

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

MIDDLESEX COUNTY

2026 SITTING

App. Ct. No. 26-P-0748

S.J.C. No. DAR -

COMMONWEALTH OF MASSACHUSETTS,
APPELLANT,

v.

ROBERT KAWADA,
APPELLEE.

ON APPEAL FROM A JUDGMENT OF THE MIDDLESEX SUPERIOR
COURT

COMMONWEALTH'S APPLICATION FOR DIRECT APPELLATE REVIEW

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Date: June 22, 2026

REQUEST FOR DIRECT APPELLATE REVIEW

The Commonwealth requests, pursuant to Mass. R.A.P. 11, that this Court grant direct appellate review of a Middlesex Superior Court Judge's allowance of the defendant's motion to dismiss his indictment for attempted poisoning pursuant to G.L. c. 265, § 28. (Commonwealth v. Kawada, 26-P-0748). This case concerns allegations that the defendant provided the victim with Misoprostol, an abortifacient, while representing it as iron pills. The victim ingested the pills and subsequently suffered a miscarriage. Specifically, the case requires an appellate court to determine whether the statute's prohibition against "mingl[ing] poison with food, drink or medicine" requires proof that poison was physically mixed into another substance, or whether it encompasses circumstances in which poison is placed with or administered as food, drink, or medicine. The motion judge adopted the former interpretation and dismissed the defendant's indictment for attempted poisoning.

The issue is one of first impression with significant implications for the enforcement of Massachusetts criminal law. The Commonwealth contends that the motion judge's interpretation improperly adds a physical-mixing requirement not found in the statutory text and produces unreasonable results by excluding from the statute's reach defendants who administer pure poison to their victims. Because the

question presented is novel, likely to recur, and implicates the proper interpretation of a significant criminal statute, direct appellate review is warranted.

STATEMENT OF PRIOR PROCEEDINGS

On November 14, 2024, a Middlesex Grand Jury returned indictments charging the defendant with attempted poisoning, G.L. c. 265, § 28; assault and battery with a dangerous weapon on a pregnant victim, G.L. c. 265, § 15A(c)(ii); and assault and battery on a family or household member, G.L. c. 265, § 13M(a). The defendant was arraigned in Middlesex Superior Court on December 12, 2024, and pleaded not guilty. Following a hearing pursuant to G.L. c. 276, § 58A, the Superior Court found the defendant dangerous and set bail at \$100,000 with conditions.

On December 20, 2025, the defendant moved to dismiss the attempted poisoning and assault and battery on a family or household member indictments, and the Commonwealth opposed. After a non-evidentiary hearing on February 19, 2026, Justice Keren E. Goldenberg allowed the motion in part and dismissed the attempted poisoning indictment on March 16, 2026. The Commonwealth filed a notice of appeal on March 20, 2026, and the appeal was docketed in the Appeals Court on May 29, 2026.

STATEMENT OF FACTS¹

In January 2024, the victim met the defendant through a dating application. (I:7, 24). After speaking for a few weeks and going on two dates, they engaged in unprotected sexual intercourse first on February 23 and again during their third date on March 1. (I:28-30). During a subsequent date on March 8, where they again had unprotected sex, the defendant learned that the victim was not using birth control. (I:32-33). On March 10, the defendant told the victim that the relationship was not working out for him, and shortly thereafter, the victim discovered she was pregnant and informed the defendant on March 17. (I:8,34-35).

Initially, the defendant appeared supportive. He met with the victim on several occasions, discussed her pregnancy, offered advice based on his prior experience with his ex-wife's pregnancies, and expressed concern about the victim's health. (I:36-38). He repeatedly focused on the victim's nutrition and iron levels, telling her that his ex-wife had suffered from anemia during pregnancy and offering to provide supplements. (I:37, 44-45).

On April 17, 2024, the defendant gave the victim homemade cookies that he claimed contained raspberry leaf, which he represented as beneficial during

¹ The facts are drawn from the Grand Jury testimony, which was heard over four days: November 5, 2024, November 7, 2024, November 12, 2024, and November 14, 2024. The Commonwealth cites to the testimony as “[day #]:[page #].”

pregnancy. (I:39, 41, 43-44). After consuming the cookies, the victim experienced significant cramping and gastrointestinal distress. (I:41, 43). She Googled “raspberry leaf” and learned that raspberry leaf helps induce labor and is not recommended in early pregnancy, but she did not say anything to the defendant because she believed he had made an honest mistake. (I:44).

Later, the defendant suggested that the victim might be anemic and offered to provide iron supplements. (I:44-45). On April 22, 2024, the parties met at Café Nero. (I:45-46). The defendant provided the victim with several pills that he represented were iron and vitamin C supplements. (I:46-47). He instructed her to place the pills in her cheeks, allow them to dissolve, and avoid drinking water or juice. (I:47-48). Shortly after taking the pills, the victim experienced severe cramping, nausea, vomiting, and vaginal bleeding. (I:49-50). Concerned that she was miscarrying, she sought emergency medical care the following morning. (I:50-51). Although the ultrasound revealed a viable pregnancy, the defendant continued to insist that she take additional "iron" pills. (I:51-52).

The following day, the defendant visited the victim at her home and told her she needed to take multiple iron pills per day. (I:51,54). He again told the victim to keep the pills in her cheeks. (I:52). However, the victim went to the bathroom and secretly spit the pills the defendant had provided into a tissue after becoming concerned about their effects. (I:52). When she emerged from the bathroom, the

defendant asked if the pills were still in her mouth, and she told him she swallowed them. (I:52). The defendant looked surprised and left. (I:52).

The next day, the defendant called the victim to talk about what had happened the day before. (I:54). The victim ultimately confessed that she had spat the pills out, and the defendant repeatedly questioned her about how long they had remained in her mouth and pressured her to continue taking them. (I:54-56).

The defendant asked the victim to meet him to continue their discussion at Cafe Nero in Allston. (I:55). The defendant said that he was upset because he felt the victim did not trust him. (I: 55; III:41-44). When the victim expressed concern about taking any medication without her doctor's express guidance, the defendant again said that trust was very important to him, that he worried the victim was behaving like his ex-wife and not taking appropriate medication, and that he knew what he was talking about because his father was an OBGYN. (I:55-56). The victim refused to take additional pills, and the defendant stormed out of the Cafe. (I:56).

The two continued to communicate via text, and on May 1, 2026, they made plans for the defendant to come to the victim's house at 6 P.M. (I:57-58). Shortly before the defendant arrived, the victim received a call from a person claiming to be a nurse from Massachusetts General Hospital. (I:58). The caller advised her that she was iron deficient and needed to begin taking iron supplements immediately. (I:58). Minutes later, the defendant arrived carrying pills that he again represented as iron

supplements. (I:59-60). Following instructions from both the purported nurse and the defendant, the victim placed multiple pills under her tongue and in her cheeks, where they rapidly dissolved. (I:60-62). The defendant refused to allow her to drink water and provided an additional pill he claimed was vitamin C. (I:62-63). During the same visit, the defendant told her that his mother had wanted her to have an abortion and asked whether she would go to Planned Parenthood. (I:63-64). The victim reiterated that she intended to keep the baby. (I:63-64).

After ingesting the pills, the victim became extremely ill, experiencing chills, shaking, severe abdominal pain, and cramping. (I:63-65). Later that night and into the early morning hours of May 2, she suffered severe bleeding and realized that she had lost the pregnancy. (I:65).

When the victim attempted to contact the purported nurse, she discovered that the number was a Google Voice number rather than a legitimate hospital number. (I:17, 65-66). She also discovered that the defendant had blocked her telephone number. (I:66). She contacted the police and provided them with a pill she had retained. (I:66-68). At Massachusetts General Hospital, a physician informed her that the pill appeared to be an abortion medication. (I:68).

The subsequent investigation revealed substantial evidence linking the defendant to the procurement and administration of abortifacient drugs. The defendant admitted to police that he had provided the victim with pills, though he

claimed they were vitamin C and iron supplements purchased from Amazon. (I:18). Investigators determined that the pills provided to the victim were consistent with Misoprostol, an abortifacient commonly used in conjunction with Mifepristone to terminate a pregnancy. (I:19). The side effects associated with Misoprostol were consistent with the symptoms the victim experienced. (I:19).

