BEFORE THE COMMISSION ON JUDICIAL CONDUCT

Complaint Number 2025-21

FORMAL CHARGES

The Commission on Judicial Conduct ("the Commission"), acting pursuant to M.G.L. c. 211C, sec. 5(14) and Commission Rule 7B(4), hereby notifies the Honorable Franco J. GoBourne ("Judge GoBourne"), retired former Circuit Justice of the District Court Department, that it has found sufficient cause to issue Formal Charges in the above-numbered complaint. These Formal Charges incorporate Commission Complaint Number 2025-21 and the referenced appendices.

These charges arose from the investigation of a complaint filed with the Commission on June 6, 2025. As a result of that investigation, on July 16, 2026, the Commission issued a Statement of Allegations, pursuant to M.G.L. c. 211C, sec. 5(5). Pursuant to M.G.L. c. 211C, sec. 5(6), the Commission sent the Statement of Allegations to Judge GoBourne on July 22, 2026. Judge GoBourne received the Statement of Allegations on July 27, 2026. Judge GoBourne did not submit a written response to the Statement of Allegations or file a written request for a personal appearance before the Commission, pursuant to M.G.L. c. 211C, sec. 5(7).

The Commission also hereby notifies Judge GoBourne that, pursuant to M.G.L. c. 211C, sec. 5(14) and Commission Rule 7B(4), he has ten (10) days after service of these Formal Charges in which to file a written response with the Commission. The response should set forth in concise language all denials, affirmative defenses, and any other matters upon which Judge GoBourne intends to rely at the hearing on these charges. Upon the filing of Judge GoBourne's response or the expiration of the ten days, a copy of the Formal Charges and any response from Judge GoBourne shall be filed with the Supreme Judicial Court. Upon that filing, the confidentiality of the Formal Charges and any response thereto shall cease.

The Commission charges that Judge GoBourne has engaged in willful judicial misconduct that brought the judicial office into disrepute, that was prejudicial to the administration of justice, and that was unbecoming of a judicial officer, in violation of M.G.L. c. 211C, sec. 2(5), and that he has violated the Code of Judicial Conduct (Supreme Judicial Court Rule 3:09), by failing to follow the law, including the Code of Judicial Conduct, in violation of Rule 1.1; by failing to act in a manner that promotes public confidence in the independence, integrity, and/or impartiality of the judiciary, in violation of Rule 1.2; by failing to uphold and apply the law, thereby creating an appearance that he was not performing all duties of judicial office fairly and impartially, in violation of Rule 2.2; by creating an appearance of bias or lack of impartiality, in violation of Rule 2.3; and by failing to be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court personnel, and others with whom the judge deals in an official capacity, in violation of Rule 2.8(B).

The Commission specifically alleges the following:

1. Judge GoBourne was appointed as a Circuit Justice of the District Court Department of the Massachusetts Trial Court in 2010. Judge GoBourne served continuously in that capacity until he retired in September 2025.

2. On March 25, 2025, Judge GoBourne presided over a session in the Fall River Division of the District Court Department ("Fall River District Court").

   On that date, one of the matters that came before Judge GoBourne for a hearing was a criminal matter: Commonwealth v. Robson Martins DaSilva, Docket Number 2332CR003324. Mr. Martins DaSilva was not present and was represented by Committee for Public Counsel Services Attorney Nicholas Athanassiou ("Attorney Athanassiou"). The Commonwealth was represented by Assistant District Attorney Kalene E. Kobza.

   At approximately 9:31 a.m., Mr. Martins DaSilva's matter was called. Attorney Athanassiou advised Judge GoBourne that he had recently learned of potentially exculpatory evidence relating to this criminal case against Mr. Martins DaSilva. Judge GoBourne then asked Attorney Athanassiou when he learned about the potentially exculpatory information. Attorney Athanassiou turned away from Judge GoBourne to review his file, which was on a desk behind him, so that he could answer Judge GoBourne's question. Attorney Athanassiou also took a few steps away from Judge GoBourne and toward the desk where his file was located.

   The following exchange then took place:

Judge GoBourne:	This, Counsel, stop pacing. Face the --
Attorney Athanassiou:	[Polite tone.] Excuse me, Your Honor?
Judge GoBourne:	-- Face the bench.
Attorney Athanassiou:	[Polite tone.] Excuse me, Your Honor.
Judge GoBourne:	[Slightly annoyed tone.] You better be careful --
Attorney Athanassiou:	[Inaudible.]
Judge GoBourne:	-- Wait. Before you come out with more words, Counsel, you better be careful what you say.
Attorney Athanassiou:	[Polite tone.] Your Honor –

Judge GoBourne:	[Slightly annoyed tone.] I'm asking you to stop pacing and face the court.
Attorney Athanassiou:	[Polite tone.] Your Honor, I understand.
Judge GoBourne:	Okay.
Attorney Athanassiou:	[Polite tone.] I would respectfully ask the court --
Judge GoBourne:	[Slightly annoyed tone.] That's -- No. That's enough. That's enough.
Attorney Athanassiou:	[Polite tone.] Your Honor, my client has a right to be heard.
Judge GoBourne:	I'm asking you to –

Attorney Athanassiou and Judge GoBourne then began speaking over each other. Attorney Athanassiou's tone remained polite and professional throughout this exchange. Judge GoBourne then stated, "I'm asking you to be quiet. And I'm asking you to face the court. Take him into custody. Take him into custody. I find you in contempt of court, Counsel."

