

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

NO. SJC-12412

COMMONWEALTH OF MASSACHUSETTS
Plaintiff-Appellee,

vs.

JEFFREY WIMER
Defendant-Appellant.

ON APPEAL FROM THE DENIAL OF A POST-CONVICTION MOTION
FOR RELIEF IN THE GREENFIELD DISTRICT COURT

DEFENDANT'S BRIEF AND RECORD APPENDIX

TIMOTHY ST. LAWRENCE

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June 2017

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ISSUE PRESENTED

Under the Sex Offender Registration and Community Notification Act, a "second and subsequent" conviction of open and gross lewdness and lascivious behavior requires a person to register as a convicted sex offender. In order to trigger this registration requirement, does a "second and subsequent" conviction of open and gross lewdness mean that the second offense must have been committed after the defendant had already been convicted of the first?

STATEMENT OF THE CASE

On July 9, 2012, a complaint issued against the defendant, Jeffrey Wimer, alleging two counts of open and gross lewdness and lascivious behavior, G. L. c. 272, § 16.¹ (R. 1, 7).

¹ The defendant's record appendix is cited as (R. [pg.]).

On April 2, 2013, Wimer pleaded guilty to both counts before Judge William F. Mazanec, III. (R. 2). On the first count, the judge sentenced Wimer to one year in the house of correction, six months to serve, with the balance suspended for two years with conditions to stay away and have no contact with the victim, to be monitored by GPS upon release, to obtain sex offender counseling, and to submit a DNA sample. (R. 2). On the second count, Wimer was sentenced to two years probation with the same conditions; in addition, he was ordered to register as a convicted sex offender. (R. 2, 43-46).

On April 1, 2015, Wimer was found to have violated his probation and, as a result, his probation was extended until March 31, 2017. (R. 4, 47). On February 23, 2016, Wimer was again found to have violated his probation and, as a result, his probation was revoked

and he was sentenced to six months in the house of correction. (R. 5, 48).

Also on February 23, 2016, Wimer filed a Mass. R. Crim. P. 30(b) motion to withdraw his guilty pleas and for a new trial. (R. 5-6). The Commonwealth filed an opposition, and after a hearing, Judge Mazanec denied the motion. (R. 6). Wimer timely appealed and the case entered in the Appeals Court on May 27, 2016.

On August 25, 2016, the Appeals Court stayed appellate proceedings to allow Wimer to file, and the trial court to consider, a Mass. R. Crim. P. 30(a) motion to correct an illegal sentence. On December 16, 2016, Wimer filed the motion in the trial court. (R. 22). On February 22, 2017, the Commonwealth filed its opposition to the motion. (R. 52-72). On February 23, 2017, after a non-evidentiary hearing, Judge Mazanec denied the motion in a written decision. (R. 73-74).

Wimer timely appealed, and on April 24, 2017, the Appeals Court consolidated the two appeals.² (R. 75).

STATEMENT OF FACTS

The judge, in his written decision denying the motion to correct an illegal sentence, found the following facts:

The defendant was arraigned on July 17, 2012 on a complaint charging him with two counts of Open and Gross Lewdness. Ultimately, the facts supporting these two charges stem from two separate incidents in which the defendant entered a nine year old's bedroom at night and openly masturbated in front of the nine year old. Both incidents were also observed by the nine year old's mother. On April 2, 2013, the defendant, while represented by counsel, tendered a guilty plea to both counts with an agreed upon condition of probation that the defendant register as a sex offender with the SORB. The court accepted the guilty plea and adopted the agreed upon conditions.

(R. 73).

² In this appeal, Wimer now only challenges the denial of his motion to correct an illegal sentence; he does not challenge the denial of his motion to withdraw his guilty pleas and for a new trial.

ARGUMENT

The portion of the defendant's sentence that required him to register as a sex offender is illegal under Massachusetts law.

Under the Sex Offender Registration and Community Notification Act, a "second and subsequent" conviction of open and gross lewdness and lascivious behavior requires a person to register as a convicted sex offender. G. L. c. 6, § 178C. "Second and subsequent" is a term of art that means the second offense was committed after the defendant had already been convicted of the first. *Commonwealth v. Daley*, 70 Mass. 209 (1855). See *Morissette v. United States*, 342 U.S. 246, 263 (1952) ("[W]here Congress borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which

it was taken and the meaning its use will convey to the judicial mind unless otherwise instructed.”).

Moreover, in 1994, the Legislature confirmed that “second and subsequent” means that the second offense was committed after the defendant had already been convicted of the first. See G. L. c. 90, § 24(1)(a)(1) as amended through st. 1994, c.25, s.3 (OUI conviction is *second and subsequent* “[i]f the defendant has been previously convicted ... [of OUI] preceding the date of the commission of the [OUI] offense for which he has been convicted.”). See also *Commonwealth v. Hernandez*, 60 Mass. App. Ct. 416, 417 (2004). So when, in 1999, the Legislature amended G. L. c. 6, § 178C, 1999 St. 1999 c.74 § 2, to include the “second and subsequent” language at issue here, it knew (and implicitly adopted) the meaning it had assigned to “second and subsequent” in the OUI statute. See *Commonwealth v. Russ R.*, 433 Mass. 515, 520 (2001) (“the Legislature is

presumed to be aware of existing statutes when it amends a statute or enacts a new one”).

Further, a recent decision from the Supreme Judicial Court lends support to the conclusion that the “second and subsequent” language in G. L. c. 6, § 178C should be interpreted to mean that the second offense was committed after the defendant had already been convicted of the first. In *Commonwealth v. Resende*, 474 Mass. 455, 466-69 (2016), the SJC cited “the principle that penal discipline can have (or should have) a reforming influence on an offender, with enhanced consequences if prior convictions and sentences do not have such an effect” in holding that, under the Massachusetts Armed Career Criminal Act, prior convictions must be “sequential” so “that the first conviction (and imposition of sentence) occur before the commission of the second predicate crime, and the

second conviction and sentence occur before the commission of the third crime.”

That the Sex Offender Registry Board’s definition of “second and subsequent” in 803 C.M.R. § 1.03 would require Wimer to register does not control the issue because “statutory interpretation is ultimately the duty of the courts.”³ *Kain v. Department of Environmental Protection*, 474 Mass. 278, 286 (2016). See *Commonwealth v. Maker*, 459 Mass. 46 (2011) (regulation promulgated by the Sex Offender Registry Board exceeded the board’s authority); *John Doe, No. 16748 v. Sex Offender Registry Board*, 82 Mass. App. Ct. 152 (2012) (same). Nor does the fact that Wimer

³ Specifically, 803 C.M.R. § 1.03 defines “Second and Subsequent Adjudication or Conviction for Open and Gross Lewdness and Lascivious Behavior” as “[t]he later of two or more separate convictions pursuant to M.G.L. c. 272, § 16. Multiple convictions resulting from a single act shall be treated as a single conviction, but arraignments occurring on the same date and resulting in multiple convictions shall be presumed to be the result of separate acts and treated as separate convictions.”

accepted sex offender registration as part of his plea agreement control. See *Hernandez*, 60 Mass. App. Ct. at 418 (“While the defendant could plead guilty, he could not accept a statutorily created sentencing condition that simply did not exist under the facts of his case.”).

For all of these reasons, a defendant’s second conviction of open and gross lewdness and lascivious behavior requires him to register as a sex offender only when the conduct giving rise to the second conviction occurred **after** the first conviction. Because the conduct giving rise to Wimer’s second conviction occurred **before** his first conviction, the portion of his sentence that required him to register as a sex offender is illegal under Massachusetts law and should be vacated. Mass. R. Crim. P. 30(a) (Any person ... whose liberty is restrained pursuant to a criminal conviction may at any time, as of right, file a written motion

requesting the trial judge ... to correct the sentence
then being served upon the ground that the ... restraint
was imposed in violation of the ... laws ... of the
Commonwealth of Massachusetts.).

CONCLUSION

Accordingly, the Court should reverse the judge's
denial of the motion to correct an illegal sentence.

Respectfully submitted,
JEFFREY WIMER
By his attorney,

/s/ Tim St. Lawrence

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June 2017

ADDENDUM

COMMONWEALTH OF MASSACHUSETTS

Franklin, ss

District Court Department
Of the Trial Court
Greenfield Division
Docket No. 12 41 CR 1056

Commonwealth of Massachusetts

v.

Jeffrey A. Wimer

Court's Decision Regarding
Defendant's Motion
to Correct Sentence

Analysis and Decision

The defendant contends in his Motion to Correct Sentence that he was given an illegal sentence when this court ordered him to register as a sex offender with the SORB as a condition of his probation resulting from two convictions for Open and Gross Lewdness.

FACTS:

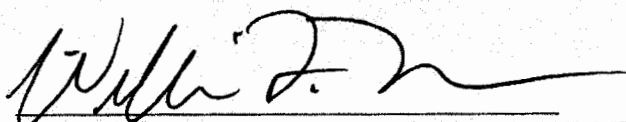
The defendant was arraigned on July 17, 2012 on a complaint charging him with two counts of Open and Gross Lewdness. Ultimately, the facts supporting these two charges stem from two separate incidents in which the defendant entered a nine year old's bedroom at night and openly masturbated in front of the nine year old. Both incidents were also observed by the nine year old's mother. On April 2, 2013 the defendant, while represented by counsel, tendered a guilty plea to both counts with an agreed upon condition of probation that the defendant register as a sex offender with the SORB. The court accepted the guilty plea and adopted the agreed upon conditions.

ANALYSIS:

The defendant faced up to two years on each of the two counts in this complaint. Sentenced consecutively he faced over four years in the House of Correction. At the time of his plea the defendant agreed to register as a sex offender as a condition of probation and he thereby avoided incarceration at that time. The defendant's argument now is that he agreed to an illegal sentence and he relies primarily upon his notion that M.G.L. c. 90, § 24 defines OUI second and subsequent offences as specifically when a new offence is committed after a prior conviction has entered. The defendant contends that this Court should read M.G.L. c. 272, § 16 to have an analogous definition as it relates to the second of the two charges the defendant pleaded guilty to. This court holds that M.G.L. c. 272, § 16 contains no such definition of second or subsequent because the legislature specifically chose not to provide such a definition.

Additionally, the defendant in this case plead guilty to two separate charges stemming from two separate events which occurred on two separate dates. These two convictions were not the result of one act on one day. Hence, the Sex Offender Registry Board's applicable regulations would define the defendant's conviction as a second or subsequent conviction in any event. 803 C.M.R. § 103.

For the foregoing reasons the defendant's Motion to Correct Sentence is hereby Denied.

A handwritten signature in black ink, appearing to read 'William F. Mazanec', written over a horizontal line.

William F. Mazanec
Justice
Greenfield District Court

February 23, 2017

Part I	ADMINISTRATION OF THE GOVERNMENT
Title II	EXECUTIVE AND ADMINISTRATIVE OFFICERS OF THE COMMONWEALTH
Chapter 6	THE GOVERNOR, LIEUTENANT GOVERNOR AND COUNCIL, CERTAIN OFFICERS UNDER THE GOVERNOR AND COUNCIL, AND STATE LIBRARY
Section 178C	DEFINITIONS APPLICABLE TO SECS. 178C TO 178P

Section 178C. As used in sections 178C to 178P, inclusive, the following words shall have the following meanings:--

"Agency", an agency, department, board, commission or entity within the executive or judicial branch, excluding the committee for public counsel services, which has custody of, supervision of or responsibility for a sex offender as defined in accordance with this chapter, including an individual participating in a program of any such agency, whether such program is conducted under a contract with a private entity or otherwise. Each agency shall be responsible for the identification of such individuals within its custody, supervision or responsibility. Notwithstanding any general or special law to the contrary, each such agency shall be certified to receive criminal offender record information maintained by the department for the purpose of identifying such individuals.

"Employment", includes employment that is full-time or part-time for a period of time exceeding 14 days or for an aggregate period of time exceeding 30 days during any calendar year, whether compensated or uncompensated.

"Institution of higher learning", a post secondary institution.

"Mental abnormality", a congenital or acquired condition of a person that affects the emotional or volitional capacity of such person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes such person a menace to the health and safety of other persons.

"Predatory", an act directed at a stranger or person with whom a relationship has been established, promoted or utilized for the primary purpose of victimization.

"Secondary addresses", the addresses of all places where a sex offender lives, abides, lodges, or resides for a period of 14 or more days in the aggregate during any calendar year and which is not a sex offender's primary address; or a place where a sex offender routinely lives, abides, lodges, or resides for a period of 4 or more consecutive or nonconsecutive days in any month and which is not a sex offender's permanent address, including any out-of-state address.

"Sentencing court", the court that sentenced a sex offender for the most recent sexually violent offense or sex offense or the superior court if such sentencing occurred in another jurisdiction or the sex offender registry board to the extent permitted by federal law and established by the board's regulations.

"Sex offender", a person who resides, has secondary addresses, works or attends an institution of higher learning in the commonwealth and who has been convicted of a sex offense or who has been adjudicated as a youthful offender or as a delinquent juvenile by reason of a sex offense or a person released from incarceration or parole or probation supervision or custody with the department of youth services for such a conviction or adjudication or a person who has been adjudicated a sexually dangerous person under section 14 of chapter 123A, as in force at the time of adjudication, or a person released from civil commitment pursuant to section 9 of said chapter 123A, whichever last occurs, on or after August 1, 1981.

"Sex offender registry", the collected information and data that is received by the department pursuant to sections 178C to 178P, inclusive, as such information and data is modified or amended by the sex offender registry board or a court of competent jurisdiction pursuant to said sections 178C to 178P, inclusive.

"Sex offense", an indecent assault and battery on a child under 14 under section 13B of chapter 265; aggravated indecent assault and battery on a child under the age of 14 under section 13B1/2 of said chapter 265; a repeat offense under section 13B3/4 of said chapter 265; indecent assault and battery on a mentally retarded person under section 13F of said chapter 265; indecent assault and battery on a person age 14 or over under section 13H of said chapter 265; rape under section 22 of said chapter 265; rape of a child under 16 with force under

section 22A of said chapter 265; aggravated rape of a child under 16 with force under section 22B of said chapter 265; a repeat offense under section 22C of said chapter 265; rape and abuse of a child under section 23 of said chapter 265; aggravated rape and abuse of a child under section 23A of said chapter 265; a repeat offense under section 23B of said chapter 265; assault with intent to commit rape under section 24 of said chapter 265; assault of a child with intent to commit rape under section 24B of said chapter 265; kidnapping of a child under section 26 of said chapter 265; enticing a child under the age of 16 for the purposes of committing a crime under section 26C of said chapter 265; enticing a child under 18 via electronic communication to engage in prostitution, human trafficking or commercial sexual activity under section 26D of said chapter 265; trafficking of persons for sexual servitude under section 50 of said chapter 265; a second or subsequent violation of human trafficking for sexual servitude under section 52 of chapter 265; enticing away a person for prostitution or sexual intercourse under section 2 of chapter 272; drugging persons for sexual intercourse under section 3 of said chapter 272; inducing a minor into prostitution under section 4A of said chapter 272; living off or sharing earnings of a minor prostitute under section 4B of said chapter 272; second and subsequent adjudication or conviction for open and gross lewdness and lascivious behavior under section 16 of said chapter 272, but excluding a first or single adjudication as a delinquent juvenile before August 1, 1992; incestuous marriage or intercourse under section 17 of said chapter 272; disseminating to a minor matter harmful to a minor under section 28 of said chapter 272; posing or exhibiting a child in a state of nudity under section 29A of said chapter 272; dissemination of visual material of a child in a state of nudity or sexual conduct under section 29B of said chapter 272; possession of child pornography under section 29C of said chapter 272; unnatural and lascivious acts with a child under 16 under section 35A of said chapter 272; aggravated rape under section 39 of chapter 277; and any attempt to commit a violation of any of the aforementioned sections pursuant to section 6 of chapter 274 or a like violation of the laws of another state, the United States or a military, territorial or Indian tribal authority.

"Sex offense involving a child", an indecent assault and battery on a child under 14 under section 13B of chapter 265; aggravated indecent assault and battery on a child under the age of 14 under section 13B1/2 of said chapter 265; a repeat offense under section 13B3/4 of said chapter 265; rape of a child under 16 with force under section 22A of said chapter 265; aggravated rape of

a child under 16 with force under section 22B of said chapter 265; a repeat offense under section 22C of said chapter 265; rape and abuse of a child under section 23 of said chapter 265; aggravated rape and abuse of a child under section 23A of said chapter 265; a repeat offense under section 23B of said chapter 265; assault of a child with intent to commit rape under section 24B of said chapter 265; kidnapping of a child under the age of 16 under section 26 of said chapter 265; enticing a child under the age of 16 for the purposes of committing a crime under section 26C of said chapter 265; enticing a child under 18 via electronic communication to engage in prostitution, human trafficking or commercial sexual activity under section 26D of said chapter 265; trafficking of persons for sexual servitude upon a person under 18 years of age under subsection (b) of section 50 of said chapter 265; inducing a minor into prostitution under section 4A of chapter 272; living off or sharing earnings of a minor prostitute under section 4B of said chapter 272; disseminating to a minor matter harmful to a minor under section 28 of said chapter 272; posing or exhibiting a child in a state of nudity under section 29A of said chapter 272; dissemination of visual material of a child in a state of nudity or sexual conduct under section 29B of said chapter 272; unnatural and lascivious acts with a child under 16 under section 35A of said chapter 272; aggravated rape under section 39 of chapter 277; and any attempt to commit a violation of any of the aforementioned sections pursuant to section 6 of chapter 274 or a like violation of the laws of another state, the United States or a military, territorial or Indian tribal authority.

