such a department the chief justice may from time to time call conferences of any or all of the chief justices of the departments;

(xvii) notwithstanding the provisions of this section, the chief justice of the trial court, in order to provide for the speedy administration of justice in the counties of Dukes and Nantucket, shall designate, from time to time, justices sitting in the division of the district court department for either of said counties as justices of the superior court department sitting in either of said counties, with power to grant injunctive relief to the same extent as a justice appointed to the superior court department;

(xviii) the chief justice of the trial court may delegate his responsibilities and powers hereunder and as otherwise provided by law to a chief justice, justice, regional justice, first justice, presiding justice, court officer, clerk, or any employee of his department, for such period

of time and with such limitations as he may impose, whenever in his opinion such delegation of authority will expedite the judicial business of the trial court;

(xix) the authority to hear and resolve interdepartmental disputes or disagreements regarding (1) transferring cases in order to facilitate the efficient administration of justice and (2) making adjustments in the scheduling and location of court sessions in order to facilitate the efficient administration of justice;

(xx) the responsibility to review and make recommendations regarding the expeditious clearing of outstanding warrants throughout the courts of the commonwealth;

(xxi) in consultation with the court administrator, the authority to resolve any dispute arising between a first justice of a division and a clerk of court concerning the management and administration of the clerk's office, the duties, powers and obligations of the clerk's staff, or the interpretation of the personnel standards provided for under section 8, provided, however, that any such dispute shall be submitted to the chief justice of the trial court in writing by the clerk, clerk-magistrate or first justice and the chief justice shall, within 30 days of receipt of the written notification of such dispute and conduct a hearing in order to determine the matter. The decision of the chief justice shall be binding on the parties;

(xxii) notwithstanding any general or special law to the contrary, the authority to suspend any particular session of the trial court; move sessions so that the availability of court personnel is consistent with the needs of individual courts; transfer cases and matters from a court to any other court, consolidate cases, and make such periodic adjustments in the scheduling and locations of court sessions as are deemed necessary for the proper administration of justice; and

(xxiii) the authority to exercise any inherently judicial power not otherwise specified in this section; provided, however, that nothing in this section shall authorize the chief justice to exercise any power reserved to the full court.

M.G.L. c. 234, §28:

Upon motion of either party, the court shall, or the parties or their attorneys may under the direction of the court, examine on oath a person who is called as a juror therein, to learn whether he is related to either party or has any interest in the case, or has expressed or formed an

opinion, or is sensible of any bias or prejudice, therein; and the objecting party may introduce other competent evidence in support of the objection. If the court finds that the juror does not stand indifferent in the case, another shall be called in his stead. In a criminal case such examination shall include questions designed to learn whether such juror understands that a defendant is presumed innocent until proven guilty, that the commonwealth has the burden of proving guilt beyond a reasonable doubt, and that the defendant need not present evidence in his behalf. If the court finds that such juror does not so understand, another shall be called in his stead.

For the purpose of determining whether a juror stands indifferent in the case, if it appears that, as a result of the impact of considerations which may cause a decision or decisions to be made in whole or in part upon issues extraneous to the case, including, but not limited to, community attitudes, possible exposure to potentially prejudicial material or possible preconceived opinions toward the credibility of certain classes of persons, the juror may not stand indifferent, the court shall, or the parties or their attorneys may, with the permission and under the direction of the court, examine the juror specifically with respect to such considerations, attitudes, exposure, opinions or any other matters which may, as aforesaid, cause a decision or decisions to be made in whole or in part upon issues extraneous to the issues in the case. Such examination may include a brief statement of the facts of the case, to the extent the facts are appropriate and relevant to the issue of such examination, and shall be conducted individually and outside the presence of other persons about to be called as jurors or already called.

M.G.L. c. 265, §13A (a):

Whoever commits an assault or an assault and battery upon another shall be punished by imprisonment for not more than 2 1/2 years in a house of correction or by a fine of not more than \$1,000.

A summons may be issued instead of a warrant for the arrest of any person upon a complaint for a violation of any provision of this subsection if in the judgment of the court or justice receiving the complaint there is reason to believe that he will appear upon a summons.

M.G.L. c. 265, §37:

No person, whether or not acting under color of law, shall by force or threat of force, willfully injure, intimidate or interfere with, or attempt to injure, intimidate or interfere with, or oppress or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him by the constitution or laws of the commonwealth or by the constitution or laws of the United States. Any person convicted of violating this provision shall be fined not more than one thousand dollars or imprisoned not more than one year or both; and if bodily injury results, shall be punished by a fine of not more than ten thousand dollars or by imprisonment for not more than ten years, or both.

M.G.L. c. 276, §87:

The superior court, any district court and any juvenile court may place on probation in the care of its probation officer any person before it charged with an offense or a crime for such time and upon such conditions as it deems proper, with the defendant's consent, before trial and before a plea of guilty, or in any case after a finding or verdict of guilty; provided, that, in the case of any child under the age of 18 placed upon probation by the superior court, he may be placed in the care of a probation officer of any district court or of any juvenile court, within the judicial district of which such child resides; and provided further, that no person convicted under section twenty-two A, 22B, 22C, 24B or subsection (b) of section 50 of chapter two hundred and sixty-five or section thirty-five A of chapter two hundred and seventy-two shall, if it appears that he has previously been convicted under said sections and was eighteen years of age or older at the time of committing the offense for which he was so convicted, be released on parole or probation prior to the completion of five years of his sentence.

S.J.C. Rule 3:09, Canon 3:

E. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer;

(b) the judge served as a lawyer in the matter in controversy;

(c) a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter in controversy;

(d) the judge has been, or is to the judge's knowledge likely to be, a material witness concerning the matter in controversy;

(e) the judge has personal knowledge of disputed evidentiary facts concerning the matter in controversy;

(f) the judge is a party to the proceeding or an officer, director, or trustee of a party or the judge knows, or reasonably should know, that he or she, individually or as a fiduciary, has (i) an economic interest in the subject matter in controversy or in a party to the proceeding, which interest could be substantially affected by the outcome of the proceeding, (ii) a relationship interest to a party to the proceeding where the party could be substantially affected by the outcome of the proceeding or (iii) any other more than de minimis interest that could be substantially affected by the outcome of the proceeding;

(g) the judge knows, or reasonably should know, that the judge's spouse or child wherever residing, or any other member of the judge's family residing in the judge's household, has (i) an economic interest in the subject matter in controversy or in a party to the proceeding, which interest could be substantially affected by the outcome of the proceeding, (ii) a relationship interest to a party to the proceeding where the party could be substantially affected by the outcome of the proceeding or (iii) any other more than de minimis interest that could be substantially affected by the outcome of the proceeding; or

(h) the judge's spouse or domestic partner, as well as a person within the third degree of relationship to

the judge, the judge's spouse, or the judge's domestic partner, or a spouse or domestic partner of such other person, (i) is a party to the proceeding or an officer, director, or trustee of a party, (ii) is acting as a lawyer in the proceeding, (iii) is known by the judge to have any more than de minimis interest that could be substantially affected by the outcome of the proceeding, or (iv) is to the judge's knowledge likely to be a material witness in the proceeding.