The entire exchange between Judge GoBourne and Attorney Athanassiou lasted approximately three minutes.

As ordered by Judge GoBourne, court officers handcuffed Attorney Athanassiou and took him into custody, placing him in a holding cell at the Fall River District Court. In accord with standard Trial Court practice after a judge has ordered a person into custody, court officers then took away Attorney Athanassiou's personal items, placed him in leg restraints, and locked him in a holding cell.

Judge GoBourne punished Attorney Athanassiou for criminal contempt summarily, despite the absence of any factual basis to support a finding, pursuant to Rule 43(a) of the Rules of Criminal Procedure, that summary punishment was necessary to maintain order in the courtroom.

At approximately 12:00 p.m., Committee for Public Counsel Services Attorney Benjamin Evans ("Attorney Evans") appeared before Judge GoBourne on behalf of Attorney Athanassiou. At that time, Attorney Evans asked to be heard regarding Attorney Athanassiou's detention and asked Judge GoBourne "to consider releasing him."

Despite knowing that he had no further cases before him to be heard at that time, Judge GoBourne refused to hear from Attorney Evans, advising him that he would consider his request to release Attorney Athanassiou at 2:00 p.m.

Judge GoBourne recessed his session immediately after refusing Attorney Evans' request and did not return to his courtroom session on this date until approximately 2:42 p.m.

At that time, Attorney Athanassiou appeared before Judge GoBourne, with Attorney Evans representing him. Judge GoBourne then addressed Attorney Athanassiou's contempt matter and, after a brief hearing, withdrew the contempt finding and ordered Attorney Athanassiou's release from custody.

Prior to Judge GoBourne's order releasing him, Attorney Athanassiou was held in custody continuously for approximately five hours because of Judge GoBourne's orders.

Judge GoBourne never gave Attorney Athanassiou or his counsel notice of the contempt charges, as required by Rule 43(b)(1) of the Rules of Criminal Procedure.

Despite ordering Attorney Athanassiou into custody and refusing to conduct a contempt hearing until approximately 2:42 p.m., Judge GoBourne never found that detaining Attorney Athanassiou in custody was necessary to maintain order in the courtroom or to ensure Attorney Athanassiou's appearance at a contempt hearing, as required by Rule 43(b)(2) of the Rules of Criminal Procedure.

(A certified copy of the transcripts of the above-described hearings is attached as Appendix A. A copy of the audio recordings of the above-described hearings is attached as Appendix B.)

The Commission charges that, through the above-described conduct, Judge GoBourne has violated the Code of Judicial Conduct (Supreme Judicial Court Rule 3:09), by failing to follow the law, including the Code of Judicial Conduct, in violation of Rule 1.1; by failing to act in a manner that promotes public confidence in the independence, integrity, and/or impartiality of the judiciary, in violation of Rule 1.2; by failing to uphold and apply the law, thereby creating an appearance that he was not performing all duties of judicial office fairly and impartially, in violation of Rule 2.2; by creating an appearance of bias or lack of impartiality, in violation of Rule 2.3; and by failing to be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court personnel, and others with whom the judge deals in an official capacity, in violation of Rule 2.8(B).

The Commission also charges that, through the above-described conduct, Judge GoBourne has engaged in willful judicial misconduct that brought the judicial office into disrepute, that was prejudicial to the administration of justice, and that was unbecoming of a judicial officer, in violation of M.G.L. c. 211C, sec. 2(5).

For the Commission on Judicial Conduct,



Bruce Herring
Chair

Date: September 9, 2026

APPENDIX A

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PAGES: 1-14
EXHIBITS: 0

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS FALL RIVER DISTRICT COURT

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COMMONWEALTH

v. Case No. 2332CR003324

MARTINS DASILVA, ROBSON

* * * * * * * * * * * * * * * * * * * *

MOTION HEARING

BEFORE THE HONORABLE FRANCO J. GOBOURNE

APPEARANCES:

For the Commonwealth:
By Kalene E. Kobza, Esq.
Bristol County District Attorney's Office
218 South Main Street, Suite 101
Fall River, MA 02721
(508) 977-0711

For the Defendant:
By Nicholas Athanassiou, Esq.
By Benjamin Evans, Esq.
Committee for Public Counsel Services
1822 N. Main St., Suite 205
Fall River, MA 02720
(508) 675-9481

Fall River, Massachusetts
Courtroom: 5
March 25, 2025

Jennifer Ferris
Approved Court Transcriber

(9:31 a.m.)

THE CLERK: The matter of Robson Martins DaSilva.

MS. KOBZA: Good morning, Your Honor. Kalene Kobza for the Commonwealth.

THE COURT: Good morning.

MR. ATHANASSIOU: Good morning, Your Honor. Nicholas Athanassiou for Mr. Robson Martins DaSilva.

THE COURT: Good morning.

MR. ATHANASSIOU: His presence was waived for today.

THE COURT: All right. Robinson DaSilva?

THE CLERK: Oh, Robson DaSilva.

MR. ATHANASSIOU: Robson DaSilva.

THE CLERK: I apologize, Your Honor.

THE COURT: I'm sorry. Let me see the complaint. I'm -- I'm not --

THE CLERK: (Inaudible), Your Honor.

