

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

SJC-13652

COMMONWEALTH OF MASSACHUSETTS, Appellant

vs.

BRIAN DICK, JAMES BI, BRENDAN GARAFALO, VIET
NGUYEN, ERIC VAN RIPER,
Appellee

**DEFENDANT-APPELLEES BRIEF ON APPEAL FROM A
JUDGMENT OF THE PLYMOUTH SUPERIOR COURT**

PLYMOUTH COUNTY

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DECEMBER 2024

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ISSUES PRESENTED

1. **WHERE LAW ENFORCEMENT POST AN ADVERTISEMENT ONLINE, POSING AS ADULT PROSTITUTES, OFFERING SPECIFIC SEXUAL SERVICES IN EXCHANGE FOR A FEE, AND THE DEFENDANTS RESPOND TO THE ADVERTISEMENT BY CONTACTING THE LISTED PHONE NUMBER, AND ENGAGE IN CONVERSATIONS WITH AN UNDERCOVER OFFICER WHO THEN OFFERS TO ENGAGE IN SPECIFIC SEXUAL ACT(S), SETS THE FEE SCHEDULE BASED ON THE DURATION OF THE VISIT, AND INVITES THE DEFENDANT TO A SPECIFIC LOCATION CHOSEN BY THE OFFICER, AND, PURSUANT TO THE TERMS SET BY THE OFFICER, THE DEFENDANTS AGREE TO ENGAGE IN SAID SEXUAL ACTIVITY IN EXCHANGE FOR A FEE, AND ARRIVE TO THE LOCATION CHOSEN BY THE OFFICER, DOES THE DEFENDANTS CONDUCT VIOLATE G.L. c. 265, §50(a)?**

2. **CAN THE DEFENDANTS BE PUNISHED UNDER THE SEX-TRAFFICKING STATUTE FOR AGREEING TO PAY, OR OFFERING TO PAY, AN UNDERCOVER OFFICER OR FICTITIOUS PERSON, TO ENGAGE IN SEXUAL CONDUCT IN EXCHANGE FOR A FEE WHERE THE OFFENSE REQUIRES A “VICTIM,” WHICH IS DEFINED AS A HUMAN BEING WHOM THE DEFENDANT ENABLED OR CAUSED TO ENGAGE IN COMMERCIAL SEXUAL ACTIVITY?**

STATEMENT OF THE CASE

On October 15, 2021, a Plymouth County¹ grand jury returned indictments charging the defendants, Brendan Garafalo,

¹ References to the record will be cited from the Commonwealth's Appendix at CA/page. The Grand Jury Transcript and Grand Jury Exhibits, as contained in the Commonwealth's Appendix, are impounded, and references to same will be cited from the Commonwealth's Appendix at ICA/page.

Brian Dick, Eric Van Riper, James Bi, and Viet Nguyen (CA/4,10,15.20, 24), each with Trafficking of Persons² for Sexual Servitude, in violation of G.L. c. 265, §59(a); and Engaging in Sexual Conduct for a Fee, in violation of G.L. c. 272, §53A.

On July 7, 2022, the defendants, collectively, filed motions to dismiss (CA/12,16,22,27) under Commonwealth v. McCarthy, 385 Mass. 160 (1982), alleging that the facts presented to the grand jury did not establish probable cause to support the sex-trafficking indictments. On August 3, 2022, the Commonwealth opposed the motion (CA/7,12,16,22,27). On August 24, 2022, Garafalo filed a supplemental memorandum of law (CA/22,27), which the other defendants joined in support of his motion.

On October 14, 2022, Judge Maynard Kirpalani allowed the defendants' motion to dismiss (CA/7,12-13,17-18,22-23, 27-28, 113-121), and the indictments against all defendants charging them for Trafficking of Persons for Sexual Servitude were dismissed. The Motion Judge reasoned:

With respect to the current matter, the grand jury heard insufficient evidence to establish probable cause to arrest the Defendants for violating the Sex Trafficking Statute. The grand jury heard no evidence that there were any actual victims in the cases involving any of the Defendants, as the woman in the advertisements was a fictitious individual created by law enforcement, and there was no money and /or sexual services exchanged.³ Consequently, there was no

² Defendants refer to the statute as the “sex-trafficking” statute.

³ The Motion Judge states at fn. 3: “The indictments charging the Defendants with human trafficking in violation of the Sex Trafficking

evidence that any of the Defendants knowingly enabled or caused, or attempted to enable or cause, another person to engage in commercial sexual activity. This conclusion comports with the purpose behind the Legislature's enactment of the Sex Trafficking Statute, which was "to 'change the focus of police and prosecutors from targeting prostitutes to going after...the pimps who profit from the transactions; by ensuring that traffickers, and not only the individuals solely engaged in commercial sexual activity, are prosecuted. CA/113-121

On November 10, 2022, the Commonwealth filed a notice of appeal. (CA/7,13,18,23,28) On March 8, 2023, this case was entered in the Appeals Court. See Docket 23-P-268 The Defendants filed a single identical brief. The Commonwealth filed its brief. After oral arguments, the Appeals Court issued the following order:

No later than December 15, 2023, the parties may file with the court supplemental memoranda, specifically addressing the issue of whether the facts presented to the grand jury established probable cause, as to each defendant, that satisfied the statutory language that they "attempt[ed] to recruit, entice, harbor, transport, or obtain by any means..." We view this issue as distinct from the issue addressed by the Superior Court, regarding the need for an actual victim... This court would appreciate an analysis of whether there are any material differences in the evidence as to each defendant. See entry on Appeals Court Docket 23-P-268 on 11/22/23

On May 7, 2024, the Appeals Court issued a full opinion affirming the allowance of the defendants' motion to dismiss,

Statute identify 'society,' as the victim. In the court's view, this seems to be an acknowledgement on the part of the Commonwealth that there was no identifiable victim in relation to these charges." CA/113-121

albeit for reasons different from the Motion Judge. See

Commonwealth v. Garafalo, 104 Mass. App. Ct. 161 (2024)

The Commonwealth filed a petition for further appellate review, which was allowed on September 5, 2024. This case entered in this Court on September 6, 2024.

STATEMENT OF FACTS

A. THE INDICTMENTS.

The Defendants were indicted for 1) Trafficking of Persons for Sexual Servitude pursuant to G.L. c. 265, §50(a), and 2) Engaging in Sexual Conduct for a Fee pursuant to G.L. c. 272, §53A. CA/4-29 As with both indictments, the victim was identified as “society” and the prosecutor instructed the grand jury that the named victim in the indictments was “society.” ICA/3-33

B. THE GRAND JURY.

Trooper Derek Cormier was the only witness to testify at the Grand Jury. Cormier is assigned to the High-Risk Victims Unit, a unit specializing in investigating crimes of human trafficking and commercial exploitation of children. ICA/3-33

One method of conducting such investigations involves “posting advertisements.” The purpose of the advertisements was: “To to see *who would respond*” to the advertisement, “to see *who would answer* the advertisement,” and “to see *who would respond looking to purchase a female for sexual activity*.” ICA/3-33 In

this investigation, the purpose of the advertisement was for “conversations indicating that it would be an *exchange for money for some agreed upon sexual activity between individuals.*”

ICA/3-33

As mentioned *infra*, law enforcement posted two advertisements online, posing as adult prostitutes. The advertisements contained photos of the prostitutes and physical descriptions of them, including intimate parts. The advertisement assured those that the prostitutes were not affiliated with law enforcement. The advertisements listed specific sexual services offered by the prostitute. The advertisements indicated that the prostitutes were available for “in calls,” where the interested party would come to the location chosen by the prostitute. The advertisements provided the location of the “in call” (Boston, Brockton, and Rockland). The advertisement listed acceptable methods of payment for sexual services. The advertisements contained the phone number for the interested party to contact 24/7.