The investigation further established that the defendant had obtained Mifepristone and Misoprostol through online medical and pharmaceutical services using another person's name. (III:46-50). Records showed deliveries of those medications to the defendant's residence on April 20, 2024, and May 1, 2024. (III:48). The defendant's phone records also connected him to the Google Voice number used by the individual posing as a nurse and revealed internet searches concerning Misoprostol, medical abortion procedures, telephone voice changers, and related topics in the days preceding the victim's miscarriage. (I:20-21).

The Commonwealth also presented evidence that the defendant made inculpatory admissions to another woman, Gena Rosenberg, with whom he was simultaneously involved. After his arrest, the defendant told Rosenberg that he had impregnated the victim and had helped her obtain abortion pills online using his ex-wife's name. (III:15-18, 25). He admitted assisting in obtaining the medications and acknowledged that the victim was no longer pregnant. (III:15-18, 25).

STATEMENT OF ISSUES OF LAW

Whether G.L. c. 265, § 28 requires the Commonwealth to prove that a defendant physically mixed poison into food, drink, medicine, or a water source, or whether the statute also encompasses circumstances in which a defendant causes a victim to ingest poison by deceptively presenting it as a legitimate food, drink, or medicine.

This issue was fully preserved. The parties squarely litigated the meaning of the term "mingles" through the defendant's motion to dismiss, the Commonwealth's opposition, and a non-evidentiary hearing before the Superior Court. The motion judge adopted the defendant's interpretation and dismissed the attempted poisoning indictment on that basis. (Add. at 30, 34). The Commonwealth timely appealed pursuant to Mass. R. Crim. P. 15(a)(1).

LEGAL ARGUMENT

THE MOTION JUDGE ERRED BY READING A PHYSICAL MIXING REQUIREMENT INTO G.L. c. 265, § 28 THAT APPEARS NOWHERE IN THE STATUTORY TEXT AND FRUSTRATES THE LEGISLATURE'S PURPOSE BY CREATING A SAFE HARBOR FOR THE DECEPTIVE ADMINISTRATION OF "PURE" POISON.

General Laws c. 265, § 28 provides that "[w]hoever mingles poison with food, drink or medicine with intent to kill or injure another person . . . shall be punished by imprisonment in the state prison for life or for any term of years." The motion judge dismissed the defendant's indictment for attempted poisoning, concluding that the statute requires proof that the poison was physically mixed into food, drink, or medicine and, where the defendant merely tricked the victim into taking an abortifacient without physically mixing it into another substance, the Commonwealth's grand jury evidence was insufficient. (Add. at 34). That interpretation finds no support in the statutory text and improperly inserts a limitation the Legislature did not intend.

First, the statute does not prohibit mingling poison into food, drink, or medicine. Nor does it require that poison be chemically combined with another substance. Rather, the Legislature chose the broader phrase "mingles poison with food, drink or medicine." The ordinary meaning of "with" denotes association, accompaniment, or connection; it does not necessarily require physical

incorporation.² By reading a physical-mixing requirement into the statute, the motion judge effectively rewrote the statutory language.

Second, the motion judge's construction also produces an unreasonable result. See Commonwealth v. Rahim, 441 Mass. 273, 280 (2004) ("a literal reading of a statute that produces an absurd or unreasonable result will not be followed."). Under her interpretation, a defendant who secretly places poison into a victim's hand while falsely representing it to be a prescribed medication could evade liability because the poison was not first blended into another substance. Yet a defendant who crushed the identical poison into applesauce or dissolved it in water could be prosecuted. Nothing in the statutory language suggests the Legislature intended criminal liability to turn on such a formalistic distinction.³ The evident purpose of the statute is to

² According to dictionary.com, "with" has seventeen definitions, including, (1) accompanied by; accompanying; (2) in some particular relation to (especially implying interaction, company, association, conjunction, or connection); (2) characterized by or having; (4) (of means or instrument) by the use of; using; (5) (of manner) using or showing; (6) in correspondence, comparison, or proportion to; (7) in regard to; (8) (of cause) owing to; (9) in the region, sphere, or view of; (10) (of separation) from; (11) against, as in opposition or competition; (12) in the keeping or service of; (13) in affecting the judgment, estimation, or consideration of; (14) at the same time as or immediately after; upon; (15) of the same opinion or conviction as; (16) in proximity to or in the same household as; (17) (used as a function word to specify an additional circumstance or condition). <https://www.dictionary.com/browse/with>.

³ The poisoning statute has been substantively the same since it was first enacted in 1836. Since it was enacted, it was amended three times (in 1860, 1882, and 1902). All three amendments involved merely stylistic changes. (Add. at 39-42).

punish the deceptive administration of poison to another person, not merely a particular method of delivery.

The motion judge's analysis is therefore inconsistent with settled principles of statutory interpretation. Although G.L. c. 4, § 6 directs that statutory words be construed according to their common and approved usage, that directive does not permit courts to disregard statutory context or legislative purpose. This Court repeatedly has held that statutes must be interpreted to effectuate legislative intent and that courts should reject constructions that lead to absurd or unreasonable results. See Sharris v. Commonwealth, 480 Mass. 586, 594 (2018), quoting Sheehan v. Weaver, 467 Mass. 734, 737 (2014) (“Our primary duty in interpreting a statute is ‘to effectuate the intent of the Legislature in enacting it’”); Commonwealth v. Peterson, 476 Mass. 163, 167 (2017) (“[W]e do not adhere blindly to a literal reading of a statute if doing so would yield an ‘absurd’ or ‘illogical’ result.”); Attorney Gen. v. School Comm. of Essex, 387 Mass. 326, 336 (1982) (“We will not adopt a literal construction of a statute if the consequences of such construction are absurd or unreasonable.”) See also Black’s Law Dictionary 11-12 (10th ed. 2014) (defining “absurdity” as “being grossly unreasonable” and “[a]n interpretation that would lead to an unconscionable result, esp. one that . . . the drafters could not have intended.”). The motion judge's interpretation violates both principles by narrowing the statute

beyond its text and exempting conduct that falls squarely within the evil the Legislature sought to prevent.

Historical usage confirms that "mingle" was not understood solely as a term of physical combination when the statute was enacted. Contemporary definitions included not only "to mix" or "blend," but also "to contaminate," "to render impure," and "to confuse." Webster's American Dictionary of the English Language (1828), (<https://webstersdictionary1828.com/Dictionary/mingle>). These definitions reflect a broader understanding of mingling that encompasses disguising, obscuring, or concealing the true nature of a substance. Thus, when a defendant presents poison as a legitimate medicine and causes the victim to ingest it, the poison has been "mingled with" medicine in precisely the sense contemplated by the statute: the poison has been deceptively associated with and substituted for a medicinal preparation.

This understanding is consistent with this Court's decision in Commonwealth v. Kennedy, 170 Mass. 18 (1897), where the defendant placed rat poison on the underside of a drinking cup intending that the victim would later swallow it while using the cup. Id. at 20. Significantly, the poison was not mixed into any food or beverage. Nevertheless, this Court focused not on physical incorporation but on the defendant's intent to cause the victim to ingest poison. Id. at 21-22. In recognizing the unique dangers posed by poisoning offenses, the Court emphasized that "[a]ny

unlawful application of poison is an evil which threatens death according to common apprehension." Id. at 22. Kennedy thus reflects the principle that the poisoning statute targets deceptive conduct designed to bring poison into a victim's body, not merely the mechanical process by which the poison is delivered.

Applying those principles here, the grand jury heard evidence that the defendant provided the victim with abortifacients while falsely representing the pills to be iron and vitamin supplements. (I:9-10, 13-15, 44-49, 52-53, 56, 58-63). That evidence was sufficient to establish that the defendant mingled poison "with" medicine within the meaning of G.L. c. 265, § 28 under at least two independent theories.

First, the defendant mingled poison with medicine through fraudulent substitution. By representing the abortifacients as iron supplements and inducing the victim to ingest them as part of a medicinal regimen, the defendant placed the poisonous substance into the category of medicine. The mingling occurred through the defendant's deception and administration of the pills, not through any chemical combination. In other words, the poison was mingled with medicine because it was presented, delivered, and received as medicine.

Second, the abortifacients themselves constitute medicine. Misoprostol is an FDA-approved pharmaceutical drug with recognized therapeutic uses in obstetric and gynecological care. See <https://www.drugs.com/misoprostol.html>. Its

administration for a harmful purpose does not strip it of its character as a medicine. Indeed, the Supreme Judicial Court has recognized that substances possessing legitimate medical uses may nevertheless function as poisons when administered in a manner intended to cause harm. See Commonwealth v. Walker, 442 Mass. 185, 195-196 (2004). Under that reasoning, a pharmaceutical drug used as a poison remains both a poison and a medicine. Thus, when the defendant administered Misoprostol to the victim, he administered poison through the vehicle of medicine, thereby mingling poison with medicine within the meaning of the statute.

