

To be argued by
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TIME REQUESTED: 10 MINUTES

New York Supreme Court



Appellate Term -- First Department



THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

New York County
Docket No.
2015NY030419

- against -

JOHN RINALDI,

Defendant-Appellant.

BRIEF FOR DEFENDANT-APPELLANT

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SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE TERM: FIRST DEPARTMENT

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THE PEOPLE OF THE STATE OF NEW YORK, :
Respondent, :
-against- :
JOHN RINALDI, :
Defendant-Appellant. :
-----x

STATEMENT PURSUANT TO RULE 5531

1. The docket number in the court below was 2015NY030419.
2. The full names of the original parties were People of the State of New York against John Rinaldi.
3. This action was commenced in Criminal Court, New York County by filing a misdemeanor complaint.
4. This appeal is from a judgment convicting appellant, after a bench trial, of two counts of Stalking in the Fourth Degree (Penal Law §§ 120.45(1), 120.45(2)) and one count each of Harassment in the First degree (Penal Law § 240.25) and Harassment in the Second Degree (Penal Law § 240.26(3)). He was sentenced to an aggregate term of 60 days' incarceration, plus a \$200 surcharge and \$50 DNA fee.
5. This is an appeal from a judgment of conviction rendered June 17, 2016 (McGrath, J.).
6. Appellant has been granted permission to appeal as a poor person on the original record. The appendix method is not being used.

STATEMENT PURSUANT TO RULE 640.3(c)

Mr. Rinaldi has served his 60-day sentence and paid the \$200 surcharge and \$50 fee. He is not presently incarcerated.

PRELIMINARY STATEMENT

This is an appeal from a judgment of the Criminal Court, New York County, rendered June 17, 2016, convicting Mr. Rinaldi, after a bench trial, of two counts of fourth-degree stalking and one count each of first-degree and second-degree harassment, and sentencing him to an aggregate term of 60 days' incarceration (McGrath, J., at trial and sentence).

This Court, on or about January 19, 2017, granted Mr. Rinaldi leave to appeal as a poor person and assigned Robert S. Dean, Esq., Center for Appellate Litigation, as counsel. There were no co-defendants below.

QUESTION PRESENTED

Whether the evidence was insufficient or the verdicts were against the weight of the evidence where the People failed to prove that Mr. Rinaldi engaged in a course of conduct that had no legitimate purpose, that he knew or should have known that his communication with the complainant was not welcome, that he intended to harass the complainant, or that the complainant reasonably feared or experienced material harm or feared physical injury. U.S. Const. amend. XIV; N.Y. Const. art. I, § 6.

INTRODUCTION

Mr. Rinaldi was charged with two counts each of stalking and harassment arising from his conduct relating to actress Brooke Shields occurring between November, 2013, and May, 2015. This was not, however, a conventional stalking or harassment case. Thirty years ago, after a young Mr. Rinaldi wrote fan letters

to Ms. Shields, her mother Teri responded and changed Mr. Rinaldi's life. She informed his parents about his secret— that he had been sexually abused by a neighbor— and Mr. Rinaldi was forever changed by that kindness and the subsequent relationship he developed with Teri Shields. In the years that followed, Mr. Rinaldi periodically contacted Brooke for various reasons, including to seek support for his charitable foundations, and Ms. Shields never once told him that these contacts were unwelcome. In 2015, however, more than 30 years after he first wrote to her, Ms. Shields decided to file a complaint. Despite his entirely legitimate reasons for contacting her and the fact that he lived in her neighborhood, and had for many years before Ms. Shields moved there, Mr. Rinaldi was criminally charged and subsequently convicted. The People failed to prove that he engaged in a course of conduct with no legitimate purpose that caused Ms. Shields to fear or experience material harm. They also failed to prove that he intentionally harassed Ms. Shields or that she reasonably feared physical injury. For these reasons, Mr. Rinaldi's convictions must be reversed.

STATEMENT OF FACTS

The Trial

Opening Arguments

The prosecutor set up her case as an effort to protect Ms. Shields, a celebrity who “has the right to feel safe” in her home just like anyone else, from a

man who “stripped that right away” from her (T¹1:89-90). Mr. Rinaldi, she claimed, “terrorized” Ms. Shields despite knowing that his contact was “unwanted,” by posting online messages about or directed at her, appearing at her public events, and parking outside and approaching her home on several occasions (T1:90-91).

Defense counsel argued that Mr. Rinaldi’s actions did not rise to the level of criminal conduct (T1:92). His communications with Ms. Shields had legitimate purposes and once he was clearly warned that they were unwelcome, he stayed away (T1:92-93). The People’s case was nothing more than a desperate attempt to pacify Ms. Shields because she was a celebrity (T1:93).

The Background

In the early 1980's, Ms. Shields first became aware of Mr. Rinaldi, a fan who sent her letters and called her house (T1:Shields 128). At some point, she learned that Mr. Rinaldi became friendly with her mother Teri Shields [“Teri”] and she learned the basis for their relationship (T2:Shields 6,10,46). In early letters, young Mr. Rinaldi disclosed that he had been sexually assaulted by a neighbor but had been unable to tell anyone (See Email to Jill Fritzo, People’s Exhibit 7). Teri shared this information with his parents, leading to the neighbor’s arrest (id.). Teri’s actions left a deep and lasting impact on Mr. Rinaldi (id.; see also AOL

¹Numbers in parentheses preceded by “T1” refer to minutes from the bench trial proceedings on June 13, 2016; those preceded by “T2” refer to minutes from June 14 and June 17, 2016.

Build video, People's Exhibit 2, at 22:05-24:36). Mr. Rinaldi contacted Ms. Shields periodically from the 1980's to 2013.²

For more than 30 years, Ms. Shields employed security firm Gavin de Becker and Associates ["de Becker"] for services including "threat assessment" and investigations of the 2,930 "inappropriate pursuers" who contacted her (T1:Creter 104-09,122; Shields 129). Some of Ms. Shields's pursuers were "stalkers" who were arrested (T1: Shields 172). Those who were "agitated or obsessive" engaged in escalating behavior that "started off rather innocuous and . . . ended quite badly" (T2:Shields 17). Ms. Shields had "never seen" these types of situations calm down, she had only seen them "increase and accelerate" and she believed that "anything can lead to an escalation" (T2:Shields 17-18). The firm advocated a "Watch and Wait" approach, encouraging Ms. Shields not to respond to letters or calls, but rather to forward all information to the firm for long-term evaluation (T1:Creter 109-10,120-21; Shields 129; T2: Shields 16). Ms. Shields and her husband, Chris Henchy, were told not to "engage or indulge anybody's behavior" and to remain "impassive" yet "polite" (T1:Shields 130-31; T2:Shields 18; Henchy 210-11).

² Some of the "contacts" merely involved his presence in the audience or by the stage door after Ms. Shields's appearances in Broadway shows. He occasionally gave her flowers or commented on things she had shared on social media. She was always cordial to Mr. Rinaldi (T1:Shields 133-34,165-68; T2:Shields 6-7). None of this occurred between November, 2013, and May, 2015.

John Rinaldi was flagged by de Becker as an “inappropriate pursuer” in the 1980's (T1:Creter 111, 115). The firm documented 35 interactions he had with Ms. Shields over the 30-plus years, including 15 letters and 16 personal encounters (T1:Creter 112-13). During that period, Ms. Shields never told Mr. Rinaldi to stop contacting her (T1:Shields 137; T2:Shields 19). In fact, she tried to avoid all communication with Mr. Rinaldi because she did not believe he was “rational” (T2:Shields 19). She was never, however, unkind to Mr. Rinaldi (T2:Shields 45). Sometime prior to November, 2013, Ms. Shields asked her husband, Mr. Henchy, to tell Mr. Rinaldi that he was “making [them] uncomfortable” and to cease contacting them (T1:Shields 137).

Ms. Shields and Mr. Henchy moved to West 10th Street in the West Village, between Hudson and Bleecker streets, around 2010-11 (T1:Shields 134; T2:Henchy 191-92,204). Nearly four years later, Ms. Shields first ran into Mr. Rinaldi, who mentioned that he had been living in the neighborhood for a while (T1:Shields 170-71; T2:Shields 13-14).

The de Becker firm logged three encounters involving Mr. Rinaldi between November, 2013, and May, 2015 (T1:Creter 114). It recommended an updated investigation and assessment, but Ms. Shields did not contract for it to do either (T1:Creter 115). She also did not request bodyguards or updated security services (T1:Creter 118-19). The firm did not recommend that Ms. Shields file criminal

charges against Mr. Rinaldi (T1:Creter 121-22).

The Incidents

Mr. Rinaldi was charged with conduct occurring between November, 2013, and May, 2015 (Court File: Prosecutor's Information).