C. THE ADVERTISEMENTS.

In the first advertisement (ICA/34-36), there are four pictures of the adult female prostitute, fully clothed, wearing a short skirt. In one photo, her face is covered with a cartoon emoji, with one eye winking and a tongue sticking out. In another photo,

she is laying face-down on a bed with both feet in the air. The advertisement attests that the photos are not fictitious, but “100% real.”

The prostitute is described as a Columbian Princess, 22 years old, named “Bella,” and “sexy.” Her physical features are described as Brunette hair, 141 lbs., 5’4” – 5’7.” (ICA/34-36)

To make the prostitute more sexually appealing, the advertisement describes her intimate parts, including her breasts described as “large natural,⁴” and her vaginal area described as “groomed” and “shaved.” (ICA/34-36)

The prostitute offers the following sexual services: (1) Deep throating,⁵ (2) Face sitting, (3) Girlfriend experience (GFE), (4) Anal intercourse, (5) Oral intercourse, (6) Vaginal intercourse, (7) Closed lip kissing, (8) Oral CIM, (9) Oral receiving,⁶ (10) BBBJ,⁷ (11) Prostate massaging, (11) Rimming receiving,⁸ (12) Role playing, and (13) Will entertain woman. The prostitute also engages in social activities with the interested party, including drinking and smoking. To cast a wide net, the prostitute is willing to meet men, women, and couples. (ICA/34-36)

⁴ Advertisement #2 (ICA/37-39) describes the breasts as “large enhanced.”

⁵ Deep Throating is the performance of oral sex on men.

⁶ Oral receiving refers to men performing oral sex on the prostitute.

⁷ BBBJ refers to oral sex performed on a man without the use of a condom.

⁸ Rimming receiving refers to the man performing oral sex on the woman’s anal area.

To assuage the interested party's concerns of contracting a sexually transmitted infection, the prostitute states that she is "clean" (free of STIs.) (ICA/34-36)

The advertisement offers "in call" services, where the interested party goes to the prostitute's discreet location, as opposed to an "outcall," where the prostitute goes to the interested party's location. (ICA/3-33) Here, when each defendant contacted the prostitute's cell phone number, the undercover officer provided the location and address of a hotel, the room number, and invited the defendant inside the hotel room. (ICA/3-33)

The prostitute is available to meet anytime, as the advertisement offers immediate, around the clock service, "24/7." (ICA/34-39)

The prostitute is described as "independent," meaning that she deals directly with the customer, assuaging any concerns that the interested party will encounter any problems in encountering a pimp, boyfriend, or third party.

To assuage the interested party's concerns about getting caught or arrested, the advertisement states, "no law enforcement" and assures the buyer that meeting will be "discreet." (ICA/34-39)

The advertisement offers forms of acceptable payment methods, including cash, and electronic transfers through CashApp and Venmo. (ICA/34-39)

The advertisement provides the prostitute's cell phone number, which the interested party can text anytime 24/7. (ICA/34-39)

The second advertisement (ICA/37-39) contains three photos of the prostitute, two of which are sexually provocative, featuring the prostitute wearing lingerie, focusing on her clothed breasts. The second advertisement is identical to the first advertisement, the only difference being that the second advertisement offers more intense forms of sexual activity, such as "Domination – mild BDSM," and the giving and receiving of "water sports." Trooper Cormier defined "dom" as "Dominatrix. So it would be hardcore submission *where the girl would more or less run the show.*" ICA/3-33 The advertisements did not place any limits on the duration of the visits.

D. THE TEXT MESSAGES.

Each defendant responded to the advertisement by contacting the cell phone number. Each defendant engaged in text message conversations (ICA/40-47) with the undercover officer. The undercover provided the address of the hotel and room number for the meeting and invited each defendant into the room. When each defendant arrived at the hotel room, they were arrested.

i. Viet Nguyen.

In Nguyen's text messages (ICA/40) with the undercover, the parties merely agreed to meet at the hotel (Room 140) at 7:00 p.m., but there are no text messages discussing any sexual activity, or a fee. Another officer [not Cormier] had a verbal conversation with Nguyen where they discussed the amount of money to be paid, but there was no reference to any sexual activity. Nguyen appeared at the hotel room where he was arrested. ICA/3-33 (Nguyen's text messages at ICA/40)

ii. James Bi.

James Bi (ICA/41) sent the initial text message to the undercover, stating "looking for HHR⁹ INCALL¹⁰ GFE.¹¹" Bi expressed interest in "*GFE,*" which was a service offered in the advertisements. Although Bi only expressed interest in GFE, the undercover asked him "what else" Bi was interested to which Bi replied, "French *kissing, BBJ,*" the advertisements offered the services of *BBJ* and kissing (although closed lip kissing.) The undercover set the price schedule (\$120 for a half-hour.) The undercover inquired about whether Bi was in "Rockland," a location offered in the second advertisement. The undercover

⁹ Cormier did not testify as to the meaning of "hh."

¹⁰ Cormier testified that "in call" is where the suspect is "coming to our location." ICA/3-33

¹¹ Cormier testified that "GFE" refers to the "girlfriend experience" (ICA/3-33) but provides no further description.

stated that she had a *room available* for the meeting. Bi asked whether the prostitute had a pimp or boyfriend hanging around and, pursuant to the advertisement, the undercover stated she was *“independent.”* When Bi texted his estimated time of arrival, the undercover provided him with the room number and stated that she *“opened the door,”* inviting him in. (Bi’s text messages at CA/41)

iii. **Brian Dick.**

Brian Dick (ICA/42-43) sent the initial text message asking if the prostitute was available and whether the pictures on the advertisement were of her. As stated in the advertisement, the undercover confirmed that the profile pictures were *100% real.* When Dick indicated that he was looking for company, the *undercover set the price schedule per duration* of the visit, \$80 for a quick visit, \$120 for a half-hour, and \$150 for an hour.” The undercover further stated that she had *“a spot” available*, the hotel room in Rockland, *the location in the second advertisement.* The undercover asks Dick “what he had in mind” for sexual activity and she states, “u see what I offer,” *referring to the sexual services listed in the advertisement,* and she didn’t want to play any games,¹² wanting to cut to the chase. Dick states that he is not interested in “dom” (domination) or prostate (prostate massages), services listed in the advertisements. The undercover asked Dick

¹² Both advertisements state “No Games. DON’T Waste my time!!” ICA/34-39

what he was interested and states that she “*can make it happen.*” Dick states that he was interested in “everything else.” The undercover insists that Dick specify the sexual services he is interested in, and she expressed her desire to “please him.” Undercover: “so what r u into I can make it happen. Ok babi dont be shy *I like to know what pleases my client.* Tell me what u need im guessing u dnt want to cum here and holdhands.” Dick wanted assurance that she was not “affiliated with law” enforcement and, pursuant to the advertisement, she assures him that she is *not affiliated with law enforcement*, and asks whether he is affiliated with law enforcement to which he replies “no.” When Dick does not express what he is interested in, the undercover asks whether he is “shy” to which Dick replies a “little.” Dick indicates that he has pulled into the parking lot of the hotel, and the undercover provides the room number and states that she has *put something in the door, inviting him to enter the hotel room.* (Dick text messages at ICA/42-43)

iv. Brendan Garafalo.