THE COURT: Martins DaSilva. Martins DaSilva.

THE CLERK: They're in response to these two motions, Your Honor.

THE COURT: What is this on for today? Motion hearing.

MR. ATHANASSIOU: So, Your Honor, it was on for hearing last week. The -- Madam Prosecutor was -- was ill. It -- we're essentially awaiting discovery from the Commonwealth. This is a case -- I'm actually the second attorney in this case. But a combination of DNA discovery, and then also forensic phone

extraction. My client's cellphone was seized by the police. There was an allegation as to one of the charges that a picture was taken by him. And so at this point we don't have the discovery yet. I know that Madam Prosecutor has been making considerable efforts to get a lot of the discovery to me. However, there is some discovery that remains outstanding.

In addition, the reason why it was on for a motion, Your Honor, is because the Commonwealth had recently disclosed some additional exculpatory information regarding the complainant attending counseling, and then also regarding the complainant's family using Catholic Social Services to try to get a U visa. So I would need to bring Rule 17 motions based on that information. Unfortunately, I've been ill as well for the past couple of days, so I haven't had a chance to get those to the Court, but --

THE COURT: Do you have them today?

MR. ATHANASSIOU: No, I don't, Your Honor. As I said, I was ill the past couple of days.

THE COURT: When did you find out about this alleged exculpatory information?

MR. ATHANASSIOU: I believe --

THE COURT: This -- Counsel, stop pacing. Face the -- face the --

MR. ATHANASSIOU: Excuse me, Your Honor?

THE COURT: -- bench.

MR. ATHANASSIOU: Excuse me, Your Honor.

THE COURT: You better be careful -- wait. Before you come out with more words, Counsel, you better be careful what you say. I'm asking you to stop pacing and face the Court.

MR. ATHANASSIOU: Your Honor, I understand. I would respectfully ask the Court --

THE COURT: That's -- no, that's enough. That's enough.

MR. ATHANASSIOU: Your Honor, my client has a right to be heard.

THE COURT: I'm asking you to -- I'm asking you to --

(Crosstalk)

THE COURT: -- be quiet. And I'm asking you to face the Court. Take him into custody. Take him into custody. I find you in contempt of Court, Counsel.

We can have him an attorney come down from 1 and speak to this gentleman.

(Proceedings recessed at 9:34 a.m.)

(Case re-called at 12:00:24 p.m.)

THE COURT: Anything else?

THE CLERK: That's it. And we have just the --

(Audio skips from 12:00:28 to 12:00:38)

MR. EVANS: -- Athanassiou?

THE COURT: You may.

MR. EVANS: I'd just ask the Court to consider releasing him.

THE COURT: Well, you can ask at 2:00. I'll consider it. All right?

(Proceedings recessed at 12:00:48 p.m.)

(Case re-called at 2:42 p.m.)

THE CLERK: Court is in session.

THE COURT: Okay. Good afternoon.

Counsel, identify yourself for the record.

MR. EVANS: Good afternoon, Your Honor. Benjamin Evans on behalf of Attorney Nick Athanassiou.

THE COURT: Okay. So what's going on, Mr. Evans? What's Mr. Athanassiou have to say to me?

MR. EVANS: Well, Your Honor, I'm asking you to release Attorney Athanassiou immediately. And I'm also asking the Court to withdraw the contempt finding. I listened to the FTR recording, and I spoke with other people who were present this morning at 9:30 when the Court took Attorney Athanassiou into custody. And -- and I can say, Your Honor, the record seems to me to be clear that Attorney Athanassiou never intended to disrespect the Court, never intended to disrupt the Court. He was attempting to advocate for his client. And, you know, we certainly apologize if the Court construed anything Mr. Athanassiou did or said as disrespectful. However, I think the Court's point has certainly been made. Attorney Athanassiou's been in custody since 9:30. He's been, you know, humiliated and embarrassed in front of his colleagues. It potentially affects his ability to gain the trust of future clients, current clients. And, moreover, the situation that -- that I heard on the FTR recording is clearly

distinguishable from any case where any court has upheld a finding of -- of contempt.

I mean, this is clearly distinguishable from the *Wilson* case where, you know, an attorney was yelling and raising his voice during voir dire, a selection of jurors. It's clearly distinguishable from that. It's even -- when you look at the leading case, the *Sussman* case, and that was a situation where a lawyer asked a question that the Court had previously ruled was not permitted, in that case the SJC said this is not contempt. This certainly doesn't rise to what Rule 43 talks about, what the case law talks about in terms of disrupting the Court. So for that reason, I'd ask the Court to release Attorney Athanassiou and withdraw the contempt finding.

THE COURT: Okay. Well, I tell you this is that Mr. Athanassiou -- it may not have heard -- you may not have heard it on the tape but his attitude, his facial expressions, and his body expressions, and his rec- -- recalcitrance is contemptuous. I asked him to stop speaking. Everyone's telling me -- and I'll be honest with you, I -- I got a call from the Chief Justice, and he was telling me you don't have it. But when you read the -- the -- when I read the -- the rules and what could be considered contempt, I feel that his -- his -- his actions did fall as contemptuous. I asked him to just face the Court. I asked him to stop pacing. He didn't even want to let me finish my sentence.