On November 8, 2013, Dan McCann, Ms. Shields's personal assistant for 12 years, showed her a box that had been delivered to her house (T1:Shields 135-36; T2:Shields 8; McCann 53, 68). Ms. Shields thought it was a "gift for [her] children" from Mr. Rinaldi, a box containing "little stuffed animals" (T1:Shields 136-37; T2:Shields 32). In fact, the box had a single teddy bear inside along with letters relating to Mr. Rinaldi's Sandy Hook charity organization, "The Sandy Hook CenTer"(T2:McCann 69; Letters dated October 3 & 4, 2013, People's Exhibit 5). One letter, addressed to Ms. Shields, explained that the teddy bear was from a memorial center and invited the recipient to return it to the memorial site at a future ceremony (T2:McCann 69-72; Henchy 214; People's Exhibit 5). The other was a form letter that mentioned celebrities who have embraced the cause (T2:McCann 71-72; People's Exhibit 5).

Ms. Shields refused to look at these letters and "asked not to be told what they were" because she "did not want anything to do with them"(T1:Shields 164-65; T2: Shields 32-33). Instead, she instructed someone to send them to de Becker because her "kids have enough toys" (T1:Shields 164; T2: Shields 33). Ms. Shields

felt that she had kept Mr. Rinaldi's contact at an acceptable level for "quite a long time," but he had crossed a line with the delivery, which made her feel "violated and terrified" because "barriers that [she] had felt had been rather intact over the course of many years were breaking down" (T1:Shields 137-38; T2:Shields 32). Despite Mr. McCann's lengthy tenure with Ms. Shields, this was the first time he had ever heard of John Rinaldi (T2:McCann 53,68,73).

On November 23, 2013, Ms. Shields was returning home with Mike Zarara, her social media assistant who had worked for her for more than eight years, when they saw Mr. Rinaldi near her house (T1:Shields 135,138; T2:Zarara 103-04,160). He was holding something and said: "I want to give this to you" or "[H]ere, I want Rowan [Shields's daughter] to have this" (T1:Shields 139-40; T2:Shields 24;Zarara 104). Ms. Shields told Mr. Zarara that Mr. Rinaldi was "one of the guys," and she quickly went into her house (T1:Shields 138-39; T2:Zarara 104). According to Mr. Zarara, Mr. Rinaldi shouted after her: "What, you don't want it?"(T2:Zarara 105). He did not try to block them from entering the gate, nor did Mr. Rinaldi enter the gate or try to follow them up the stairs (T2: Zarara 171-72). This was the first time Mr. Zarara had ever seen Mr. Rinaldi (T2:Zarara 103,168).

Mr. Zarara asked who Mr. Rinaldi was and what he wanted (T2:Zarara 105,167-68). Mr. Rinaldi introduced himself and said he was "friendly," not

“creepy,” before offering his driver’s license, which Mr. Zarara photographed, showing that he lived nearby on Waverly Place (T2:Zarara 105-06,177-78; People’s Exhibit 8). Mr. Zarara acted “friendly” with Mr. Rinaldi, trying to make him “comfortable” (T2:Zarara 177). Mr. Rinaldi handed Mr. Zarara the item and Zarara thanked him, shook his hand, and brought it into the house (T2: Zarara 106,178). Ms. Shields recognized it as a silver picture frame with a photo of her inside that her mother had distributed at one of her birthday parties when she was younger (T1:Shields 139; T2:Shields 9,22,24; T2:Zarara 176,179).

A few minutes later, Mr. Zarara went outside to speak with Mr. Rinaldi, who was now on the corner of Bleecker and West 10th Street, and asked what he was doing there. Mr. Rinaldi said he was waiting for a friend to get coffee (T2:Zarara 107-08,186). Mr. Zarara told him to “please not approach anyone in the home” or contact them and that it was “inappropriate to appear at someone’s home uninvited” (T2:Zarara 109,186-87). Mr. Rinaldi responded that he is a “nice guy” who lives in the neighborhood and though he frequently sees the family around, he never bothers them (T2:Zarara 109,187). They shook hands, and Mr. Zarara later reported the incident to de Becker (T2:Zarara 172,180,187-88). He did not see Mr. Rinaldi again until the trial (T2:Zarara 188).

On December 8, 2013, Ms. Shields and Mr. McCann saw Mr. Rinaldi outside as they left the house and got onto McCann’s motor scooter. He

approached them trying to get her attention or say something, but they did not listen and simply rode away (T1:Shields 140-41; T2:Shields 11-12; McCann 55-56,74). Mr. Rinaldi did not try to interfere with them in any way (T1: Shields 141;T2: Shields 12; McCann 56,75). Mr. McCann did not see Mr. Rinaldi in the neighborhood again until May 5, 2015 (T2:McCann 76-77). Ms. Shields did not discuss Mr. Rinaldi with him or ask him to speak with Mr. Rinaldi during the intervening 17 months (T2:McCann 76-77). Mr. McCann did not see Mr. Rinaldi in the neighborhood *after* May 5, 2015, either (T2:McCann 85).

Also in December, 2013, Kelly Corrigan– the nanny for Ms. Shields’s children for more than four years– answered the door one day and saw Mr. Rinaldi standing on the sidewalk behind the unlocked gate (T1: Shields 134-35; T2:Corrigan 91,93-94,100). He introduced himself and asked whether they had received his previous package (T2:Corrigan 91-92,100). This was the first time Ms. Corrigan had ever seen Mr. Rinaldi (T2:Corrigan 96). The entire encounter was ordinary and did not alarm her in any way (T2: Corrigan 101). She later informed Ms. Shields and Mr. Henchy about the incident, and they advised her to “be alert” and to report any future interactions (T2:Corrigan 92). She never saw Mr. Rinaldi or his car in the neighborhood after that (T2:Corrigan 93, 97).

On March 4, 2014, Mr. Henchy ran into Mr. Rinaldi on the corner of Bleecker and West 10th Street (T2:Henchy 192). Mr. Rinaldi approached him and

said he might have “spooked” Ms. Shields the last time he saw her (T2:Henchy 193,206). Trying to keep the encounter “brief and non-confrontational” and not to “antagonize” or “engage” Mr. Rinaldi, Mr. Henchy responded that Mr. Rinaldi was correct (T2:Henchy 193,206-11). He told Mr. Rinaldi that his wife “likes her privacy and going up to her” or “going up to the house and knocking on the door” makes her “unsettled and nervous and scared” (T2:Henchy 193).

Mr. Rinaldi nodded and said he meant no harm. Mr. Henchy, who was “trying to send [him] a message to stay away,” added: “I just think it is best you avoid her” and then he walked away (T2:Henchy 194). He “looked [Mr. Rinaldi] in the eye,” told him to “leave Brooke alone,” and hoped that Mr. Rinaldi “received that message” (T2:Henchy 217). During their conversation, Mr. Rinaldi mentioned that his niece was coincidentally named Rowan, the same as Henchy’s daughter (T2:Henchy 207). Mr. Henchy reported the incident to de Becker but not to the police (T2:Henchy 194). This was the only personal interaction he ever had with Mr. Rinaldi (T2:Henchy 202).

Mr. Rinaldi did not approach their house or Ms. Shields after that conversation, and Henchy did not see Mr. Rinaldi again until the trial; he did, however, see Mr. Rinaldi’s car parked nearby (T2:Henchy 218-19, 211).

On November 18, 2014, Ms. Shields appeared at an event promoting her book, “There Was a Little Girl: The Real Story of My Mother and Me” (T1:

Shields 141; People’s Exhibit 2). She spotted Mr. Rinaldi in the front row and, during an audience question session, he handed her a picture of himself with her mother Teri and explained that she had played an important role in his life by encouraging his parents to investigate a problem he had with a neighbor. This inspired him to help others, and he wanted to express his gratitude for Teri’s actions (T2:Shields 9-10; People’s Exhibit 2 at 22:05-24:36). Mr. Rinaldi mentioned that he had discussed this with Ms. Shields and her husband after her daughter was born, when he gave them a gift. Ms. Shields recalled the conversation (People’s Exhibit 2 at 22:40-22:50).

Ms. Shields testified that she was hoping that Mr. Rinaldi’s “emotions [wouldn’t] get too high” during the exchange and he wouldn’t “get agitated” or “escalate” the situation (T1:Shields 142-43,169). Nevertheless, she was “congenial. . .pleasant” and “gracious” in responding to his story, which she claimed had “nothing to do with the event” (T1: Shields 142, 168; T2: Shields 23). Of course, Ms. Shields’s book was about her relationship with Teri, whom she claimed was “insecure,” and Mr. Rinaldi said that he thought Teri’s actions showed that she was actually confident (T2:Shields 10,41-42; People’s Exhibit 2 at 23:22-23:29).

After this event, Ms. Shields saw Mr. Rinaldi “more frequently in [her] neighborhood, always around [her] home” (T1:Shields 146). She claimed to see him five or six times during this period, but she did not identify any specific

encounters (T1:Shields 153; T2:Shields 11,20-21,25-26). She also saw his car, which she recognized because his license plate bore his last name, at least a few times (T1:Shields 146,153; T2:Shields 12-13; People's Exhibit 3). When Ms. Shields did see Mr. Rinaldi near her home, she tried to get past him or, if she was with her kids, avoided going home altogether (T1:Shields 147). Seeing him made her feel "electric," "on point, ready," "fearful," "on edge," "preoccupied," as well as "victimized" and "vulnerable" (T1:Shields 147-48).