Garafalo (ICA/44-45) sends the initial text messages, stating “Hey.” The undercover replies, asking Garafalo if he is looking for company, and the undercover *immediately gives her assurance that she can sexually satisfy him.* Undercover: “ok babi what do u like? *I can make sure u r satisfied.*” Garafalo inquires if

she offers *“in call,” a service offered in the advertisement.*

Garafalo asked where she is located and, pursuant to the second advertisement, she states that she is *located in Rockland.* The undercover states that she had a *room available* for them to meet. Garafalo asks if a “hh” (half-hour) “qv” (quick visit) is okay. The undercover replies by asking Garafalo if he was interested in a quick visit or a half-hour, Garafalo states that he is interested in a quick visit, and the *undercover sets the price schedule* for a quick visit (\$80) and follows this up by asking Garafalo, “what can I do to *make sure ur 100% satisfied.*” Garafalo does not state what he is specifically interested in, stating, “I can think of a couple things lol” to which the undercover states, “tell me dont be shy *ill make sure im nice and wet,*” meaning that the prostitute wants to be sexually stimulated and ready for sexual activity as soon as Garafalo arrives. The undercover then states that she *wants to sexually gratify Garafalo* to the point of making him ejaculate, “*i want to make u cum...*what do u like.” At this point, Garafalo calls the undercover because he wants to make sure that she is “real” and they have a brief conversation where the undercover, most likely, assures him that she is a real prostitute and *not affiliated with law enforcement,* which Garafalo follows up in a text message, stating “Had to make sure u were real lol.” When Garafalo states that he is on his way, the undercover expresses her

excitement with an emoji of a tongue sticking out. Undercover: ***“im excited.”*** The undercover then inquires on Garafalo’s estimated time of arrival. When Garafalo states that he is 5 minutes away, the undercover provides the room number, direction of the room, and left the room to the ***door opening, inviting him to enter the room.*** Although Garafalo did not state anything in the text messages about wanting a “blowjob,” the prosecutor elicited testimony that Garafalo was looking for a “blowjob.” TR/21 Assuming Garafalo requested a blowjob, ***a blowjob was a sexual service listed in the advertisements.*** (Garafalo text messages at ICA/44-45)

v. **Eric Vanriper.**

Vanriper (ICA/46-47) sent an initial text message, asking whether the prostitute was “hosting,” and the undercover stated yes, stating that she was available for ***“in call,” a service offered in the advertisements.*** Vanriper asked for the fee schedule and the ***undercover sets the fee schedule and duration,*** \$80 for a quick visit, \$120 for a half-hour, and \$150 for an hour. Vanriper asked if the prostitute wanted to “party,” code for asking whether she was interested in doing drugs. The undercover stated that she was willing to party (do drugs) and asks Vanriper if he had any drugs to which he replied that he didn’t but was interested in “some hard” (drugs, usually opiates) if the prostitute had some. The undercover

asks what Vanriper was interested in and assures him that she can “*fully satisfy*” him.” Vanriper states that he is interested in “eating pussy,” “sloppy bjs,” and “doggystyle,” *sexual services offered in the advertisements*. Vanriper states that he is interested in “foot jobs,” not listed in the advertisement, and he states that he likes getting “pegged,¹³” assuming that she was “into it.” The undercover assures Vanriper that *she can provide any sexual services that Vanriper was interested in*. Undercover: “*If ur into it i will make it happen.*” Vanriper agrees to the fee of \$150.

Vanriper asks where she is hosting, and the undercover states, “*Rockland,*” *the location provided in the second advertisement*.

Vanriper asks whether the undercover could get some “candy,” code for drugs,” and the undercover confirms that she has “candy” for them, meaning that the *undercover can supply Vanriper with drugs*. Vanriper wants confirmation that the undercover is a real prostitute and that there will be no issues with a “bait and switch” or a scam requesting a deposit in advance,” and the undercover assures him that she is the “*real deal,*” *and not affiliated with law enforcement*. Upon his arrival at the hotel, Vanriper asks which room, and the undercover provides the room number and states

¹³ Cormier provided the following definition of getting “pegged.” “It’s when a female has a strap-on device and has intercourse, anal intercourse, with a male.” ICA/3-33

that the *door is open, inviting him into the room.* (Vanriper text messages at ICA/46-47)

ARGUMENT

1. **THE SEX-TRAFFICKING INDICTMENTS WERE PROPERLY DISMISSED BECAUSE INSUFFICIENT EVIDENCE WAS PRESENTED TO THE GRAND JURY THAT EACH DEFENDANT ENGAGED IN CONDUCT, OR ATTEMPTED TO ENGAGE IN CONDUCT, TO “SUBJECT,” “RECRUIT,” “ENTICE,” “HARBOR,” “TRANSPORT,” “PROVIDE,” OR “OBTAIN BY ANY MEANS” ANOTHER PERSON TO ENGAGE IN COMMERCIAL SEXUAL ACTIVITY.**
 - A. **THE APPEALS COURT PROPERLY INTERPRETED AND DEFINED THE TERMS “ENTICE” AND “RECRUIT.”**

In Commonwealth v. Garafalo, 104 Mass. App. Ct. 161 (2024), when interpreting and defining “entice” and “recruit,” the Appeals Court looked to Commonwealth v. Dabney, 478 Mass. 839 (2018), which defined “entice” and “recruit” and applied those definitions to the conduct of the Defendant in Dabney.

Dabney defined “**entice**” as to “incite,” “instigate,” “draw on by arousing hope or desire,” “allure,” “attract,” “draw into evil ways,” “lead astray,” or “tempt.” Id. at 855 Dabney concluded that “one may entice, for example, simply by making an attractive offer.” Id. at 856 The Appeals Court properly found that “attract means that the allegedly attracting party (the defendant) must at

least have **initiated the behavior** of the party attracted (the victim.) Garafalo at 169

The Appeals Court was correct in that the definition of “**entice**” requires that the Defendant must **initiate** conduct that instigates (“to bring about **or initiate** an action or event”), incites (“**urge** or persuade someone to act” or “incite someone to do something”), or allures (“**powerfully attract** or charm, tempt”) which, in turn, causes another person to engage in an act or practice which that person was not otherwise intending to engage. Thus, the Defendant must at least initiate the behavior of the victim. Id.

Dabney defined “**recruit**” as to “hire or otherwise obtain to perform services,” to “secure the services of” another, to “muster,” “raise,” or “enlist.” “Enlist” is a verb defined as “**to win over.**” (Merriam-Webster Dictionary) “Muster” is defined as “**to cause** to gather, **to bring** together, **to call forth.**” (Merriam-Webster Dictionary.)