Under either theory, the grand jury had ample evidence to support a reasonable inference that the defendant violated G.L. c. 265, § 28. The motion judge's contrary interpretation improperly narrows the statute by imposing a physical-mixing requirement found nowhere in its text. Such a construction elevates form over substance and creates a loophole for precisely the type of deceptive poisoning the Legislature sought to prevent.

The poisoning statute is, on its face, designed to protect individuals from harmful substances introduced into their bodies under false pretenses, particularly through trusted vehicles such as food, drink, and medicine. The inclusion of "medicine" within the statute is especially significant because individuals are uniquely vulnerable when they trust that a substance is therapeutic rather than harmful. Here, the defendant exploited that vulnerability. He cultivated the victim's

trust by portraying himself as a supportive partner concerned about her pregnancy, repeatedly offering nutritional advice, discussing his prior experience with pregnancy, and providing what he claimed were prenatal supplements and iron pills. He then used that trust to administer abortifacients while representing them as beneficial medication.

A construction of § 28 that excludes such conduct would not merely narrow the statute; it would undermine its core protective purpose. It would permit liability to turn on the method of administration rather than the defendant's deceptive use of medicine as a vehicle for poisoning. The Legislature could not have intended such a result. See Rahim, 441 Mass. at 280 ("a literal reading of a statute that produces an absurd or unreasonable result will not be followed").

STATEMENT OF REASONS WHY DIRECT APPELLATE REVIEW IS APPROPRIATE

Direct appellate review is appropriate because this case presents a novel question of statutory interpretation with significant implications for the enforcement of Massachusetts criminal law. Specifically, the case requires interpretation of G.L. c. 265, § 28 and resolution of an issue that neither this Court nor the Appeals Court appears to have addressed: whether a defendant "mingles poison with food, drink or medicine" only when the poison is physically incorporated into another substance,

or whether the statute also encompasses circumstances in which poison is deceptively presented and administered as food, drink, or medicine.⁴

The issue extends well beyond the facts of this case. The motion judge's interpretation substantially narrows the reach of a statute enacted to protect the public from the administration of poisonous substances and raises important questions concerning the scope of criminal liability for modern forms of poisoning. See Kennedy, 170 Mass. at 22 (“Any unlawful application of poison is an evil which threatens death according to common apprehension, and the gravity of the crime, the uncertainty of the result, and the seriousness of the apprehension, coupled with the great harm likely to result from poison, even if not enough to kill, would warrant holding the liability for an attempt to begin at a point more remote from the possibility of accomplishing what is expected than might be the case with lighter crimes.”). As pharmaceuticals become increasingly accessible and sophisticated, courts are likely to continue confronting cases involving the surreptitious administration of drugs, the adulteration or manipulation of prescribed medication regimens, the mislabeling of medications, and other forms of pharmaceutical

⁴ Prior cases considered by this Court—Walker, 442 Mass. at 186 (sleep medication in alcohol); Commonwealth v. Hobbs, 140 Mass. 443, 446 (1886) (arsenic in bread); Commonwealth v. Bearse, 108 Mass. 487, 487 (belladonna in food); Commonwealth v. Galavan, 91 Mass. 271, 273 (1864) (poison in water)—all happened to involve physical admixture, but none of them held that physical admixture is the exclusive means of satisfying the element. They are fact patterns, not definitional rulings.

deception. See Walker, 442 Mass. at 196-197 (holding that temazepam, a prescription medication, constituted a poison as used when secretly mixed into victim's drink). Whether such conduct falls within the scope of G.L. c. 265, § 28 is a question of recurring statewide importance that warrants authoritative guidance from this Court.

The issue is also particularly suited for direct appellate review because it requires application of a nineteenth-century criminal statute to contemporary factual circumstances that the Legislature could not have specifically anticipated. The motion judge's ruling effectively engrafts a physical-mixing requirement onto the statute, notwithstanding the Legislature's use of the broader phrase "mingles poison with food, drink or medicine." The proper interpretation of that language presents a pure question of law with implications extending far beyond the parties to this case.

Absent review by this Court, uncertainty will remain regarding the scope of Massachusetts's poisoning statute and the circumstances under which deceptive administration of poisonous substances may be prosecuted. Because the question presented is novel, likely to recur, and implicates both public safety and the proper construction of a significant criminal statute, direct appellate review is warranted.

CONCLUSION

For the foregoing reasons, the Commonwealth respectfully requests that this Court grant direct appellate review.

Respectfully Submitted
For the Commonwealth,

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ADDENDUM

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2481CR00395 Commonwealth vs. Kawada, Robert

- Case Type:
- Indictment
- Case Status:
- Open
- File Date
- 11/14/2024
- DCM Track:
- B - Complex
- Initiating Action:
- POISONING, ATTEMPTED c265 §28
- Status Date:
- 12/12/2024
- Case Judge:
-
-
- Next Event:
- 09/18/2026

- All Information
- Party
- Charge
- Event
- Tickler
- Docket
- Disposition

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[More Party Information](#)**Party Charge Information**

- **Kawada, Robert**

- - Defendant

Charge # 1:**265/28-0 - Felony** POISONING, ATTEMPTED c265 §28

- Original Charge
- 265/28-0 POISONING, ATTEMPTED c265 §28 (Felony)
- Indicted Charge
-
- Amended Charge
-

Charge Disposition

Disposition Date

Disposition

03/16/2026

Dismissed

- **Kawada, Robert**

- - Defendant

Charge # 2:**265/15A/E-0 - Felony** A&B WITH DANGEROUS WEAPON, PREGNANT VICTIM c265 §15A(c)(ii)

- Original Charge
- 265/15A/E-0 A&B WITH DANGEROUS WEAPON, PREGNANT VICTIM c265 §15A(c)(ii) (Felony)
- Indicted Charge
-
- Amended Charge
-

- **Kawada, Robert**

- - Defendant

Charge # 3:**265/13M/B-0 - Misdemeanor - more than 100 days incarceration** A&B ON FAMILY / HOUSEHOLD MEMBER c265 §13M(a)

- Original Charge
- 265/13M/B-0 A&B ON FAMILY / HOUSEHOLD MEMBER c265 §13M(a) (Misdemeanor - more than 100 days incarceration)
- Indicted Charge
-
- Amended Charge
-

Events

<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Event Judge</u>	<u>Result</u>
12/12/2024 11:00 AM	Woburn Magistrate Session	Courtroom 440	Arraignment	Flaherty, Daniel	Held as Scheduled
12/12/2024 11:05 AM	Woburn Magistrate Session	Courtroom 440	58A Dangerousness Hearing	Flaherty, Daniel	Held as Scheduled

01/08/2025 09:00 AM	Criminal 1 Rm 430		Scheduling Conference	Ham, Hon. Catherine	Rescheduled
01/21/2025 09:00 AM	Criminal 1 Rm 430		Scheduling Conference	Ham, Hon. Catherine	Held as Scheduled
04/29/2025 10:00 AM	Criminal 1 Rm 430	Courtroom 430	Bail Hearing	Haggan, Hon. Patrick	Held as Scheduled
05/12/2025 09:00 AM	Criminal 1 Rm 430	Courtroom 430	Filing of Motions		Rescheduled
07/22/2025 09:00 AM	Criminal 1 Rm 430	Courtroom 430	Filing of Motions		Rescheduled
09/19/2025 10:30 AM	Criminal 1 Rm 430		Trial Readiness Conference	Rooney, Hon. Lynn C	Rescheduled
10/20/2025 09:00 AM	Criminal 1 Rm 430		Jury Trial		Rescheduled
11/14/2025 09:00 AM	Criminal 1 Rm 430	Courtroom 430	Filing of Motions	Haggan, Hon. Patrick	Rescheduled
12/30/2025 09:00 AM	Criminal 1 Rm 430	Courtroom 430	Filing of Motions	Haggan, Hon. Patrick	Held as Scheduled
02/19/2026 12:00 PM	Criminal 1 Rm 430	Courtroom 430	Non-Evidentiary Hearing to Dismiss	Goldenberg, Hon. Keren E	Held - Under advisement
09/18/2026 09:05 AM	Criminal 1 Rm 430	Courtroom 430	Trial Readiness Conference		
10/19/2026 09:00 AM	Criminal 1 Rm 430	Courtroom 430	Jury Trial		