Now I will admit maybe I should have been more -- a little

bit more patient. But it's not the first time that Counsel has acted this way to me or to others, okay? And I hope, Mr. Athanassiou, that you understand that this kind of behavior is not going to be accepted any further. I have no problems with an attorney advocating for their client in the -- in the most meaningful way. But disdain and aggressiveness towards the Court, that's inappropriate. And I practiced under CPCS for a long time, and I was taught better. You win and you lose. But you show respect to the Court. You carry yourself professionally and respectfully towards the Court, and that's what you failed to remember. And I have much pride in my CPCS time, and you have let me down, and I believe you've let yourself down, and the office of CPCS down.

I hope you have learned something from today. And it serves me no purpose because then I have to have a fight, both with your attorneys and with my superiors. But I'm willing to have that fight if I need to show you and other lawyers the proper way to represent themselves -- to carry themselves and represent their clients. So I hope you -- I hope you've learned something from this experience, okay? You're a grown man. I'm not trying to talk to you like a -- a defendant. You're not a criminal; you're a professional, okay?

I'll drop the contempt. Release him.

THE CLERK: Okay. The finding of contempt has been dropped. And then when he comes -- when he's released do you want him to

address the Commonwealth (inaudible) courtroom?

THE COURT: No. That'll go to another date.

THE CLERK: Okay.

MR. EVANS: We're looking for something in late May.

THE COURT: For what, Counsel?

MR. EVANS: For Mr. Romans (sic) -- Martins DaSilva.

THE COURT: No, let's give -- give him an April date because there are a bunch of motions. The Commonwealth has provided discovery. I want an early April date so we can get this case moving. This case is over 555 days old. It's going to get moving. Give me an early April date.

MR. EVANS: Let's do Friday, the 18th.

THE COURT: Okay.

THE CLERK: Thank you. So the matter's continued to April the 18th. That'll be for a motion hearing in this courtroom, courtroom number 5.

THE COURT: Okay. And as an aside, I see Mr. Benedetti here in the courtroom. I started with Mr. Benedetti. He and I were in the same class together taking training together in CPCS. So, like I say, I have respect for that office. You better gain some more respect for your -- your position. Thank you.

(Proceedings adjourned at 2:48 p.m.)

C E R T I F I C A T I O N

I, Jennifer Ferris, an Approved Court Transcriber, do hereby certify that the foregoing is a true and accurate transcript of the audio recording of the above-entitled matter provided to me in the form of an electronic sound recording.

I, Jennifer Ferris, further certify that the foregoing is in compliance with the Administrative Office of the Trial Court Directive on Transcript Format.

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

Jennifer Ferris

May 6, 2025

Jennifer Ferris of Kelsey Transcripts

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The Commonwealth of Massachusetts
OFFICE OF COURT MANAGEMENT, Transcription Services

AUDIO ASSESSMENT FORM

TODAY'S DATE: May 6, 2025 **TRANSCRIBER NAME:** Jennifer Ferris

CASE NAME: Commonwealth vs. Robson Martins DaSilva

CASE NUMBER: 2332CR003324

RECORDING DATE: March 25, 2025 **TRANSCRIPT VOLUME:** 1 OF 1

TYPE: ☑ FTR ☐ JAVS **QUALITY:** ☐ EXCELLENT ☑ GOOD ☐ FAIR ☐ POOR

ISSUES:

☐ background noise

☐ low audio

☐ low audio at sidebar

☐ simultaneous speech

☑ speaking away from mic.

☐ other: pronunciation unclear

Time stamp(s) of indiscernible word(s):

9:32:02, 2:47:42

COMMENTS:

APPENDIX B

(Audio Recordings Provided as Digital Files)

COMPLAINT NUMBER 2025-21

Committee for Public Counsel Services
Public Defender Division
75 Federal Street, 6th Floor, Boston, MA 02110
Tel: (617) 482-6212 – Fax: (617) 988-8495

2025-21



Date: June 6, 2025

To: Commission on Judicial Conduct (CJC)

From: Committee for Public Counsel Services,
filed by Deputy Chief Counsel, Arnie Lucinda Stewart

Re: Judicial Complaint - Gobourne

Pages (including cover): 81

CPCS
Committee for Public Counsel Services
Defending the People of Massachusetts

COMMONWEALTH OF MASSACHUSETTS
COMMISSION ON JUDICIAL CONDUCT

SUFFOLK, ss CJC COMPLAINT NO. _____

IN THE MATTER OF THE HONORABLE FRANCO J. GOBOURNE

COMPLAINT PURSUANT TO G.L. c.211C

I, Arnie Lucinda Stewart, state as follows.

1. I am the Deputy Chief Counsel of the Public Defender Division of the Committee for Public Counsel Services (CPCS).

2. As Deputy Chief Counsel, I am responsible for the overall supervision, management, and support of the staff attorneys hired by the Public Defender Division (PDD) to represent indigent persons charged with criminal offenses in the Commonwealth of Massachusetts. G.L. c.211D, §§6(a), 13.

3. The judge who is the subject of this complaint for judicial misconduct is the Honorable Franco J. Gobourne, an Associate Justice of the District Court Division of the Trial Court Department.

4. The misconduct that prompts the complaint occurred in courtroom 5 of the Fall River District Court on March 25, 2025.

5. The case that was the occasion for Judge Gobourne's misconduct is *Commonwealth v. Robson Martins DaSilva*, 2332CR003324.