Like “entice,” the Appeals Court found that: “Recruit, in the context of human trafficking, similarly means that the defendant **must initiate** the concept that the victim will engage in commercial sexual activity,” similar to the analogy that an employer does not “recruit” a job application that simply

approached the employer and asked for a job. Garafalo at 169, fn.

8

The Appeals Court found that “entice” and “recruit,” as used in the statute, contain *an element of causing another person to engage in an act or practice in which the person was not otherwise intending to engage*. Id. 168

In construing the meaning of “entice” and “recruit,” the Appeals Court noted that the Defendant’s conduct in Dabney met the definitions of entice and recruit, where the Defendant “encouraged the victim to begin prostituting herself,” he told her it ‘would be good money because she was a beautiful person,” “together the defendant and the victim determined the prices she would charge for various acts,” the defendant “would accompany” the victim to the location of the sexual activity,” and the victim gave all her earnings to the defendant, which he used to buy alcohol and drugs for them to share.

In Dabney, the Commonwealth did not need to prove that the defendant engaged in force or coercion, but did find that his conduct satisfied the definitions of entice and recruit, because he initiated the behavior of the party attracted (the victim), setting the wheels in motion by introducing the concept, and took steps towards causing (or attempting to cause) the victim to engage in an act or conduct she was not otherwise intending to engage by

“encouraging her to prostitute herself,” telling her that she could make “good money because she was a beautiful person,” coordinating with the victim the prices for various acts, controlling the visits by accompanying her to the location of the sexual activity, keeping all her earnings, and providing the victim with alcohol and drugs to enable her future participation.

In the following cases, the Court found that the Defendant’s conduct amounted to enticement and recruitment, which did not involve any force or coercion. Commonwealth v. Gonzalez, 99 Mass. App. Ct. 161 (2021)(defendant enticed and recruited the victim to engage in prostitution by supplying drugs that were payment and incentive for the victim to participate in the operation and the defendant assisted in the operation that facilitated its continuation knowing that this would result in the victim’s “anticipated engagement in commercial sexual activity.”); Commonwealth v. Pompilus, 98 Mass. App. Ct. 1120 (2020)(defendant enticed and recruited each victim to engage in commercial sex trade by paying for hotels, food, and supplies for victims, providing drugs to victims, and he assisted and paid for Backpage.com ads that advertised the victims.); Commonwealth v. Chen, 101 Mass. App. Ct. 1112 (2022)(detective testified as to the steps of human trafficking investigations, as looking at “how a business *recruits* employees and customers, determining how

customers pay for services, and interviewing people who may have information about the business.”); Commonwealth v. McGhee, 472 Mass. 405 (2015)(Defendants approached the victims, encouraged them to become prostitutes, participated in creating the advertisements, facilitated their sexual transactions.); Commonwealth v. Sylvestre, 97 Mass. App. Ct. 1109 (2020)(defendant encouraged victim to engage in prostitution by telling her that it was a “good way of life” that “makes money” and she will “get used it to.”)

B. THE APPEALS COURT PROPERLY INTERPRETED AND DEFINED THE TERMS “HARBOR,” “TRANSPORT,” AND “PROVIDE.”

The Appeals Court properly defined “harbor,” “transport” and “provide” as conduct that “somehow physically affects the other person’s actions.” Garafalo at 170 “Harbor” means to shelter or conceal.¹⁴ “Transport” means “to take or convey.” Id.¹⁵ “Provide” means “to make available.” Id. In this case, the Commonwealth does not argue that the defendants conduct contained any elements of transporting, harboring, or providing, because the defendants did not engage in any conduct that would physically affect the actions of the undercover officer.

¹⁴ See Model Jury Instruction on Sex Trafficking (Mass.gov. Sept. 2024)

¹⁵ Commonwealth v. Lowery, 487 Mass. 851 (2021)(“taking into account the business cards, condoms, and other items seized from the defendant’s vehicle, the jury could have found that the text messages demonstrated that the defendant knowingly *transported Jane to the hotel to meet with McManus to perform sexual services.*”)

C. THE APPEALS COURT PROPERLY INTERPRETED AND DEFINED THE STATUTORY LANGUAGE “OBTAIN BY ANY MEANS.”

In construing “obtain,” the Appeals Court properly employed the principles of statutory interpretation.

The Appeals Court applied the *commonly used meaning* of “obtain” as to “possess or control.” Garafalo at 169

The Appeals Court considered the *Latin derivative* of the term “obtain” meaning “to hold.” Id.

The Appeals Court considered the language of the statute which requires that the defendant to “obtain” a “*person.*” Id.

The Appeals Court considered *the context* and applied the doctrine of *ejusdem generis* (Latin for “of the same kind or class¹⁶”), which provides that where, as here, “general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words.” Id. at 170

In Banushi v. Dorfman, 438 Mass. 242 (2002), the question was whether a two-family house in which one unit is rented is a “building” within the meaning of G.L. c. 143, §51, a statute that imposes strict liability on the property owner for injuries resulting from building code violations. The Dorfman’s owned a two-family home, they lived on the first floor, and they rented the other

¹⁶ People for the Ethical Treatment of Animals, Inc. v. Department of Agric. Resources, 477 Mass. 280 (2017)

apartment. The Dorfman's hired a contractor to paint the exterior of the house. The contractor, in turn, hired the plaintiff (Banushi) to perform the painting work. When painting the house, Banushi injured himself when he fell from his ladder onto wood debris left by other workers (another subcontractor who had the responsibility of removing the debris from the site.) Banushi claimed that the Dorfman's violated the State building code regulations relative to debris cleanup, causing him to become injured; and that, pursuant to G.L. c. 143, §51, the Dorfsmans are strictly liable for his injuries.

G.L. c. 143, §51 provides:

“The owner...being in control, *of a place of assembly, theatre, specific hall, public hall, factory, workshop, manufacturing establishment or building* shall comply with the provisions of...the state building code relative thereto, and such person shall be liable to any person injured and for all damages caused by a violation of any of said provisions.”

The question was whether §51 applied to an owner-occupied two-family home in which the owner rents one unit to a tenant. The SJC applied the doctrine of ejusdem generis, which applies when a series of several terms is listed that concludes with the disputed language¹⁷ – here “building.” The SJC found:

“Here, each of the words in the series preceding the disputed word describes a place of public or commercial use. The final word, ‘building,’ is a general word. Pursuant

¹⁷ Perlera v. Vining Disposal Serv., Inc., 47 Mass. App. Ct. 491 (1999)

to the doctrine of ejusdem generis, we construe the general word ‘building’ to refer to structures **similar in nature to those described by the preceding specific words**, i.e., places of public or commercial use, places of assembly or places of work.’ ‘Building’ [in the statute] must be read to refer to structures used for purposes like those of the other structures listed. An owner-occupied two-family home in which the owner rents one unit to a tenant is not a ‘building’ within the terms of the statute.”