On May 5, 2015, Ms. Shields returned home from working out with her trainer when she saw Mr. Rinaldi (T1:Shields 149). She "could tell he was waiting. . . could feel he was waiting for the [trainer] to leave so he could approach [her]" (T1:Shields 149). Ms. Shields went into the house and avoided Mr. Rinaldi, who said nothing (T1:Shields 149). That evening, Ms. Shields and Mr. McCann noticed Mr. Rinaldi's car parked in front of her house with Ms. Shields's name written in dirt on the window, "eerily similar" to how she signs her name but without the "XX" she typically appends (T1: Shields 149-50; T2:McCann 57,78). She found it "disturbing and creepy," and considered it "some kind of message" (T1:Shields 150; T2:McCann 79). At Ms. Shields's prompting, Mr. McCann wiped it off with his sleeve (T1:Shields 150; T2:McCann 57,79).

When Ms. Shields and Mr. McCann returned later that night, they saw rustling in the back seat of Mr. Rinaldi's car (T1:Shields 151; T2:McCann 58,80).

They went into the house, and Ms. Shields instructed Mr. McCann to tell Mr. Rinaldi to leave. As he approached the car, Mr. Rinaldi drove away (T1:Shields 151; McCann 58-59,80). Ms. Shields “finally had enough,” and she went to the precinct and filed a complaint (T1:Shields 148,151,153; T2:Shields 26; McCann 62).

Ms. Shields told Detective Stanley Dash that Mr. Rinaldi had never threatened her and that she did not want him arrested, but she wanted her complaint kept on file (T2:Dash 229,245). Afterwards, she asked Mr. McCann to stay at her house because she did not want to be alone (T1: Shields 153-54; T2:McCann 63).

The next morning, May 6, 2015, Lieutenant Kevin Blake was told about the harassment complaint and learned that Mr. Rinaldi was parked on a street behind the precinct, asleep in his car (T2:Blake 253). Lt. Blake found Mr. Rinaldi and knocked on the window (T2:Blake 254,259). Mr. Rinaldi identified himself and Lt. Blake warned that he should stay away from Ms. Shields, her house, and her family and stop posting about her online(T2: Blake 254-55,260). Mr. Rinaldi was cooperative and acknowledged the warnings (T2:Blake 255). This was the first time Lt. Blake had ever seen Mr. Rinaldi or his car (T2:Blake 258).

Around 3:30 that afternoon, Lt. Blake saw Mr. Rinaldi walking past Ms. Shields’s house (T2:Blake 255). He was walking “somewhat briskly,” and he “sort

of slowed down” as he passed the building but continued without stopping (T2: Blake 256,260-61). Lt. Blake enlisted Detective Dash, and the two found Mr. Rinaldi a few minutes later inside the Starbucks on the corner of West 10th Street and Hudson, working on his laptop (T2:Blake 256,261; Dash 231). Lt. Blake asked Mr. Rinaldi to step outside, and he cooperated. There, Lt. Blake mentioned their earlier conversation and said Mr. Rinaldi was “inviting trouble” by walking in front of Ms. Shields’s home (T2:Blake 256,261).

Mr. Rinaldi said he had walked past it on his usual route to Starbucks, and he did not know why Ms. Shields would be uncomfortable as he had known her for years (T2:Dash 231-32). Detective Dash responded that his relationship was with Ms. Shields’s mother, and Mr. Rinaldi acknowledged this (T2:Dash 231). Detective Dash and Lt. Blake instructed Mr. Rinaldi to “cease this behavior”—approaching the house, contacting her, “tweeting about” her or referencing the “situation” online— or the police would be forced to arrest him (T2:Blake 256-57; Dash 231-32). Mr. Rinaldi said he would no longer contact her (T2:Dash 232). This was the first time Detective Dash had ever seen Mr. Rinaldi, and he never noticed Rinaldi’s car parked outside the precinct (T2:Dash 243-44).

Between that day and May 16, 2015, Mr. McCann sent Detective Dash a number of Mr. Rinaldi’s tweets (T2:Dash 232; People’s Exhibit 25). He also forwarded an email that Mr. Rinaldi sent to Ms. Shields’s publicist Jill Fritzo

explaining that he would be surrendering to the police the next day but he was not guilty of stalking or harassment (T2:McCann 63; Dash 235; People's Exhibit 7).

On May 16, 2015, Mr. Rinaldi voluntarily surrendered at the precinct (T2:Dash 236,246). Detective Dash Mirandized him, and after Mr. Rinaldi signed the waiver, he told Dash that though he was not supposed to contact Ms. Shields, he emailed Ms. Fritzo and tweeted *about* Ms. Shields because he wanted to tell his side of the story to avoid tarnishing the name of his charitable organization (T2: Dash 236-37). Detective Dash never saw Mr. Rinaldi again (T2:Dash 244).

Mr. Rinaldi's actions from 2013 to 2015 made Ms. Shields feel like she was "at the whim of somebody else" and she felt "not as free" or as secure, leading her to be "hypervigilant" and "more on edge" (T1:Shields 162). She felt this way though Mr. Rinaldi never verbally threatened her and his correspondence and encounters had always involved him trying to be generous or give her a gift (T1:Shields 163; T2: Shields 4-5). She perceived him as a threat, however, because his "agitated expression" and "energy was enough to signify that he was off balance" (T2: Shields 4). Though Ms. Shields believed that Mr. Rinaldi's various correspondence contained "verbal attacks" about her being "horrible" to him and about people in her life, she acknowledged that they also contained communications about his charity work, his relationship with her mother, and how Teri saved his life (T2: Shields 5-6). Ms. Shields also admitted that she "didn't

read so many of the correspondence” (T2: Shields 5). Ms. Shields was afraid for her children, and she began to “look left and right” before leaving her house and started exiting from a basement entrance so as to avoid being “vulnerable” on the front steps (T1:Shields 154-55). She did not, however, retain the services of a bodyguard (T1:Shields 155).

The Social Media Evidence

The prosecution offered many of Mr. Rinaldi’s tweets (Twitter comments) and social media posts to or about Ms. Shields into evidence as proof that he engaged in a course of conduct directed at her. The court rejected some for evidentiary reasons (T2:134-35, 147). As all of the posts were protected speech that could not be criminalized, infra pp. 34-37, only those relevant to his state of mind for the criminal charges will be recounted hereafter.

Ms. Shields, it should be noted, stopped reading her Twitter feed because it made her “too. . .hypersensitive and nervous” (T1:Shields 161; T2: Shields 34).³ She did not manage her Twitter account, but left it to Mr. Zarara and her “publicity team” (T2:Shields 34-35). After his encounter with Mr. Rinaldi, Mr. Zarara regularly checked Twitter to see if he tagged Ms. Shields⁴ (T2:Zarara 182).

³At some point, Ms. Shields did, however, read a few of the tweets that were offered into evidence at trial (T2:Shields 35,37).

⁴When someone “tags” another user on Twitter, it sends a notification to that person that their account has been referenced (T2:Zarara 188-89).

Mr. Rinaldi did,⁵ but his tweets never mentioned or implied that he wanted to cause Ms. Shields physical harm (T2:Zarara 182).

On November 26, 2013, a “WhoSay” account⁶ associated with Mr. Rinaldi commented on a photo that Ms. Shields posted: “[V]ery disappointed. And horrified to hear saying hello was inappropriate” (T2:Zarara 110-13; Holtzman 224-25; People’s Exhibit 10). He also welcomed her to the neighborhood, where he had lived for 18 years (People’s Exhibit 10).

On November 28, 2014, Mr. Rinaldi referenced the AOL Build event on his blog and mentioned that he sees her around the neighborhood periodically and they “go back 28 years” (T2:Zarara 116-17; People’s Exhibit 12).

In one tweet, Mr. Rinaldi suggested Ms. Shields be “nicer” to him, though she claimed she “didn’t understand what he was talking about” (T2:Shields 49; People’s Exhibit 6). A different tweet mentioned Mr. Rinaldi parking in front of Ms. Shield’s house because the space is adjacent to a police precinct (T2:McCann 81; People’s Exhibit 25).

After Ms. Shields returned home with her trainer on May 5, 2015, she claimed Mr. Rinaldi tweeted that he saw that she had “just gone to the West Side

⁵The People’s exhibits reveal clusters of tweets from Mr. Rinaldi centered around the encounters discussed at trial, but there are also sustained periods of inactivity on Twitter between, for example, March 2014 and October, 2014, and December 2014, and early May, 2015.

⁶WhoSay is a social media site for celebrities and public figures (T2:Zarara 109).