6. The attorney involved is Nicholas Athanassiou, a PDD staff attorney who has worked in the PDD's Fall River office since his graduation from Boston College Law School in 2008.

7. An appeal from Judge Gobourne's order and finding below has not been taken because, as explained herein, any such appeal would be moot.

Basis of Knowledge of Judicial Misconduct

8. The incident that gives rise to this complaint occurred in open court and on the record.

9. I have reviewfed the MassCourts docket pertaining to the *Martins DaSilva* case.

10. A copy of the docket is submitted as Attachment A of the Addendum to this complaint. Add. 1-9.

11. I have read a transcript of the proceedings at issue, a copy of which is submitted as Attachment B. Add. 10-18.

12. I have listened to the FTR recording of the incident, which took place in courtroom 5 of the Fall River District Court from 9:31 a.m. to 9:34 a.m. on March 25, 2025.

13. I have also listened to the FTR recording of a hearing regarding the incident that took place in courtroom 5 from 2:42 p.m. to 2:48 p.m. on March 25, 2025.

14. I have spoken with Attorney Athanassiou.

15. I have spoken as well with Attorney Allyson Totaro and Attorney Benjamin Evans, both of whom are staff attorneys in the PDD's Fall River office with personal knowledge about this matter.

16. I have read the affidavits of attorneys Totaro, Evans, and Athanassiou which are submitted as Attachments C, D, and E, respectively.[1]

17. I state under pains and penalties of perjury that the facts set out in the following section of this complaint at ¶¶ 18-58 are true to the best of my knowledge, information, and belief.

Facts Relevant to Judge Gobourne's Misconduct

18. Courtroom 5 is on the fourth floor of the Fall River District Court and is the pretrial session for criminal cases in that court.[2]

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[1] See Add. 26-32 (Affidavit of Attorney Allyson Totaro); Add. 33-39 (Affidavit of Attorney Benjamin Evans); Add. 45-56 (Affidavit of Attorney Nicholas Athanassiou).

[2] Add. 3-4; Add. 27 (Totaro Aff. at ¶ 3); Add 46 (Athanassiou Aff. at ¶ 7).

19. Judge Gobourne was presiding in courtroom 5 on March 25, 2025.[3]

20. Attorney Nicholas Athanassiou appeared before Judge Gobourne at 9:31 a.m. for a pretrial hearing on one of Attorney Athanassiou's cases, *Commonwealth v. Robson Martins DaSilva*, 2332CR003324.[4]

21. After saying "Good morning" to Judge Gobourne and introducing himself for the record, Attorney Athanassiou stated that discovery in the case was incomplete and that, in light of exculpatory information that Attorney Athanassiou had recently received from the prosecution, it would be necessary for the defense to file two Rule 17 motions.[5]

22. The following then occurred:

> THE COURT: When did you find out about this alleged exculpatory information?
>
> MR. ATHANASSIOU: I believe—
>
> THE COURT: This—Counsel, stop pacing. Face the—face the—
>
> MR. ATHANASSIOU: Excuse me, Your Honor?

---

[3] Add. 27 (Totaro Aff. at ¶ 5); Add. 35 (Evans Aff. at ¶ 11); Add. 46 (Athanassiou Aff. at ¶ 9).

[4] Add. 12; Add. 28 (Totaro Aff. at ¶ 6); Add. 46 (Athanassiou Aff. at ¶ 7). See also Add. 46 (Athanassiou Aff. at ¶¶ 10-11 ["After arriving in courtroom 5, I asked the prosecutor on the case, ADA Kalene Kobza, if she had been able to obtain certain outstanding discovery. . . . ADA Kobza informed me that she had not yet obtained the discovery"]).

[5] Add. 12-13; Add. 28 (Totaro Aff. at ¶ 8); Add. 47 (Athanassiou Aff. at ¶ 23).

THE COURT: —bench.

MR. ATHANASSIOU: Excuse me, Your Honor.

THE COURT: You better be careful—wait. Before you come out with more words, Counsel, you better be careful what you say. I'm asking you to stop pacing and face the Court.

MR. ATHANASSIOU: Your Honor, I understand. I would respectfully ask the Court—

THE COURT: That's—no, that's enough. That's enough.

MR. ATHANASSIOU: Your Honor, my client has a right to be heard.

THE COURT: I'm asking you to—I'm asking you to—

(Crosstalk)

THE COURT: be quiet. And I'm asking you to face the Court. Take him into custody. Take him into custody. I find you in contempt of Court, Counsel.[6]

23. The judicial order that Attorney Athanassiou be taken into custody for contempt of court issued three minutes after Attorney Athanassiou had answered on his case.[7]

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[6] Add. 13-14.

[7] Add. 12-14.

24. Upon issuance of Judge Gobourne's order, two court officers handcuffed Attorney Athanassiou and took him out of courtroom 5 through a doorway behind the prisoners' dock.[8]

25. That doorway leads to a hallway down which is an elevator used by court officers to bring prisoners to and from the courtrooms and Fall River District Court's lockup, which is on the first floor of the courthouse.[9]

26. Attorney Athanassiou was taken to the lockup via this elevator.[10]

27. In the lockup, a court officer removed Attorney Athanassiou's handcuffs and told him to empty his pockets. [11]

28. After confiscating his cell phone, watch, belt, and necktie, a court officer ordered Attorney Athanassiou to sit in a chair while he shackled Attorney Athanassiou's legs together at the ankles.[12]

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[8] Add. 29-30 (Totaro Aff. at ¶¶ 20-22); Add. 50 (Athanassiou Aff. at ¶¶ 42-43).