In Commonwealth v. Narvaez, 490 Mass. 807 (2022), the defendant was arrested for OUI-liquor and placed in a jail cell. The defendant urinated on the floor both inside and outside of the jail cell, and the urine seeped into the cracks between the floor tiles, causing permanent damage to the sub floor beneath. Because urine, like other bodily fluids, can carry potentially dangerous bacteria and viruses, the police hired a cleanup company specializing in cleaning hazardous fluids and spills to clean the defendant’s cell. As a result of his urinating inside and outside the jail cell, the defendant was charged with vandalizing with a “noxious or filthy substance” in violation of G.L. c. 266, §103, which provides:

“Whoever willfully, intentionally...throws into, against or upon a dwelling house, office, shop or other building, or vessel, or puts or places therein or thereon *oil of vitriol, coal tar, or other noxious or filthy substance*...shall be punished.”

The question was whether urine is a “noxious or filthy substance.” The SJC applied the doctrine of *ejusdem generis* because the general term “other noxious and filthy substance” is

preceded by specific words (“oil of vitriol, coal tar.”) The SJC found:

“Coal tar is ‘tar obtained by distillation of bituminous coal and is used especially as an industrial fuel, in making dyes, and in topical treatment of skin disorders.’ [citation omitted.] Oil of vitriol is concentrated sulfuric acid. [citation omitted.] Thus, we construe the term “other noxious or filthy substance” to encompass only those substances substantially similar to the specifically listed items, coal tar and oil of vitriol...Urine is neither listed on the Massachusetts Oil and Hazardous Material List **nor similar substantially in form to either of these two substances.**”

In Commonwealth v. Escobar, 479 Mass. 225 (2018), the SJC used the doctrine of *ejusem generis* to discern the Legislature’s intent behind the term “anything of value” to determine whether a defendant committed identity fraud within the context of G.L. c. 266, §37E(b).¹⁸ The defendant argued that evasion from criminal prosecution was not “anything of value” within the meaning of §37E(b). The Court agreed because where the general term “anything of value” was preceded by the specific terms “money, credit, goods, or services,” the term “anything of

¹⁸ G.L. c. 266, §37E(b) provides:

Whoever, with intent to defraud, obtains personal identifying information about another person without the express authorization of such person, with the intent to pose as such person or who obtains personal identifying information about a person without the express authorization of such person in order to assist another to pose as such person in order *to obtain money, credit, goods, services, anything of value*, any identification card or other evidence of such person's identity, or to harass another shall be guilty of the crime of identity fraud.

value” necessarily must have been intended to be limited only to “that which can be exchanged for a financial payment.” Id. at 229 The phrase “anything of value” necessarily was added “to encompass any other items that do not appear **but are similar to those items that do appear.**” Id.

Thus, here, “obtain” (a general word), which follows the preceding specific words (“recruit, entice, transport, harbor, provide”) is to be construed to embrace only objects **similar in nature** to those objects enumerated by the preceding specific words.

Here, the Appeals Court considered the words preceding “obtain.” “Recruit” or “entice” contains an element either of causing the other “person” to do something they otherwise did not intend. “Transport,” “harbor,” or “provide,” contain an element of somehow physically affecting the other person’s actions. Thus, consistent with the preceding specific words, “obtain” must be construed as to *imply some level of controlling or changing the victim’s will or intent*, which is similar in form to the preceding specific words. Garafalo at 170

D. THE APPEALS COURT’S DEFINITION OF “ENTICE,” “RECRUIT,” AND “OBTAIN BY ANY MEANS,” DOES NOT INSERT AN ELEMENT OF FORCE OR COERCION.

The Appeals Court acknowledged that “coercion or force” is not an element of the sex-trafficking statute. *Id.* at 167 With regards to “entice” and “recruit,” the Appeals Court found that those words “do not require that the defendant control the victim” (*Id.* at fn. 10)

The Appeals Court’s definition and interpretation of “entice,” “recruit,” and “obtain” do not require an element of coercion. *Id.*

22 U.S.C. §7102(11)(A) (Trafficking Victims Protection Act) defines coercion as (A) **threats of serious harm to or physical restraint** against any person; (B) any scheme, plan, or pattern **intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint** against any person; or (C) the abuse or threatened abuse of the legal process.

The SJC has defined coercion as “the application to another of such **force, either physical or moral,** as to **constrain him to do against his will** something he would not otherwise have done.” *Deas v. Dempsey*, 403 Mass. 468 (1998); *Delaney v. Chief of Police of Wareham*, 27 Mass. App. Ct. 398 (1989) (coercion is “**the active domination of another’s will.**”); *Freeman v. Planning Bd. of West Boylston*, 419 Mass. 548 (1995)(“Coercion’ is defined as ‘the use of **physical or moral force to compel another to act or**

assent.”); Broderick v. Roache, 803 F. Supp. 480 (1992)(under the Massachusetts Civil Rights Act, coercion does not require anything that is actually or potentially physical in nature, but **scheme of harassment** which induces the plaintiff to give up secured rights violates the Act, even if it is carried out by nonphysical threats or intimidation is enough); Commonwealth v. Robinson, 449 Mass. 1 (2007)(judge correctly instructed jury that coercion is “**to bring about by force or threats to nullify individual will.**”)

Recently, the Legislature amended G.L. c. 209A to include “coercive control,” which is defined as:

- (a) A pattern of behavior intended to **threaten, intimidate, harass, isolate, control, coerce or compel compliance** of a family or household member that causes that family or household member to reasonably fear physical harm or have a reduced sense of physical safety or autonomy, including but not limited to:

Therefore, “force” or “coercion” is much **different in kind and degree** than entice, recruit or obtain. With the latter, the Defendant must, at least, initiate some conduct directed towards the victim to introduce the concept of engaging in commercial sexual activity and take steps toward causing (or attempting to cause) the victim to engage in commercial sexual activity; something that the victim was not otherwise intending to do. Such conduct need not be forceful or coercive, but could be through words or acts of encouragement, assistance, incentives, gifts,

money, housing, benefits, promises, drugs, alcohol, *etc.* To entice, recruit, or obtain, the defendant need not use any force or coercion.

E. INSUFFICIENT EVIDENCE WAS PRESENTED TO THE GRAND JURY THAT THE CONDUCT OF EACH DEFENDANT SATISFIED THE STATUTORY LANGUAGE OF “ENTICE” OR “RECRUIT.”

The Defendants did not attempt to “entice” or “recruit” the undercover officer because they did not initiate or impel¹⁹ the offer of sex or stand to profit from it. Garafalo at 166 Specifically, the Defendants did not attempt to initiate, instigate, incite, or bring about the offer of sex, or recruit the services of someone whom they did not know existed.

By posting the advertisement, law enforcement enticed and recruited by initiating the concept of engaging in commercial sexual activity and initiating the offer for sexual activity by providing a laundry list of sexual acts. Investigators sought to make the offer for sexual services as attractive as possible, by posting provocative pictures of the prostitutes in suggestive poses in lingerie and providing physical descriptions of them, including their sexually intimate parts. The investigators offer for “in call” services brought the interested party to them at a location chosen

¹⁹ “Impel is to “drive, force, or urge someone to do something.” “Impel suggests a strong urge or motivation to do something, which **comes from within oneself rather than from external forces.**” “Impel is typically used when referring to a powerful feeling or a compelling force that drives someone to take action. It often conveys an inner drive or moral compulsion, **rather than an external force.**” “*Compel vs. Impel: What’s the Difference?*” Grammarly.com, accessed on 12.02.24.

by the officer. Thus, the defendants had no control over the prostitute's person, destination, or location of the activity – *i.e.*, there would be no transport or harboring. To make the offer as attractive as possible, investigators took special care to address concerns that may give someone pause from pursuing the sexual encounter, such as giving them assurance that the prostitute was not affiliated with law enforcement, the prostitute was clean of any sexually transmitted infections, and the prostitute acted independently and would deal with them directly, so there would be no encounter with a pimp, boyfriend, or third-party. The prostitute was available 24/7. The offer presented the acceptable forms and methods of payment.