"Sexually violent offense", indecent assault and battery on a child under 14 under section 13B of chapter 265; aggravated indecent assault and battery on a child under the age of 14 under section 13B1/2 of said chapter 265; a repeat offense under section 13B3/4 of said chapter 265; indecent assault and battery on a mentally retarded person under section 13F of said chapter 265; rape under section 22 of said chapter 265; rape of a child under 16 with force under section 22A of said chapter 265; aggravated rape of a child under 16 with force under section 22B of said chapter 265; a repeat offense under section 22C of said chapter 265; assault with intent to commit rape under section 24 of said chapter 265; assault of a child with intent to commit rape under section 24B of said chapter 265; enticing a child under 18 via electronic communication to engage in prostitution, human trafficking or commercial sexual activity under section 26D of said chapter 265; trafficking of persons for sexual servitude under section 50 of chapter 265; a second or subsequent violation of human

trafficking for sexual servitude under section 52 of chapter 265; drugging persons for sexual intercourse under section 3 of chapter 272; unnatural and lascivious acts with a child under 16 under section 35A of said chapter 272; aggravated rape under section 39 of chapter 277; and any attempt to commit a violation of any of the aforementioned sections pursuant to section 6 of chapter 274 or a like violation of the law of another state, the United States or a military, territorial or Indian tribal authority, or any other offense that the sex offender registry board determines to be a sexually violent offense pursuant to the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, 42 U.S.C. section 14071.

"Sexually violent predator", a person who has been convicted of a sexually violent offense or who has been adjudicated as a youthful offender or as a delinquent juvenile by reason of a sexually violent offense, or a person released from incarceration, parole, probation supervision or commitment under chapter 123A or custody with the department of youth services for such a conviction or adjudication, whichever last occurs, on or after August 1, 1981, and who suffers from a mental abnormality or personality disorder that makes such person likely to engage in predatory sexually violent offenses.

Part IV CRIMES, PUNISHMENTS AND PROCEEDINGS IN CRIMINAL CASES

Title I CRIMES AND PUNISHMENTS

Chapter 272 CRIMES AGAINST CHASTITY, MORALITY, DECENCY AND GOOD
ORDER

Section 16 OPEN AND GROSS LEWDNESS AND LASCIVIOUS BEHAVIOR

Section 16. A man or woman, married or unmarried, who is guilty of open and gross lewdness and lascivious behavior, shall be punished by imprisonment in the state prison for not more than three years or in jail for not more than two years or by a fine of not more than three hundred dollars.

Certificate of Compliance

I certify that, to the best of my knowledge, this brief complies with the relevant rules of court pertaining to the preparation and filing of briefs. Those rules include Mass. R. App. P. 16(a)(contents of briefs); Mass. R. App. P. 16(e) (references to the record); Mass. R. App. P. 16(f) (reproduction of statutes, rules and regulations); Mass. R. App. P. 16(h) (length of briefs); Mass. R. App. P. 18 (appendix to the briefs); and Mass. R. App. P. 20 (forms of briefs, appendices, and other papers).

/s/ Tim St. Lawrence
Timothy St. Lawrence

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

NO. SJC-12412

COMMONWEALTH OF MASSACHUSETTS
Plaintiff-Appellee,

vs.

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Defendant-Appellant.

ON APPEAL FROM THE DENIAL OF A POST-CONVICTION MOTION
FOR RELIEF IN THE GREENFIELD DISTRICT COURT

DEFENDANT'S RECORD APPENDIX

TIMOTHY ST. LAWRENCE

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June 2017

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CRIMINAL DOCKET		DOCKET NUMBER 1241CR001056	NO. OF COUNTS 2	Trial Court of Massachusetts District Court Department	
DEFENDANT NAME AND ADDRESS Jeffrey Wimer 225 Walnut St. Apt 2 Athol, MA 01331		DOB 11/07/1985	GENDER Male	COURT NAME & ADDRESS Greenfield District Court 425 Main Street Greenfield, MA 01301	
		DATE COMPLAINT ISSUED 07/09/2012			
		PRECOMPLAINT ARREST DATE		INTERPRETER REQUIRED	
FIRST FIVE OFFENSE COUNTS					
COUNT	CODE	OFFENSE DESCRIPTION			OFFENSE DATE
1	272/16	LEWDNESS, OPEN AND GROSS c272 §16			06/19/2012
2	272/16	LEWDNESS, OPEN AND GROSS c272 §16			06/19/2012
DEFENSE ATTORNEY O'Brien		OFFENSE CITY/TOWN Montague		POLICE DEPARTMENT Montague PD	
DATE & JUDGE	DOCKET ENTRY		DATE & JUDGE	FEES IMPOSED	
JUL 17 2012 Walsh	<input checked="" 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"/> PR <input type="checkbox"/> Bail <input type="checkbox"/> See Docket for special condition <input type="checkbox"/> Held (276 §58A)		JUL 17 2012	Counsel Fee (211D § 2A)(2) <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	
			JUL 17 2012 Nalsh	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 checked="" type="checkbox"/> Right to drug exam (111E § 10) 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)	
			APR 2 2013	Probation Supervision Fee (276 § 87A) <input type="checkbox"/> WAIVED Bail Order Forfeited	
SCHEDULING HISTORY					
NO.	SCHEDULED DATE	EVENT	RESULT	JUDGE	TAPE START/STOP
1	7-17-12	ARR	<input checked="" type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd	Walsh	
2	9-4-12	PTC	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input checked="" type="checkbox"/> Cont'd		
3	10-28-12	PTC	<input checked="" type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd		
4	11-29-12	PTC	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input checked="" type="checkbox"/> Cont'd		
5	12-28-12	Final	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd		
6	4-8-13	JT	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd		
7	4/2/13	Dsp	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd		
8			<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd		
9	10-2-13	SRP	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input checked="" type="checkbox"/> Cont'd		
10	11-8-13	SRP	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd		
APPROVED ABBREVIATIONS ARR = Arraignment PTH = Preliminary hearing DCE = Discovery compliance & jury selection BTR = Bench trial JTR = Jury trial PCH = Probable cause hearing MOT = Motion hearing SRE = Status review SRP = 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 or default warrant recalled PVH = Probation revocation hearing.					
A TRUE COPY ATTEST:		CLERK-MAGISTRATE / ASST CLERK		TOTAL NO. OF PAGES	ON (DATE)
X					



CRIMINAL DOCKET - OFFENSES		DEFENDANT NAME Jeffrey Wimer		DOCKET NUMBER 1241CR001056	
COUNT / OFFENSE 1 LEWDNESS, OPEN AND GROSS c272 §16			DISPOSITION DATE AND JUDGE APR 2 2013 <i>Mazzone</i>		
DISPOSITION METHOD <input checked="" 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 HEAD INJURY ASMT RESTITUTION		COSTS V/W ASSESSMENT BATTERER'S FEE OTHER	
		SENTENCE OR OTHER DISPOSITION <input type="checkbox"/> Sufficient facts found but continued without a finding until: <input checked="" type="checkbox"/> Defendant placed on probation until: 4-1-15 <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: DNA FEB 23 2015		OUI §24D FEE OUI VICTIMS ASMT JUDGE DATE	
FINDING <input checked="" type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input checked="" 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 checked="" type="checkbox"/> Sentence or disposition revoked (see cont'd page)		- 1 yr Hbfc - 6 months Direct Bal SS 2 yrs - Sex offender - Canceling - DNA - No contact / stay away 100 yds	
COUNT / OFFENSE 2 LEWDNESS, OPEN AND GROSS c272 §16			DISPOSITION DATE AND JUDGE APR 2 2013 <i>Mazzone</i>		
DISPOSITION METHOD <input checked="" 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 HEAD INJURY ASMT RESTITUTION		COSTS V/W ASSESSMENT BATTERER'S FEE OTHER	
		SENTENCE OR OTHER DISPOSITION <input type="checkbox"/> Sufficient facts found but continued without a finding until: <input checked="" type="checkbox"/> Defendant placed on probation until: 4-1-15 <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: FEB 23 2015		OUI §24D FEE OUI VICTIMS ASMT JUDGE DATE	
FINDING <input checked="" type="checkbox"/> Guilty <input type="checkbox"/> Not Guilty <input checked="" 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 checked="" type="checkbox"/> Sentence or disposition revoked (see cont'd page)		from alleged victims Register as Sex Offender GPS upon release	
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 HEAD INJURY ASMT RESTITUTION		COSTS V/W 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:		Def not to be released until GPS established	
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)		PROBATION ORDER OF CONDITIONS ENTERED AND INCORPORATED HEREIN.	

CRIMINAL DOCKET DOCKET ENTRIES		DEFENDANT NAME Jeffrey Wimer	DOCKET NUMBER 1241CR001056
DATE	DOCKET ENTRIES		
7-9-12	<div style="border: 1px solid black; padding: 2px; display: inline-block;"> Date Warrant Issued <u>7/16/12</u> Warrant Recalled <u>7/18</u> </div>		
7-17-12	(M) for Protective Order + Supersumment filed - Allowed J. Walsh.		
9-5-12	(M) for Speedy Trial filed.		
3/28/13	(M) to be heard by def. (2) Allowed - continued to 4/2/13 for possible dispo 14mch/ee cr		
4-2-13	Sentence Mitt issued		
5/1/13	Motion to reuse & revoke - filed		
11-8-13	C to 2-7-14 @ reg of prob		
2-7-14	DBC - PSF reduced by \$260 (Remit \$260) - (maranee) C to 5-7-14 @ reg		
5/7/14	(3) C 8/8/14 SRP not p		
8/8/14	C 11/7/14 SRP		
11-7-14	C to 1-28-15 sre @ reg of prob		
1-28-15	C to 4-1-15 sre @ reg of prob		
2-11-15	Notice of PVH filed - by court - ally Simanski appt (1/50 to) C to 2-23-15 VOP status (maranee)		

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 SRE = Status review
SRP = 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 or default warrant recalled PVH = probation revocation hearing.



CRIMINAL DOCKET
DOCKET ENTRIES

DEFENDANT NAME
Jeffrey Wimer

DOCKET NUMBER
1241CR001056

DATE	DOCKET ENTRIES
2-23-15	C to 3-24-15 VOP (H) by agreement (Mazzone)
3-24-15	By agreement - C to 3-27-15 VOP (H) (Mazzone)
3-25-15	Bst find @ Dy of Chief DeAngelis - Ree cont of VOP (H) - C to 4-1-15 VOP (H) - Atty Simanski to contact Mr Wimer - Probation notified of new date.
4-1-15	Dy admits to VOP Dy found in VOP Dy probated to 3-31-17 w/ amended cond of probs of Sex offender frmt. No unsupervised contact w/ minors GPS No inappropriate electronic communication w/ relatives No contact & stay 100 yards away from victim. Register CSO. No added PSR
11-18-15	Request for warrant filed by Pub. Attorney - Ken Bullock (Mazzone)
11-18-15	Warrant Issued Warrant Recalled
11-23-15	Dy found - Notice of PVT filed - Defarr'd - Dy signed waiver - C to 12-2-15 VOP (H) (Mazzone)

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 jury session S = Sentencing 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

DOCKET CONTINUATION		NAME OF CASE	DOCKET NUMBER
NO.	DATE	DOCKET ENTRIES	
12215		By agreement - C to 1-6-16 VOP #1 (marked)	
	JAN 06 2016	VOP (11-23-15) by drawn. RIPPS, J.	
1/20/15		<div style="border: 1px solid black; padding: 2px; display: inline-block;"> Date 1/25/16 Warrant Issued <input checked="" type="checkbox"/> Warrant Recalled <input checked="" type="checkbox"/> </div>	
12516		Notice of PTH & PDH filed - Def arr'd - atty Flynn app't. PC heard - Def held pending trial #1 - 2-24-16 & 2-23-16 (M) for new (1) (marked)	
1/25/16		Mitt issued to 2-23-16	
2-23-16		Def admits to VOP Def found on VOP on pants 1 & 2 - Probation Revoked - Cont 1 - 6 months HOF imposed Direct - Credit Cont 2 - 6 months HOF imposed Direct (cont w) Cont 1	
2-23-16		Any outstanding * admitted - motion for new Trial filed 4-5-16 M for new (1) (Habe) (marked)	
2/23/16		Sentence Mittimus Issued Habe issued for 4/5/16	
2/25/16		DNA Fee waived Def doing sentence @ Worcester County. any further habeas - issue to WCTOC.	

CRIMINAL COMPLAINT ORIGINAL		DOCKET NUMBER 1241CR001056	NO. OF COUNTS 2	Trial Court of Massachusetts District Court Department
DEFENDANT NAME & ADDRESS Jeffrey Wimer 225 Walnut St. Apt 2 Athol, MA 01331				COURT NAME & ADDRESS Greenfield District Court 425 Main Street Greenfield, MA 01301 (413)774-5533
DEFENDANT DOB 11/07/1985	COMPLAINT ISSUED 07/09/2012	DATE OF OFFENSE 06/19/2012	ARREST DATE	
OFFENSE CITY / TOWN Montague	OFFENSE ADDRESS Montague Center, MA			NEXT EVENT DATE & TIME <i>Warrant</i>
POLICE DEPARTMENT Montague PD	POLICE INCIDENT NUMBER 12-265-AR			NEXT SCHEDULED EVENT
OBTN				ROOM / 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	272/16	LEWDNESS, OPEN AND GROSS c272 §16

On or about 06/19/2012 did commit open and gross lewdness and lascivious behavior in the presence of another person, in violation of G.L. c.272, §16.

PENALTY: state prison not more than 3 years; or jail not more than 2 years; or not more than \$300.

2	272/16	LEWDNESS, OPEN AND GROSS c272 §16
---	--------	-----------------------------------

On or about 06/19/2012 did commit open and gross lewdness and lascivious behavior in the presence of another person, in violation of G.L. c.272, §16.

PENALTY: state prison not more than 3 years; or jail not more than 2 years; or not more than \$300.

SIGNATURE OF COMPLAINANT <i>X [Signature]</i>	SWORN TO BEFORE CLERK-MAGISTRATE/ASST. CLERK/DEP. ASST. CLERK X	DATE 7/11/12
NAME OF COMPLAINANT	A TRUE COPY ATTEST X	CLERK-MAGISTRATE/ASST. CLERK 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.

ORIGINAL

Volume: I of I
Pages: 1 - 13
Exhibits: 0

COMMONWEALTH OF MASSACHUSETTS
FRANKLIN, SS DISTRICT COURT DEPARTMENT
OF THE TRIAL COURT

* * * * *
*
* COMMONWEALTH OF MASSACHUSETTS *
*
* V * DOCKET No.
* 1241CR1056
*
* JEFFREY WIMER *
*
* * * * *

HEARING BEFORE THE HONORABLE WILLIAM F. MAZANEC III

APPEARANCES:

FOR THE COMMONWEALTH:
BY: Assistant District Attorney Banks

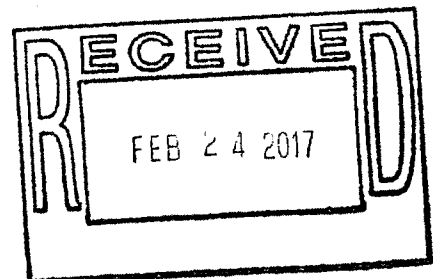
FOR THE DEFENDANT:
By: Attorney O'Brien

Courtroom Unknown
Greenfield, Massachusetts
April 2, 2013

Reporter: Raymond F. Catuogno, Sr.
Registered Professional Reporter

Recorder: Unknown Court Recording Monitor

I N D E X



Catuogno Court Reporting & StenTel Transcription
Springfield, MA Worcester, MA Boston, MA Providence, RI

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
(NONE CALLED)				

EXHIBITS	PAGE
(NONE MARKED)	

1 (Court called to order.)

2 (Defendant present.)

3 (12:04 p.m.)

4 THE CLERK: Jeffrey Wimer?

5 MR. BANKS: And agreed plea for consideration, Your Honor.

6 THE COURT: All right.

7 MR. BANKS: It was brought forward from the trial list

8 THE CLERK: Mr. Wimer, will you raise your right hand to be
9 sworn?

10 JEFFREY WIMER, Sworn

11 MR. WIMER: Yes, ma'am.

12 THE COURT: Mr. Wimer, I hold in my hands a green sheet
13 which appears to have your signature on the back. Is that your
14 signature?

15 MR. WIMER: Yes, Your Honor.

16 THE COURT: Does that signature tell the Court you've read
17 and understood the paragraphs above your signature?

18 MR. WIMER: Yes, Your Honor.

19 THE COURT: All right. I want you to listen carefully
20 while the prosecutor relates what he says he can prove if this
21 went to trial then I'll ask you some more questions. Mr. Banks
22 (phonetic)?

23 MR. BANKS: Thank you, your Honor. June 29th, 2012,
24 Detective Doyle (phonetic) of the Montague Police met with a
25 Michael Jenkins (phonetic) from Department of Children's and

1 Families in regards to a situation he had become aware of. He
2 indicated he had met with Ms. Tia Collins (phonetic) as well as a
3 9-year-old individual who was known to Ms. Collins (phonetic)
4 during that interview. It became apparent that an individual
5 known as Jeffrey Wimer had been doing things of a sexual nature
6 in front of the 9-year-old. Based on that, Detective Doyle
7 (phonetic) did follow up eventually meeting with the 9-year-old
8 as well as with Ms. Collins.