Highway to work out in the park” (T1:Shields 152). She believed this meant he had followed her there (T1:Shields 152). In fact, Mr. Rinaldi merely tweeted: “just saw u as ur workout partner dropped u home. My entire life- man I am is bcuz u & ur mom. Pls b nicer- I’m sch gd guy!” (T2:Shields 38; People’s Exhibit 6). Ms. Shields called this “extremely upsetting” because she did not know how Mr. Rinaldi “could have known that was [her] trainer” (T2:Shields 38). She conceded that she was wearing exercise clothes at the time (T2:Shields 39).

Several tweets between May 5 and May 16, 2015, were admitted over counsel’s objections that they, *inter alia*, involved “protected speech” and occurred outside the period charged in the accusatory instruments (T2:130-40). In one of the tweets, Mr. Rinaldi said: “Shame on u to use celebrity to bully” (People’s Exhibit 15). This was one of three tweets that referenced bullying (*id.*).

Mr. Henchy apparently found a portion of the email to Jill Fritzo particularly upsetting. In it, Mr. Rinaldi referenced an actress named Rebecca Schaeffer who had been killed by a stalker named Robert John Bardo (T2:Henchy 196-98; People’s Exhibit 7). This was a small portion of a lengthy, 5-page email and its context was apparent from Mr. Rinaldi’s explanation that the case had “shaped the stalking laws”⁷ (T2:Henchy 199-201; People’s Exhibit 7).

⁷Legal scholarship supports Mr. Rinaldi’s conclusion. See Lopez and Bast, The Difficulties in Prosecuting Stalking Cases, 45 No. 1 Crim. Law Bulletin Art. 2, Winter 2009; Wiggins, Stalking Humans: Is There a Need For Federalization of Anti-Stalking Laws In Order to Prevent Recidivism in Stalking?, 50 Syracuse L. Rev. 1067, 1074-75 (2000).

Mr. Rinaldi also insisted in the email that he was “not a stalker,” that the case was “defamation, at best,” and that he “would soon rather harm [him]self than to ever even disturb Brooke” (T2:Henchy 201-02; People’s Exhibit 7).

Trial Order of Dismissal

After the People’s case, defense counsel made an extensive motion for a trial order of dismissal. He argued first that the prosecution failed to prove that Mr. Rinaldi engaged in a specific, concerted course of conduct. Counsel noted that the People’s evidence generally fell into two categories: Mr. Rinaldi’s appearances at or near the complainant’s home, and his social media contacts. He argued that Mr. Rinaldi’s presence near the house was always in furtherance of a legitimate purpose, and that the social media evidence generally expressed Mr. Rinaldi’s support for or disappointment with Ms. Shields, but never expressed threats or anything that could be construed as threatening (T2:264-72). Many other posts were efforts to defend himself against what he believed were slanderous accusations. Counsel also argued that there was no order of protection prohibiting the posts and they were an exercise of Mr. Rinaldi’s right to express himself that could not be criminalized (T2:272-75).

Though Mr. Rinaldi’s conduct may have been “inappropriate” or “awkward,” counsel argued it was not likely to cause fear in a reasonable person (T2:275-77). He added that the People failed to prove that Ms. Shields actually

suffered “material harm to her mental or emotional health” or that she was scared of Mr. Rinaldi (T2:280-82).

Counsel also argued that Mr. Rinaldi did not and could not have reasonably known that his contacts would cause Ms. Shields to experience fear and that any warnings he received were ambiguous (T2:277-79). He noted that a critical factor was Mr. Rinaldi’s relationship with Teri Shields, which proved that Mr. Rinaldi was not a total stranger to the complainant and that he had reason to believe his contact was appropriate (T2:279-80). Addressing the harassment counts, counsel argued that there was no evidence that Ms. Shields was placed in reasonable fear of physical injury or that Mr. Rinaldi intended to “harass, annoy, or alarm” her (T2:284-85).

The prosecutor responded that the “sheer number of contacts” proved that Mr. Rinaldi’s only purpose was to “get[] close to Ms. Shields,” “be[] friends with her,” and “harass and annoy” her (T2:286, 291-92). She then argued that many of the social media contacts demonstrated his hostility towards Ms. Shields and occurred in-between the personal interactions; together, she argued, they established a continuous course of conduct (T2:287-92). A “reasonable person would be scared by” Mr. Rinaldi’s behavior and “could see that there is no legitimate purpose for all of this” (T2:291). Ms. Shields, the prosecutor argued, experienced material harm because she “looks both ways before going outside. .

.[and] is more nervous” and her children sleep “closer to her and facing the police department” (T2:292-93). Addressing the harassment charges, the prosecutor insisted that a reasonable person could perceive Mr. Rinaldi’s conduct, after “being told multiple times to stop,” as posing a “threat to her physical safety” (T2:293).

The court reserved decision on the motion (T2:293).

The Defense Case

Defense counsel moved into evidence a record showing that Mr. Rinaldi had been a customer at The Village Apothecary, a pharmacy located on the corner of Bleecker Street and West 10th Street, since 2003 (T2:294-95; Defense Exhibit A). This was well before Ms. Shields moved into the neighborhood. Counsel renewed his motion for a trial order of dismissal and added that the pharmacy records showed that Mr. Rinaldi had a legitimate purpose for being on Ms. Shields’s block (T2:296). The court again reserved decision (T2:296).

Summations

Defense counsel incorporated his motion for dismissal in summation and argued that the case had to be viewed through the “specific lens” that Mr. Rinaldi was not a stranger to Ms. Shields. His relationship with Teri was a basis for his communication with Brooke and an inspiration for his charity, which served as another legitimate reason he contacted Ms. Shields (T2:297-99). Further, he was

never clearly informed that his communications were not welcome and he insisted that he would rather harm himself than harm or scare Ms. Shields (T2:307).

Counsel argued that the evidence was not credible where so many of the witnesses were biased or offered little substantive testimony (T2:299-302). Ms. Shields, moreover, was biased by the many “inappropriate pursuers” she had over the years and had come to expect that encounters with them might endanger her, even where there was no rational reason for such fear (T2:302-03,306-07). Ms. Shields’s testimony, tainted by irrational fear, “did not jibe with” other prosecution witnesses, including her own husband, none of whom corroborated her testimony that Mr. Rinaldi was regularly near her home (T2:303-05).

Counsel concluded that the case was brought only “because the complainant is Brooke Shields. . . because she is famous” and insisted that this case would have been dismissed if the complainant was not a celebrity (T2:307).

The prosecutor again argued that “everyone has a right to feel safe in their neighborhood and inside their homes,” including celebrities like Ms. Shields (T2:309). She insisted that Mr. Rinaldi crossed a line by referencing Ms. Shields’s daughter Rowan and argued that Mr. Rinaldi was told to stay away by Mr. Zarara and by Mr. Henchy (T2:310-11). He continued to “harass” and “annoy” Ms. Shields after receiving those warnings by appearing at the AOL event, tweeting at and posting about Ms. Shields online, parking near her house, and appearing

outside it on May 5, 2015, before writing her name on his car (T2:312-28). He did not cease his conduct even after he was warned to stay away and to stop posting online by the police officers (T2:321-28). She concluded that the stalking laws are designed to “stop unstable and unhinged individuals before it escalates to the point of violence” and the court should hold Mr. Rinaldi “accountable” by finding him guilty of all charges (T2:330-32).

Verdict and Sentence

The court convicted Mr. Rinaldi of both fourth-degree stalking counts and both harassment counts, and sentenced him to an aggregate term of 60 days incarceration (T2:332-33, 337-38).

ARGUMENT

THE EVIDENCE WAS LEGALLY INSUFFICIENT AND THE VERDICT WAS AGAINST THE WEIGHT OF THE EVIDENCE WHERE THE EVIDENCE FAILED TO PROVE THAT MR. RINALDI ENGAGED IN A COURSE OF CONDUCT THAT HAD NO LEGITIMATE PURPOSE, THAT HE KNEW OR SHOULD HAVE KNOWN THAT HIS COMMUNICATION WITH THE COMPLAINANT WAS NOT WELCOME, THAT HE INTENDED TO HARASS THE COMPLAINANT, OR THAT THE COMPLAINANT REASONABLY EXPERIENCED OR FEARED MATERIAL HARM OR FEARED PHYSICAL INJURY. U.S. CONST. AMEND. XIV; N.Y. CONST. ART. I, § 6.