Ticklers

<u>Tickler</u>	<u>Start Date</u>	<u>Due Date</u>	<u>Days Due</u>	<u>Completed Date</u>
Pre-Trial Hearing	12/12/2024	03/12/2025	90	12/13/2024
Final Pre-Trial Conference	12/12/2024	05/27/2025	166	12/13/2024
Case Disposition	12/12/2024	06/10/2025	180	12/13/2024
Under Advisement	02/19/2026	03/21/2026	30	
Pre-Trial Hearing	12/13/2024	04/25/2025	133	
Final Pre-Trial Conference	01/21/2025	10/03/2025	255	
Case Disposition	12/13/2024	09/09/2025	270	

Docket Information

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
11/14/2024	Indictment(s) returned	1	
11/15/2024	Commonwealth 's Motion to Impound and/or redact Confidential Information from the Public	2	
11/15/2024	Affidavit of Jacob McCrindle, Esq In Support of Commonwealth's Motion to Impound and/ or Redact Confidential Information from the Public	2.1	
11/15/2024	Endorsement on Motion to Impound and/or Redact Confidential Information from the Public, (#2.0): ALLOWED After review, and without objection, motion to Allowed. (Haggan, J.)		 Image

	Judge: Haggan, Hon. Patrick		
11/15/2024	Docket Note: **Original unredacted Indictments placed in red envelope**		
12/09/2024	Summons returned to court: SERVED by mailing an attested copy to the defendant's last known address at 197 Fuller Street, Apt. 1, Brookline, MA 02446.	3	 Image
12/12/2024	Attorney appearance On this date Rosemary C Scapicchio, Esq. added as Private Counsel for Defendant Robert Kawada		 Image
12/12/2024	Attorney appearance On this date Jacob McCrindle, Esq. added as Attorney for the Commonwealth for Prosecutor Middlesex District Attorney		 Image
12/12/2024	Event Result:: Arraignment scheduled on: 12/12/2024 11:00 AM Has been: Held as Scheduled Comments: PO - Dipietrantonio Hon. Patrick Haggan, Presiding Appeared: Prosecutor Jacob McCrindle, Esq., Attorney for the Commonwealth Defendant Robert Kawada Rosemary C Scapicchio, Esq., Private Counsel Staff: Mary T Aufiero, Assistant Clerk Dennis Collins, Assistant Clerk Magistrate FTR: Vanessa Nogueira		
12/12/2024	Defendant arraigned before Court. Judge: Haggan, Hon. Patrick		
12/12/2024	Defendant waives reading of indictment Judge: Haggan, Hon. Patrick		
12/12/2024	Plea of not guilty entered on all charges. Judge: Haggan, Hon. Patrick		
12/12/2024	Court inquires of Commonwealth if abuse, as defined by G.L. c. 209A, § 1, is alleged to have occurred immediately prior to or in connection with the charged offense(s). Judge: Haggan, Hon. Patrick		
12/12/2024	Court finds abuse is alleged in connection with the charged offense. G.L. c. 276, § 56A. Judge: Haggan, Hon. Patrick		
12/12/2024	Event Result:: 58A Dangerousness Hearing scheduled on: 12/12/2024 11:05 AM Has been: Held as Scheduled Comments: PO - Dipietrantonio Hon. Patrick Haggan, Presiding Appeared: Prosecutor Jacob McCrindle, Esq., Attorney for the Commonwealth Defendant Robert Kawada Rosemary C Scapicchio, Esq., Private Counsel Staff: Mary T Aufiero, Assistant Clerk Dennis Collins, Assistant Clerk Magistrate FTR: Vanessa Nogueira		
12/12/2024	Bail warnings read Judge: Haggan, Hon. Patrick		
12/12/2024	Bail set at \$1,000,000.00 Surety, \$100,000.00 Cash. Defendant found to be dangerous. Conditions set: 1. No contact direct or indirect with the victim or any members of the victim's family. 2. Surrender passport and do not apply for a new one. 3. Do not leave the Commonwealth of Massachusetts without permission.		

	4. GPS with exclusion zone of the victim's residence. ALL CONDITONS ARE SET PURSUANT TO 276, 58a		
12/12/2024	Commonwealth files the statement of the case.	4	
12/12/2024	Commonwealth 's Motion, Memorandum, and Submissions for Pretrial Detention Pursuant to M.G.L. c. 276, 58A	5	 Image
12/12/2024	Attorney appearance On this date Kailey V Steblovskiy, Esq. added as Attorney for the Commonwealth for Prosecutor Middlesex District Attorney		 Image
12/12/2024	Findings and Order on Motion for Detention pursuant to G.L. c. 276 § 58A. Judge: Haggan, Hon. Patrick	6	 Image
12/12/2024	Commonwealth 's Notice Regarding a Potential Commonwealth Witness	7	
12/12/2024	Defendant 's General Motion for Relevant Discovery	8	 Image
12/12/2024	Commonwealth 's Notice of Discovery at Arraignment	9	 Image
12/12/2024	Order for the transmittal of Bail sent to the clerk of the Waltham District Court.		 Image
12/12/2024	Case assigned to: DCM Track A - Standard was added on 12/12/2024		 Image
12/12/2024	ORDER of Pre-Trial Conditions of Release Judge: Haggan, Hon. Patrick	10	 Image
01/07/2025	Event Result:: Scheduling Conference scheduled on: 01/08/2025 09:00 AM Has been: Rescheduled For the following reason: Request of Defendant Hon. Catherine Ham, Presiding		
01/17/2025	Defendant 's Assented to Motion to Amend the Court's Tracking Order	11	
01/21/2025	Case assigned to: DCM Track B - Complex was added on 01/21/2025		
01/21/2025	Event Result:: Scheduling Conference scheduled on: 01/21/2025 09:00 AM Has been: Held as Scheduled Comments: Motion to amend track allowed. Dates provided in motion. Hon. Catherine Ham, Presiding Staff: Michelle Goldman, Assistant Clerk Magistrate Ariel Jordan, Assistant Clerk Magistrate		
01/21/2025	Endorsement on Assented to Motion to Amend the Court's Tracking Order, (#11.0): ALLOWED ALLOWED. (Ham, J.) 1/21/25		 Image
04/29/2025	Defendant 's Motion to modify conditions of release to remove GPS monitor for minor Dependant's medical appointments (IMPOUNDED)	12	
04/29/2025	Endorsement on Motion to modify conditions of release to remove GPS monitor for minor Dependant's medical appointments, (#12.0): ALLOWED After hearing with argument, the Motion is ALLOWED.		
04/29/2025	Conditions of release on bail: GPS Monitoring After hearing, GPS condition vacated. All other conditions remain in full force. Haggan, J. 4/29/25 Judge: Haggan, Hon. Patrick		
04/29/2025	Event Result:: Bail Hearing scheduled on: 04/29/2025 10:00 AM Has been: Held as Scheduled Comments: FTR: A. Bresnahan Hon. Patrick Haggan, Presiding Appeared: Prosecutor Jacob McCrindle, Esq., Attorney for the Commonwealth		