9 The 9-year-old did support the statements made to Mr.
10 Jenkins (phonetic) as well as which she interviewed to Mr. Doyle
11 (phonetic). And primarily going with what witness Ms. Collins
12 (phonetic) stated, she indicated that Mr. Wimer was her
13 boyfriend, that they had been dating for approximately three
14 years. And he would leave his residence at some nights and
15 report to her residence, usually around 11:00 p.m., that they
16 would engage in sexual activity.

17 That on some occasions Mr. Wimer would leave --
18 specifically, she would state that on two occasions, it would
19 appear this happened more that Mr. Wimer would leave the bedroom.
20 On two occasions, it would appear that he would be gone for a
21 significant period of time. She would go attempt to find him.
22 She located him in the 9-year-old's bedroom actively masturbating
23 in front of the 9-year-old. The 9-year-old would support, that
24 allegation as well.

25 She indicated that on one occasion which again would be

1 supported by what the 9-year-old told Detective Doyle (phonetic),
2 that when she awoke to see Mr. Wimer doing that that she yelled
3 to her, to Ms. Collins (phonetic) to come to the location. Ms.
4 Collins (phonetic) indicated that she does recall one of the
5 occasions where it appeared he had been gone for too long, that
6 as she was approaching the other bedroom that that individual did
7 yell out to her to approach. When she entered, Mr. Wimer was
8 actively engaged in masturbation in front of the 9-year-old and
9 on some occasions, he had asked Ms. Collins (phonetic) if the 9-
10 year-old could report to the bedroom when they were having sex in
11 order to observe them engage in that activity. He indicated that
12 she believed that she was attractive. Those would be the facts,
13 Your Honor.

14 THE COURT: All right. Mr. Wimer, did you hear that?

15 MR. WIMER: Yes, your Honor.

16 THE COURT: Are those facts true, sir?

17 MR. WIMER: Yes, Your Honor.

18 THE COURT: That's what happened?

19 MR. WIMER: Yes, Your Honor.

20 THE COURT: How old are you and how far did you go in
21 school?

22 MR. WIMER: Twenty-seven and eleventh grade, GED.

23 THE COURT: In the past 24 hours, have you had any drugs,
24 alcohol or prescription medication?

25 MR. WIMER: No, Your Honor.

1 THE COURT: Do you currently suffer from any physical or
2 mental illness which would impair your ability to think clearly
3 and understand what you're doing here today?

4 MR. WIMER: No, Your Honor.

5 THE COURT: All right. Well, you have a number of
6 important rights you give up by pleading guilty to these charges.
7 The most important right of all is the right to a trial. That
8 trial could be before a judge alone or it could be before a jury.
9 If it were before a jury you and Mr. O'Brien (phonetic) would
10 help pick the six jurors who would decide whether you were guilty
11 or not guilty. And they'd have to make their decision
12 unanimously, which means that they'd all have to agree one way or
13 the other. Do you understand you're giving up your right to
14 either form of trial by admitting or pleading guilty to these
15 charges?

16 MR. WIMER: Yes, Your Honor.

17 THE COURT: The next one, that you're also giving up your
18 right to remain silent, the right to testify and present a
19 defense, the right to confront and cross-examine witnesses
20 against you and the right to be presumed innocent and to force
21 the prosecutor to prove these charges beyond a reasonable doubt.
22 Do you understand you're also giving up all those rights?

23 MR. WIMER: Yes, Your Honor.

24 THE COURT: Anyone make any promises or threats or coerce
25 you to get you to do this?

1 MR. WIMER: No, Your Honor.

2 THE COURT: Are you doing it freely, willingly and
3 voluntarily?

4 MR. WIMER: Yes, Your Honor.

5 THE COURT: Was it explained to you and do you understand
6 you'll have to provide a DNA sample to the state police?

7 MR. WIMER: Yes, Your Honor.

8 THE COURT: Also, you'll have to register as a sex
9 offender. Do you understand that?

10 MR. WIMER: Yes, Your Honor.

11 THE COURT: All right. Have you had enough time to speak
12 to Mr. O'Brien (phonetic)?

13 MR. WIMER: I have. Yes.

14 THE COURT: Are you satisfied that he's acted in your best
15 interest?

16 MR. WIMER: Yes, Your Honor.

17 THE COURT: All right. You don't have to respond to this
18 next statement, Mr. Wimer, but if you're not a citizen of the
19 United States, a conviction of these offenses could have the
20 result of deportation, denial of naturalization or exclusion from
21 admission to the United States. Are you confused by anything
22 I've said to you?

23 MR. WIMER: No, Your Honor.

24 THE COURT: Are you pleading guilty because you are guilty
25 and for no other reason?

1 MR. WIMER: Yes, Your Honor.

2 THE COURT: All right. I find there's a factual basis for
3 the plea, that the tender's made knowingly, willingly and
4 voluntarily with knowledge of consequence. Mr. Banks (phonetic)?

5 MR. BANKS: Your Honor, it is agreed -- I'd suggest maybe
6 but for the lack of a record, this is probably not a
7 recommendation the Commonwealth would have gone along with. He
8 does have essentially no record besides from this. Rather than
9 put the 9-year-old through testifying, understandably that
10 individual could testify but I think the 9-year-old would
11 probably have to in order to solidify the charges, he has agreed
12 to do this disposition. We would ask that you would
13 (indiscernible -- cannot understand at 12:09:00) essentially,
14 we're asking for the one year House of Correction, six months
15 direct on count one with a six month suspended sentence and
16 straight probation on count two. If there is a violation,
17 leaving count two open for the full penalty which would be two
18 years in the House of Correction if he were to violate on either
19 of these charges.

20 THE COURT: Thanks.

21 MR. O'BRIEN: We have been in contact with the victim and
22 her family and they're no longer associated with Mr. Wimer.

23 THE COURT: There's a restraining order I think.

24 MR. BANKS: There may be, that's correct. And as far as
25 I'm understanding, he's been abiding by that restraining order.

1 THE COURT: All right. And is there any victim impact
2 statement?

3 MR. BANKS: There's not, Your Honor. They did not intend
4 on being here today for this disposition but were aware of it.

5 THE COURT: All right.

6 MR. O'BRIEN: Thank you, Your honor. Mr. Wimer is standing
7 before you ready, willing and able to accept his guilt and
8 everything that goes along with it. He understands he would be
9 taken into custody today. He understands there would be a
10 significant amount of time hanging over him for the next two
11 years or two years upon his release along with the other
12 conditions and the serious collateral consequences that go along
13 with this. It's not like he's just going into jail and then
14 getting out. He understands especially with the SOR
15 registration, it's 20 years he's going to be required to do that.
16 And also, depending on what classification he is, so long with
17 the GPS, DNA sample, the -- there is a lot of collateral
18 consequences for Mr. Wimer.

19 He's indicated to me early on that he had -- he did not want
20 to go to trial. He did not, obviously, want to put anyone
21 through a trial. He understands that. And I think the
22 Commonwealth understands that as well. It's just been, you know,
23 my position to let's play this out and let me do what I'm
24 supposed to do. But I have been working with Attorney Banks
25 (phonetic) pretty closely on this and this is what we have come

1 to. So he accepts responsibility. He knows he obviously needs
2 some help with this. I can say that there was absolutely no
3 contact -- physical contact with he and the victim.

4 THE COURT: I got that.

5 O'BRIEN: So -- but it's still obviously a very serious
6 charge.

7 THE COURT: Mm-hmm.

8 O'BRIEN: And he's, again, ready and willing and able to
9 accept that responsibility, Your Honor. He was currently work --
10 or he had been working full-time at Hardigg Industries. That job
11 is -- obviously, he gave his notice to that job. I'm not sure if
12 that's something that he can go back to at the end. Obviously
13 he's going to need to be paying probation supervision fees and
14 obviously for -- and counseling. There's a fee associated with
15 the GPS. You know, hopefully he'll be able to get back into the
16 workforce. For what it's worth, he did pay his (indiscernible --
17 background noise at 12:11:50) advocate fee and so he's ready to
18 accept it right now, Your Honor.

19 THE COURT: All right. We'll adopt (indiscernible -- cannot
20 understand at 12:11:57) recommendation on count one as guilty.
21 One year sentence to the House of Corrections, six months of that
22 sentence to be served direct, the balance suspended for eighteen
23 months, \$90 victim/witness fee and a \$65 per month probation
24 supervision fee. The defendant will attend and complete sex
25 offender counseling and sign releases for probation to monitor.

1 He will be required to provide a DNA sample. There will be an
2 order of no contact to stay away from the victims in this matter
3 complying with a restraining order. Count two is guilty, two
4 years straight probation, same conditions as count one and on all
5 of these matters he'll have to register with the sex offender
6 forward and there will be a GPS requirement as well. All right.

7 MR. O'BRIEN: Your Honor, I think Probation suggested -- if
8 the MIT reflects the GPS, they'll transport him here from the
9 jail.

10 PROBATION OFFICER: (Indiscernible -- simultaneous speech
11 at 12:12:45) that's exactly right.

12 THE COURT: Yeah.

13 PROBATION OFFICER: We'll have the MIT reflect that there -
14 he cannot be released until GPS --

15 THE COURT: GPS is -- all right.

16 MR. O'BRIEN: Thank you.

17 THE COURT: Mr. Wimer, you're in custody.

18 MR. WIMER: Thank you, your Honor. I appreciate it.

19 (Hearing adjourned at 12:12 p.m.)



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OFFICE OF COURT MANAGEMENT, Transcription Services**

AUDIO ASSESSMENT FORM

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TODAY'S DATE: February 19, 2017 **TRANSCRIBER NAME:** Raymond F. Catuogno, Sr.

CASE NAME: Commonwealth v. Jeffrey Wimer **DOCKET NUMBER** 1241CR1056

RECORDING DATE: April 2, 2013 **TRANSCRIPT VOLUME:** I OF I

(circle one) TYPE: CD TAPE QUALITY: EXCELLENT GOOD FAIR POOR

(circle all that apply) **ISSUES** (include time stamp):

background noise time stamp: 12:11:50

low audio _____

low audio at sidebar _____

simultaneous speech 12:12:45

cannot understand 12:09:00; 12:11:57

other: _____ **time stamp:** _____

COMMENTS:

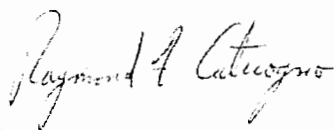
COMMONWEALTH OF MASSACHUSETTS

I, RAYMOND F. CATUOGNO, SR., an Approved Court Transcriber, do hereby certify that the foregoing is a true and accurate transcript from the audio recording provided to me by unknown court recording monitor of Greenfield District Court proceedings in the above-entitled matter.

I, RAYMOND F. CATUOGNO, SR., further certify that the foregoing is in compliance with the Administrative Office of the Trial Court Directive on Transcript Format.

I, RAYMOND F. CATUOGNO, SR., further certify that I neither am counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not financially nor otherwise interested in the outcome of the action.

February 19, 2017



Date

Raymond F. Catuogno, Sr.

One Monarch Place

Springfield, MA 01144-000

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CourtReporting@Catuogno.cc

COMMONWEALTH OF MASSACHUSETTS
APPEALS COURT

FRANKLIN COUNTY

2016-P-0390

COMMONWEALTH

vs.

JEFFREY WIMER

STIPULATION OF PARTIES TO RECORD CORRECTION

On April 2, 2013, the defendant in this case, Jeffrey Wimer, pleaded guilty to two charges of open and gross lewdness, G. L. c. 272, § 16, before Judge William F. Mazanec, III, in Greenfield District Court.

The parties on appeal stipulate that Page 5, Line 12 of the plea colloquy transcript should be corrected to read: "she he believed that she was attractive."

For the defendant,

/s/ Tim St. Lawrence

Timothy St. Lawrence
BBO #676899
11 S. Angell St., #252
Providence, RI 02906
401.484.7850
tstlawrence@gmail.com

For the Commonwealth,

/s/ Cynthia Von Flatern (tsl)

Cynthia Von Flatern, A.D.A
Northwestern D.A.'s Office
BBO # 550493
One Gleason Plaza
Northampton, MA 01060
(413) 586-9225

Dated: June 7, 2017

COMMONWEALTH OF MASSACHUSETTS

FRANKLIN COUNTY

GREENFIELD DISTRICT
COURT NO. 1241CR001056

COMMONWEALTH

vs.

JEFFREY WIMER

MOTION TO CORRECT ILLEGAL SENTENCE

Under Massachusetts Rule of Criminal Procedure 30(a), the defendant respectfully moves the Court to correct his illegal sentence in the above-referenced case by vacating the order that he register as a sex offender.

The reasons for this motion are set forth in the accompanying memorandum of law and appendix.

Respectfully submitted,
JEFFREY WIMER
By his attorney

Timothy St. Lawrence
BBO #676899
11 S Angell St #252
Providence RI 02906
401 484 7850
tstlawrence@gmail.com

Dated: December 16, 2016

COMMONWEALTH OF MASSACHUSETTS

FRANKLIN COUNTY

GREENFIELD DISTRICT
COURT NO. 1241CR001056

COMMONWEALTH

vs.

JEFFREY WIMER

MEMORANDUM OF LAW IN SUPPORT OF MOTION

PRIOR PROCEEDINGS

On July 9, 2012, a complaint issued against the defendant, Jeffrey Wimer, alleging two counts of open and gross lewdness and lascivious behavior, G. L. c. 272, § 16.¹ (A. 1, 7). Wimer entered pleas of not guilty to both counts of the complaint.

On April 2, 2013, Wimer pleaded guilty to both counts. (A. 2). On the first count, Wimer was sentenced to one year in the house of correction, six months direct, balance suspended for two years with conditions to stay away and have no contact with the victim, to be monitored by GPS upon release, to obtain sex offender counseling, and to submit a DNA sample. (A. 2). On the second count, Wimer was sentenced

¹ For purposes of this memorandum, information contained in the appendix is cited as “(A. [pg.])” and is reproduced *post*.

to two years probation with the same conditions; in addition, he was ordered to register as a convicted sex offender. (A. 2, 15-18).

On April 1, 2015, Wimer was found to have violated his probation and, as a result, his probation was extended until March 31, 2017. (A. 4, 19). On February 23, 2016, Wimer was found to have violated his probation and, as a result, his probation was revoked and he was sentenced to six months in the house of correction. (A. 5, 20).

On February 23, 2016, Wimer filed a Mass.R.Crim.P. 30(b) motion to withdraw his guilty pleas and for a new trial. (R. 5-6). The Commonwealth filed an opposition, and after a hearing, the judge denied the motion. (R. 6). The defendant timely appealed and the Appeals Court allowed his motion to stay appellate proceedings pending the preparation, filing, and resolution of this Mass. R. Crim. P 30(a) motion to correct an illegal sentence.

ARGUMENT

The portion of the defendant's sentence that required him to register as a sex offender is illegal under Massachusetts law.

Under the Sex Offender Registration and Community Notification Act, a *second and subsequent* conviction of open and gross lewdness and lascivious behavior requires a person to register as a convicted sex offender. G. L. c. 6, § 178C. *Second and subsequent* is a term of art that

means the second offense was *committed* after the defendant had already been *convicted* of the first. *Commonwealth v. Daley*, 70 Mass. 209 (1855). See *Morissette v. United States*, 342 U.S. 246, 263 (1952) (“[W]here Congress borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken and the meaning its use will convey to the judicial mind unless otherwise instructed.”).

Moreover, in 1994, the Legislature confirmed that *second and subsequent* means that the second offense was *committed* after the defendant had already been *convicted* of the first. See G. L. c. 90, § 24(1)(a)(1) as amended through St. 1994, c.25, s.3 (OUI conviction is *second and subsequent* “[i]f the defendant has been previously convicted ... [of OUI] preceding the date of the commission of the [OUI] offense for which he has been convicted.”). See also *Commonwealth v. Hernandez*, 60 Mass. App. Ct. 416, 417 (2004). So when, in 1999, the Legislature amended G. L. c. 6, § 178C, 1999 St. 1999 c.74 § 2, to include the *second and subsequent* language at issue here, it knew (and implicitly adopted) the meaning it had assigned to *second and subsequent* in the OUI statute. See *Commonwealth v. Russ R.*, 433 Mass. 515, 520 (2001) (“the Legislature is presumed to be aware of existing statutes when it amends a statute or enacts a new one”).

That the Sex Offender Registry Board's definition of *second and subsequent* in C.M.R. § 1.03 would require Wimer to register does not control the issue. See *Commonwealth v. Maker*, 459 Mass. 46 (2011) (regulation promulgated by the Sex Offender Registry Board exceeded the board's authority); *John Doe, No. 16748 v. Sex Offender Registry Board*, 82 Mass. App. Ct. 152 (2012) (same). Nor does the fact that Wimer accepted sex offender registration as part of his plea agreement control. See *Hernandez*, 60 Mass. App. Ct. at 418 ("While the defendant could plead guilty, he could not accept a statutorily created sentencing condition that simply did not exist under the facts of his case.").

For all of these reasons, a defendant's second conviction of lewd and lascivious behavior requires him to register as a sex offender only when the conduct giving rise to the second conviction occurred **after** the first conviction. Because the conduct giving rise to Wimer's second conviction of lewd and lascivious behavior occurred **before** his first conviction of lewd and lascivious behavior, the portion of his sentence that required him to register as a sex offender is illegal under Massachusetts law and thus should be vacated. Mass. R. Crim. P. 30(a) (Any person ... whose liberty is restrained pursuant to a criminal conviction may at any time, as of right, file a written motion requesting the trial judge ... to correct the sentence then being served upon the

ground that the ... restraint was imposed in violation of the ... laws ... of the Commonwealth of Massachusetts.).