Brooke Shields is a celebrity, and during the course of her 30-year career, she has collected nearly 3,000 “inappropriate pursuers,” many of whom may well

have intentionally crossed appropriate boundaries into her private life. Mr. Rinaldi is not one of those people. Beginning early in Ms. Shields's career, he developed a meaningful relationship with her mother Teri, whose generosity changed Mr. Rinaldi's life. He contacted Ms. Shields periodically during the ensuing decades to express his gratitude for her mother's kindnesses, to support Ms. Shields's career, to be hospitable to a neighbor, and to seek assistance with his own charitable endeavors. Ms. Shields never once told Mr. Rinaldi that his contacts were unwelcome, and they apparently did not dismay her before November, 2013. It was then, several years after Ms. Shields had moved into the same neighborhood as Mr. Rinaldi, that he first approached her home seeking assistance with his charity. Though Ms. Shields apparently *felt* that Mr. Rinaldi was somehow "escalating" his behavior and crossing previously-established boundaries, her feelings were unreasonable. Though she believed she saw him many times over the next few years, her ever-present coterie of employees and family each saw him no more than once or twice during that same period, and only her husband saw Mr. Rinaldi's car parked in front of their home. Ms. Shields was clearly experiencing a "hypervigilance" or "hypersensitivity," as she described it, and that was the true cause for the shift in her attitude towards Mr. Rinaldi.

Mr. Rinaldi did not engage in a course of conduct once he learned that his communications with Ms. Shields were no longer welcome. Further, he had

entirely legitimate purposes for every communication both before and after he was equivocally advised to avoid her. Then, when he followed that advice, he was *still* arrested and the People, desperate to make their case, offered at trial a torrent of Mr. Rinaldi's social media posts that were legitimate expressions of free speech that could not fairly be criminalized— and many of which were defenses at what he perceived to be an unjust prosecution and essentially a scarlet letter destined to harm his charitable organization.

This case should never have been prosecuted, and Mr. Rinaldi certainly should not have been convicted upon such plainly insufficient evidence. This Court must reverse the convictions and dismiss the accusatory instrument.

When reviewing a conviction for legal sufficiency, this Court can affirm only if the evidence, viewed in the light most favorable to the People, could lead a rational trier of fact to conclude that each essential element of the crime had been proven beyond a reasonable doubt. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); People v. Bleakley, 69 N.Y.2d 490, 495 (1987). Generally, “[L]egally sufficient evidence’ means competent evidence which, if accepted as true, would establish every element of an offense charged.” C.P.L. § 70.10(1).

When reviewing the weight of the evidence, in contrast to reviewing for legal sufficiency, this Court must engage in a two-step inquiry. First, it must assess whether, based on all credible evidence, “an acquittal would not have been

unreasonable.” People v. Danielson, 9 N.Y.3d 342, 348 (2007); see also People v. Romero, 7 N.Y.3d 633, 643 (2006). Then this Court “must, like the trier of fact below, weigh the relative probative force of conflicting testimony and the relative strength of conflicting inferences that may be drawn from the testimony.” Bleakley, 69 N.Y.2d at 495; see also C.P.L. § 470.15(5). “If this review of the record leads this court to conclude that ‘the trier of fact has failed to give the evidence the weight it should be accorded, then the appellate court may set aside the verdict.’” Romero, 7 N.Y.3d at 643-44 (quoting Bleakley). Although there must be some deference to the jury, “[e]ssentially, the court sits as a thirteenth juror and decides which facts were proven at trial.” Danielson, 9 N.Y.3d at 348.

Mr. Rinaldi’s convictions were legally insufficient and against the weight of the evidence.

A. The Evidence Was Insufficient to Prove That Mr. Rinaldi Intentionally Engaged in a Course of Conduct With No Legitimate Purpose, That He Did So to Harass or Annoy Ms. Shields, or That She Suffered a Reasonable Fear of Material Harm or Physical Injury, or That She Experienced Material Harm.

The conduct attributed to Mr. Rinaldi in this case falls into one of several legitimate categories, including: (1) expressions of support for Ms. Shields or gratitude for her mother Teri; (2) requests for donations or assistance for his charitable organization; (3) offers of gifts, benefits, or other hospitable acts; and (4) mere proximity to her home. None of the evidence suggests that Mr. Rinaldi

intended to make Ms. Shields fearful or that he had any reason to believe his conduct would have that effect. Indeed, he appeared near her home, in the same neighborhood where he had lived for 20 years, just once after the only clear warning he received arguably suggesting his contact was unwelcome. This did not establish a concerted course of conduct, a critical element in both the stalking and harassment charges. Further, the People failed to prove that Ms. Shields experienced material harm or fear of material harm or physical injury, or that any fear she did experience was reasonable.

The prosecution tried to paper over these fundamental deficiencies by burying the court in Mr. Rinaldi's innocuous social media posts and emails. These were mere distractions, cover for the absence of an identifiable course of conduct occurring after Mr. Rinaldi was allegedly warned that his behavior was bothering Ms. Shields. As none of these were "true threats," Mr. Rinaldi could not be penalized for his expression of speech under the First Amendment.

Viewed in the light most favorable to the prosecution, the evidence failed to establish that Mr. Rinaldi committed the offenses of stalking or harassment, and his arguments are preserved by counsel's exhaustive motion for a trial order of dismissal (T2:263-85). As Mr. Rinaldi has completed the maximum sentence for these offenses, his convictions must be vacated and the accusatory instrument dismissed. See People v. Burwell, 53 N.Y.2d 849, 824 (1981).

1. The Stalking Charges

The first and second subdivisions of the fourth-degree stalking statute require proof that the defendant, for “no legitimate purpose,” intentionally engaged in a “course of conduct” directed at a specific person. Penal Law §§ 120.45(1); 120.45(2). “No legitimate purpose” means the actor has no reason to “engage someone[,] other than to hound, frighten, intimidate or threaten” the person. People v. Stuart, 100 N.Y.2d 412, 428 (2003). Though “course of conduct” has not been defined in the Penal Law, it is generally recognized as “a series of acts evidencing a continuity of purpose.” People v. Venson, 47 Misc.3d 92, 94 (App. Term 1st Dept. 2015) (citations and quotations omitted).

Under subdivision one, the prosecution must prove that the defendant knew or reasonably should have known that this conduct was “likely to cause reasonable fear of material harm to the physical health, safety, or property” of the person, her family, or her associate(s). Penal Law § 120.45(1). Under subdivision two, the prosecution must prove that the defendant *actually caused* material harm to the mental or emotional health of the intended recipient after being “clearly informed to cease” his conduct. Penal Law § 120.45(2).

Course of Conduct With No Legitimate Purpose

Here, even viewed in the light most favorable to the prosecution, the evidence failed to show that Mr. Rinaldi engaged in a course of conduct that was

not legitimate or that he knew that his conduct was unwelcome, much less that it was likely to cause Ms. Shields reasonable fear. In fact, the evidence proved that Mr. Rinaldi had *several* legitimate reasons to engage with Ms. Shields and did not intend to “hound, frighten, intimidate or threaten” her.

Mr. Rinaldi’s contacts with Ms. Shields must be viewed in the context of his relationship with Ms. Shields’s mother Teri, which began more than 30 years ago. When Teri helped Mr. Rinaldi divulge the sexual abuse he suffered at the hands of a neighbor, she left a powerful and lasting impression on Mr. Rinaldi. Further, this relationship led Mr. Rinaldi to believe that the complainant was not a complete stranger, but rather an acquaintance with whom he could and did periodically communicate. Ms. Shields knew about Mr. Rinaldi’s relationship with her mother and knew that he believed it changed his life (T1:Shields 128; T2:Shields 10,46; People’s Exhibit 2; People’s Exhibit 7; People’s Exhibit 12). She also acknowledged her mother’s habit of serving as a “savior” to “broken down” people (T2:Shields 49). Given that relationship, Mr. Rinaldi had no reason to believe that his innocuous conduct would be perceived as threatening.

For more than 30 years, Mr. Rinaldi wrote letters to Ms. Shields yet she never told Mr. Rinaldi his contact was unwelcome, nor was she ever present when anyone else did (T1:Shields 137; T2:Shields 19). In fact, she was always “gracious” with him and was never unkind (T2:Shields 18,44-45). Under these circumstances,

it would be difficult for Mr. Rinaldi to know that his contacts were unwanted, much less that they caused her fear.

The “Warnings”

The People’s theory was that Mr. Rinaldi learned his contact was unwelcome from Mr. Zarara on November 23, 2013, and from Mr. Henchy on March 4, 2014 (T2: 313, 315). The Zarara interaction, however, was ambiguous. After Mr. Rinaldi approached Ms. Shields and offered her a picture frame that he had been given by Teri years earlier, she went into the house and he spoke with Mr. Zarara, who acted “friendly” (T1: Shields 139; T2: Shields 8-9, 22-24; Zarara 176). He accepted the frame and shook Mr. Rinaldi’s hand (T2:Zarara 106,176-78). A short while later, Mr. Zarara suggested that Mr. Rinaldi not “approach anyone in the home anymore” because it was “inappropriate” (T2:Zarara 109). He did not indicate that this request came from Ms. Shields, with whom Mr. Rinaldi believed he had a legitimate, if distant, relationship. Further, this was inconsistent with Mr. Zarara’s genial conduct minutes earlier. At best, Mr. Zarara’s words and actions sent mixed messages to Mr. Rinaldi.