[9] Add. 29 (Totaro Aff. at ¶ 21).

[10] Add. 31 (Totaro Aff. at ¶ 36); Add. 35 (Evans Aff. at ¶ 13); Add. 50 (Athanassiou Aff. at ¶ 43).

[11] Add. 50 (Athanassiou Aff. at ¶ 44).

[12] Add. 50 (Athanassiou Aff. at ¶¶ 44-46).

29. Attorney Athanassiou remained shackled in leg irons—which dug painfully into his ankles whenever he tried or was made to move—for the next five hours.[13]

30. After being shackled, Attorney Athanassiou was locked inside a cell and left there.[14]

31. Attorney Allyson Totaro—who has worked as a staff attorney in the PDD's Fall River office for eleven years—was in courtroom 5 waiting to be heard on her own cases when Attorney Athanassiou's case was called.[15]

32. Attorney Totaro saw and heard Attorney Athanassiou address Judge Gobourne. She saw and heard Judge Gobourne address Attorney Athanassiou. And she watched as Attorney Athanassiou was taken into custody on Judge Gobourne's order.[16]

33. Attorney Totaro avers as follows:

> While providing Judge Gobourne with background information about the status of pretrial discovery in the case, Attorney Athanassiou walked two or three steps back and forth, briefly turning his back to the bench as he did so. . . . I did not observe Attorney Athanassiou

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[13] Add. 31 (Totaro Aff. at ¶ 36); Add. 33 (Evans Aff. at ¶ 13); Add. 51, 53, 55 (Athanassiou Aff. at ¶¶ 56, 76, 99, 101).

[14] Add. 50 (Athanassiou Aff. at ¶ 47).

[15] Add. 27-28 (Totaro Aff. at ¶¶ 3-7).

[16] Add. 28-30 (Totaro Aff. at ¶¶ 8-28).

> turn his back towards the bench at any point after Judge Gobourne first ordered him to stop pacing and to face the bench. . . . I did not hear Attorney Athanassiou raise his voice at any point while he was addressing Judge Gobourne. . . . I did not hear Attorney Athanassiou say anything at all after Judge Gobourne ordered him to be quiet. . . . I did not observe Attorney Athanassiou make any facial expressions that seemed unusual or that could reasonably be taken as disrespectful. . . . I did not observe Attorney Athanassiou make any gestures or body movements that seemed unusual or that could reasonably be taken as disrespectful.[17]

34. What Attorney Totaro *did* observe was Attorney Athanassiou's attempt "to preserve his client's rights under circumstances made very difficult by Judge Gobourne's apparent anger."[18]

35. With respect to the "pacing" and failure to "face the Court" to which Judge Gobourne referred, Attorney Athanassiou avers as follows:

> Mr. Martins DaSilva's case was called shortly after 9:30 a.m. . . . I walked forward, placed my case file on defense counsel's desk, walked forward a few more steps, and stood to the left of [the prosecutor on the case,] ADA Kalene Kobza, who was standing behind the podium. . . . I did not bring my case file with me because it was relatively heavy and there was not another suitable place to put it while addressing the court. . . . [After providing the court with information as to why the case needed further discovery,] Judge Gobourne asked me, "When did you find out about this alleged

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[17] Add. 28, 30 (Totaro Aff. at ¶¶ 9, 24-28).

[18] Add. 29 (Totaro Aff. at ¶ 15).

exculpatory information?"... I was not sure of the date on which ADA Kobza had provided me with the exculpatory information and wanted to give Judge Gobourne an accurate answer to his question.... Accordingly, I turned my face and body away from Judge Gobourne with the intent of ascertaining the date of the disclosure either from ADA Kobza or from information in my file on the desk behind me.... In turning away from Judge Gobourne, my intent was not to disrespect the Court but to obtain the answer to his question.... I am aware that I have a tendency on occasion to walk back and forth while addressing the court, especially if I am feeling particularly nervous or anxious.... In this instance, however, I recall moving only briefly by taking a few steps in the area between the podium and the defense counsel desk, in an attempt to respond to Judge Gobourne's question to me.... Before I could ascertain the date that ADA Kobza had provided me with the exculpatory information, Judge Gobourne ordered me to "stop pacing" and "face the bench."... I immediately stopped, turned to face the Court, and made a conscious and deliberate effort to remain still.... Judge Gobourne rose from his seat, his eyes widened, and he said in a raised voice, "You better be careful.... Before you come out with more words, Counsel, you better be careful what you say. I'm asking you to stop pacing and face the Court."... In an attempt to preserve my client's rights, I put my hands together in a prayer-like fashion, and said to Judge Gobourne, "My client has a right to be heard."... Judge Gobourne stated, "That's enough," and ordered me to be "be quiet and "face the Court." After Judge Gobourne ordered me to be quiet, I did not say a word, and I continued facing him.... Judge Gobourne nonetheless immediately ordered the court officers to take me into custody and then announced that he had found me in contempt of court.[19]

---

[19] Add. 47-50 (Athanassiou Aff. at ¶¶ 17-19, 25-32, 38-41).