CONCLUSION

Accordingly, the defendant asks this Honorable Court to grant the motion to correct his illegal sentence.

Respectfully submitted,
JEFFREY WIMER
By his attorney,

Timothy St. Lawrence
BBO #676899
11 South Angell Street, #252
Providence, RI 02906
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December 16, 2016

APPENDIX

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CRIMINAL DOCKET		DOCKET NUMBER 1241CR001056	NO. OF COUNTS 2	Trial Court of Massachusetts District Court Department	
DEFENDANT NAME AND ADDRESS Jeffrey Wimer 225 Walnut St. Apt 2 Athol, MA 01331		DOB 11/07/1985	GENDER Male	COURT NAME & ADDRESS Greenfield District Court 425 Main Street Greenfield, MA 01301	
		DATE COMPLAINT ISSUED 07/09/2012			
		PRECOMPLAINT ARREST DATE		INTERPRETER REQUIRED	
FIRST FIVE OFFENSE COUNTS					
COUNT	CODE	OFFENSE DESCRIPTION			OFFENSE DATE
1	272/16	LEWDNESS, OPEN AND GROSS c272 §16			06/19/2012
2	272/16	LEWDNESS, OPEN AND GROSS c272 §16			06/19/2012
DEFENSE ATTORNEY <i>O'Brien</i>		OFFENSE CITY/TOWN Montague		POLICE DEPARTMENT Montague PD	
DATE & JUDGE		DOCKET ENTRY		DATE & JUDGE	
JUL 17 2012 <i>Walsh</i>		<input checked="" 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		JUL 17 2012 <i>150</i> <input type="checkbox"/> WAIVED	
		Terms of release set: <input checked="" type="checkbox"/> PR <input type="checkbox"/> Bail <input type="checkbox"/> See Docket for special condition <input type="checkbox"/> Held (276 §58A)		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	
JUL 17 2012 <i>Nalsh</i>		Arraigned and advised: <i>Stayed no contact with victim</i> <input type="checkbox"/> Potential of bail revocation (276 §58) <input type="checkbox"/> Right to bail to review (276 §58) <input type="checkbox"/> Right to drug exam (111E § 10) <input type="checkbox"/> Waiver of jury found after colloquy <input type="checkbox"/> Does not waive		APR 2 2013 <i>65 mo</i> <input type="checkbox"/> WAIVED	
		Advised of right to jury trial		Probation Supervision Fee (276 § 87A) <input type="checkbox"/> WAIVED	
		Advised of trial rights as pro se (Dist. Ct. Supp R.4)		Bail Order Forfeited	
		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	7-17-12	ARR	<input checked="" type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd	<i>Walsh</i>	
2	9-4-12	PTC	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input checked="" type="checkbox"/> Cont'd		
3	10-23-12	PTC	<input checked="" type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd	<i>mazank</i>	
4	11-29-12	PTC	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input checked="" type="checkbox"/> Cont'd	<i>mazank</i>	
5	12-28-12	Final	<input checked="" type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd	<i>mazank</i>	
6	4-8-13	JT	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd		
7	4/2/13	Disp	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd		
8			<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd		
9	10-2-13	SRP	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input checked="" type="checkbox"/> Cont'd		
10	11-8-13	SRP	<input type="checkbox"/> Held <input type="checkbox"/> Not Held but Event Resolved <input type="checkbox"/> Cont'd		
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 SRE = Status review SRP = Status review of payments FAT = First appearance in jury session SEN = Sentencing CWF = Continuance without finding scheduled to terminate PRO = Probation scheduled to terminate OFTA = Defendant failed to appear & was defaulted WAR = Warrant issued WARD = Default warrant issued WR = Warrant or default warrant recalled PVH = probation revocation hearing					
A TRUE COPY ATTEST:		CLERK-MAGISTRATE / ASST CLERK X		TOTAL NO. OF PAGES	ON (DATE)

CRIMINAL DOCKET - OFFENSES		DEFENDANT NAME Jeffrey Wimer		DOCKET NUMBER 1241CR001056	
COUNT / OFFENSE 1 LEWDNESS, OPEN AND GROSS c272 §16				DISPOSITION DATE AND JUDGE APR 2 2013 <i>Morano</i>	
DISPOSITION METHOD <input checked="" 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 HEAD INJURY ASMT RESTITUTION V/W ASSESSMENT		COSTS OUI §24D FEE BATTERER'S FEE OTHER	
		SENTENCE OR OTHER DISPOSITION <input type="checkbox"/> Sufficient facts found but continued without a finding until: <input checked="" type="checkbox"/> Defendant placed on probation until: 4-1-15 <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: DNA FEB 23 2013		1 yr HoFe 6 months Direct Bal SS 2 yrs - Sex offender counseling - DNA - No contact/stay away 100 yds	
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 checked="" type="checkbox"/> Sentence or disposition revoked (see cont'd page)		JUDGE Morano DATE	
COUNT / OFFENSE 2 LEWDNESS, OPEN AND GROSS c272 §16				DISPOSITION DATE AND JUDGE APR 2 2013 <i>Morano</i>	
DISPOSITION METHOD <input checked="" 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 HEAD INJURY ASMT RESTITUTION V/W ASSESSMENT		COSTS OUI §24D FEE BATTERER'S FEE OTHER	
		SENTENCE OR OTHER DISPOSITION <input type="checkbox"/> Sufficient facts found but continued without a finding until: <input checked="" type="checkbox"/> Defendant placed on probation until: 4-1-15 <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: FEB 23 2013		from alleged victims - Register as Sex offender - DPS upon release	
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 checked="" type="checkbox"/> Sentence or disposition revoked (see cont'd page)		JUDGE Morano 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 HEAD INJURY ASMT RESTITUTION V/W ASSESSMENT		COSTS OUI §24D FEE 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:		Def not to be released until DPS established	
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 Jeffrey Wimer	DOCKET NUMBER 1241CR001056
DATE	DOCKET ENTRIES		
7-9-12	<div style="border: 1px solid black; padding: 2px; display: inline-block;"> Date 7/16/12 Warrant Issued <u>7/16/12</u> Warrant Recalled <u>7/16/12</u> </div>		
7-17-12	(M) for Protective Order + Supersummary filed - allowed J. Walsh		
9-5-12	(M) for Speedy Trial filed		
3/28/13	(M) to be heard filed by def. (2) Allowed - continued to 4/2/13 for possible dispo 14mch/see on		
4-2-13	Sentence Mitt issued		
5/1/13	Motion to reverse & revoke - filed		
11-8-13	C to 2-7-14 @ reg of prob		
2-7-14	DRC - PSF reduced by \$260 (Remit \$260) - (maranee)		
5/7/14	(M) C to 5-7-14 @ reg		
8/8/14	C 8/8/14 SRP not p C 11/7/14 SRP		
11-7-14	C to 1-28-15 @ reg of prob		
1-28-15	C to 4-1-15 @ reg of prob		
2-11-15	Notice of PVH filed - by def. Atty Simanski appt (8/50 to) C to 2-23-15 VOP status (maranee)		

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 SRE = Status review
SRP = 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 or default warrant recalled PVH = probation revocation hearing



**CRIMINAL DOCKET
DOCKET ENTRIES**

DEFENDANT NAME
Jeffrey Wimer

DOCKET NUMBER
1241CR001056

DATE	DOCKET ENTRIES
2-23-15	C to 3-24-15 VOP (H) by agreement (marzani)
3-24-15	By agreement - C to 3-27-15 VOP (H) (marzani)
3-25-15	Bst find (a) of Chief DeAngelis - Ree cont of VOP (H) - C to 4-1-15 VOP (H) - Atty Simonski to contact Mr Wimer - Probation notified of new date.
4-1-15	DJ admits to VOP DJ found in VOP DJ probated to 3-31-17 w/ amended cond of probs of Sex offender frmt. No unsupervised contact w/ minors GPS No inappropriate electronic communication w/ relatives No contact & stay 100 yards away from victim. Register CSO No added PST
11-18-15	Request for warrant filed by Prob. Attorney - Ren Bulable (Marzani)
11-18-15	Warrant Issued Warrant Recalled
11-23-15	DJ comd - Notice of PUTH filed - Defarr'd DJ signed waiver - C to 12-2-15 VOP (H) (marzani)

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 jury session S = Sentencing 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

DOCKET CONTINUATION		NAME OF CASE	DOCKET NUMBER
NO.	DATE	DOCKET ENTRIES	
12-2-15		By agreement - CTO 1-6-16 VOP #1 (marane)	
	JAN 06 2016	VOP (1-23-15) by draw. S. J.	
1/20/15		<div style="border: 1px solid black; padding: 2px; display: inline-block;"> Date Warrant Issued 1/25/16 Warrant Recalled </div>	
1-25-16		Notice of PTH & PDH filed - Def arr'd - atty Flynn appt. PC heard - Def held pending trial #1 - 2-24-16 & 2-22-16 (M for new T) (marane)	
1/25/16		Mitt issued to 2-23-16	
2-23-16		Def admits to VOP by fax in VOP on pants 1 & 2 - Probation Revoked - Count 1 - 6 months HFC imposed Direct - Credit Count 2 - 6 months HFC imposed Direct (con w) Count 1	
2-23-16		Any outstanding & admitted - motion for new Trial filed 4-5-16 M for new T. (Habe)	
2/23/16		Sentence Mitimus Issued Habe issued for 4/5/16 DNA fee waived Def doing sentence @ Worcester County. any further Habs - issue to <u>WCTOC</u> .	

CRIMINAL COMPLAINT ORIGINAL		DOCKET NUMBER 1241CR001056	NO. OF COUNTS 2	Trial Court of Massachusetts District Court Department
DEFENDANT NAME & ADDRESS Jeffrey Wimer 225 Walnut St. Apt 2 Athol, MA 01331				COURT NAME & ADDRESS Greenfield District Court 425 Main Street Greenfield, MA 01301 (413)774-5533
DEFENDANT DOB 11/07/1985	COMPLAINT ISSUED 07/09/2012	DATE OF OFFENSE 06/19/2012	ARREST DATE	
OFFENSE CITY / TOWN Montague	OFFENSE ADDRESS Montague Center, MA			NEXT EVENT DATE & TIME <i>Warrant</i>
POLICE DEPARTMENT Montague PD	POLICE INCIDENT NUMBER 12-265-AR			NEXT SCHEDULED EVENT
OBTN				ROOM / SESSION
<p>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.</p>				

COUNT	CODE	DESCRIPTION
1	272/16	LEWDNESS, OPEN AND GROSS c272 §16

On or about 06/19/2012 did commit open and gross lewdness and lascivious behavior in the presence of another person, in violation of G.L. c.272, §16.

PENALTY: state prison not more than 3 years; or jail not more than 2 years; or not more than \$300.

2	272/16	LEWDNESS, OPEN AND GROSS c272 §16
---	--------	-----------------------------------

On or about 06/19/2012 did commit open and gross lewdness and lascivious behavior in the presence of another person, in violation of G.L. c.272, §16.

PENALTY: state prison not more than 3 years; or jail not more than 2 years; or not more than \$300.

SIGNATURE OF COMPLAINANT <i>X [Signature]</i>	SWORN TO BEFORE CLERK-MAGISTRATE/ASST. CLERK/DEP. ASST. CLERK <i>X [Signature]</i>	DATE 7/11/12
NAME OF COMPLAINANT	A TRUE COPY ATTEST <i>X</i>	CLERK-MAGISTRATE/ ASST. CLERK 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.

APPLICATION FOR CRIMINAL COMPLAINT		APPLICATION NO.(COURT USE ONLY) 12-CR-1056	PAGE 1 of 1	Trial Court of Massachusetts District Court Department	
1, the undersigned complainant, request that a criminal complaint issue against the accused charging the offense(s) listed below. If the accused HAS NOT BEEN ARRESTED and the charges involve: <input type="checkbox"/> ONLY MISDEMEANOR(S), I request a hearing <input type="checkbox"/> WITHOUT NOTICE because of an imminent threat of <input type="checkbox"/> BODILY INJURY <input type="checkbox"/> COMMISSION OF A CRIME <input type="checkbox"/> FLIGHT <input type="checkbox"/> WITH NOTICE to accused. <input checked="" type="checkbox"/> ONE OR MORE FELONIES, I request a hearing <input type="checkbox"/> WITHOUT NOTICE <input type="checkbox"/> WITH NOTICE to accused. <input checked="" type="checkbox"/> WARRANT is requested because prosecutor represents that accused may not appear unless arrested.				GREENFIELD DISTRICT COURT 425 MAIN ST GREENFIELD, MA. 01301 ARREST STATUS OF ACCUSED <input type="checkbox"/> HAS <input checked="" type="checkbox"/> HAS NOT been arrested	
INFORMATION ABOUT ACCUSED					
NAME (FIRST MI LAST) AND ADDRESS JEFFREY A WIMER 225 WALNUT ST ATHOL, MA. 01331			BIRTH DATE 11/07/1985	SOCIAL SECURITY NUMBER	
			PCF NO.	MARITAL STATUS	
			DRIVERS LICENSE NO. S98816973	STATE MA	
			GENDER M	HEIGHT	WEIGHT
			EYES		
HAIR	RACE W	COMPLEXION	SCARS/MARKS/TATTOOS	BIRTH STATE OR COUNTRY	DAY PHONE 413-475-3195
EMPLOYER/SCHOOL		MOTHER'S MAIDEN NAME (FIRST MI LAST)		FATHER'S NAME (FIRST MI LAST)	
CASE INFORMATION					
COMPLAINANT NAME (FIRST MI LAST) William Doyle			COMPLAINANT TYPE <input checked="" type="checkbox"/> POLICE <input type="checkbox"/> CITIZEN <input type="checkbox"/> OTHER		PD MOT
ADDRESS Montague Police Department 180 Turnpike Rd Turners Falls, MA. 01376			PLACE OF OFFENSE MONTAGUE CENTER, MA		
			INCIDENT REPORT NO. 12-285-AR	OBTN TMOT201200265	
			CITATION NO(S).		
OFFENSE CODE 272/16	DESCRIPTION LEWDNESS, OPEN AND GROSS			OFFENSE DATE 06/29/2012	
1 VARIABLES (e.g. victim name, controlled substance, type and value of property. other variable information; see Complaint Language Manual) about 6/19/12					
VICTIM(S) WEAPON(S): None;					
OFFENSE CODE 272/16	DESCRIPTION LEWDNESS, OPEN AND GROSS			OFFENSE DATE 06/29/2012	
2 VARIABLES on or about 5/19/12					
VICTIM(S): WEAPON(S): None;					
OFFENSE CODE	DESCRIPTION			OFFENSE DATE	
3 VARIABLES					
REMARKS SID#			COMPLAINANT'S SIGNATURE X [Signature]		DATE FILED 7-9-12
COURT USE ONLY	A HEARING UPON THIS COMPLAINT APPLICATION } WILL BE HELD AT THE ABOVE COURT ADDRESS ON			DATE OF HEARING AT	COURT USE ONLY
DATE	PROCESSING OF NON-ARREST APPLICATION(COURT USE ONLY)				CLERK/JUDGE
NOTICE SENT OF CLERK'S HEARING SCHEDULED ON:					
NOTICE SENT OF JUDGE'S HEARING SCHEDULED ON:					
HEARING CONTINUED TO:					
APPLICATION DECIDED WITHOUT NOTICE TO ACCUSED BECAUSE: <input type="checkbox"/> IMMINENT THREAT OF <input type="checkbox"/> BODILY INJURY <input type="checkbox"/> CRIME <input type="checkbox"/> FLIGHT BY ACCUSED <input type="checkbox"/> FELONY CHARGED AND POLICE DO NOT REQUEST NOTICE <input type="checkbox"/> FELONY CHARGED BY CIVILIAN; NO NOTICE AT CLERK'S DISCRETION					
DATE	COMPLAINT TO ISSUE			COMPLAINT DENIED	
7/9/12	<input checked="" type="checkbox"/> PROBABLE CAUSE FOUND FOR ABOVE OFFENSE(S) NO(S). <input type="checkbox"/> 1. <input checked="" type="checkbox"/> 2. <input type="checkbox"/> 3. BASED ON <input checked="" type="checkbox"/> FACTS SET FORTH IN ATTACHED STATEMENT(S) <input type="checkbox"/> TESTIMONY RECORDED: TAPE NO. _____ START NO. _____ END NO. _____ <input checked="" type="checkbox"/> WARRANT <input type="checkbox"/> SUMMONS TO ISSUE ARRAIGNMENT DATE: _____			<input type="checkbox"/> NO PROBABLE CAUSE FOUND <input type="checkbox"/> REQUEST OF COMPLAINANT <input type="checkbox"/> FAILURE TO PROSECUTE <input type="checkbox"/> AGREEMENT OF BOTH PARTIES <input type="checkbox"/> OTHER: COMMENT	



Montague Police Department
Summons Report

Page: 1
07/06/2012

Summons #: 12-265-AR
Call #: 12-8022
Incident #: 12-268-OF

Date/Time Reported: 06/29/2012 @ 1534
Arrest Date/Time: 07/05/2012 @ 1909
Involves: Sex Crimes, Juveniles
OBTN: TMOT201200265
Reporting Officer: Detective William Doyle
Signature: _____

#	DEFENDANT(S)	SEX	RACE	AGE	SSN	PHONE
1	WIMER, JEFFREY A 225 WALNUT ST ATHOL MA 01331	M	W	26		413-475-3195

Military Active Duty: N
BODY: NOT AVAIL. COMPLEXION: NOT AVAIL.
DOB: 11/07/1985 PLACE OF BIRTH: NOT AVAIL.
LICENSE NUMBER: MA S98816973 ETHNICITY: NOT HISPANIC

[CONTACT INFORMATION]

Home Phone (Primary) 413-475-3195

#	OFFENSE(S)	ATTEMPTED	TYPE
	LOCATION TYPE: Residence/Home/Apt./Condo Zone: MONTAGUE CENTER 354 TURNERS FALLS RD MONTAGUE CENTER MA 01351		
1	LEWDNESS, OPEN AND GROSS 272/16 272 16 OCCURRED: 06/29/2012 1534 WEAPON/FORCED USED: None	N	Felony
2	LEWDNESS, OPEN AND GROSS 272/16 272 16 OCCURRED: 06/29/2012 1534 WEAPON/FORCED USED: None	N	Felony

#	VICTIM(S)	SEX	RACE	AGE	SSN	PHONE
1		F	W	9		NOT AVAIL

DOB: _____
INJURIES: None
ETHNICITY: Not of Hispanic Origin
RESIDENT STATUS: Resident
VICTIM CONNECTED TO OFFENSE NUMBER(S): 1 2
RELATION TO: WIMER JEFFREY Child of Boy/Girl Friend

Montague Police Department
Summons Report

Page: 2
07/06/2012

Summons #: 12-265-AR
Call #: 12-8022
Incident #: 12-268-OF

#	PERSON(S)	PERSON TYPE	SEX	RACE	AGE	SSN	PHONE
---	-----------	-------------	-----	------	-----	-----	-------

1	COLLINS, TIA E	WITNESS	F	W	33		
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CONTACT INFORMATION:

Home Phone (Primary)

2	JENKINS, MIKE	REPORTING PARTY	M	W	59		
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EMPLOYER:

CONTACT INFORMATION:

Home Phone (Primary)

Ref: 12-265-AR

On 6/29/2012, Michael Jenkins an investigator for the Department of Children and Families, came to the Montague Police Department as a result of a report made to the District attorney's office for possible sexual abuse at a location in Montague. Montague Police Officer Josh Hoffman and Police Sgt Chris Bonnett went to _____ along with Department of Children and Families investigator Jenkins and interviewed family members at this address. (see attached police incident report 12-268).