Kailey V Steblovskiy, Esq., Attorney for the Commonwealth Defendant Robert Kawada Rosemary C Scapicchio, Esq., Private Counsel Staff: Michelle Goldman, Assistant Clerk Magistrate Ariel Jordan, Assistant Clerk Magistrate		
05/07/2025	Event Result: Filing of Motions scheduled on: 05/12/2025 09:00 AM Has been: Rescheduled For the following reason: Request of Defendant Hon. Patrick Haggan, Presiding Staff: Michelle Goldman, Assistant Clerk Magistrate Ariel Jordan, Assistant Clerk Magistrate	
05/07/2025	Defendant 's Assented to Motion to Advance and Continue Motion Filing Hearing Date	13 
07/21/2025	Event Result: Filing of Motions scheduled on: 07/22/2025 09:00 AM Has been: Rescheduled For the following reason: Joint request of parties Hon. Lynn C Rooney, Presiding Staff: Michelle Goldman, Assistant Clerk Magistrate Ariel Jordan, Assistant Clerk Magistrate	Image
09/18/2025	Event Result: Trial Readiness Conference scheduled on: 09/19/2025 10:30 AM Has been: Rescheduled For the following reason: Joint request of parties Hon. Lynn C Rooney, Presiding Staff: Michelle Goldman, Assistant Clerk Magistrate Ariel Jordan, Assistant Clerk Magistrate	
09/18/2025	Commonwealth, Defendant 's Motion to Continue	14
09/19/2025	Endorsement on Motion to Continue, (#14.0): ALLOWED Judge: Rooney, Hon. Lynn C	 Image
09/22/2025	Rule 36 waived re: by defendant from 9/18/25 through 10/19/26	
09/22/2025	Event Result: Jury Trial scheduled on: 10/20/2025 09:00 AM Has been: Rescheduled For the following reason: Joint request of parties Hon. Lynn C Rooney, Presiding Staff: Michelle Goldman, Assistant Clerk Magistrate Ariel Jordan, Assistant Clerk Magistrate	
11/13/2025	Event Result: Filing of Motions scheduled on: 11/14/2025 09:00 AM Has been: Rescheduled For the following reason: Request of Defendant Hon. Patrick Haggan, Presiding Staff: Dennis Collins, Assistant Clerk Magistrate Michelle Goldman, Assistant Clerk Magistrate	
11/13/2025	Defendant 's Assented to Motion to Advance and Continue Motion Filing Hearing Date	15 
12/30/2025	Event Result: Filing of Motions scheduled on: 12/30/2025 09:00 AM Has been: Held as Scheduled Comments: Off the record Hon. Patrick Haggan, Presiding Staff: Dennis Collins, Assistant Clerk Magistrate Michelle Goldman, Assistant Clerk Magistrate	Image
12/30/2025	Defendant 's Motion to Dismiss Counts 1 and 3 of the Indictment and Incorporated Memorandum of Law (IMPOUNDED)	16

12/30/2025	Defendant 's Motion to Seal Defendant's Motion to Dismiss	17	
12/30/2025	Endorsement on Motion to Seal Defendant's Motion to Dismiss, (#17.0): ALLOWED After review, and without objection, motion ALLOWED. (Haggan, J.) 12/30/25		
02/12/2026	Commonwealth 's Opposition to "Defendant's Motion to Dismiss Counts 1 and 3 of the Indictment"	18	
02/19/2026	Attorney appearance On this date Christa M Elliott, Esq. added as Attorney for the Commonwealth for Prosecutor Middlesex District Attorney		
02/19/2026	Matter taken under advisement: Non-Evidentiary Hearing to Dismiss scheduled on: 02/19/2026 12:00 PM Has been: Held - Under advisement Comments: FTR: A. Bresnahan Hon. Keren E Goldenberg, Presiding Appeared: Prosecutor Jacob McCrindle, Esq., Attorney for the Commonwealth Kailey V Steblovskiy, Esq., Attorney for the Commonwealth Christa M Elliott, Esq., Attorney for the Commonwealth Defendant Robert Kawada Rosemary C Scapicchio, Esq., Private Counsel Staff: Dennis Collins, Assistant Clerk Magistrate Michelle Goldman, Assistant Clerk Magistrate		
03/16/2026	MEMORANDUM & ORDER: On Defendant's Motion to Dismiss Indictments-001 and 003. ORDER: The defendant's motion to dismiss Indictment-001 alleging attempted poisoning is ALLOWED and defendant's motion to dismiss the portion of Indictment-003 that alleges a qualifying relationship is DENIED. (Keren E. Goldenberg, Justice of the Superior Court) March 16, 2026 Judge: Goldenberg, Hon. Keren E (See scanned order for full ruling)	19	
03/16/2026	Offense Disposition:: Charge #1 POISONING, ATTEMPTED c265 §28 On: 03/16/2026 Judge: Hon. Keren E Goldenberg By: Hearing Dismissed (See Memo of Decision and Order (P#19)		
03/20/2026	Notice of appeal filed. (Appeal pursuant to Mass. R. Crim. P. 15(a)(1) (Allowance in part of the defendant's motion to dismiss) Applies To: Middlesex District Attorney (Prosecutor); Elliott, Esq., Christa M (Attorney) on behalf of Middlesex District Attorney (Prosecutor) Applies To: Middlesex District Attorney (Prosecutor); McCrindle, Esq., Jacob (Attorney) on behalf of Middlesex District Attorney (Prosecutor); Elliott, Esq., Christa M (Attorney) on behalf of Middlesex District Attorney (Prosecutor)	20	
04/01/2026	Commonwealth 's Notice of Transcript Order	21	
04/29/2026	CD of Transcript of 02/19/2026 12:00 PM Non-Evidentiary Hearing to Dismiss received from Darlene M. Coppola, DMC Transcripts. (Transcript received via email)		
05/28/2026	Notice to Clerk of the Appeals Court of Assembly of Record- Notice of Appeal (P#20), Memorandum of Decision and Order on Defendant's Motion to Dismiss Indictments-001 and 003 (P#19), List of Docket Entries, and Transcript date of 2/19/26 (Appeal was sent via electronically to the Appeals Court, this day)	22	
05/28/2026	Notice of assembly of record sent to Counsel Applies To: Middlesex District Attorney (Prosecutor); Scapicchio, Esq., Rosemary C (Attorney) on behalf of Kawada, Robert (Defendant); Elliott, Esq., Christa M (Attorney) on behalf of Middlesex District Attorney (Prosecutor)	23	
05/28/2026	Appeal: Statement of the Case on Appeal (Cover Sheet).	24	

05/29/2026 Notice of Entry of appeal received from the Appeals Court
-COMMONWEALTH OF MASSACHUSETTS

25



APPEALS COURT CLERK'S OFFICE

Dated: May 29, 2026

RE: No. 2026-P-0748
Lower Court No: 2481CR00395

COMMONWEALTH vs. ROBERT KAWADA

NOTICE OF ENTRY OF APPEAL

In accordance with Massachusetts Rule of Appellate Procedure 10(a)(3), please note that the above-referenced case was entered in this Court on May 29, 2026.

Very truly yours,
The Clerk's Office

If you have any questions, or wish to communicate with the Clerk's Office about this case, please contact the Clerk's Office at 617-725-8106. Thank you.

Case Disposition

<u>Disposition</u>	<u>Date</u>	<u>Case Judge</u>
Active	12/12/2024	

APPEALS COURT
Full Court Panel Case
Case Docket

COMMONWEALTH vs. ROBERT KAWADA
THIS CASE CONTAINS IMPOUNDED MATERIAL OR PID
2026-P-0748

CASE HEADER

Case Status	No briefs yet	Status Date	05/29/2026
Nature	Crime against person - no death	Entry Date	05/29/2026
Appellant	Plaintiff	Case Type	Criminal
Brief Status	Awaiting blue brief	Brief Due	07/08/2026
Arg/Submitted		Decision Date	
Panel		Citation	
Lower Court	Middlesex Superior Court	TC Number	
Lower Ct Judge	Keren E. Goldenberg, J.	TC Entry Date	11/14/2024
SJ Number		FAR Number	
SJC Number			

INVOLVED PARTY

Commonwealth
Plaintiff/Appellant
Awaiting blue brief
Due 07/08/2026

Robert Kawada
Defendant/Appellee
Awaiting red brief
Due 08/07/2026

ATTORNEY APPEARANCE

[Thomas D. Ralph, A.D.A.](#)
[Christa Elliott, A.D.A.](#)
[Jacob McCrindle, A.D.A.](#) - Inactive
[Kailey Verni, A.D.A.](#) - Inactive
[Rosemary Curran Scapicchio, Esquire](#)

DOCKET ENTRIES

Entry Date	Paper	Entry Text
06/01/2026		IMPOUNDED INFORMATION: Defendant's Motion to Modify Conditions of release to remove GPS Monitor - 04/29/2025. Defendant's Motion to Dismiss Counts 1 and 3 of Indictment and Incorporated Memorandum or Law - 12/20/2025. Per the Docketing Statement.
05/29/2026		Transcript Volume: 02/19/2026 - Hearing to Dismiss
05/29/2026	#1	Lower Court Assembly of the Record Package
05/29/2026	#2	Notice of entry sent.
05/29/2026	#3	Docketing Statement filed for Commonwealth by Attorney Christa Elliott.

As of 06/01/2026 2:15pm

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT
CRIMINAL ACTION
No. 2481CR00395

COMMONWEALTH

vs.