The defendants did not entice or recruit because the offer was presented to the defendants. Thus, according to the advertisement, law enforcement initiated the concept of commercial sexual activity, initiated the offer for commercial sexual activity, specified the list of sexual services offered, specified the forms of payment, chose the location to meet, and provided the phone number.

The investigators were the external force that impelled the offer for sex. The defendants did not seek out or recruit this prostitute, whom they did not know existed. The defendants did not initiate the offer for sex, but simply responded to the offer for

sex. But for the actions of the investigators, there would have been no contact with the defendants, in this case.

As the Appeals Court found, a proper reading of Dabney is that “entice” or “recruit” requires an element of the defendant of causing, or attempting to cause, someone to do something that they were not otherwise intending to do, which requires the Defendant to initiate an exchange with the victim and do something to entice or recruit them into engaging in commercial sexual activity; something that the victim was not inclined to do but for the efforts of the Defendant.

Here, as evidenced by the advertisement, the undercover officer did not require any degree of encouragement, convincing, assistance, etc., because they made the offer for sex, they chose the location of the encounter (bringing the defendants to them), and they expressed their clear willingness to engage in commercial sexual activity with anyone who responded to the advertisement.

“The defendants here responded to the advertisements posed by someone else - - they did not initiate the offer of commercial sex nor, on these facts, did they take any action to cause another person to do something that person did not otherwise intend to do. The defendants did not ‘incite,’ or ‘tempt,’ nor did they ‘attract.’ Rather, the person they were communicating with had initiated the offer, and no tempting was required or occurred.” (Garafalo at 169)

Unlike Dabney, Gonzalez, Pompilus, Chen, McGhee, and Sylvestre, the Defendants did not attempt to entice or recruit, and

(unlike Dabney) they certainly did not engage in “substantial efforts...to convince the victim [undercover officer] to engage in prostitution. Garafalo at 168

F. INSUFFICIENT EVIDENCE WAS PRESENTED TO THE GRAND JURY THAT THE CONDUCT OF EACH DEFENDANT SATISFIED THE STATUTORY LANGUAGE “OBTAIN BY ANY MEANS.”

The Defendants did not engage in any conduct to satisfy the Appeals Court’s definition of “obtain,” as the defendants did not attempt to “obtain,” “hold,” “**possess or control**” a “**person**,” which requires **some level of controlling or changing the victim’s will or intent.**

The level of control need not be substantial, forceful, or coercive but must be enough to control or change the victim’s will or intent. For example, if a victim is not intent on engaging in commercial sexual activity, a defendant’s encouragement, persuasion, promises, offers of assistance, benefits or incentives, with the intention of changing the victim’s mind would be enough. *See* Commonwealth v. McGhee, 472 Mass. 405 (2015) (defendant approached homeless drug addict at a homeless shelter, proposed a business arrangement where she could “make a lot of money,” “have a nice car,” “have a nice apartment,” and promises of a “better life.”); Commonwealth v. Dabney, 478 Mass. 839 (2018) (defendant “told the victim that she was beautiful and would ‘make

good money' from prostitution, controlled the terms of her clients visits, encouraged her to advertise on Backpage, and helped her pay for and set up the Backpage account.”)

The Appeals Court correctly found that “the defendants’ conduct here did not attempt to obtain a person, because the defendants **did not attempt to possess or control someone**. They responded to an offer **in accordance with the terms**.” (Appeals Court at 15-16)

When the defendants responded to the advertisement, some requested or expressed interests in the specific sexual acts offered and listed in the advertisement. Those defendants who did not specify interest in any particular sexual act were assured that the prostitute was willing to engage in whatever sexual act was requested and she wanted to ensure that the client was 100% satisfied. As such, the prostitute did not require any level of encouragement, convincing, or control. As with some defendants, the officer went above and beyond to entice the interested party into pursuing the endeavor, saying that she wanted to make the interested party ejaculate (cum), she would be sexually stimulated upon the other party’s arrival, even offering Vanriper drugs. In the text messages, the undercover would assure the interested party that she was not affiliated with law enforcement, and she operated independently without aid or assistance from anyone. The

undercover set the price for the sexual conduct based on the duration. The undercover was available to meet at the mutually agreed upon time. The undercover chose the location for the activity, directed the defendant to the room, and invited them into the room. The officer set all the terms, and the defendants agreed to them.

Here, the Defendants did not do anything, and did not have to do anything, to control or change the will or intent of another person because the investigators made the offer for sex, set and controlled the terms, the price, the date, the time, and chose the location and the hotel room where the sexual activity was to occur – bringing the defendants to them – and when the defendants arrived, the officer stated that the door to the hotel room was open, inviting them to enter.

G. THE LEGISLATURE DID NOT INTEND TO PUNISH THE DEFENDANTS' CONDUCT UNDER G.L. c. 265, §50(a). RATHER, THE LEGISLATURE INTENDED TO PUNISH THE CONDUCT OF THE DEFENDANTS UNDER G.L. c. 272, §53.

The Appeals Court found that the definition, interpretation, and application of the words “entice,” “recruit,” or “obtain by any means” was consistent with the legislative history of the sex-trafficking statute (G.L. c. 265, §50(a)) and the payment for sex statute (G.L. c. 272, §53A) Garafalo at 171-172

The payment for sex statute was long in existence before the sex-trafficking statute. When §50(a) was enacted on November 21, 2011, the legislature (at the same time) amended §53A by (1) separating out the crime of offering to pay for sex, and (2) increasing the maximum punishment for that crime to two and one-half years in the house of correction. *Id.* at 171 However, the legislature did not establish a minimum-mandatory sentence for the crime of offering to pay for sex. By enacting a five-year minimum-mandatory sentence for human trafficking, the same legislature decided to treat the crime of agreeing to pay for sex differently with a lesser, but increased penalty. *Id.*

“Where we find the legislative history helpful, however, is in suggesting that §53A sufficiently differs from §50 *that some conduct covered by §53A is not covered by §50*, and thus not subject to a five-year mandatory minimum sentence.” *Id.* at 172

The Legislature intended to punish the *exact type of conduct* engaged in by the Defendants when it enacted and revised G.L. c. 272, §53A(b), which provides:

Whoever pays, **agrees to pay or offers to pay another person** to engage in sexual conduct, or to agree to engage in sexual conduct with another person, shall be punish...**whether such sexual conduct occurs or not.**

The Legislature’s use of the language “whether such sexual conduct occurs or not” envisioned the type of conduct presented

here where the Defendants can be punished based on their mere offer or an agreement to pay another person (such as an undercover officer or fictitious person), a fee in exchange for sexual conduct and they are liable regardless of whether the sexual conduct occurs or not.