On 6/29/2012 Tia Collins (age 33) was interviewed along with her daughter _____. In the first interview with _____ accompanied by her grandfather. _____ told investigators that a man, Jeffrey Wimer, who comes to her house at night had come into _____ bedroom where she was awoken to find Wimer fully nude rubbing his own penis. _____ told investigators that this has happened on another occasion, and she is awoken by a "slurping" noise, and Wimer talking to _____. _____ stated that Wimer will stated "_____ it's okay to look". _____ told investigators that she yelled for her mother, which is why Wimer stopped.

On this same date, 6/29/12, Tia Collins was interviewed. Tia stated that Wimer is her lover and that Wimer does come over late at night. Tia Collins stated the last time Wimer had come over to the residence of _____ for sex was on 6/19/12. According to Tia, on that night, after the two adults had sex, Wimer left the bedroom to use the bathroom. Tia heard her daughter cry out so Tia went into her daughter's _____ room to find Wimer standing in _____ room holding his erect penis. Tia also stated that this had happened once before about a month before, and on that occasion she observed Wimer partially erect, standing in the hallway watching _____. Tia also stated that Wimer has asked Tia if _____ could be brought into the bedroom when the adults are having sex so that _____ could watch. Tia stated that she did not agree to do this at this time.

On 7/2/12 A forensic Interview was done at the District attorney's office in Greenfield. Suzanne Koch interviewed _____ about these past incidents involving Wimer. (See attached DVD of interview)

In this interview, _____ stated that Jeff Wimer would "sneak out of Mommy's room" and that he would stand in front of her while he is totally naked and rubbing his penis. She further described it that he would bend his penis and rub it in a circular motion. _____ stated that when he does this he makes a slurping sound with his nuts. _____ stated that Jeff will talk to her while he is pulling on his penis. _____ imitated Jeff Wimer in the way that Wimer speaks to her. _____ imitated Wimer as if Wimer is singing "_____ look, _____ it's okay." _____ states that this scares her and she calls out to her mother. _____ stated that Jeff wants to "do it" with her. _____ stated that she feels unsafe, and she can't go back to bed/sleep after he does this. _____ stated that Wimer when in her room had put his penis on her dresser and other things in her room. When he got closer to her she would scream out for her mother. _____ also stated that Jeff would sigh and moan "like he just got drunk" while he masturbated in front of her. _____ stated that Jeff would sigh and say, "it's okay, i won't tell anybody". _____ again stated in this interview that when she yells for her mother Jeff would back up toward the door of her _____ bedroom and start moving away from her. When asked how close Jeff got to _____ as she layed in her bed, _____ replied "about half a foot, or six inches away. At one point in the interview, _____ stated that when Jeff did this, she was so scared that she did not want to look at him and she would cover her eyes. _____ had found Jeff Wimer's phone once as he had dropped it in her room. _____ navigated through the pictures stored in Jeff's phone and observed pictures of Jeff's penis, along with at least two other pictures of woman with no clothes on. _____ had also taken her mother's phone and observed a video of Jeff masturbating, and several pictures of Jeff's penis.

NARRATIVE FOR DETECTIVE WILLIAM DOYLE

Ref: 12-265-AR

On 7/3/12 at approximately 1540 hours, Detective Doyle interviewed Tia Collins at the Montague Police Department. Tia was given miranda warnings, and advised that the interview was going to be recorded visually and auditorily. Tia signed consent forms for both the miranda and the electronic recording (see attached).

During this interview, Tia stated that she has been seeing/dating Jeff Wimer for approximately three years. Tia and Jeff have had sex multiple times but only four or six times at her house/parents house. Tia explained that Jeff would text her and come over around Eleven p.m. staying the night, sneaking out just before her parents woke for the day. Tia stated that Jeff had told her on occasions that he thought _____ was pretty and that he would like to teach her how to please herself. Tia stated that when Jeff would say these type of things, Tia would respond that _____ is too young right now. Jeff would then state that he was about her age when he knew how to masturbate. Tia explained that there were two separate times where after Tia and Jeff had been having sex in Tia's bedroom, Jeff would leave the room to go to the bathroom. On two separate occasions, Tia thought that Jeff had been gone for too long (approximately 15 to 20 minutes). Tia left her bedroom to find Jeff, naked and masturbating in front of her daughter _____. On at least one of the times, just as Tia was going to check on Jeff, _____ called out for her mother. On both times (first and second time Tia found Jeff masturbating in front of _____ was awake, and Tia apologized to her daughter and then Tia brought Jeff back into Tia's bedroom.

Tia also stated in this interview that Jeff would tell Tia that he wanted _____ to watch Tia and Jeff have sex. Tia stated that during the "heat of the moment", during sexual intercourse, Jeff would speak of _____. During these times Jeff stated things about how cute _____ is, how _____ should know how to please herself, how _____ hands are so small that it would take both of _____ hands to go around Jeff's penis, and that _____ must be "smooth" down there.

The Detective explained to Tia that _____ had stated that when Jeff was masturbating in front of her, that there was a slurping noise. Tia explained that was because of the "Lube" that they used during sex, and that this Lube was the sticky stuff that _____ had spoke of that was on the door knob.

When the Detective asked Tia if Jeff had ever "touched" _____ Tia responded that _____ had told her mother that Jeff had touched her on the shoulder once.

Tia also explained that she and Jeff send erotic/nude photos and videos to each other on their cell phones, and that _____ has viewed these photos and videos. Tia stated that _____ would take her mother's phone to play games but then switch to the videos and photos. Tia stated the videos are of Tia and Jeff having sex and of Jeff masturbating. Tia stated the photos are of the same.

Tia stated that _____ pleads with her to stop seeing Jeff and doesn't want Jeff at the house at all. Tia stated that _____ has been saying these things for a long time.

Respectfully Submitted

Detective William J Doyle

**TENDER OF PLEA OR ADMISSION
& WAIVER OF RIGHTS**

DOCKET NO.

1241CR001056

Trial Court of Massachusetts
District Court Department

NAME OF DEFENDANT

Jeffrey Wimer

COURT DIVISION

Greenfield District Court
425 Main Street
Greenfield, MA 01301**SECTION I****CONDITIONAL TENDER OF PLEA OR ADMISSION**Defendant tenders the following: ☒ PLEA OF GUILTY ☐ ADMISSION TO FACTS SUFFICIENT FOR A FINDING OF GUILTY

COUNT NO.	DEFENDANT'S RECOMMENDATION(s) (Include all fees, costs and conditions of probation)	PROSECUTOR'S RECOMMENDATION(s) (Required when Prosecutor disagrees with Defendant's recommendations)	JUDGE'S DISPOSITION WHEN DEFENDANT'S RECOMMENDATION IS REJECTED
1	G. 1 yr. HoC w/ 6 mos. direct; 24 - CHO balance susp. 18 mos.; 140 WOF; 165/mo PSF; sex offender counseling; DNA sample; no contact, stay away		
2	G. 2 yrs. probation; same conditions as count 1; SORB registration; GPS		

IF ANY COUNT IS BEING PLACED ON FILE: it may be removed from the file at any time and sentence imposed (or scheduled for trial if no guilty finding has been made): (1) at the defendant's request, or (2) if a related conviction or sentence is reversed or vacated, or (3) if it is shown by a preponderance of evidence that the defendant committed a new criminal offense, or (4) if it is shown by a preponderance of evidence that:

(Optional:) The prosecutor may not request that the charge be removed from the file after:

(date).

DIST. / MUN. CTS. R. CRIM. P. 4(c) REQUIRES COUNSEL TO CONSULT WITH THE PROBATION DEPARTMENT REGARDING PROBATIONARY TERMS.

SIGNATURE OF DEFENSE COUNSEL OR PRO SE DEFENDANT

DATE

SIGNATURE OF PROSECUTOR

DATE

X

4/2/13

X

THE COURT ☐ ACCEPTS DEFENDANT'S TENDER ☐ REJECTS DEFENDANT'S TENDER

DATE

SIGNATURE OF JUDGE

X

4/2/13

DEFENDANT'S DECISION WHEN COURT REJECTS DEFENDANT'S RECOMMENDATION

☐ Defendant WITHDRAWS the tendered plea or admission. ☐ Defendant ACCEPTS judge's disposition set forth above.

SIGNATURE OF DEFENSE COUNSEL

DATE

SIGNATURE OF DEFENDANT

DATE

X

X

SECTION II

DEFENDANT'S WAIVER OF RIGHTS (G.L. c. 263, § 6) & ALIEN RIGHTS NOTICE (G.L. c. 278, § 29D)

I am not now under the influence of any drug, medication, liquor or other substance that would interfere with my ability to fully understand the constitutional and statutory rights that I am waiving when I plead guilty, or admit to sufficient facts to support a finding of guilty.

I have decided to plead guilty, or admit to sufficient facts, freely and voluntarily upon the conditions which I have tendered in Section I. My guilty plea or admission is not the result of force or threats, promises or other assurances.

I understand and acknowledge that I am voluntarily giving up the right to be tried by a jury, or by a judge without a jury, on these charges. I understand that the jury would consist of six jurors chosen at random from the community, and that I could participate in selecting those jurors, who would determine unanimously whether I was guilty or not guilty. I understand that by entering my plea of guilty or admission, I will also be giving up my right to confront, cross-examine, and compel the attendance of witnesses, to present evidence in my defense, to remain silent and refuse to testify or provide evidence against myself, all with the assistance of a defense attorney, and to be presumed innocent until proven guilty by the prosecution beyond a reasonable doubt.

I am aware of the nature and elements of the charge(s) to which I am entering my guilty plea or admission. I am also aware of the nature and range of the possible sentence(s); I am aware that sentences can be imposed one after the other. I have been advised if my plea of guilty or admission to the charges could trigger the provisions of the sex offender registration statute, or lifetime community parole supervision, or commitment as a sexually dangerous person under G.L. c. 123A, § 12.

I understand that if I am not a citizen of the United States, the acceptance by this court of my plea of guilty, plea of nolo contendere, or admission to sufficient facts may have consequences of deportation, exclusion from admission to the United States, or denial of naturalization, pursuant to the laws of the United States.

If any charge is being placed on file, I freely and voluntarily consent to the filing of that charge on the conditions listed on the front of this form. I understand that I have a right at any time to have the court remove it from the file and impose sentence (or schedule it for trial if no guilty finding has been made). I understand that the prosecutor may request the court to remove it from the file and impose sentence (or schedule it for trial if no guilty finding has been made) if a related conviction or sentence is reversed or vacated, or if the prosecutor proves by a preponderance of evidence either that I committed a new criminal offense or that any other condition listed on this front of this form has occurred. The prosecutor may do so at any time (or if a time limit is listed on the front of this form, at any time until that date). I understand that if the charge is removed from the file and I am sentenced, it may result in additional punishment in this case.

SIGNATURE OF DEFENDANT

DATE

I have translated this document for the defendant.
SIGNATURE OF INTERPRETERX 

4-2-13

X

SECTION III

DEFENSE COUNSEL'S CERTIFICATE (G.L. c. 218, § 26A)

As required by G.L. c. 218, § 26A, I certify that as legal counsel to the defendant in this case, I have explained to the defendant the legal rights and consequences referred to in Section II above.

SIGNATURE OF DEFENSE COUNSEL

BBO NO.

DATE

X 

658945

4/2/13

SECTION IV

JUDGE'S CERTIFICATION

I, the undersigned Judge of the District Court, addressed the defendant directly in open court. I made appropriate inquiry into the education and background of the defendant and am satisfied that the defendant fully understands all of the defendant's rights as set forth in Section II above, and that the defendant is not under the influence of any drug, medication, liquor or other substance that would impair the defendant's ability to fully understand those rights. I find, after a colloquy with the defendant, that the defendant has knowingly, intelligently, and voluntarily waived all of the rights as explained during these proceedings and as set forth in this form.

After a hearing, I have found a factual basis for the charge(s) to which the defendant is pleading guilty or admitting and I have found that the facts as related by the prosecution and admitted by the defendant would support a conviction on the charge(s) to which the plea or admission is made.

I certify that I have advised the defendant as follows: "If you are not a citizen of the United States, you are hereby advised that the acceptance by this court of your plea of guilty, plea of nolo contendere, or admission to sufficient facts may have consequences of deportation, exclusion from admission to the United States, or denial of naturalization, pursuant to the laws of the United States."

If any charge is being placed on file after a guilty finding, I have informed the defendant that he or she has a right to be sentenced on that charge at any time, that (subject to any listed time limit) the prosecutor may request the court to remove it from the file and impose sentence if a related conviction or sentence is reversed or vacated, or if the prosecutor proves by a preponderance of evidence either that the defendant committed a new offense or that any other condition listed on this front of this form has occurred, and that if the charge is removed from the file and sentence imposed it may result in additional punishment in this case.

SIGNATURE OF JUDGE

DATE

X 

4/2/13

**MASSACHUSETTS TRIAL COURT
NOTICE OF THE DUTY OF A SEX OFFENDER TO REGISTER**

Offender Name JEFFREY WIKER

THIS FORM IS TO BE COMPLETED

☒ District Court
☐ Superior Court
☐ Juvenile Court
☐ Boston Municipal Court

County/Court Division: GREENFIELD

Docket No: 1241CR1056

**NOTICE TO AN OFFENDER
PRIOR TO ACCEPTING A PLEA FOR A SEX OFFENSE**

This notice is to inform you, prior to the court's acceptance of a plea of guilty for a sex offense, that such plea may result in your being subject to the provisions of G.L. c. 6, §§ 178C to 178P, inclusive. Under G.L. c. 6, §§ 178C to 178P, inclusive, a convicted sex offender has a duty to register, to verify registration information, and to give notice of change of address or intended change of address to the sex offender registry board (the board). A convicted sex offender has a right, under G.L. c. 6, § 178L, to submit to the board documentary evidence relative to such sex offender's risk of reoffense, the degree of dangerousness posed to the public and the duty to register under G.L. c. 6, § 178E. It is a criminal offense for a sex offender to violate the provisions of G.L. c. 6, §§ 178C to 178P, inclusive, and a first and subsequent convictions will be punished by imprisonment, or by a fine, or by both a fine and imprisonment. Further, failure to register may be grounds for revocation of the offender's probation. (Acknowledge receipt of this notification by signing, where applicable, at the end of this notification.)

**NOTICE TO SEX OFFENDER OF THE DUTY TO REGISTER
THIS FORM IS TO BE COMPLETED UPON CONVICTION OR ADJUDICATION**

As a convicted "sex offender" under provision of G.L. c. 6, § 178E you have a duty to register by mailing a completed form, obtained from and approved by the sex offender registry board (the board), to the board within two days of receiving this notification. If you are adjudicated as a delinquent juvenile or youthful offender by reason of a sex offense, the legal guardian or agency having custody and your most recent attorney of record shall also be required to acknowledge, in writing, such information.

You have the right under G.L. c. 6, § 178L(1)(a) to submit documentary evidence to the board relative to your risk of reoffense, and the degree of dangerousness you pose to the public and your duty to register according to the provisions of G.L. c. 6, § 178E. It is also your duty to comply with all applicable provisions listed below, of G.L. c. 6, §§ 178C-178P:

- If you intend to move to a different city or town within Massachusetts, you must register with the board not later than ten days prior to establishing such new residence by mailing to the board a completed form, obtained from and approved by the board.
- If you intend to change your address within a city or town in Massachusetts, you must notify the board in writing not later than ten days prior to establishing such new residence.