ROBERT KAWADA

MEMORANDUM OF DECISION AND ORDER
ON DEFENDANT'S MOTION TO DISMISS INDICTMENTS -001 AND -003

A grand jury indicted Robert Kawada alleging: (1) attempted poisoning in violation of G. L. c. 265, § 28; (2) assault and battery by means of a dangerous weapon on a pregnant person in violation of G. L. c. 265, § 15A(c)(ii); and (3) assault and battery on a family or household member in violation of G. L. c. 265 § 13M(a). Defendant has moved to dismiss Indictments -001 (attempted poisoning) and the portion of -003 (domestic assault and battery) that alleges a qualifying relationship between the defendant and the complainant due to insufficient evidence presented to the grand jury. See *Commonwealth v. McCarthy*, 385 Mass. 160, 163-164 (1982).

I held a non-evidentiary hearing and heard argument by counsel. After reviewing the grand jury minutes, pleadings, arguments of counsel, and for the reasons stated below, the defendant's motion to dismiss is **ALLOWED** in part and **DENIED** in part. Indictment -001 alleging attempted poisoning is dismissed. The request to dismiss the portion of Indictment -003 that alleges a qualifying domestic relationship is denied.

BACKGROUND

The grand jury heard evidence that in January 2024, the complaining witness¹ and the defendant met through a dating app. They met up again in February and twice in March. At the February and March dates they had sex. They did not use contraception on all three occasions. The complainant believed that she could not get pregnant due to a medical condition. Soon after that the defendant told the complainant that he was not interested in pursuing a relationship with her. By mid-March, CW learned that she was pregnant and told the defendant. CW intended to go through with the pregnancy and Kawada was supportive, telling her that he would support her. The complainant knew that Kawada had two children and asked him for advice about diet and nutrition.

On April 22, 2024, Defendant gave CW supplements that he claimed were iron pills and told her to put 6 to 8 pills in her cheeks and let them absorb without anything to drink rather than swallowing them. CW felt poorly shortly after taking the pills and experienced terrible cramping in her lower abdomen. Later that evening she threw up and noticed a bloody discharge following a bowel movement. She went to the hospital and learned that the fetus was still viable.

On April 23, 2024, Kawada brought her more pills that he said were iron pills and instructed her to put them in her cheeks and let them melt. She went into the bathroom and spit them out. The following day she told Kawada that she had spit them out. Complainant said she wanted to check with her doctor before taking any supplements. Defendant accused her of not trusting him and became upset.

A few days later, just before Kawada said he would arrive at her house, Complainant got a call by someone claiming to be a nurse from Massachusetts General Hospital, where she

¹ The complaining witness's name has been impounded and will be referred to as Complainant or CW.

received care. The caller told her that her bloodwork showed that her iron levels were low and that she should take supplements. The caller instructed her on how much iron to take per day. Defendant arrived at her house a few minutes later and CW told him about the call from the nurse. He gave her iron pills that he had brought for her. He instructed her to hold the pills in her cheek or under her tongue. She consumed the pills. Defendant inquired about whether she would seek an abortion and got angry when she said she would continue the pregnancy. CW felt very ill that night. She experienced severe cramping and bleeding. CW miscarried and her pregnancy terminated.

CW called the phone number of the caller claiming to be a nurse from MGH and discovered that it was a “Google Voice” number. The call did not originate from a recognized MGH number. CW provided the police with one leftover pill that the defendant had represented as iron pills. The appearance of the pill is consistent with the pill form of Misoprostol, a medication used to terminate pregnancies. Records show that two deliveries of Misoprostol and Mifepristone, another drug used to end pregnancies, were delivered to Defendant’s address.

DISCUSSION

The grand jury stands between the government and the individual to guard against “hasty, malicious and oppressive public prosecutions.” *Jones v. Robbins*, 74 Mass. 329, 343-344 (1857). Because its essential functions are to investigate and charge, it is not the purpose of the grand jury to determine the guilt or innocence of the accused or even to test the adequacy of the evidence to sustain a finding of guilt. See *Commonwealth v. Moran*, 453 Mass. 880, 883-884 (2009); *Commonwealth v. Goldstein*, 54 Mass. App. Ct. 863, 866-867 (2002).

“The question posed by a *McCarthy* motion is whether the grand jury were presented with ‘sufficient evidence to establish the identity of the accused and probable cause to arrest

him.” *Commonwealth v. Johnson*, 92 Mass. App. Ct. 538, 541-542 (2017), quoting *Commonwealth v. Bell*, 83 Mass. App. Ct. 61, 63 (2013). Probable cause requires “reasonably trustworthy information . . . sufficient to warrant a prudent man in believing that the defendant had committed . . . an offense.” *Bell*, 83 Mass. App. Ct. at 63, quoting *Commonwealth v. O’Dell*, 392 Mass.445, 450 (1983). “Probable cause to sustain an indictment is a decidedly low standard.” *Commonwealth v. Fernandes*, 483 Mass. 1, 20 (2019) (Cypher, J., concurring in part and dissenting in part) (citation and internal quotations omitted). “When testing the sufficiency of the evidence to sustain a grand jury indictment [courts] need not determine that the evidence would allow a reasonable person to find [the defendant guilty] beyond a reasonable doubt.” *Commonwealth v. Riley*, 73 Mass. App. Ct. 721, 726-727 (2009), quoting *Commonwealth v. Levesque*, 436 Mass. 443, 452 (2002). Rather, the “quantum of evidence required to indict . . . [is] considerably less exacting than that required of the petit jury that adjudicates guilt.” *Id.* at 726.

I. Attempted Poisoning

Kawada asserts that the grand jury did not hear sufficient evidence to support the indictment for attempted poisoning. To survive a motion to dismiss based on sufficiency of evidence, the Commonwealth must present sufficient evidence that the defendant: (1) introduced a poison into the body of another person; (2) mingled with food, drink or medicine; (3) with the intent to kill or injure. G. L. c. 265, § 28. A “poison,” for purposes of this statute, does not need to be a substance so inherently dangerous that no reasonable person under normal circumstances would ingest it. *Commonwealth v. Walker*, 442 Mass. 185, 195 (2004). There are substances that have beneficial uses, but when used improperly, may have the capacity to act as a poison. *Id.* at 196 (“[T]empazepan administered improperly is capable of causing injury, thus acting as a

poison”). Here the poison alleged is Misopristol, which has the capacity to induce a miscarriage and terminate a pregnancy. The Commonwealth has presented sufficient evidence that the iron pills that Kawada provided to CW were Misopristol and that this substance can act as a poison when taken by a person who does not seek to terminate their pregnancy.² Inducing a miscarriage against a person’s will is an injury to another person, as required by the statute.

The remaining issue with the presentment is that the evidence did not show that Misoprostol was mingled with “food, drink, or medicine.” To the contrary, the evidence presented was that Kawada specifically instructed CW to hold the Misopristol under her tongue or in her cheeks and let the pills absorb. “It is a well-established canon of construction that, where the statutory language is clear, the courts must impart to the language its plain and ordinary meaning” (emphasis added). *Commonwealth v. Billingslea*, 484 Mass. 606, 622 (2020) quoting *Commonwealth v. One 1987 Mercury Cougar Auto.*, 413 Mass. 534, 537 (1992). “The language of a statute is not to be enlarged or limited by construction unless its object and plain meaning require it.” *Id.*, quoting *Rambert v. Commonwealth*, 389 Mass. 771, 773 (1983).

The language of G. L. c. 265, § 28 is clear. The “poison” must be mingled with food, drink, or medication. See *Walker*, 442 Mass. at 196 (sleep medication mixed with alcohol). *Commonwealth v. Kennedy*, 170 Mass. 18 (1897) (rat poison placed in drinking cup); *Commonwealth v. Hobbs*, 140 Mass. 443 (1886) (white arsenic mixed into meal used for baking bread). Absent evidence of mingling the Misoprostol with food, drink, or medication, the Commonwealth has not met its burden.

² The fetus was not viable at the time of the miscarriage, so the victim of the alleged attempt to poison is the complainant. *Commonwealth v. Cass*, 392 Mass. 799, 808 (1984).

II. Domestic Assault and Battery

Kawada moves to dismiss the portion of the second indictment for assault and battery on a family or household member, to the extent that the Commonwealth has failed to present sufficient evidence of a qualifying relationship between him and CW. In order to establish probable cause that CW was a family or household member of Kawada, the Commonwealth had to present evidence that they (i) were married, (ii) had a child in common, or (iii) were in a substantive dating relationship. G. L. 265, §13M(c). There is no dispute that CW and Kawada were not married and that the fetus was not viable. The only qualifying relationship would be a “substantive dating relationship.”