The interaction with Mr. Henchy was slightly less ambiguous. Mr. Rinaldi suggested that he might have “spooked” Ms. Shields, though he “meant no harm” (T2:Henchy 193-94). Mr. Henchy responded, in a “brief and non-confrontational” manner, that she “likes her privacy” and that she became nervous and unsettled

when approached on the street or near her home (T2: Henchy 193). Trying to “send [Mr. Rinaldi] a message” that he “hoped” Mr. Rinaldi received, Mr. Henchy said either: “I just think it is best you avoid her” (T2:Henchy 194) or that Mr. Rinaldi should “leave Brooke alone” (T2:Henchy 217).

This was hardly a clear, unequivocal warning that Ms. Shields, a person with whom Mr. Rinaldi occasionally interacted for decades, was afraid of or threatened by him. Nevertheless, aside from the AOL Build event eight months later, Mr. Rinaldi had just one subsequent personal interaction with Ms. Shields before she went to the police on May 5, 2015.

Neither Mr. Zarara nor Mr. Henchy told Mr. Rinaldi not to post about Ms. Shields online.

Conduct Following the “Warnings”– The Lone Personal Interaction and the Walk-By

Mr. Rinaldi had just one personal interaction with Ms. Shields after the March, 2014, conversation with Mr. Henchy. On May 5, 2015, Ms. Shields saw him near her house as she returned from a workout with her trainer. Though she inferred that he was “waiting for [the trainer] to leave,” he did not say anything to Ms. Shields, much less anything suggesting he had been waiting for her (T1:Shields 149). Mr. Rinaldi’s presence in a neighborhood where he had lived for many years longer than Ms. Shields, and less than a block from businesses he frequented (including a coffee shop and The Village Apothecary, which he had

been patronizing since 2003) hardly suggested criminal conduct and was entirely attributable to coincidence (People’s Exhibit 8; Records of Village Apothecary, Defense Exhibit A). It certainly did not establish a specific intention to “hound, frighten, intimidate or threaten” Ms. Shields or her family. See Stuart, 100 N.Y.2d at 428.

The only other time anyone even saw Mr. Rinaldi near Ms. Shields’s residence after the Henchy conversation was when Lt. Blake saw him walk past the house on May 6, 2015. According to Blake, Mr. Rinaldi “sort of slowed down” as he passed before entering the nearby Starbucks, where Blake and Detective Dash found him working on his computer (T2:Blake 256). Mr. Rinaldi’s path to a local business took him past Ms. Shields’s home— it was not part of a concerted effort to frighten or intimidate Ms. Shields.

These two incidents— each more than a year after the conversation with Mr. Henchy— are the only conduct following the “warning” that supposedly put Mr. Rinaldi on notice that his contact was unwelcome. They do not share a “continuity of purpose” sufficient to establish a course of conduct. See People v. Sweeney, 27 Misc.3d 134(A) (App. Term 2d Dept. 2010); compare Venson, 47 Misc.3d at 94 (allegations were insufficient where defendant offered complainant gifts then approached her with an unrelated request) with People v. Westwood, 53 Misc.3d 74, 79-80 (App. Term. 2d Dept. 2016)(complaint sufficiently alleged continuous

course of conduct where defendant sent letters to stranger complainant asking her to call him and engage in sexual acts).

Conduct Following the “Warnings” – Social Media Speech

All of the other evidence following Mr. Henchy’s “warning” relates to Mr. Rinaldi’s social media posts and an email to Ms. Shields’s publicist, Jill Fritzo. Lacking sufficient proof of personal contact, the prosecution desperately cited these expressions of speech in an effort to incriminate Mr. Rinaldi. The First Amendment may not be so easily circumvented.

Freedom of speech is one of the inalienable rights provided in the First Amendment of the United States Constitution, and the government may not restrict or punish it on the basis of its message, ideas, or content. People v. Marquan M., 24 N.Y.3d 1, 7 (2014) (citing United States v. Stevens, 559 U.S. 460, 468 (2010)); U.S. Const. amend. I. “[S]peech is presumptively protected and generally cannot be curtailed by the government,” subject to limited exceptions. Marquan M., 24 N.Y.3d at 7 (citations omitted). A particularly robust “breathing space” is tolerated in speech relating to public figures and celebrities. Hustler Magazine, Inc., v. Falwell, 485 U.S. 46, 52 (1985). Since the theory of guilt here was premised on whether Mr. Rinaldi’s social media acts placed Ms. Shields in reasonable fear of material harm, the question is whether Mr. Rinaldi’s posts were “true threats.”

“True threats” are statements “where the speaker means to communicate a serious expression of intent to commit an unlawful act of violence” towards an individual or group of individuals. Virginia v. Black, 538 U.S. 343, 359 (2003). A statement may be criminally punished if it inflicts injury “by [its] utterance alone” or “presents a clear and present danger of some serious substantive evil.” People v. Dietze, 75 N.Y.2d 47, 51-52 (1989).

The prosecutor cited a number of Mr. Rinaldi’s tweets, a post on his blog, and his email to Jill Fritzo as proof that he engaged in a course of conduct that he should have known would place Ms. Shields in fear of material harm (T2:315-20,322-23,325). Since none of these communications contained true threats, Mr. Rinaldi may not be punished for engaging in protected speech.

Twitter is an “online social networking service that. . . enables its users to post (“Tweet”). . .and read the Tweets of other users.” People v. Harris, 36 Misc.3d 613, 615 (N.Y. County Crim. Ct., 2012). A “tweet” is a missive that may contain a photo or text up to 140 characters. Id. Each user on Twitter has a “unique username” and can monitor or “follow” other users’ tweets, as well as allow or forbid access to his own tweets. Id. at 615-16. Twitter is designed to be an “open method of communication” that can enable users worldwide to see an individual’s tweets. Id. The “blog” posts referenced at Mr. Rinaldi’s trial were originally posted on a website entitled “The Sandy Hook CenTer,” available at

<http://www.thesandyhookkidscenter.com> (People's Exhibit 12).

Neither the tweets nor the blog post contained anything resembling a threat. In fact, the tweets generally fell into one of three categories: (1) offers to Ms. Shields such as “lmk [let me know] if you want the parking space” (People's Exhibit 13e) and requests like “DM [direct message] me about tomorrow” (People's Exhibit 11); (2) comments about his history with Ms. Shields and her mother and photos involving one or both of them (People's Exhibits 14, 15, 18); and (3) comments explaining or defending himself against what he believed were meritless and slanderous accusations (People's Exhibits 6, 13f, 15). In the blog post dated November 28, 2014, Mr. Rinaldi wrote extensively about his charity work, mentioning Ms. Shields and her mother in just a few sentences suggesting that he saw Ms. Shields around their shared neighborhood and had known her for many years (People's Exhibit 12). The prosecutor grouped these social media posts with various acts as part of the supposed course of conduct (T2:316-17). The blog posts and tweets were not true threats, they therefore could not establish a criminal course of conduct in compliance with the First Amendment.

The email to Jill Fritzo, also repeatedly referenced in the prosecutor's summation, was nothing more than an impassioned defense against what Mr. Rinaldi felt were hurtful and false accusations leveled at him and his non-profit organization that caused him “pain and anguish” (People's Exhibit 7). The email

did not suggest he harbored animosity towards her and certainly did not contain any threats.⁸ In fact, Mr. Rinaldi said he would rather “harm [him]self then [sic] to ever even disturb [Ms. Shields]” (People’s Exhibit 7).

The email also reflected Mr. Rinaldi’s legitimate purposes for contacting Ms. Shields over the years, including his support for her career and his history with Teri. It even referenced a few cordial interactions that he shared with her and Mr. Henchy over the years (People’s Exhibit 7). Mr. Rinaldi noted too the minimal number of times they had run into each other since they shared the same neighborhood— a fact Ms. Shields corroborated when she said she did not see him for the first four years she lived there (T1:Shields 171). The email illustrates that Mr. Rinaldi did not believe or have any reason to believe that Ms. Shields feared him or that his contact with her was unwanted. Indeed, Mr. Rinaldi recalled Mr. Henchy telling him “not to worry about Brooke, that she is overly protective and private” (People’s Exhibit 7).

Simply put, the email to Jill Fritzo was nothing more than a fervent defense to the charges Mr. Rinaldi faced when Ms. Shields suddenly rejected Mr. Rinaldi’s innocuous contacts and conduct after decades of unobstructed communications.

⁸The prosecutor tried to ascribe devious intent to Mr. Rinaldi’s reference to Rebecca Schaeffer, an actress killed by an alleged stalker. However, Mr. Rinaldi plainly referenced that situation to explain his understanding of what “stalking” means, both as a matter of law and historically. At most, it was a clumsy, inartful attempt to show why Mr. Rinaldi believed his conduct was actually the furthest thing from stalking.

It certainly was not the type of “true threat” that may be criminalized.

The social media and email evidence was constitutionally protected speech that should not have been treated as criminal conduct. Moreover, and contrary to the People’s purposes, this evidence actually proves that Mr. Rinaldi had several legitimate reasons for contacting Ms. Shields.