- If you intend to move out of Massachusetts, you must first apply through the Probation Office listed below for out of state supervision under the Interstate Compact Agreement. If the receiving state approves your request, then you must notify the board in writing not later than ten days before leaving Massachusetts.
- If you intend to change your work address, you must notify the board in writing not later than ten days prior to establishing the new work address.
- If you have been determined to be a sexually violent predator under G.L. c.6, § 178K(2)(c), you must appear in person every 90 days at the local police department in the city or town in which you live, or if you do not reside in the commonwealth, then in the city or town where you work, to verify that your registration data on file remains true and accurate.
- If you have been finally classified by the board as a level 2 or 3 sex offender required to register pursuant to G.L. c. 6, §§ 178C to 178P, inclusive, you must appear in person annually at the local police department in the city or town where you reside, or if you do not reside in the commonwealth, then in the city or town in Massachusetts in which you work, to verify that the registration data on file remains true and accurate.
- All other sex offenders required to register pursuant to G.L. c. 6, §§ 178C through 178P, inclusive, must annually verify that the registration data on file with the board remains true and accurate by mailing to the board a form, obtained from and approved by the board.
- If you list a homeless shelter as your residence you must verify registration data every 90 days with the board by mailing to the board a form, obtained from and approved by the board. A sex offender who lists a homeless shelter as his or her residence who has been determined to be a sexually violent predator under G.L. c. 6, § 178K(2)(c) must appear in person at the local police department, in the city or town where you reside, or if you do not reside in the commonwealth, then in the city or town in Massachusetts in which you work, to verify that the registration data on file remains true and accurate. Any offender who lists a homeless shelter as his or her residence pursuant to G.L. c. 6, §§ 178C to 178P, inclusive, who knowingly: (1) fails to register as a sex offender; (2) fails to verify registration information; (3) fails to provide notice of change of address; or (4) provides false information shall, for a first conviction, be punished by imprisonment for not more than 30 days in a house of correction; for a second conviction, be punished by imprisonment for not more than two and one-half years in a house of correction nor more than five years in a state prison or by a fine of not more than \$1,000, or both such fine and imprisonment; and for a third and subsequent conviction, be punished by imprisonment in a state prison for not less than five years; provided, however, that the sentence imposed for the third or subsequent conviction shall not be reduced to less than five years, nor suspended, nor shall any person sentenced herein be eligible for probation, parole, work release or furlough, or receive any deduction from his or her sentence for good conduct until having served five years.

Your duty to register as a sex offender and comply with the requirements pursuant to G.L. c. 6 shall, unless sooner terminated by the board under G.L. c. 6, § 178L, end twenty years after you were convicted or adjudicated or released from all custody or supervision, whichever last occurs, unless you were "convicted of two or more sex offenses defined as sex offenses pursuant to the Jacob Wetterling Crimes Against Children

and Sexually Violent Offender Registration Act. 42 U.S.C., § 14071 [et seq.], committed on different occasions. ha[ve] been convicted of a sexually violent offense; ha[ve] been determined by the sentencing court to be a sexually violent predator, or if [you are] otherwise subject to lifetime registration requirements as determined by the board pursuant to [G.L. c. 6] section 178D, in which case the duty to register shall never be terminated." G.L. c. 6, § 178G.

You may make an application to the sex offender registry board to terminate your obligation to register upon proof, by clear and convincing evidence, that you have not committed a sex offense within ten years following conviction, adjudication or release from all custody or supervision, whichever is later and that you are not likely to pose a danger to the safety of others. An offender determined by the sentencing court to be a sexually violent predator may, not earlier than ten years after such determination, file a motion in the sentencing court for a determination whether he remains a sexually violent predator. The court shall notify and obtain a report from the board and the burden shall be on such sex offender to demonstrate to the court by clear and convincing evidence that he is no longer a sexually violent predator. Any subsequent conviction for a sex offense or act of domestic violence shall be prima facie evidence that the offender is still a sexually violent predator.

It is a criminal offense if you knowingly: (1) fail to register as a sex offender; (2) fail to verify registration information; (3) fail to provide notice of change of address; or (4) provide false information. A first conviction for committing one of the aforementioned offenses shall be punished by imprisonment for not less than six months and not more than two and one-half years in a house of correction nor more than five years in a state prison or by a fine of not more than \$1,000 or by both such fine and imprisonment. A second and subsequent conviction shall be punished by imprisonment in the state prison for not less than five years. Violations of this section, G.L. c. 6, § 178H, may be prosecuted and punished in any county where you knowingly: (1) fail to register as a sex offender; (2) fail to verify registration information; (3) fail to provide notice of change of address; or (4) provide false information.

Probation Office: Greenfield Dist. court
Street Address: 425 main St.
City/town: Greenfield, MA Zip Code: 01301
Telephone No.: 413-774-5531

Prior to the court accepting a plea of guilty for a sex offense the sex offender must acknowledge this notification by signing where appropriate below:

**ACKNOWLEDGMENT OF NOTIFICATION REGARDING THE REQUIREMENTS
FOR A PERSON WHO PLEADS GUILTY TO A SEX OFFENSE
PURSUANT TO G.L. c. 6, §§ 178C to 178P, INCLUSIVE**

I, Jeffrey Wimer, [print name] acknowledge that I have been notified that a plea of guilty for a sex offense may result in my being subject to the provisions of G.L. c. 6, §§ 178C to 178P, inclusive.

Signature: [Signature]

Date: April 2, 2013

*(If said person is a juvenile or youthful offender, such person must acknowledge this notification by signing his/her name above, and the legal guardian or agency having custody and the most recent attorney of record must also sign below.)

***ACKNOWLEDGMENT OF NOTIFICATION
BY THE LEGAL GUARDIAN/AGENCY HAVING CUSTODY
AND THE MOST RECENT ATTORNEY OF RECORD
OF THE DELINQUENT JUVENILE'S OR YOUTHFUL OFFENDER'S OBLIGATIONS
PURSUANT TO G.L. c. 6, §§ 178C to 178P, INCLUSIVE, IF THE COURT ACCEPTS
A PLEA OF DELINQUENCY OR AS A YOUTHFUL OFFENDER
BY REASON OF HAVING VIOLATED ONE OF THE ENUMERATED SEX OFFENSES**

I, _____ [print name] _____ [relationship to juvenile or youthful offender], and _____ [print name of attorney of record] acknowledge that I have been notified of the delinquent juvenile's or youthful offender's obligations pursuant to G.L. c. 6, §§ 178C to 178P, inclusive, if the court accepts a plea of delinquency or as a youthful offender by reason of having committed one of the enumerated sex offenses.

Signature [legal guardian or agency having custody] _____ Date: _____

Signature [attorney of record] _____ Date: _____

**ACKNOWLEDGMENT OF NOTIFICATION
OF DUTY TO REGISTER AS A SEX OFFENDER**

X I, Jeffrey Wimer, [print name] acknowledge that I have been notified of my duty to register and have been provided with a copy of this notice describing all duties I have under the provisions of G.L. c. 6, §§ 178C to 178P, inclusive.

Signature Jeffrey Wimer Date: April 2, 2013

** (If said person has been adjudicated as a delinquent juvenile or a youthful offender by reason of a sex offense such person must acknowledge this notification by signing his or her name above; and the legal guardian or agency having custody and the most recent attorney of record must also sign below.)

****ACKNOWLEDGMENT OF NOTIFICATION
BY THE LEGAL GUARDIAN/AGENCY HAVING CUSTODY
AND THE MOST RECENT ATTORNEY OF RECORD OF THE DELINQUENT JUVENILE'S OR
YOUTHFUL OFFENDER'S DUTY TO REGISTER BY REASON OF HAVING VIOLATED ONE OF THE
ENUMERATED SEX OFFENSES**

I, _____ [print name] _____ [relationship to juvenile or youthful offender], and _____ [print name of attorney of record] acknowledge that I have been notified of the duty of the delinquent juvenile or youthful offender named herein to register pursuant to the provisions of G.L. c. 6, § 178E(c) by reason of having committed one of the enumerated sex offenses and I have been provided with a copy of this notice describing all duties he or she has under the provisions of G.L. c. 6, §§ 178C to 178P, inclusive.

Signature [legal guardian or agency having custody] _____ Date: _____

Signature [attorney of record] _____ Date: _____

AUTC- (9/1999)

R. 47

ORDER OF PROBATION CONDITIONS UPON FINDING OF GUILTY OR SUFFICIENT FACTS		<input checked="" type="checkbox"/> RISK/NEED OR OUI SUPERVISION <input type="checkbox"/> ADMINISTRATIVE SUPERVISION	DOCKET NO(s). IN WHICH PROBATION WAS ORDERED 1241 CR1056
PROBATIONER'S NAME & ADDRESS Jeffrey Wimer 34 Bridge St #2 South Andover, MA 01075 (413) 5394404 (413) 8241249		DISPOSITION Found violation on 4/1/15 Ext 3/31/17	Trial Court of Massachusetts District Court Department - Greenfield District Court 101 Munson Street Greenfield, MA 01301 Extend
TO THE ABOVE-NAMED PROBATIONER: You are hereby placed on probation by this Court. Unless you are excused by your probation officer, you must appear in court on the probation end date indicated, at which time a report on your probation progress will be made. If you fail to appear on that date or any other date required, a warrant may be issued for your arrest.			PROBATION START DATE 4/1/15 PROBATION END DATE 3/31/17
GENERAL CONDITIONS OF PROBATION (You must comply with Items 1-6 unless struck out by judge.)			
<div>1. Obey all court orders and all local, state and federal laws, including any support order, as defined in G.L. c. 119A, § 1A.</div> <div>2. Report to your probation officer at such times and places as he or she requires, and make no false statements to your probation officer.</div> <div>3. Notify your probation officer within 48 hours if you change residence or employment.</div> <div>4. Pay any ordered Probation Supervision Fees monthly or, if permitted by the court, perform community service monthly.</div> <div>5. Submit a DNA sample to the State Police, if required to do so by law. Register with the Sex Offender Registry, if required to do so by law.</div> <div>6. Sign all releases necessary for supervision and verification of compliance.</div>			
(You must also comply with Items 7-9 if "RISK/NEED OR OUI SUPERVISION" is checked above.)			
<div>7. Allow the probation officer to visit you in your home with or without notice.</div> <div>8. Report to your probation officer within 48 hours after you are released from any incarceration.</div> <div>9. Do not leave Massachusetts unless you get the express permission of your probation officer and sign a waiver of rendition.</div>			
SPECIAL CONDITIONS OF PROBATION (You must also comply with all items checked below and all payments ordered.)			
<div>10. <input type="checkbox"/> EMPLOYMENT/SCHOOL: Remain employed or make reasonable efforts to obtain employment or attend school, and provide verification as required.</div> <div>11. <input type="checkbox"/> WORK/SCHOOL VISITS: Allow the probation officer to visit your place of employment or school with or without notice.</div> <div>12. <input type="checkbox"/> SUBSTANCE ABUSE EVALUATION/TREATMENT: As directed by the probation officer, and subject to review by a judge on request, submit to and successfully complete any substance abuse evaluation, treatment and aftercare at a non-residential program. <input type="checkbox"/> and/or a residential program.</div> <div>13. <input type="checkbox"/> DRUG/ALCOHOL TESTING: Remain <input type="checkbox"/> drug free <input type="checkbox"/> alcohol free. Submit to random testing as required.</div> <div>14. <input type="checkbox"/> MENTAL HEALTH EVALUATION/TREATMENT: <input type="checkbox"/> Submit to evaluation <input type="checkbox"/> Complete treatment and take medications as prescribed</div> <div>15. <input type="checkbox"/> SPECIFIC PROGRAMS: Complete the following program(s), including any aftercare: <input type="checkbox"/> Driver Alcohol Education (G. L. c. 90, § 24D) <input type="checkbox"/> 14-Day Residential Driver Alcohol Education <input type="checkbox"/> Certified Batterer's Intervention <input type="checkbox"/> Anger Management Treatment <input type="checkbox"/> Other:</div> <div>16. <input checked="" type="checkbox"/> HAVE NO CONTACT WITH <input checked="" type="checkbox"/> and STAY (distance) 100 yds AWAY FROM: (name(s)) Victim (Krow)</div> <div>17. <input type="checkbox"/> COMMUNITY SERVICE: Perform _____ hours of community service as directed by probation.</div> <div>18. <input type="checkbox"/> HOME CONFINEMENT: Submit to home confinement and electronic monitoring until _____ pursuant to the schedule approved by the Court.</div> <div>19. <input checked="" type="checkbox"/> OTHER CONDITIONS: Register CSO - Fully engage in Sex Offender tx (weekly individual + group tx) - No inappropriate sexual contact with mother</div>			
20. Make all FINANCIAL PAYMENTS listed below, as directed by probation.			
JUDGE'S SIGNATURE			
SIGNATURE OF JUDGE			4-1-15
INTERPRETER'S SIGNATURE			
SIGNATURE OF INTERPRETER, if any: I have translated the terms of this Order and the acknowledgment set forth above to the probationer prior to his/her signature.			
PROBATIONER'S ACKNOWLEDGMENT OF ORDER			
SIGNATURE OF PROBATIONER: I have read and understand the above conditions of probation and I agree to observe them. I understand that if I violate any such condition it may result in my arrest, revocation of probation, the entry of a guilty finding (if not already entered), and the imposition or execution of sentence. I have received a copy of this Order.			
PROBATION OFFICER'S SIGNATURE			
SIGNATURE OF WITNESSING PROBATION OFFICER			
DATE: 4/1/15			

TYPE	AMOUNT	DUE DATE AND/OR TERMS
Counsel Fee/Contribution	\$	
Default Warrant Fee	\$	
Default Warrant Arrest Fee	\$	
Court Costs	\$	
Fine/Surfine/Civil Assessment	\$	
Restitution	\$	
Victim/Witness Assessment	\$	
Probation Fee & Surcharge	\$	
OUI § 24D State Fee	\$	
OUI Victims Assessment	\$	
Head Injury Assessment/Surfine	\$	
Drug Analysis Fee	\$	
Batterer's Program Assessment	\$	

Handwritten notes:
- No unsupervised - GPS monitoring
- Same existing money outstanding
- No additional PSF for Extension
- Judge waived due to payments

COMMONWEALTH OF MASSACHUSETTS

FRANKLIN, SS

DISTRICT COURT DEPARTMENT
OF THE TRIAL COURT
DOCKET NO. 1241CR001056

COMMONWEALTH OF MASSACHUSETTS)

v.)

JEFFERY WIMER)

Defendant)

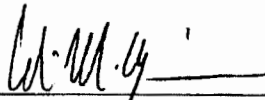
APR - 5 2016

AFFIDAVIT

I, Attorney Colin M. O'Brien, hereby state and depose:

1. I was the court-appointed attorney for the Defendant, appointed on or about July 17, 2012 in Greenfield District Court.
2. The Defendant entered into an agreed upon plea with the Commonwealth on or about April 8, 2013.
3. The Defendant pleaded guilty to two counts of open and gross lewdness, occurring in the same complaint.
4. The Commonwealth insisted on SORB registration as part of the plea due to its belief that the guilty pleas to two counts of open and gross lewdness in the same complaint qualified as a second and subsequent conviction, thereby requiring SORB registration.
5. Based upon information and belief, I did not challenge the legal validity of this assumption at the time of the Defendant's plea.
6. I do not believe that the Defendant would have voluntarily agreed to SORB registration if it were not legislatively mandated.

Signed under the pains and penalties of perjury this 4th day of April, 2016.


Colin M. O'Brien, Esq.

COMMONWEALTH OF MASSACHUSETTS

FRANKLIN COUNTY

GREENFIELD DISTRICT
COURT NO. 1241CR001056

COMMONWEALTH

vs.

JEFFREY WIMER

AFFIDAVIT OF ATTORNEY TIMOTHY ST. LAWRENCE

I, TIMOTHY ST. LAWRENCE, hereby depose and say to the best of my knowledge and belief:

1. I am the attorney for the defendant in the above-entitled case.
2. The defendant was charged in the same complaint with two counts of Open and Gross Lewdness and Lascivious Behavior, G. L. c. 272, § 16.
3. At the time of the acts giving rise to the complaint, at the time of arraignment, and at the time of his plea in this case, the defendant had no prior convictions under G. L. c. 272, § 16.
4. In addition, at the time of the acts giving rise to the complaint, at the time of arraignment, and at the time of his plea in this case, the defendant had never been convicted in any jurisdiction of a "like offense" to G. L. c. 272, § 16.
5. The Court's order requiring the defendant to register as a sex offender was based solely on his two convictions in this case.
6. As a result of the Court's order requiring him to register as a convicted sex offender, the defendant has been classified by the Sex Offender Registry Board as a Level 2 Sex Offender.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 15TH DAY OF DECEMBER, 2016.

TM St Lawrence

Timothy St. Lawrence
BBO # 676899

COMMONWEALTH OF MASSACHUSETTS

FRANKLIN COUNTY

GREENFIELD DISTRICT
COURT NO. 1241CR001056

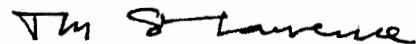
COMMONWEALTH

vs.

JEFFREY WIMER

CERTIFICATE OF SERVICE

I, Timothy St. Lawrence, counsel for the defendant herein, hereby certify that I served a copy of the foregoing "Motion to Correct Illegal Sentence," "Memorandum of Law in Support of Motion," and "Appendix" by mail, first-class postage prepaid, on December 16, 2016, to Assistant District Attorney Cynthia M. Von Flatern, Office of the District Attorney for the Northwestern District, 13 Conway Street, Greenfield, MA 01301.