Unlike §50, for a conviction under §53A, a defendant does not have to entice, recruit, harbor, transport, provide, or obtain by any means - or cause (or attempt to cause) someone to do something that they were not otherwise intending to do – or engage in any level of conduct to change the victim’s will or intent. Under §53, a mere offer to pay, or agreement to pay, another person [including an undercover officer or fictitious person] is enough, regardless of whether any sexual activity occurs. Under §53, if an undercover officer, posing as a prostitute, approaches a defendant on the street and offers him sexual services in exchange for a fee, and the defendant agrees, he is liable under §53. See Commonwealth v. Wright, 91 Mass. App. Ct. 1113 (2017),

In this case, the legislature intended to punish the exact conduct of the defendants under §53A and it does not matter that - the police posted the advertisement; the police initiated or impelled the offer of sex, the defendants did not stand to profit by it; or whether any sexual activity occurred. Here, the defendants’ response to the advertisement and their mere offer or agreement to

pay was enough for a conviction under §53A. And, by the 2011 amendment to §53A, the Legislature intended to increase the punishment for those who engaged in such activity. Here, because of the defendants' conduct was covered by §53A, and not covered by §50, the legislature did not intend to punish the conduct of the defendants under the sex-trafficking statute.

2. THE SEX-TRAFFICKING INDICTMENTS WERE PROPERLY DISMISSED BECAUSE THE OFFENSE REQUIRES PROOF OF A VICTIM [A HUMAN BEING] WHOM THE DEFENDANT ENABLED OR CAUSED TO ENGAGE IN COMMERCIAL SEXUAL ACTIVITY.

In Commonwealth v. Fan, 490 Mass. 433 (2022), the SJC held that: “Although the Commonwealth must prove beyond a reasonable doubt that there **was a victim**, i.e., *someone whom the defendant enabled or caused to engage in commercial sexual activity*, it need not prove the identity²⁰ of that person as an element of the offense. In examining the statutory language (“another person” and “a person”), the SJC defined “person,” in its ordinary use, as “**a human being**.”²¹”

²⁰ In Fan, there were victims (actual human beings) some of whom testified at trial. The Commonwealth was just not required to prove their identities.

²¹ The Fan court approved the trial court’s jury instruction that “the Commonwealth need not prove the identity of the person or persons engaged in prostitution, **so long as it proves that one or more persons were engaged in commercial sexual activity** at the location identified by the verdict slip sometime between January 1, 2017, and May 4, 2017.”

The fact that the offense requires proof of an actual human being is consistent with the decision in Commonwealth v. Pompilus, 98 Mass. App. Ct. 1120 (2020), finding: “It is undisputed that the purpose of the trafficking statute is to punish conduct **directed at a discrete victim**... The convictions are not duplicative as the statute punishes **conduct injurious to a specific victim**...”

After Fan, the Model Jury Instruction was revised to include the requirement of a victim: “An ‘act of sex trafficking’ means an act that subjects, recruits, entices, harbors, transports, provides or obtains [**the alleged victim**], or that **attempts** to subject, recruit, entice, harbor, transport, provide, or obtain [**the alleged victim**] by any means to engage in commercial sexual activity, or causes [**the alleged victim**] to engage in commercial sexual activity.”

The Fan Court applied the victim requirement to the entire statute, including the “attempt” portion. Had the SJC found that the offense, or attempted commission of the offense, does not require a victim/ human-being, the SJC would have addressed expressly said so.

The Motion Judge never used the term “factual impossibility” because the offense requires an actual victim as *an element of the offense*.

Under the Child Enticement statute (G.L. c. 265, §26C), the offense does not require an actual human being victim. Rather, the offense requires that the victim was a child under the age of 16 *or a person whom the defendant believed to be under the age of 16.* “The Commonwealth is not required to prove that the defendant enticed a child who was actually under 16 years of age. It is sufficient if the Commonwealth proves beyond a reasonable doubt that the *object of the defendant’s enticement was a person whom he believed to be a child under the age of 16.*” See Model Instruction 6.560. This envisions the type of scenario common in investigations, where an undercover officer is posing as a child under the age of 16, or someone whom the defendant believed to be a child under 16.

Under the Payment for Sex statute (G.L. c. 272, §53A), the offense does not require an actual human being victim. Rather, the offense can be committed “whether such sexual conduct occurs or not.” This envisions the type of investigation in this case.

If the legislature intended to punish those who traffic, or attempt to traffic, another person, such as an undercover officer or fictitious person, to engage in commercial sexual activity, the legislature would have incorporated language like the child-enticement and payment-for-sex statutes.

Because the offense requires a victim, an actual human being, as an element of the offense, the sex-trafficking indictments, identifying the victim as “society,” must be dismissed.

We are dealing with an element of the offense. The facts in this case do not support an essential element of the offense. Specifically, an undercover officer, posing as a fictitious person, is not a victim, or an actual human being

In addition, as we are dealing with an essential element of the offense, the sex-trafficking indictments must be dismissed because an undercover officer, posing as a fictitious person, does not meet the definition of a “victim” i.e., *someone whom the defendant enabled or caused to engage in commercial sexual activity.*

CONCLUSION

For the aforementioned reasons, the Defendants’ request that this Honorable Court affirm the allowance of the defendants’ motion to dismiss the sex-trafficking indictments and to affirm the decision of the Massachusetts Appeals Court (23-P-268) dismissing the sex-trafficking indictments against each defendant.

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CERTIFICATE OF COMPLIANCE

Undersigned counsel does hereby certify that the Defendants-Appellees Brief complies with the current rules of court that pertain to the filing of briefs before the Supreme Judicial Court; specifically, undersigned counsel certifies that compliance with Rule 20 was ascertained by using 12 point Times New roman, which is a proportionally spaced font in Word X, and that the number of non-excluded words in the brief is 8,561 words, and the number of non-excluded pages is 39.

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CERTIFICATE OF SERVICE

In the matter of Commonwealth v. Brendan Garafalo, in the Supreme Judicial Court for the Commonwealth of Massachusetts, Docket No.: SJC-13652, undersigned counsel does hereby certify that the Defendants-Appellees Brief was served, on behalf of the Defendants-Appellees, Brian Dick, James Bi, Brendan Garafalo, Viet Nguyen, and Eric Vanriper, upon the Commonwealth-Appellant, Plymouth County District Attorney's Office, 166 Main Street, Brockton, MA, 02301 by serving same, via electronic mail, to the Commonwealth's counsel of record, Assistant District Attorney Julianne Campbell, Julianne.Campbell2@mass.gov on this 11th day of December 2024:

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COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

SJC-13652

COMMONWEALTH OF MASSACHUSETTS, Appellant

vs.