All of the other evidence at trial came *before* Mr. Rinaldi had any reason to believe his communications were unwelcome, and should not be considered as part of the alleged “course of conduct.” In light of the scant evidence following the Henchy warning, the prosecution failed to prove that Mr. Rinaldi engaged in a course of conduct with no legitimate purpose or that he knew or had reason to know his actions would be perceived as threatening.

Conduct Preceding the Warnings

Assuming, *arguendo*, that the conduct preceding the warnings may be considered as part of the course of conduct, it too was entirely legitimate conduct.

Given Mr. Rinaldi’s inspiring experiences with Teri Shields, it was perfectly reasonable for him to believe that Brooke, like her mother, would be interested in helping others by contributing to or associating with his charitable organization. Mr. Rinaldi’s November, 2013, package delivery and December, 2013, follow-up on the request for his charitable foundation were innocuous and certainly not criminal (People’s Exhibit 5).

Much of the other alleged conduct was, in essence, nothing more than expressions of praise or support for Ms. Shields or gratitude regarding her mother's generosity. The interaction at the AOL Build event is one such example (People's Exhibit 2 at 22:05-24:36). On other occasions, Mr. Rinaldi offered Ms. Shields gifts or benefits and at least one was accepted with gratitude. These acts were not intended to frighten or intimidate her. His November 23, 2013, attempt to return a picture frame that Teri Shields gave him years earlier is a particularly obvious example (T1:Shields 139, T2: Shields 9, 11). Even Ms. Shields acknowledged that most if not all of the correspondence and the encounters began with Mr. Rinaldi offering her gifts (T1: Shields 163). No reasonable factfinder would infer malicious intent from these acts.

The remaining conduct suggested nothing more than Mr. Rinaldi's presence in a neighborhood where he had lived for nearly 20 years and where he frequented local businesses (T1:Shields 170-71; T2: Shields 13; Zarara 178; People's Exhibit 8; Defense Exhibit A). On December 8, 2013, for example, there was no indication that Mr. Rinaldi had been standing nearby waiting for Ms. Shields to exit her house, and it is entirely possible that he was there because he *lived nearby*. Further, neither Ms. Shields nor Mr. McCann suggested that Mr. Rinaldi was unhappy, angry, or threatening in any way (T1:Shields 140-41; T2: McCann 56, 74-75).

None of the acts occurring before Mr. Henchy's warning were criminal in

nature.

Fear of Material Harm Under Penal Law § 120.45(1)

The People also failed to offer sufficient proof that any fear of material harm Ms. Shields experienced was objectively reasonable. See People v. Dozier, 50 A.D.3d 589 (1st Dept. 2008). Ms. Shields’s decision to go to the police hinged on her assumption, based on prior incidents with people *other than* Mr. Rinaldi, that “these situations have a tendency to escalate” and that they never get better (T2:Shields 17,47-48). As she explained, other “agitated” and “obsessive” fans had engaged in behavior that became “more dangerous” and her decision to go to the police here was her attempt to prevent such danger (T2:Shields 17). These people, who were arrested, made her “hypersensitive” and nervous. Of course, the de Becker firm had identified 2,930 people as inappropriate pursuers of Ms. Shields during its 33-year representation and recommended that she contact the police for some of them. However, with its advanced threat assessment system, the firm never recommended that she file a complaint against Mr. Rinaldi.

From 2013-2015, Mr. Rinaldi’s conduct did *not* become more threatening, he simply ran into Ms. Shields more often or reached out more frequently with requests for his charity, among other legitimate purposes. This did not create an objectively reasonable basis for her to fear material harm.

In sum, there was insufficient evidence that Mr. Rinaldi engaged in a

concerted course of conduct towards Ms. Shields that had no legitimate purpose or that he knew or had reason to know that his communications would be perceived as threatening or cause her to fear for her safety. Accordingly, the prosecution failed to prove the first stalking count and that conviction should be reversed and the accusatory instrument dismissed. See Sweeney, 27 Misc.3d 134(A); cf. also Venson, 47 Misc.3d 92 (defendant did not engage in “the type of intrusive. . . conduct that the anti-stalking statute was aimed to prevent”).

Stalking Under Penal Law § 120.45(2)

The second stalking offense also requires proof of a course of conduct with no legitimate purpose, and the evidence was insufficient as to this count for the aforementioned reasons. It also requires proof that the defendant actually caused material harm to the mental or emotional health of the complainant. The People failed to prove this element too.

The stalking offenses were enacted to address the problem of one person stalking another in a “threatening, frightening or violent way.” See William Donnino, Practice Commentary, Penal Law § 120.40. In describing the prohibited conduct, the Legislature explained, “[T]he unfortunate reality is that stalking victims have been intolerably forced to live in fear of their stalkers.” L. 1999, c. 635 § 2 (emphasis added).

The prosecution failed to offer sufficient evidence that Ms. Shields

experienced such extreme harm to her mental or emotional health as a result of Mr. Rinaldi's actions. Ms. Shields did not change her security protocols or request a bodyguard between 2013 and 2015, and she told the police she did not even want Mr. Rinaldi arrested (T1:Creter 117-122; Shields 263; T2: Shields 4-5; Dash 244-45). She did not seek counseling as a result of Mr. Rinaldi's behavior, and she did not substantially modify her routines in any way. These factors undermine any claim that she suffered mental or emotional harm.

For these reasons and those referenced at pp. 29-40, the prosecution failed to prove Mr. Rinaldi's guilt of fourth-degree stalking under Penal Law § 120.45(2).

2. Harassment in the First and Second Degree

A person is guilty of first-degree harassment when he “intentionally and repeatedly harasses another person” by following them, engaging in a course of conduct, or “repeatedly committing acts which places such person in reasonable fear of physical injury.” Penal Law § 240.25. Viewing the evidence in the light most favorable to the prosecution, the People failed to prove this offense.

First, Mr. Rinaldi did not at any time intentionally harass Ms. Shields. Although it may usually be inferred that one intends the natural and probable consequences of his acts, see People v. Lieberman, 3 N.Y.2d 649, 654 (1958), an inference of criminal intent is unwarranted here. Examination of Mr. Rinaldi's “conduct and the surrounding circumstances” – the typical way to infer intent, see

People v. Bracey, 41 N.Y.2d 296, 301 (1977) – allows no rational inference that he intended to cause Ms. Shields fear of physical harm or to annoy her. See People v. Ubbink, 120 A.D.3d 1574, 1574 (4th Dept. 2014). To the contrary, Mr. Rinaldi’s conduct suggests a desire to thank Ms. Shields, to solicit assistance for his charity, to be hospitable and neighborly, and then to defend himself against false and slanderous accusations.

Much of the prosecution’s evidence suggests that Mr. Rinaldi perceived himself as a “friendly” person, not a “creep,” who had been acquaintances with Ms. Shields for many years and had seen her in the neighborhood but never bothered her (T2:Zarara 105,109,116-17). In the email to Jill Fritzo, Mr. Rinaldi insisted he would sooner harm himself than harm Ms. Shields (People’s Exhibit 7). There is simply no basis to infer that he intended to harass Ms. Shields.

The prosecution’s witnesses generally acknowledged that Mr. Rinaldi was driven by his genuine beliefs in the connection he shared with Ms. Shields because of his relationship with Teri (T2:Shields 6,10; McCann 83; Henchy 215-16). As Mr. Rinaldi had entirely legitimate reasons for contacting Ms. Shields and being near her home, an intention to harass cannot be reasonably inferred. Cf. People v. Coveny, 50 Misc.3d 1, 7 (App. Term 2d Dept. 2015)(drawing inference from “sheer volume of defendant’s attempted unwanted communications, especially after” he had been warned to stop). Absent an intent to harass or annoy, Mr.

Rinaldi could not be guilty of harassment in the first or second degree.

The prosecution also failed to introduce legally sufficient evidence that Mr. Rinaldi followed Ms. Shields or that he engaged in a course of conduct or engaged in persistent acts that placed her in “reasonable fear of physical injury.” In fact, Ms. Shields conceded that Mr. Rinaldi never threatened physical harm (T2: Shields 163; T2: Shields 5).

“Where reasonable fear is an element of a crime, the fear must be objectively reasonable.” People v. Demisse, 24 A.D.3d 118, 119 (1st Dept. 2005)(internal citations omitted). In Demisse, the evidence was insufficient where, though the defendant’s actions may have caused emotional distress to the public figure victim, his “communications were neither abusive nor hostile in tone or in content” and they “did not convey any implied threat of harm.” Id. There was no evidence at trial that Mr. Rinaldi engaged in any hostile or threatening gestures, and any fear Ms. Shields may have experienced was objectively unreasonable. See People v. Corichi, 195 Misc.2d 518, 519 (App. Term 1st Dept. 2003)(“erratic” behavior unaccompanied by threatening gestures did not engender “reasonable fear of physical injury”); People v. Watson, 32 A.D.3d 1199 (4th Dept. 2006)(evidence that complainants found defendant’s conduct “creepy” was insufficient to establish reasonable fear); Venson, 47 Misc.3d 92 (largely ambiguous behavior, including approaching and following complainant, was not

the “unacceptably intrusive behavior” necessary to create reasonable fear).