Timothy St. Lawrence
BBO #676899
11 S. Angell St., #252
Providence, RI 02906
401 484 7850
tstlawrence@gmail.com

Dated: December 16, 2016

COMMONWEALTH OF MASSACHUSETTS

FRANKLIN, SS.

District Court Department
of the Trial Court
Greenfield Division
Docket No. 1241CR01056

COMMONWEALTH OF MASSACHUSETTS

V.

JEFFREY A. WIMER

Commonwealth's Opposition to Defendant's Motion
to Correct Sentence

Introduction

Now comes the Commonwealth in opposition to the defendant's Motion to Correct Illegal Sentence.

Statement of Procedural Facts

On July 17, 2012, the defendant was arraigned on two counts of Open and Gross Lewdness, G.L. c. 272, §16, and was appointed counsel (Defendant's Appendix Def. App./1-2). On April 2, 2013, the defendant pleaded guilty on both counts and, on Count One, was sentenced to one year to the House of Correction, six months direct, balance suspended for two years with conditions to stay away and have no contact with the victim, to be monitored with a GPS upon release, to obtain sex offender counseling, to submit a

DNA sample, and to register as a sex offender, Mazanec, J. (Def. App./2). On Count Two, he was sentenced to two years of probation with the same conditions (Def. App./2).

On April 1, 2015, after notice, the defendant admitted to a violation of probation, the violation was found and he was reprobated to March 31, 2017 with amended conditions of probation, to wit, sex offender treatment, no unsupervised contact with minors, GPS monitoring, no inappropriate electronic communication with relatives, no contact and stay away from victim, and register as a sex offender (Def. App./4).

On February 23, 2016, the defendant once again admitted to being in violation of probation and was found in violation (Def. App./5). His probation was revoked and he was sentenced to six months direct to the house of correction on both counts (Def. App./5). On February 23, 2016, the defendant filed a Motion for New Trial (Def. App./5). On April 5, 2016, after a hearing, the Motion was denied (Def. App./6). On May 27, 2016, the matter was docketed in the Appeals Court (Commonwealth's Appendix Comm. App./1). The matter is stayed in the Appeals Court pending this court's decision on the motion to correct sentence (Comm. App./2).

Statement of Facts

At the plea hearing, the following facts were established: For three years, the defendant dated a woman whose initials were T.C.¹ T.C. told police that, on some nights at about 11 p.m., the defendant would leave his home and go to her home to have sex. On some occasions, the defendant asked T.C. if they could have the nine-year old girl who lived in the house come in to T.C.'s bedroom to watch them having sex. He told T.C. that he thought the nine-year old was attractive.

On two separate nights, the defendant left T.C.'s bedroom. T.C. noticed that he was gone for some period of time so she went to look for him. She found him in the bedroom of the nine-year old. On both occasions, T.C. saw the defendant masturbating in front of her. The nine-year old's statement would support T.C.'s statement. On one of these occasions, the nine-year old had called out to T.C. before T.C. arrived at the bedroom.

¹ The Statement of Facts is summarized from the recording of the plea hearing held on April 2, 2013.

Argument

I. The Defendant's Motion to Correct Illegal Sentence Should be Denied as the Sentence Was Legal under the Statute and the Regulations Promulgated Thereunder.

The defendant's sentence was legal and there are no grounds upon which to change the sentence. A conviction for Open and Gross Lewdness and Lascivious Behavior, G.L. c. 272, §16, is punishable in the district court for up to two years in a house of correction (three years in state prison). The defendant received a six-month sentence on Count One of the complaint and a term of probation on Count Two.

The statute is not constructed so as to call for sentence enhancement for a conviction for a second or subsequent offense, G.L. c. 272, §16. See G.L. c. 278, §11A (bifurcated trial required for second and subsequent offenses defined as occurring when there is more severe punishment and the complaint or indictment alleges that the offense charged is a second or subsequent offense). See also *Commonwealth v. Beaulieu*, 79 Mass. App. Ct. 100, 102 (2011) (bifurcation pursuant to G.L. c. 278, §11A not required for charge of OUI while license suspended for OUI, G.L. c. 90, §23, because fact that there was suspension for OUI is element of the offense and not sentence enhancement).

The Open and Gross statute, G.L. c. 272, §16, does not define a second and subsequent offense and is thus easily

distinguishable from Operating Under the Influence (OUI), G.L. c. 90, §24. The OUI statute specifically lays out what constitutes conviction for OUI as a second or subsequent offense: when a "defendant has been previously convicted or assigned to an alcohol or controlled substance education, treatment, or rehabilitation program by a court of the commonwealth or any other jurisdiction because of a like violation preceding the date of the commission of the offense for which he has been convicted." G.L. c. 90, §24(1)(a)(1) (emphasis added). See *Commonwealth v. Hernandez*, 60 Mass. App. Ct. 416, 417 (2004) (defendant was improperly sentenced as second offender because he had not been previously convicted for OUI pursuant to G.L. c. 90, §24(1)(a)(1) at the time of his arrest as the statute requires).

In enacting G.L. c. 6, §178C, the legislature chose to define a sex offender as anyone who has had two convictions for open and gross. G.L. c. 6, §178C.

The legislature has entrusted the Sex Offender Registry Board (SORB) with the power to "promulgate rules and regulations to implement the provisions of sections 178C to 178P, inclusive." G.L. c. 6, §178D. Those regulations were subject to thorough review. G.L. c. 30A, §§1-7. And they are entitled to a presumption of validity. *Commonwealth v. Maker*, 459 Mass. 46,

49 (2011), citing *Doe, Sex Offender Registry Bd. No. 3844 v. Sex Offender Registry Bd.*, 447 Mass. 768, 775 (2006).

The definition of sex offense pursuant to the C.M.R. is defined as follows:

Second and Subsequent Adjudication or Conviction for Open and Gross Lewdness and Lascivious Behavior. The later of two or more separate convictions pursuant to M.G.L. c. 272, §16. Multiple convictions resulting from a single act shall be treated as a single conviction, but arraignments occurring on the same date and resulting in multiple convictions shall be presumed to be the result of separate acts and treated as separate convictions.

803 C.M.R. §1.03. The defendant is subject to registration because he has two convictions of the predicate offense.

See and compare *Doe, SORB No. 327216 v. Sex Offender Registry Bd.*, 2015 Mass. App. Unpub. LEXIS 866, review denied 473 Mass. 1109 (2015) (defendant had duty to register as sex offender after pleading to one count of open and gross under G.L. c. 272, §16 when he had a prior similar conviction from another state, even though he had not been charged or prosecuted as a second and subsequent offender).² See also *Doe v. Sex Offender Registry Bd.*, 2013 Mass. App. Unpub. LEXIS 433 (2013) (defendant ordered to register after Open and Gross conviction where he had prior like offenses

² See case attached for convenience of the court and the defendant at Stat. Add./1-6.

in Washington State.³ There is precedent for designating a defendant with two convictions for Open and Gross as a sex offender.

The requirement to register as a sex offender as a result of having been convicted of two separate charges of Open and Gross, G.L. c. 272, §16, is a collateral consequence. See *Commonwealth v. Shindell*, 63 Mass. App. Ct. 503, 505 (2005) ("fact that an entity outside the court decides whether the defendant ultimately must register is the very definition of a collateral consequence"). Cf. *Commonwealth v. Roberts*, 472 Mass. 355, 362 (2015) (civil confinement as sexually dangerous person is collateral and not direct consequence of conviction for sex offenses). Although the holding in *Shindell* was subject to a revisit in *Commonwealth v. Sylvester*, 476 Mass. 1 (2016), the court did not overturn *Shindell* because the statutory scheme under which Sylvester had pleaded and was ordered to register was different, i.e. less demanding, than the statutory scheme at present. That the defendant met the definition of sex offender pursuant to the statute and the regulations promulgated thereunder is not as the result of any error by the sentencing judge. The defendant's argument is with SORB and not this court. See *Doe v. Sex Offender Registry Bd.*, 82 Mass. App. Ct. 152, 157 (2012) (defendant can challenge a SORB regulation in

³ This case is also attached. See Stat. Add./7-111

declaratory action or in appeal from SORB's final order of classification).

Conclusion

For the reasons stated above, the defendant's Motion to Correct Illegal Sentence should be denied.

Respectfully submitted,

COMMONWEALTH OF MASSACHUSETTS

Cynthia M. Von Flatern
Cynthia M. Von Flatern
BBO#550493
Assistant District Attorney
Northwestern District
13 Conway Street
Greenfield, MA 01301
(413) 774-3186

Date: February 22, 2017

Certificate of Service

I hereby certify that a true copy of the Commonwealth's Opposition to Defendant's Motion to Correct Illegal Sentence was this day sent to defendant's counsel Timothy St. Lawrence, Esquire via email to tstlawrence@gmail.com.

Cynthia M. Von Flatern
Cynthia M. Von Flatern
Assistant District Attorney

Comm. App. 11-2

Supreme Judicial Court and Appeals Court of Massachusetts

Public Case Information



Case Search

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- Docket Number
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APPEALS COURT
Full Court Panel Case
 Case Docket

COMMONWEALTH vs. JEFFREY WIMER
 2016-P-0741

CASE HEADER

Case Status	Stayed till certain date	Status Date	01/18/2017
Nature	Crime: Sexual Offense	Entry Date	05/27/2016
Sub-Nature	Open and Gross Lewdness	SJ Number	
Appellant	Defendant	Case Type	Criminal
Brief Status	Awaiting status report	Brief Due	02/17/2017
Panel		Argued/Submitted	
Citation		Decision Date	
Lower Court	Greenfield District, FR	TC Number	
Lower Ct Judge	William F. Mazanec, III, J.	TC Entry Date	07/09/2012
FAR Number		SJC Number	

INVOLVED PARTY

Commonwealth
 Plaintiff/Appellee
 Awaiting red brief

Jeffrey Wimer
 Defendant/Appellant
 Awaiting status report
 5 Extensions, 226 Days

ATTORNEY APPEARANCE

Thomas H. Townsend, A.D.A.

Dorothy A. Mele, CPCS assignment supervisor
 Inactive
Timothy St. Lawrence, Esquire

DOCKET ENTRIES

Entry Date	Paper	Entry Text
05/27/2016		Transcripts received: 1 Vol, 1 CD ^ and paper copies Hearing 4/5/2016
05/27/2016	#1	Lower Court Assembly of the Record Package
05/27/2016	#2	Notice of entry sent.
06/02/2016	#3	Docketing Statement received from Jeffrey Wimer. ^
06/03/2016	#4	Notice of appearance of Timothy St. Lawrence for Jeffrey Wimer
07/11/2016	#5	MOTION to extend brief & appendix due date, filed by Jeffrey Wimer.
07/12/2016		RE#5: Allowed to 08/26/2016. Notice sent.
08/24/2016	#6	MOTION to stay, filed by Jeffrey Wimer.
08/25/2016		RE#6: Appellate proceedings STAYED to 10/14/2016. Defendant is given leave to file and the trial court to consider rule 30 (a) motion. Status report due then confirming the filing of the motion. *Notice/Attest.

DOCKET ENTRIES

10/11/2016 #7	Status Report, filed by Jeffrey Wimer.
10/17/2016	RE#7: Appellate proceedings STAYED to 11/25/2016. Status report due by then indicating the motion for new trial has been filed, accompanied by a copy of the motion. Further stay to complete the motion should not be anticipated. *Notice/Attest.
12/15/2016	Notice preceding dismissal: Standing Order Governing Dismissals for Lack of Prosecution. *Notice.
12/16/2016 #8	Motion to file status report late and Status Report filed for Jeffrey Wimer by Attorney Timothy St. Lawrence.
12/20/2016	RE#8: Allowed for filing this date. Appellate proceedings STAYED to 01/17/2017. Status report due 01/17/2017 concerning trial court's disposition of pending motion to correct sentence. *Notice.
01/17/2017 #9	Status Report filed for Jeffrey Wimer by Attorney Timothy St. Lawrence.
01/18/2017	RE#9: Appellate proceedings STAYED to 02/17/2017. Status report due 02/17/2017 concerning trial court's disposition of pending motion to correct sentence. *Notice.

[≤ Top](#)

As of 01/18/2017 20:00

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(2017-02-21 13:22:45)

Stat. Add. 11-6

Document: Doe, SORB No. 327216 v. Sex Offender Registry Bd., 2015... Actions ▾

**A Doe, SORB No. 327216 v. Sex Offender Registry
Bd., 2015 Mass. App. Unpub. LEXIS 866**

Copy Citation

Appeals Court of Massachusetts

August 25, 2015, Entered

14-P-88

Reporter

2015 Mass. App. Unpub. LEXIS 866 * | 88 Mass. App. Ct. 1102 | 36 N.E.3d
78

JOHN DOE, SEX OFFENDER REGISTRY BOARD NO. 327216 vs. SEX OFFENDER REGISTRY
BOARD.

Notice: SUMMARY DECISIONS ISSUED BY THE APPEALS COURT PURSUANT TO ITS
RULE 1:28, AS AMENDED BY 73 MASS. APP. CT. 1001 (2009), ARE PRIMARILY
DIRECTED TO THE PARTIES AND, THEREFORE, MAY NOT FULLY ADDRESS THE FACTS
OF THE CASE OR THE PANEL'S DECISIONAL RATIONALE. MOREOVER, SUCH
DECISIONS ARE NOT CIRCULATED TO THE ENTIRE COURT AND, THEREFORE,
REPRESENT ONLY THE VIEWS OF THE PANEL THAT DECIDED THE CASE. A SUMMARY
DECISION PURSUANT TO RULE 1:28 ISSUED AFTER FEBRUARY 25, 2008, MAY BE
CITED FOR ITS PERSUASIVE VALUE BUT, BECAUSE OF THE LIMITATIONS NOTED
ABOVE, NOT AS BINDING PRECEDENT. SEE CHACE V. CURRAN, 71 MASS. APP. CT.
258, 260 N.4, 881 N.E.2d 792 (2008).

PUBLISHED IN TABLE FORMAT IN THE MASSACHUSETTS APPEALS COURT REPORTS.

PUBLISHED IN TABLE FORMAT IN THE NORTH EASTERN REPORTER.

Subsequent History: Appeal denied by Doe v. Sex Offender Registry Bd.,
2016 Mass. LEXIS 37 (Mass., Jan. 27, 2016)

Document: Doe, SORB No. 327216 v. Sex Offender Registry Bd., 2015... Actions ▾

~~Disposition: Judgment affirmed.~~

Core Terms

lewdness, sex offender, indecent exposure, register

Judges: Cypher ▾, Hanlon ▾ & Agnes ▾, JJ. [*1]

Opinion

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The petitioner, John Doe, appeals from a Superior Court judgment affirming a decision of the Sex Offender Registry Board (board) requiring him to register as a level two sex offender. Doe argues that his prior New Hampshire conviction of indecent exposure is not sufficiently similar to the Massachusetts crime of open and gross lewdness to constitute a "like offense." He also contends that the board violated art. 30 of the Massachusetts Declaration of Rights when it deemed the offense a second and subsequent conviction because, during the criminal prosecution of the index offense, a judge had allowed the prosecutor's motion to remove the second and subsequent offense portion of the complaint. In Doe's view, that action was binding on the board. We affirm, essentially for the reasons well explained in the judge's thoughtful memorandum of decision.

Doe pleaded nolo contendere in New Hampshire in 1990 of the misdemeanor offense of indecent exposure and lewdness, in violation of N.H. Rev. Stat. Ann. § 645:1 (1971). [1] The charge arose from an incident where women workers at a laundromat saw him standing naked and masturbating in front of an unshaded window in his [*2] mobile home across the street. In 2011, Doe was found guilty in the Cambridge Division of the District Court Department of one count of open and gross lewdness and one count of breaking and entering, after he entered an adult female neighbor's apartment and exposed his buttocks to her. [2] He initially had been charged with a violation of open and gross lewdness as a second and

subsequent offense on the basis of the New Hampshire conviction. The
~~Document: Doe, SORB No. 327216 v. Sex Offender Registry Bd., 2015... Actions~~

~~Commonwealth, however, deciding that the New Hampshire conviction was~~
not a "like violation," chose not to proceed with the second and
subsequent offense portion of the complaint; the judge struck that
charge from the docket.

In November, 2011, Doe was notified [*3] that the board initially had
classified him as a level two sex offender. He made a timely request for
an administrative hearing to challenge the board's recommendation. After
an evidentiary hearing on April 17, 2012, the hearing examiner made a
final determination, requiring Doe to register as a level two offender.
Doe then filed a complaint in the Superior Court for judicial review of
the board's final determination; the judge upheld the board's decision.
Doe timely appealed and now makes essentially the same arguments he did
below.