36. Immediately after Attorney Athanassiou was taken out of the courtroom through the doorway behind the prisoners' dock, Attorney Totaro informed her office that Attorney Athanassiou had just been taken into custody by Judge Gobourne.[20]

37. Attorney Benjamin Evans—a PDD staff attorney with twenty years of experience and the acting Attorney-in-Charge of the Fall River office on March 25, 2025—was handling a case in courtroom 2 when he received Attorney Totaro's message.[21]

38. After finishing what he had to do in courtroom 2, Attorney Evans went to the lockup, where he found Attorney Athanassiou "locked up in a cell with shackles on his ankles."[22]

39. Attorney Evans then went to the courthouse law library, where he reviewed Rule 43 of the Massachusetts Rules of Criminal Procedure, which governs the circumstances under which—and the process by which—a judge has the authority to summarily punish contempt of court.[23]

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[20] Add. 30 (Totaro Aff. at ¶ 29).

[21] Add. 34-35 (Evans Aff. at ¶¶ 2-10).

[22] Add. 35 (Evans Aff. at ¶ 13).

[23] Add. 35-36 (Evans Aff. at ¶ 15).

40. In the law library, Attorney Evans also read cases construing Rule 43, including *Commonwealth v. Diamond*, 46 Mass. App. Ct. 103, 106 (1999) ("'[T]o maintain order' must be construed narrowly to guard against arbitrary imposition of penalty without due process"), *Commonwealth v. Nicholas*, 74 Mass. App. Ct. 164, 168 (2009) ("[S]ummary contempt is disfavored and narrowly construed"), and the leading case, *Sussman v. Commonwealth*, 374 Mass. 692 (1978), in which the Supreme Judicial Court held that justification for summary contempt "was clearly absent" where "court room order had [not] disintegrated" nor had the attorney's putative misconduct brought proceedings "to a standstill." Id. at 700.[24]

41. While Attorney Evans was in the law library, Judge Gobourne continued going down the list in courtroom 5.[25]

42. At some point that morning, Judge Gobourne called Attorney Totaro to sidebar and told her that "he would have the duty attorney speak to Attorney Athanassiou. . . . [Attorney Totaro] told Judge Gobourne that Attorney Athanassiou was the duty attorney" that day. [26]

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[24] Add. 35-36 (Evans Aff. at ¶ 15).

[25] Add. 31 (Totaro Aff. at ¶ 30); Add. 36 (Evans Aff. at ¶ 16).

[26] Add. 31 (Totaro Aff. at ¶¶ 31-32).

43. Shortly before noon, Attorney Evans went to courtroom 5, waited until the list had been completed, received permission to address the court, and asked Judge Gobourne "to consider releasing [Attorney Athanassiou]."[27]

44. Judge Gobourne said, "Well, you can ask at 2:00. I'll consider it. All right?" and left the bench.[28]

45. Meanwhile, down in the lockup, a court officer told Attorney Athanassiou at about 11:00 a.m. that Judge Gobourne "would conduct a contempt hearing at 2 p.m."[29]

46. "This information gave [Attorney Athanassiou] some sense of relief that [he] would at least know more about [his] fate in about three hours."[30]

47. By 2 p.m., Attorney Evans was back in courtroom 5, ready to seek Attorney Athanassiou's release from custody.[31]

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[27] Add. 14; Add. 36 (Evans Aff. at ¶¶ 16-17).

[28] Add. 14; Add 31 (Totaro Aff. at ¶¶ 33-35); Add. 36 (Evans Aff. at ¶ 18).

[29] Add. 52 (Athanassiou Aff. at ¶ 69).

[30] Add. 52 (Athanassiou Aff. at ¶70).

[31] Add. 31 (Totaro Aff. at ¶ 37); Add. 37 (Evans Aff. at ¶ 21).

48. Eight members of the defense bar of Bristol County in addition to Attorney Evans were now present; so too was CPCS's Chief Counsel, Anthony Benedetti.[32]

49. By 2 p.m., court officers had also moved Attorney Athanassiou from the lockup to courtroom 5's so-called "flip cell"—a cell near a courtroom used for holding prisoners who are about to be brought before the court. [33].

50. At 2:30 p.m., when Judge Gobourne had still not taken the bench, Attorney Evans inquired about the delay. Add. 37 (Evans Aff. at ¶ 24).

51. A court officer informed those assembled that Judge Gobourne would take up the Athanassiou matter at 3:30 p.m. Add. 31 (Totaro Aff. at ¶ 38). See also Add. 37 (Evans Aff. at ¶ 26) ("A court officer said that he had been told that Judge Gobourne would not come on the bench until 3:30 p.m., because he 'had some writing to do'").

52. At about 2:40 p.m., a court officer came into the flip cell, placed Attorney Athanassiou in handcuffs, and led into the prisoners' dock of courtroom 5.[34]

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[32] Add. 31 (Totaro Aff. at ¶ 37); Add. 37 (Evans Aff. at ¶¶ 21-23).

[33] Add. 53 (Athanassiou Aff. at ¶¶ 75-77).

[34] Add. 53 (Athanassiou Aff. at ¶ 84).