The factors the trier of fact may consider when determining whether a relationship is substantive include: “the length of time of the relationship; the type of relationship; the frequency of interaction between the parties; whether the relationship was terminated by either person; and the length of time elapsed since the termination of the relationship.” *Id.* These factors are not individually dispositive and must be taken as a whole to demonstrate a substantive dating relationship. *Commonwealth v. Dustin*, 476 Mass. 1003, 1005, fn. 7 (2016) (“There does not need to be evidence as to each factor, let alone proof beyond a reasonable doubt as to any one or more of them”). While length of relationship is a factor the factfinder must consider, there is no minimum temporal requirement. *C.O. v. M.M.*, 442 Mass. 648, 653 (2004) (“It would be unproductive to place a numerical quota on the number of ‘dates’ that constitute a ‘substantive dating relationship’”). There is no requirement that the relationship be exclusive and “a person can be found to be in more than one ‘substantive dating relationship’ at any one time.” *Brossard v. West Roxbury Div. of the Dist. Court Dep’t*, 417 Mass. 183, 185 (1994).

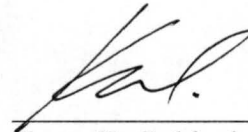
The Commonwealth presented evidence that CW and Kawada met over a dating app in January. They met up three times throughout February and March and had sex on each date. After their third sexual encounter, Kawada indicated that he was not interested in pursuing a relationship with CW. Their subsequent meetings were to discuss CW's pregnancy and Kawada appeared to provide support and guidance that CW relied upon. The alleged assaults occurred shortly after Kawada indicated that he was not interested in pursuing the relationship and while he was providing what appeared to be emotional support. While these facts do not overwhelmingly suggest a serious dating relationship, it is enough to satisfy the probable cause standard. It will be for the factfinder at trial to determine whether they had a "substantive dating relationship."

Kawada also alleges that G. L. 265, §13M(c), as applied to him is void for vagueness due to its failure to provide him with fair warning that he was engaged in a substantive dating relationship. A statute is void for vagueness if it "fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden" and "should be deemed void for vagueness." *Commonwealth v. Kwiatkowski*, 418 Mass. 543, 547 (1994), quoting *Opinion of the Justices*, 378 Mass. 822, 826 (1979). "The essence of the fair warning requirement embodied in the due process clause is that a person should not be punished for an act he could not know was criminal." *Robinson v. Berman*, 594 F.2d 1, 3 (1st Cir. 1979). A person who commits an act while on notice that it violates one criminal statute "ha[s] no cause to complain that he had no notice his conduct violated another statute." *Id.* The defendant had fair notice that his alleged misconduct, which involved causing CW to ingest unwanted medication that could trigger a miscarriage, violated criminal law. He had sufficient notice of the term "substantive dating relationship." *C.O.*, 442 Mass. at 653-654 (2004). See *Commonwealth v. Panagopoulos*, 60

Mass. App. Ct. 327, 328-329 (2004) (statute not unconstitutionally vague for failure to adequately define those persons subject to its prohibitions.)

ORDER

For the foregoing reasons, the defendant's motion to dismiss Indictment -001 alleging attempted poisoning is **ALLOWED** and defendant's motion to dismiss the portion of Indictment -003 that alleges a qualifying relationship is **DENIED**.



Keren E. Goldenberg
Justice of the Superior Court

March 16, 2026

Massachusetts General Laws Annotated

Part IV. Crimes, Punishments and Proceedings in Criminal Cases (Ch. 263-280)

Title I. Crimes and Punishments (Ch. 263-274)

Chapter 265. Crimes Against the Person (Refs & Annos)

M.G.L.A. 265 § 28

§ 28. Poison; use with intent to injure; punishment

[Currentness](#)

Whoever mingles poison with food, drink or medicine with intent to kill or injure another person, or wilfully poisons any spring, well or reservoir of water with such intent, shall be punished by imprisonment in the state prison for life or for any term of years.

[Notes of Decisions \(12\)](#)

M.G.L.A. 265 § 28, MA ST 265 § 28

Current through Chapter 79 of the 2026 2nd Annual Session. Some sections may be more current, see credits for details.

End of Document

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of this state, or shall forcibly seize and confine, or shall inveigle or kidnap any other person, with intent either to cause such person to be secretly confined or imprisoned in this state, against his will, or to cause such person to be sent out of this state against his will, or to be sold as a slave, or in any way held to service against his will, or to every person, who shall sell, or in any manner transfer for any term the service or labor of any negro, mulatto, or other person of color who shall have been unlawfully seized, taken, inveigled or kidnapped from this state, to any other state, place, or country, shall be punished by imprisonment in the state prison, not more than ten years, or by fine not exceeding one thousand dollars, and imprisonment in the county jail, not more than two years.

SECT. 21. Every offence, mentioned in the preceding section, may be tried either in the county in which the same may have been committed, or in any county, in or to which the person so seized, taken, inveigled, kidnapped or sold, or whose services shall be so sold or transferred, shall have been taken, confined, held, carried or brought; and upon the trial of any such offence, the consent thereto of the person so taken, inveigled, kidnapped or confined, shall not be a defence, unless it shall be made satisfactorily to appear to the jury, that such consent was not obtained by fraud, nor extorted by duress or by threats.

Kidnapping,
etc., where do
the victims go?

duress or by threat.

SECT. 22. If any person shall mingle any poison with any food, drink or medicine, with intent to kill or injure any other person, or shall wilfully poison any spring, well or reservoir of water, with such intent, he shall be punished by imprisonment in the state prison, for life or for any term of years.

Planning tool,
software,
systems, tools,
etc.

life or for any term of years.

SECT. 23. If any person shall assault another with intent to commit any burglary, robbery, rape, manslaughter, mayhem or any felony, the punishment of which assault is not herein before prescribed, he shall be punished by imprisonment in the state prison, not more than ten years, or by fine not exceeding one thousand dollars, and imprisonment in the county jail, not more than three years.

Assaults not before mentioned, law punished.

Accounts not before mentioned, now published.

CHAPTER 126.

OF OFFENCES AGAINST PRIVATE PROPERTY.

English	Arabic
1. Hearing a swelling home in the night loud. Dullness and pain that not present was swelling thence.	1. Hearing wind, timber, home, &c. 2. Swollen woman, &c. for swelling pro- pity of her husband.
2. " " In the day time.	3. Hearing tidings, &c. inward.
3. " " A swelling home, &c. in the night time.	4. Embrace, being almost as making no sense.
4. " " In the day time.	5. " " Hearing wind, not making no sense.
	6. Hearing a sleep, &c. in the night, with sense, &c.

in addition to the above-named penalty, be forever disqualified from holding any office under the laws or constitution of this state.

SECT. 20. Whoever, without lawful authority, forcibly or secretly confines or imprisons another person within this state against his will, or forcibly carries or sends such person out of this state, or forcibly seizes and confines, or inveigles, or kidnaps, another person, with intent either to cause him to be secretly confined or imprisoned in this state against his will, or to cause him to be sent out of this state against his will, or to be sold as a slave, or in any way held to service against his will; and whoever sells, or in any manner transfers, for any term, the service or labor of a negro, mulatto, or other person of color, who has been unlawfully seized, taken, inveigled, or kidnapped, from this state, to any other state, place, or country; shall be punished by imprisonment in the state prison not exceeding ten years, or by fine not exceeding one thousand dollars and imprisonment in the jail not exceeding two years.

SECT. 21. Every offense mentioned in the preceding section may be tried either in the county in which it is committed, or in any county in or to which the person so seized, taken, inveigled, kidnapped, or sold, or whose service are so sold or transferred, is taken, confined, held, carried, or brought; and upon the trial of any such offense, the consent thereto of the person so taken, inveigled, kidnapped, or confined, shall not be a defense, unless it is made satisfactorily to appear to the jury that such consent was not obtained by fraud, nor extorted by duress or threats.

SECT. 22. Whoever mingles any poison with food, drink, or medicine, with intent to kill or injure another person, or wilfully poisons any spring, well, or reservoir of water, with such intent, shall be punished by imprisonment in the state prison for life, or any term of years.

SECT. 23. Whoever assaults another with intent to commit burglary, robbery, rape, manslaughter, mayhem, or any felony, the punishment of which assault is not herein before prescribed, shall be punished by imprisonment in the state prison not exceeding ten years, or by fine not exceeding one thousand dollars and imprisonment in the jail not exceeding three years.