Discussion. "Like violation." Doe argues first that his New Hampshire
conviction of indecent exposure and lewdness was not of a "like
violation" to a Massachusetts offense that would require him to register
with the board. [3] "A 'like violation' is a conviction in another
jurisdiction of an offense of which the elements are the same or nearly
the same as an offense requiring registration in Massachusetts." Doe,
Sex Offender Registry Bd. No. 151564 v. Sex Offender Registry Bd., 456
Mass. 612, 615, 925 N.E.2d 533 (2010). Comparing the definition of the
New Hampshire offense with the Massachusetts offense, "the essence of
the two crimes [must be] the same." *Ibid.*

In the State of New Hampshire, a person is guilty of the misdemeanor
offense of indecent exposure and lewdness if he or she "fornicates,
exposes his or her genitals, or performs any other act of gross lewdness
under circumstances which he or she should know will likely cause
affront or alarm." N.H. Rev. Stat. Ann. § 645:1 (1971). In
Massachusetts, the crime of open and gross lewdness and lascivious
behavior (G. L. c. 272, § 16) "requires proof of five elements to
support a conviction, i.e., that the defendant (1) exposed genitals,
breasts, or buttocks; (2) intentionally; (3) openly or with reckless
disregard of public exposure; (4) in a manner so 'as to produce alarm or
shock'; (5) thereby actually shocking or alarming one or more persons."
Commonwealth v. Swan, 73 Mass. App. Ct. 258, 260-261, 897 N.E.2d 1015

(2008) ~~quoting from Commonwealth v. Kessler, 442 Mass. 770, 773, 817~~
~~Document: Doe, SORB No. 327216 v. Sex Offender Registry Bd., 2015... Actions~~
~~N.E.2d 711 & n.4 (2004).~~

Here, the essence of the two crimes is the same because both the New Hampshire and the Massachusetts statutes prohibit the intentional exhibition of a person's private parts to cause shock or alarm. See Doe, Sex Offender Registry Bd. No. 151564, supra; Commonwealth v. Becker, 71 Mass. App. Ct. 81, 87, 879 N.E.2d 691 (2008). Any differences in the statutes are "inconsequential because both statutory formulations 'prohibit essentially the same conduct.'" Commonwealth v. Bell, 83 Mass. App. Ct. 82, 87, 981 N.E.2d 220 (2013), quoting from Doe, Sex Offender Registry Bd. No. 151564, supra at 617. **[*5]**

The fact that the Massachusetts crime requires proof of the victim's reaction does not undermine its similarity to the New Hampshire offense for purposes of G. L. c. 6, § 178C. "The elements of the offense in another jurisdiction need not be precisely the same as the elements of a Massachusetts sex offense in order for it to constitute a 'like violation.' . . . [T]he Legislature chose the word 'like' rather than the word 'identical' to describe the required relationship between an offense from another jurisdiction and a Massachusetts sex offense." Doe, Sex Offender Registry Bd. No. 151564, supra at 615-616. Because the offenses here are sufficiently similar, we are satisfied that Doe's indecent exposure conviction in New Hampshire is a "like violation" of the Massachusetts offense of open and gross lewdness and lascivious behavior. **[4]**

Board's authority. Doe also argues that the board's decision that Doe's Massachusetts conviction was a second and subsequent conviction violated art. 30 of the Massachusetts Declaration of Rights because the District Court judge earlier had removed the second and subsequent allegation from the complaint on the index offense. **[*6]** **[5]**

First, as the hearing officer noted, neither the statute nor the board's regulations require that, in order to require Doe to register, he must be convicted of a second and subsequent offense. Whether the Commonwealth chose to prosecute Doe as a first time offender, prompting the judge to strike the second and subsequent portion of the offense from the docket, is therefore immaterial. The prosecutor's executive powers afford a wide discretion in deciding whether and how to prosecute

~~a particular defendant. The board, in contrast, is duty-bound, by~~
~~Document: Doe, SORB No. 327216 v. Sex Offender Registry Bd., 2015... Actions~~
~~statute and its own regulations, to make a separate determination of~~
whether a person is required to register with the board based on a
second and subsequent conviction. See Commonwealth v. Borders, 73 Mass.
App. Ct. 911, 912-913, 900 N.E.2d 117 (2009). See also G. L. c. 6, §
178C; 803 Code Mass. Regs. § 1.03 (2004).

In addition, contrary to Doe's argument, the Massachusetts conviction
did not address whether the New Hampshire conviction was a "like
violation"; instead, it established simply that Doe was convicted of
breaking and entering and open and gross lewdness. In light of that
fact, the board's determination that the Massachusetts conviction [*7]
and the New Hampshire conviction were like violations in no way
interfered with the judgment of the District Court.

Judgment affirmed.

By the Court (Cypher, Hanlon & Agnes, JJ. [6]),

Entered: August 25, 2015.

Footnotes

[1]

As in effect at the time of the offense.

[2]

In addition to these incidents, which together constituted the
index offense, Doe committed several other similar offenses: a
1987 charge of open and gross lewdness for exposing himself at a
shopping plaza; a 1989 guilty plea to one count of indecent
exposure in violation of G. L. c. 272, § 53; and a 2001 charge of
open and gross lewdness for "flashing" a woman sitting in a parked
car. The 1987 and 2001 charges for open and gross lewdness were
continued without findings.

[3]

A person convicted of a second and subsequent adjudication or
conviction for open and gross lewdness and lascivious [*4]
behavior under G. L. c. 272, § 16, a sex offense, must register
with the board. G. L. c. 6, § 178C.

Document **412** Doe, SORB No. 327216 v. Sex Offender Registry Bd., 2015... Actions ▾

Doe agrees that his rule of lenity argument was not raised below.
It is therefore waived.

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Article 30 "enumerates the constitutional principles of separation of powers among the three branches of government." Commonwealth v. Borders, 73 Mass. App. Ct. 911, 912, 900 N.E.2d 117 (2009).

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The panelists are listed in order of seniority.



Stat. Add. 1/1-11

Document: Doe v. Sex Offender Registry Bd., 2013 Mass. App. Unpub. L... Actions ▾

**Doe v. Sex Offender Registry Bd., 2013 Mass. App.
Unpub. LEXIS 433**

Copy Citation

Appeals Court of Massachusetts

April 12, 2013, Entered

11-P-1008

Reporter

2013 Mass. App. Unpub. LEXIS 433 * | 83 Mass. App. Ct. 1124 | 985 N.E.2d
413 | 2013 WL 1482860

JOHN DOE, SEX OFFENDER REGISTRY BOARD NO. 69202 vs. SEX OFFENDER
REGISTRY BOARD.

Notice: DECISIONS ISSUED BY THE APPEALS COURT PURSUANT TO ITS RULE 1:28
ARE PRIMARILY ADDRESSED TO THE PARTIES AND, THEREFORE, MAY NOT FULLY
ADDRESS THE FACTS OF THE CASE OR THE PANEL'S DECISIONAL RATIONALE.
MOREOVER, RULE 1:28 DECISIONS ARE NOT CIRCULATED TO THE ENTIRE COURT
AND, THEREFORE, REPRESENT ONLY THE VIEWS OF THE PANEL THAT DECIDED THE
CASE. A SUMMARY DECISION PURSUANT TO RULE 1:28, ISSUED AFTER FEBRUARY
25, 2008, MAY BE CITED FOR ITS PERSUASIVE VALUE BUT, BECAUSE OF THE
LIMITATIONS NOTED ABOVE, NOT AS BINDING PRECEDENT.

PUBLISHED IN TABLE FORMAT IN THE MASSACHUSETTS APPEALS COURT REPORTS.

PUBLISHED IN TABLE FORMAT IN THE NORTH EASTERN REPORTER.

Disposition: [*1] Judgment affirmed.

Document: Doe v. Sex Offender Registry Bd., 2013 Mass. App. Unpub. L... Actions ▾

lascivious, lewdness, alarm, indecent exposure, sex offender, shock

Judges: Trainor ▾, Vuono ▾ & Sullivan ▾, JJ. **31**

Opinion

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The plaintiff, John Doe No. 69202, appeals from a Superior Court order that affirms the final decision of the Sex Offender Registry Board requiring him to register as a level 3 sex offender. The only issue on appeal is whether the Washington crime of indecent exposure, Wash. Rev. Code. § 9A.88.010, is a "like violation" -- for purposes of G. L. c. 6, § 178C -- of the Massachusetts offense of open and gross lewdness and lascivious behavior, G. L. c. 272, § 16.

In 2003, the plaintiff pleaded guilty in Cambridge District Court to one count of open and gross lewdness and lascivious behavior. Prior to that, the plaintiff was convicted several times of indecent exposure in Washington State. The definition of "sex offense," within the meaning of the statute, includes "second and subsequent adjudication or conviction for open and gross lewdness and lascivious behavior." G. L. c. 6, § 178C, as amended by **[*2]** St. 1999, c. 74, § 2. So, if the prior Washington offenses are not deemed "like violations," the plaintiff's lone Massachusetts offense would not constitute a "sex offense," and he would not be required to register as a sex offender. See G. L. c. 6, § 178C. "Because the registration requirement is defined in terms of offenses, the determination whether an offense from another jurisdiction is a 'like violation' is defined also in terms of offenses and not conduct." John Doe, Sex Offender Registry Bd. No. 151564 v. Sex Offender Registry Bd., 456 Mass. 612, 619, 925 N.E.2d 533 (2010). Accordingly, we compare the elements of the crimes to determine if an out-of-State violation is a "like violation."

In the State of Washington, "[a] person is guilty of indecent exposure if he or she intentionally makes any open and obscene exposure of his or

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 her person or the person of another, knowing that such conduct is likely to cause reasonable affront or alarm." Wash. Rev. Code § 9A.88.010. "The essence of the crime is the lascivious exhibition of those private parts of the person which instinctive modesty, human decency, or common propriety require shall be customarily kept covered in the presence of others." State v. Eisenshank, 10 Wash. App. 921, 924, 521 P.2d 239 (1974), [*3] citing State v. Galbreath, 69 Wash.2d 664, 419 P.2d 800 (1966).

In Massachusetts, the crime of open and gross lewdness and lascivious behavior, G. L. c. 272, § 16, 1A requires proof of five elements: "that the defendant (1) exposed genitals, breasts, or buttocks; (2) intentionally; (3) openly or with reckless disregard of public exposure; (4) in a manner so 'as to produce alarm or shock'; (5) thereby actually shocking or alarming one or more persons." Commonwealth v. Swan, 73 Mass. App. Ct. 258, 260-261, 897 N.E.2d 1015 (2008).

The Washington statute does not explicitly require proof of the victim being shocked or alarmed. 2A From this, the plaintiff argues that the proof required for a Washington conviction would not necessarily lead to a conviction of the Massachusetts crime of open and gross lewdness and lascivious behavior. In other words, the State of Washington does

[*4] not need to prove any reaction whatsoever in the victim to convict the defendant of indecent exposure. For the crime of open and gross lewdness and lascivious behavior, however, the Commonwealth must prove shock or alarm in the victim to support a conviction. Therefore, the plaintiff reasons, the Washington crime of indecent exposure is not a "like violation" to the Massachusetts crime of open and gross lewdness and lascivious behavior. We disagree.

The plaintiff's argument hinges on the Supreme Judicial Court's statement that the "'like violation' requirement [is] satisfied where it is shown that proof necessary for the out-of-State conviction would also warrant a conviction of a Massachusetts offense for which registration is required." Doe No. 151564, supra at 616. The plaintiff reads this language too narrowly. "[T]he Supreme Judicial Court did not hold that this was the only way the 'like violation' requirement could be satisfied." Commonwealth v. Bell, 83 Mass. App. Ct. 82, 87, 981 N.E.2d 220 (2013). [*5] Rather, the Supreme Judicial Court affirmed the

~~Document: Doe v. Sex Offender Registry Bd., 2013 Mass. App. Unpub. L. Actions~~
~~analysis in Commonwealth v. Becker, 71 Mass. App. Ct. 81, 87, 879 N.E.2d~~
~~691 (2008), cert. denied, 555 U.S. 933, 129 S. Ct. 320, 172 L. Ed. 2d~~
~~231 (2008), quoting from Commonwealth v. Boucher, 438 Mass. 274, 276,~~
~~780 N.E.2d 47 (2002), that "a 'like violation' . . . means 'the same or~~
~~nearly the same.'" See Doe No. 151564, supra at 614. "The elements of~~
~~the offense in another jurisdiction need not be precisely the same as~~
~~the elements of a Massachusetts sex offense in order for it to~~
~~constitute a 'like violation.'" Id. at 615-616. General Laws c. 6, §~~
~~178C, only requires that the essence of the two crimes be similar. See~~
~~Becker, supra at 81; Doe No. 151564, supra at 615.~~

Here, the essence of the two crimes is similar because the conduct prohibited by the Washington statute is essentially the same as the conduct prohibited by the Massachusetts statute. See id. at 617. Both statutes prohibit the intentional exhibition of a person's private parts to cause shock or alarm. See G. L. c. 272, § 16; Eisenshank, 10 Wash. App. at 924. That the Massachusetts crime requires proof of the victim's reaction does not necessarily invalidate its similarity to the out-of-State crime for purposes of G. L. c. 6, § 178C. [*6] See Bell, supra. "[T]he legislature chose the word 'like' rather than the word 'identical' to describe the required relationship between an offense from another jurisdiction and a Massachusetts sex offense." Doe No. 151564, supra at 616. Because the offenses in question are sufficiently similar, we conclude that the plaintiff's indecent exposure convictions in Washington are "like violations" of the Massachusetts offense of open and gross lewdness and lascivious behavior.

Judgment affirmed.

By the Court (Trainor, Vuono & Sullivan, JJ. 33)

Entered: April 12, 2013.

Footnotes

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This case was originally heard by a panel comprised of Justices Trainor▼, Smith▼, and Sullivan▼. Following the death of Justice Smith▼, Justice Vuono▼ was added to the panel to participate in this decision.

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The text of the G. L. c. 272, § 16, as amended by St. 1987, c. 43, reads: "A man or woman, married or unmarried, who is guilty of open and gross lewdness and lascivious behavior, shall be punished by imprisonment in the state prison for not more than three years or in jail for not more than two years or by a fine of not more than three hundred dollars."

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But a victim is implicitly required. "A targeted victim is implicit in the statutory language [of § 9A.88.010] because only a victim could be affronted or alarmed by the obscene conduct." State v. Snedden, 149 Wash.2d 914, 919, 73 P.3d 995 (2003).

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This case was originally heard by a panel comprised of Justices Trainor▾, Smith▾, and Sullivan▾. Following the death of Justice Smith▾, Justice Vuono▾ was added to the panel to participate in this decision.



COMMONWEALTH OF MASSACHUSETTS

Franklin, ss

District Court Department
Of the Trial Court
Greenfield Division
Docket No. 12 41 CR 1056

Commonwealth of Massachusetts]	
]	
v.]	Court's Decision Regarding
]	Defendant's Motion
]	to Correct Sentence
Jeffrey A. Wimer]	

Analysis and Decision

The defendant contends in his Motion to Correct Sentence that he was given an illegal sentence when this court ordered him to register as a sex offender with the SORB as a condition of his probation resulting from two convictions for Open and Gross Lewdness.

FACTS:

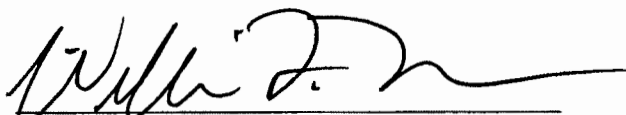
The defendant was arraigned on July 17, 2012 on a complaint charging him with two counts of Open and Gross Lewdness. Ultimately, the facts supporting these two charges stem from two separate incidents in which the defendant entered a nine year old's bedroom at night and openly masturbated in front of the nine year old. Both incidents were also observed by the nine year old's mother. On April 2, 2013 the defendant, while represented by counsel, tendered a guilty plea to both counts with an agreed upon condition of probation that the defendant register as a sex offender with the SORB. The court accepted the guilty plea and adopted the agreed upon conditions.

ANALYSIS:

The defendant faced up to two years on each of the two counts in this complaint. Sentenced consecutively he faced over four years in the House of Correction. At the time of his plea the defendant agreed to register as a sex offender as a condition of probation and he thereby avoided incarceration at that time. The defendant's argument now is that he agreed to an illegal sentence and he relies primarily upon his notion that M.G.L. c. 90, § 24 defines OUI second and subsequent offences as specifically when a new offence is committed after a prior conviction has entered. The defendant contends that this Court should read M.G.L. c. 272, § 16 to have an analogous definition as it relates to the second of the two charges the defendant pleaded guilty to. This court holds that M.G.L. c. 272, § 16 contains no such definition of second or subsequent because the legislature specifically chose not to provide such a definition.

Additionally, the defendant in this case plead guilty to two separate charges stemming from two separate events which occurred on two separate dates. These two convictions were not the result of one act on one day. Hence, the Sex Offender Registry Board's applicable regulations would define the defendant's conviction as a second or subsequent conviction in any event. 803 C.M.R. § 103.

For the foregoing reasons the defendant's Motion to Correct Sentence is hereby Denied.

A handwritten signature in black ink, appearing to read 'William F. Mazanec', written over a horizontal line.

William F. Mazanec

Justice

Greenfield District Court

February 23, 2017

COMMONWEALTH OF MASSACHUSETTS

FRANKLIN COUNTY

GREENFIELD DISTRICT
COURT NO. 1241CR001056

COMMONWEALTH

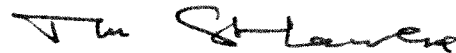
vs.

JEFFREY WIMER

NOTICE OF APPEAL

The defendant hereby gives notice, pursuant to Rule 3 of the Massachusetts Rules of Appellate Procedure, of his intent to appeal the denial of his Massachusetts Rule of Criminal Procedure 30(a) "Motion to Correct Illegal Sentence," which motion was denied on February 23, 2017.

Respectfully submitted,
JEFFREY WIMER
By his attorney



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Dated: March 13, 2017

CERTIFICATE OF SERVICE

I, Timothy St. Lawrence, counsel for the defendant herein, hereby certify that I served a copy of the foregoing "Notice of Appeal" by mail, first-class postage prepaid, on March 13, 2017, to Cynthia M. Von Flatern, Assistant District Attorney for the Northwestern District, 13 Conway Street, Greenfield, MA 01301.



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