BRIAN DICK, JAMES BI, BRENDAN GARAFALO, VIET
NGUYEN, ERIC VAN RIPER,
Appellee

**DEFENDANT-APPELLEES ADDENDUM OF
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1. **G.L. c. 265, §50. Trafficking of persons for sexual servitude; trafficking of persons under 18 years for sexual servitude; trafficking by business entities; penalties; tort actions brought by victims**
 - (a) Whoever knowingly: (i) subjects, or attempts to subject, or recruits, entices, harbors, transports, provides or obtains by any means, or attempts to recruit, entice, harbor, transport, provide or obtain by any means, another person to engage in commercial sexual activity, a sexually-explicit performance or the production of unlawful pornography in violation of chapter 272, or causes a person to engage in commercial sexual activity, a sexually-explicit performance or the production of unlawful pornography in violation of said chapter 272; or (ii) benefits, financially or by receiving anything of value, as a result of a violation of clause (i), shall be guilty of the crime of trafficking of persons for sexual servitude and shall be punished by imprisonment in the state prison for not less than 5 years but not more than 20 years and by a fine of not more than \$25,000. Such sentence shall not be reduced to less than 5 years, or suspended, nor shall any person convicted under this section be eligible for probation, parole, work release or furlough or receive any deduction from his sentence for good conduct until he shall have served 5 years of such sentence. No prosecution commenced under this section shall be continued without a finding or placed on file.
 - (b) Whoever commits the crime of trafficking of persons for sexual servitude upon a person under 18 years of age shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 5 years. No person convicted under this subsection shall be eligible for probation, parole, work release or furlough or receive any deduction from his sentence for good conduct until he shall have served 5 years of such sentence.
 - (c) A business entity that commits trafficking of persons for sexual servitude shall be punished by a fine of not more than \$1,000,000.
 - (d) A victim of subsection (a) may bring an action in tort in the superior court in any county wherein a violation of subsection (a) occurred, where the plaintiff resides or where the defendant resides or has a place of business. Any business entity that knowingly aids or is a joint venturer in trafficking of persons for sexual servitude shall be civilly liable for an offense under this section.

2. G.L. c. 143, §51. Liability for violation of statutes; criminal prosecution; notice to firm or corporation.

The owner, lessee, mortgagee in possession or occupant, being the party in control, of a place of assembly, theatre, special hall, public hall, factory, workshop, manufacturing establishment or building shall comply with the provisions of this chapter and the state building code relative thereto, and such person shall be liable to any person injured for all damages caused by a violation of any of said provisions. No criminal prosecution for such violation shall be begun until the lapse of thirty days after such party in control has been notified in writing by a local inspector as to what changes are necessary to meet the requirements of such provisions, or if such changes shall have been made in accordance with such notice. Notice to one member of a firm or to the clerk or treasurer of a corporation or to the person in charge of the building or part thereof shall be sufficient notice hereunder to all members of any firm or corporation owning, leasing or controlling the building or any part thereof. Such notice may be served personally or sent by mail.

3. G.L. c. 266, §103. Oil of vitriol, or other substances; throwing into building or vessel.

Whoever wilfully, intentionally and without right throws into, against or upon a dwelling house, office, shop or other building, or vessel, or puts or places therein or thereon oil of vitriol, coal tar or other noxious or filthy substance, with intent unlawfully to injure, deface or defile such dwelling house, office, shop, building or vessel, or any property therein, shall be punished by imprisonment in the state prison for not more than five years or in jail for not more than two and one half years or by a fine of not more than three hundred dollars.

4. G.L. c. 266, §37E(b). Use of personal identification of another; identity fraud; penalty; restitution.

(b) Whoever, with intent to defraud, poses as another person without the express authorization of that person and uses such person's personal identifying information to obtain or to attempt to obtain money, credit, goods, services, anything of value, any identification card or other evidence of such person's identity, or to harass another shall be guilty of identity fraud and shall be punished by a fine of not more than \$5,000 or imprisonment in a house of

correction for not more than two and one-half years, or by both such fine and imprisonment.

5. 22 U.S.C. §7102. Definitions.

(2) Coercion

The term "coercion" means-

- (A) threats of serious harm to or physical restraint against any person;
- (B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
- (C) the abuse or threatened abuse of the legal process.

6. G.L. c. 209A, §1. Definitions.

“Coercive control”, either:

- (a) a pattern of behavior intended to threaten, intimidate, harass, isolate, control, coerce or compel compliance of a family or household member that causes that family or household member to reasonably fear physical harm or have a reduced sense of physical safety or autonomy, including, but not limited to:
 - (i) isolating the family or household member from friends, relatives or other sources of support;
 - (ii) depriving the family or household member of basic needs;
 - (iii) controlling, regulating or monitoring the family or household member's activities, communications, movements, finances, economic resources or access to services, including through technological means;
 - (iv) compelling a family or household member to abstain from or engage in a specific behavior or activity, including engaging in criminal activity;
 - (v) threatening to harm a child or relative of the family or household member;
 - (vi) threatening to commit cruelty or abuse to an animal connected to the family or household member;
 - (vii) intentionally damaging property belonging to the family or household member;
 - (viii) threatening to publish sensitive personal information relating to the family or household member, including sexually explicit images; or
 - (ix) using repeated court actions found by a court not to be warranted by existing law or good faith argument; or

(b) a single act intended to threaten, intimidate, harass, isolate, control, coerce or compel compliance of a family or household member that causes the family or household member to reasonably fear physical harm or have a reduced sense of physical safety or autonomy of: (i) harming or attempting to harm a child or relative of the family or household member; (ii) committing or attempting to commit abuse to an animal connected to the family or household member; or (iii) publishing or attempting to publish sexually explicit images of the family or household member.

7. **G.L. c. 272, §53A. Engaging in sexual conduct for a fee; engaging in sexual conduct with a child under 18 for a fee; penalties.**

(a) Whoever engages, agrees to engage or offers to engage in sexual conduct with another person in return for a fee, shall be punished by imprisonment in the house of correction for not more than 1 year or by a fine of not more than \$500, or by both such imprisonment and fine, whether such sexual conduct occurs or not.

(b) Whoever pays, agrees to pay or offers to pay another person to engage in sexual conduct, or to agree to engage in sexual conduct with another person, shall be punished by imprisonment in the house of correction for not more than 2 and one-half years or by a fine of not less than \$1,000 and not more than \$5,000, or by both such imprisonment and fine, whether such sexual conduct occurs or not.

(c) Whoever pays, agrees to pay or offers to pay any person with the intent to engage in sexual conduct with a child under the age of 18, or whoever is paid, agrees to pay or agrees that a third person be paid in return for aiding a person who intends to engage in sexual conduct with a child under the age of 18, shall be punished by imprisonment in the state prison for not more than 10 years, or in the house of correction for not more than 2 and one-half years and by a fine of not less than \$3,000 and not more than \$10,000, or by both such imprisonment and fine, whether such sexual conduct occurs or not; provided, however, that a prosecution commenced under this section shall not be continued without a finding or placed on file.

8. G.L. c. 265, §26C. Definition of “entice;” enticement of child under 16; punishment.

(a) As used in this section, the term “entice” shall mean to lure, induce, persuade, tempt, incite, solicit, coax or invite.

(b) Any one who entices a child under the age of 16, or someone he believes to be a child under the age of 16, to enter, exit or remain within any vehicle, dwelling, building, or other outdoor space with the intent that he or another person will violate section 13B, 13B ½, 13B ¾, 13F, 13H, 22, 22A, 22B, 22C, 23, 23A, 23B, 24 or 24B of chapter 265, section 4A, 16, 28, 29, 29A, 29B, 29C, 35A, 53 or 53A of chapter 272, or any offense that has as an element the use or attempted use of force, shall be punished by imprisonment in the state prison for not more than 5 years, or in the house of correction for not more than 2 ½ years, or by both imprisonment and a fine of not more than \$5,000.