SECT. 24. If the life of any person, being a passenger, is lost by reason of the negligence or carelessness of the proprietor or proprietors of any steamboat, stage coach, or of common carriers of passengers, or by the recklessness or gross negligence or carelessness of their servants or agents, such proprietor or proprietors, and common carriers, shall be punished by fine not exceeding five thousand, nor less than five hundred, dollars, to be recovered by indictment, and paid to the executor or administrator, for the use of the widow and children of the deceased in equal parts, for the use of the widow and children of the deceased in equal parts; but if there are no children, to the use of the widow, and if no widow, to the use of the next of kin.

SECT. 25. Whoever, having management or control of or over any steamboat or other public conveyance used for the common carriage of persons, is guilty of gross recklessness or neglect in, or in relation to, the conduct, management, or control, of such steamboat or other public conveyance, while being at work for the common carriage of persons, shall be punished by fine not exceeding five thousand dollars, or by imprisonment in the jail not exceeding three years.

SECT. 26. If a driver of a stage coach or other vehicle, for the conveyance of passengers by hire, when a passenger is within or upon such coach or vehicle, leaves the horse driven without some suitable person to take the charge and guidance of them, or without fastening them in a safe and prudent manner, he may be punished by imprisonment in the jail not exceeding two months, or by fine not exceeding fifty dollars.

SECT. 29. Whoever, either verbally or by a written or printed communication, maliciously threatens to accuse another of a crime or offence, or by such communication maliciously threatens an injury to the person or property of another, with intent thereby to extort money or any pecuniary advantage whatever, or with intent to compel the person so threatened to do any act against his will, shall be punished by imprisonment in the state prison not exceeding fifteen years, or in the house of correction not exceeding ten years, or by fine not exceeding five thousand dollars, or by such imprisonment and fine.

SECT. 30. Whoever, without lawful authority, forcibly or secretly confines or imprisons another person within this state against his will, or forcibly carries or sends such person out of this state, or forcibly seizes and confines or inveigles or kidnaps another person, with intent either to cause him to be secretly confined or imprisoned in this state against his will, or to cause him to be sent out of this state against his will, or in any way held to service against his will, and whoever sells or in any manner transfers for any term the service or labor of a negro, mulatto, or other person of color, who has been unlawfully seized, taken, inveigled, or kidnapped from this state to any other state, place, or country, shall be punished by imprisonment in the state prison not exceeding ten years, or by fine not exceeding one thousand dollars and imprisonment in the jail not exceeding two years.

SECT. 31. Every offence mentioned in the preceding section may be tried either in the county in which it is committed, or in any county in or to which the person so seized, taken, inveigled, kidnapped, or sold, or whose services are so sold or transferred, is taken, confined, held, carried, or brought; and upon the trial of any such offence the consent thereto of the person so taken, inveigled, kidnapped, or confined shall not be a defence, unless it is made satisfactorily to appear to the jury that such consent was not obtained by fraud, nor extorted by duress or threats.

SECT. 32. Whoever mingles poison with food, drink, or medicine with intent to kill or injure another person, or wilfully poisons any spring, well, or reservoir of water with such intent, shall be punished by imprisonment in the state prison for life, or for any term of years.

SECT. 33. Whoever assaults another with intent to commit burglary, robbery, rape, manslaughter, mayhem, or any felony, the punishment of which assault is not heretofore prescribed, shall be imprisoned by imprisonment in the state prison not exceeding ten years, or by fine not exceeding one thousand dollars and imprisonment in the jail not exceeding three years.

SECT. 34. Whoever, having management or control of or over any steamboat or other public conveyance used for the common carriage of persons, is guilty of gross carelessness or neglect in or in relation to the conduct, management, or control of such steamboat or other public conveyance, while being so used for the common carriage of persons, shall be punished by fine not exceeding five thousand dollars, or by imprisonment in the jail not exceeding three years.

SECT. 35. If a driver of a stage-coach or other vehicle for the conveyance of passengers for hire, when a passenger is within or upon such coach or vehicle, leaves the horses thereof without some suitable person to take the charge and guidance of them, or without fastening them in a safe and prudent manner, he may be punished by imprisonment in the jail not exceeding two months, or by fine not exceeding fifty dollars.

Attempt to extort money, etc., by threat.
G. S. 189, § 28.
23 Crim. 36.
13 Allen, 449.
208 Mass. 4.
108 Mass. 19.
207, 209.
171 Mass. 27.
172 Mass. 19.
129 Mass. 33.

Kidnaping, etc.
G. S. 189, § 30.
11 Met. 28, 29.
8 Gray, 205.
2 Allen, 228.

Warrant to be procured.
G. S. 140, § 32.

Poisoning food, medicine, spring, etc.
G. S. 189, § 32.
7 Allen, 271.
208 Mass. 407.

Assault not before mentioned.
G. S. 189, § 33.

Negligence, etc., of person having care of public conveyance.
G. S. 189, § 34.

Driver of stage-coach, etc., who leaves horses without charge, etc.
G. S. 189, § 35.

SECTION 25. Whoever, verbally or by a written or printed communication, maliciously threatens to accuse another of a crime or offence, or by such communication maliciously threatens an injury to the person or property of another, with intent thereby to extort money or any pecuniary advantage, or with intent to compel the person so threatened to do any act against his will, shall be punished by imprisonment in the state prison for not more than fifteen years, or in the house of correction for not more than fifteen years, or by a fine of not more than five thousand dollars, or by both such fine and imprisonment.

SECTION 26. Whoever, without lawful authority, forcibly or secretly confines or imprisons another person within this commonwealth against his will, or forcibly carries or sends such person out of this commonwealth, or forcibly seizes and confines or inveigles or kidnaps another person, with intent either to cause him to be secretly confined or imprisoned in this commonwealth against his will, or to cause him to be sent out of this commonwealth against his will or in any way held to service against his will, and whoever sells or in any manner transfers for any term the service or labor of a negro, mulatto or other person of color who had been unlawfully seized, taken, inveigled or kidnapped from this commonwealth to any other state, place or country, shall be punished by imprisonment in the state prison for not more than ten years or by a fine of not more than one thousand dollars and imprisonment in jail for not more than two years. Whoever commits any offence described in this section with the intent to extort money or other valuable thing thereby shall be punished by imprisonment in the state prison for not more than twenty-five years.

SECTION 27. A crime described in the preceding section may be tried in the county in which it is committed or in any county in or to which the person so seized, taken, inveigled, kidnapped or sold, or whose services are so sold or transferred, is taken, confined, held, carried or brought; and upon the trial of any such crime, the consent thereto of the person so taken, inveigled, kidnapped or confined shall not be a defence unless the jury finds that such consent was not obtained by fraud nor extorted by duress or threats.

SECTION 28. Whoever mixes poison with food, drink or medicine with intent to kill or injure another person, or wilfully poisons any spring, well or reservoir of water with such intent, shall be punished by imprisonment in the state prison for life or for any term of years.

SECTION 29. Whoever assaults another with intent to commit a felony shall, if the punishment of such assault is not hereinbefore provided, be punished by imprisonment in the state prison for not more than ten years or by a fine of not more than one thousand dollars and imprisonment in jail for not more than three years.

SECTION 30. Whoever, having the management or control of or over a steamboat or other public conveyance which is used for the

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**Certificate of Compliance
Pursuant to Rule 16(k) of the
Massachusetts Rules of Appellate Procedure**

I, Christa Elliott, hereby certify that the foregoing application for direct appellate review complies with the rules of court that pertain to the filing of such applications, including, but not limited to:

Mass. R. A. P. 16 (a)(13) (addendum);
Mass. R. A. P. 16 (e) (references to the record);
Mass. R. A. P. 18 (appendix to the briefs);
Mass. R. A. P. 20 (form and length of briefs, appendices, and other documents); and
Mass. R. A. P. 21 (redaction).

I further certify that the foregoing application complies with the applicable length limitation in Mass. R. A. P. 20 because it is produced in the proportional font Times New Roman at size 14, and contains 1,544, total non-excluded words as counted using the word count feature of Microsoft Word.

\s\ Christa Elliott
Christa Elliott
Assistant District Attorney
BBO No. 703101

CERTIFICATE OF SERVICE

I served the Commonwealth's application for direct appellate review on the defendant on this day by causing PDF copies to be sent via Tylerhost and electronic mail to his attorney:

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Boston, MA 02109
rosemary@scapicchiolaw.com

\s\ Christa Elliott
Christa Elliott
Assistant District Attorney

Date: June 22, 2026