Mr. Rinaldi was also charged with harassment in the second degree, which required proof that Mr. Rinaldi engaged in a course of conduct or repeatedly committed acts that alarmed or seriously annoyed another person and served “no legitimate purpose.” Penal Law § 240.26(3). The prosecution failed to prove that Mr. Rinaldi harbored the requisite mens rea and that he acted with no legitimate purpose, supra pp. 27-38, 41-43.

Unable to present a clear, compelling case against Mr. Rinaldi, the People offered a mishmash of non-incriminating or ambiguous evidence that was simply “not the stuff that warrants a criminal conviction.” People v. Santos, 38 N.Y.2d 173, 176 (1975). The evidence was legally insufficient to establish harassment in the first or second degree, and Mr. Rinaldi’s convictions must be reversed and the accusatory instrument dismissed.

B. The Verdicts Were Against the Weight of the Evidence

Mr. Rinaldi’s convictions were also against the weight of the evidence. As the only witness who claimed to have seen Mr. Rinaldi on many occasions prior to, during, and after the alleged criminal conduct here, Brooke Shields was the star witness at trial. In her eyes, Mr. Rinaldi was a persistent, deranged individual, always lurking nearby, whose behavior had been inappropriate for decades before it crossed some unidentifiable line, escalating to potentially dangerous levels

between November, 2013 and May, 2015. Yet, the objective facts presented by all of the prosecution's other witnesses collectively suggest that Ms. Shields was simply not credible. Her "hypervigilant" focus on other "stalkers" colored her opinions about Mr. Rinaldi. Indeed, this hypersensitivity also colored her testimony in devastating fashion. As the People failed to provide credible evidence that Mr. Rinaldi engaged in a course of conduct directed at Ms. Shields, with no legitimate purpose, which placed her in fear of or caused her material harm, the stalking convictions were against the weight of the evidence. Since there was no credible evidence that Mr. Rinaldi intended to harass or annoy Ms. Shields, or that she reasonably feared physical injury, the harassment convictions were against the weight of the evidence.

The period of criminal conduct here supposedly occurred between November 2013 and May 2015. Ms. Shields claimed that prior to that span, she pointed Mr. Rinaldi out to Mr. Henchy and instructed him to tell Mr. Rinaldi that he was making them "uncomfortable" and he should stay away from them (T1:Shields 137-38). Mr. Henchy disputed this, saying instead that Ms. Shields never introduced him to Mr. Rinaldi, he was only generally aware of Mr. Rinaldi, and the first time he ever met him was March 4, 2014 (T2: Henchy 202-04).

Ms. Shields testified that on November 8, 2013, Mr. Rinaldi delivered a box that contained a "gift to [her] children"— "little stuffed animals"— that made her

feel “violated and terrified” that established “barriers” were breaking down (T1: Shields 136-38,164). Though Ms. Shields knew that the box contained explanatory letters, she refused to read them (T1:Shields 164; T2:Shields 32).

Had Ms. Shields read the generic form letters, she would have learned that the single teddy bear inside was not offered as a gift to her children, but rather as a token to be returned for creative charitable purposes, for Mr. Rinaldi’s charity (T2: McCann 68-72; People’s Exhibits 5, 6). The letters did not even reference Ms. Shields’s children. Her refusal to even *learn* the actual intended purpose of the bear and her dramatic overreaction illustrates the critical flaw with the People’s case—Ms. Shields’s obstinate and irrational opinions about Mr. Rinaldi’s actions.

It is worth noting too that Mr. McCann, her personal assistant for 12 years, had never even *heard* of Mr. Rinaldi before this package was delivered to the house (T2:McCann 53, 68,74). This significantly undermines Ms. Shields’s suggestion that she was constantly looking out for Mr. Rinaldi or even that she thought about him at all prior to November, 2013.

Other than his encounter with Mr. Rinaldi on November 23, 2013, Mr. Zarara never saw him during the two-year period in which Mr. Rinaldi allegedly stalked and harassed Ms. Shields (T2:Zarara 188). Mr. Zarara had also never seen him in the preceding five years he worked for Ms. Shields (T2:Zarara 103). Mr. McCann never saw Mr. Rinaldi between December 8, 2013, and May 5, 2015, and

Ms. Shields never mentioned him during that span (T2:McCann 76-78). This too suggests Ms. Shields did not live in a state of fear during that period. Nanny Kelly Corrigan, who worked in the Shields home four days a week since 2012, saw Mr. Rinaldi just one time between November 2013 and December 2015 and never noticed his car parked outside (T2:Corrigan 93-94, 96-97). The fact that these witnesses never saw Mr. Rinaldi is particularly notable where he lived in the neighborhood and frequented local businesses.

On March 4, 2014, Mr. Rinaldi asked Mr. Henchy if he had “spooked” Ms. Shields the last time he saw her. This was more than three years after they had moved into the neighborhood where Mr. Rinaldi lived, and it was the first time Henchy had seen him other than outside a Broadway theater (T2: Henchy 192-93, 202-04). This was also the *last* time Mr. Henchy saw Mr. Rinaldi near his house or anywhere else before the trial (T2:Henchy 211, 218).

The AOL Build event in November, 2014, was, again, nothing more than an opportunity for Mr. Rinaldi to express his feelings about Teri Shields at an event *about* Teri Shields. It also reveals an interesting exchange in which Mr. Rinaldi referenced a conversation he had with Ms. Shields and Mr. Henchy years earlier, when she was pregnant, and how he gave them a gift. Ms. Shields recalled the conversation (id. at 22:40-22:50). This exchange demonstrates, as clearly as anything could, how Ms. Shields’s hypersensitivity is the real issue in this case, *not*

any alleged ill-intended conduct by Mr. Rinaldi.

On May 5, 2015, Ms. Shields thought Mr. Rinaldi tweeted about having seen her by the “West Side highway” working out in the park, a fact that deeply unsettled her because it implied he had followed her (T1:Shields 152). In fact, Mr. Rinaldi’s tweet did not mention the highway or the park, it simply said that he saw her “work out partner drop[] [her] home,” which does not suggest he had followed her (People’s Exhibit 6). Ms. Shields later conceded that she did not even read any of Mr. Rinaldi’s tweets that morning (T2: Shields 37). Like the incident with the teddy bear, Ms. Shields overreacted without availing herself of the actual content of Mr. Rinaldi’s communications.

Throughout her testimony, Ms. Shields repeatedly implied that Mr. Rinaldi had mental illness, was “off balance,” unstable, or otherwise incapable of “rational thought or communication,” and that his behavior, like her many other stalkers, had escalated and crossed certain lines (T1:Shields 138,142-43,147-48,154,169; T2: Shields 4,11,17,19,47-48,50). She claimed his communications caused her to feel an “electric jolt,” “fearful,” “on edge,” “preoccupied,” and “vulnerable” (T1: Shields 147-48, 155).

While Ms. Shields’s beliefs were genuine, they were not reasonable. While her recollections were firm, they were not credible. None of Mr. Rinaldi’s conduct posed a threat to Ms. Shields, and no reasonable person would perceive it as such.

Ms. Shields's observations, further, were simply not supported by *any* other objective evidence. Though she believed that she saw Mr. Rinaldi and his vehicle numerous times after the AOL Build appearance and before the May 5, 2015, incident, *nobody else did*. Neither her babysitter, nor her social media advisor, her personal assistant, or her husband saw Mr. Rinaldi near their house in those six months. Neither Detective Dash nor Lt. Blake, who worked right across the street, recalled seeing Mr. Rinaldi or his car outside the precinct anytime prior to May 5, 2015 (T2:Dash 244-45;Blake 258).

Mr. Henchy saw Mr. Rinaldi in the neighborhood just one time, on March 4, 2014. Mr. McCann saw Mr. Rinaldi just twice, on December 8, 2013, and May 5, 2015. Mr. Zarara saw Mr. Rinaldi just once, on November 23, 2013. Ms. Corrigan saw Mr. Rinaldi just once, in December, 2013. In the 24-month span at issue, people other than Brooke Shields saw Mr. Rinaldi in the neighborhood, *where he lived*, just five times and nobody apparently saw him in the three or four years they lived there prior to November, 2013 (T1: Shields 171).

This Court, sitting as thirteenth juror, must conclude that acquittal would not have been unreasonable and that the trial court failed to give the evidence the weight it deserved. The convictions should be reversed, and the accusatory instrument dismissed. See Burwell, 53 N.Y.2d at 824.

CONCLUSION

FOR THE REASONS SET FORTH HEREIN, THE
CONVICTIONS SHOULD BE REVERSED AND
THE ACCUSATORY INSTRUMENT DISMISSED.

Respectfully submitted,

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