53. "There [he] stood, in handcuffs and leg irons, waiting for Judge Gobourne to take the bench."[35]

54. Judge Gobourne took the bench at 2:42 p.m.[36]

55. There is no evidence that Judge Gobourne had given Attorney Athanassiou any prior "notice of the charges," as required by Rule 43(b)(1).

56. To the contrary, Judge Gobourne began the hearing as follows:

> THE COURT: Okay. So what's going on, Mr. Evans? *What's Mr. Athanassiou have to say to me?*[37]

57. Attorney Evans responded by asking Judge Gobourne "to release Attorney Athanassiou immediately . . . [a]nd . . . to withdraw the contempt finding" because, as made clear by the FTR audio recording, "Attorney Athanassiou never intended to disrespect the Court, never intended to disrupt the Court."[38]

58. Judge Gobourne's responded as follows:

> THE COURT: Okay. Well, I tell you this is that Mr. Athanassiou—it may not have heard—you may not have heard it on the tape but *his attitude, his facial expressions, and his body expressions, and his . . . recalcitrance is contemptuous.* I asked him to stop speaking. Everyone's telling me—and I'll be honest with you, *I . . . got a call from the Chief Justice, and he [sic] was telling me you don't*

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[35] Add. 53 (Athanassiou Aff. at ¶ 85).

[36] Add. 15.

[37] Add. 15 (emphasis supplied).

[38] Add. 15.

have it. But when you read the . . . when I read the . . . the rules and what could be considered contempt, I feel that his . . . actions did fall as contemptuous. I asked him to just face the Court. I asked him to stop pacing. He didn't even want to let me finish my sentence.

Now I will admit maybe I should have been more—a little bit more patient. But it's not the first time that Counsel has acted this way to me or to others, okay? And *I hope, Mr. Athanassiou, that you understand that this kind of behavior is not going to be accepted any further.* I have no problems with an attorney advocating for their client in the—in the most meaningful way. But disdain and aggressiveness towards the Court, that's inappropriate. And I practiced under CPCS for a long time, and I was taught better. You win and you lose. But you show respect to the Court. You carry yourself professionally and respectfully towards the Court, and that's what you failed to remember. And I have much pride in my CPCS time, and you have let me down, and I believe you've let yourself down, and the office of CPCS down.

I hope you have learned something from today. And it serves me no purpose because then I have to have a fight, both with your attorneys and with my superiors. But I'm willing to have that fight if I need to show you and other lawyers the proper way to represent themselves—to carry themselves and represent their clients. So I hope . . . you've learned something from this experience, okay? You're a grown man. I'm not trying to talk to you like a—a defendant. You're not a criminal; you're a professional, okay?

I'll drop the contempt. Release him.[39]

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[39] Add. 16-17 (emphasis supplied).

Judge Gobourne's Actions Constitute an Egregious Abuse of Judicial Power

59. Judge Gobourne's actions on March 25 were a lawless and dangerous abuse of judicial power. A judge who believes—contrary to the advice given to him by his Chief Justice—that Rule 43 gives him the authority to use his power of summary criminal contempt to teach "lawyers the proper way to . . . carry themselves"—and then vows to keep "fight[ing]" with attorneys and his superiors in order to get his message across—presents a grave threat to the fair administration of justice and to the safety and well-being of the advocates who appear before him.

60. Contempt of court is not a teaching tool. It is a criminal charge carrying criminal sanctions. Summary contempt presents special concerns because it allows for a criminal proceeding without the due process rights that ordinarily accompany and serve to safeguard the fairness of criminal prosecutions. "Because due process protections are lost . . . summary punishment always, and rightly, is regarded with disfavor," and may therefore be exercised "only when the contemptuous behavior constitutes a threat that immediately imperils the administration of justice." *Commonwealth v. Corsetti*, 387 Mass. 1, 7-8 (1982).

61. Perhaps Attorney Athanassiou paced back and forth while addressing the court. Or maybe he turned and took a few steps towards his case file on the desk behind him in an attempt to get an answer to Judge Gobourne's question,

"When did you find out about this alleged exculpatory information?" Regardless, nothing in the record supports the notion that the administration of justice was "immediately imperil[ed]" by anything Attorney Athanassiou did or said during the three minutes that elapsed from the time that he answered on his case until Judge Gobourne ordered that he be taken into custody.

62. The abuse of judicial power in this matter is indefensible. Summary punishment for contempt of court is permissible under Rule 43 only if each of four enumerated criteria are met, the first of which is that such punishment "is necessary to maintain order in the courtroom." Mass. R. Crim. P. 43(a)(1). "'[T]o maintain order' must be construed narrowly to guard against arbitrary imposition of penalty without due process." *Commonwealth v. Diamond*, 46 Mass. App. Ct. 103, 106 (1999). Pacing back and forth while addressing the court cannot be sufficient grounds for summarily taking a lawyer into custody. That is especially true here, where the record contains zero evidence that Attorney Athanassiou did anything other than immediately comply with Judge Gobourne's commands that he stop pacing, face the court, and be quiet.

63. Any reasonable judge—that is to say, a judge with "a little bit more patien[ce]" than is apparent here—would have handled the situation differently—for example, by speaking with the lawyer or with the lawyer's supervisor. See *Diamond*, 46 Mass. App. Ct. at 106–108 (discussing options less

drastic than summary contempt to be considered by a judge faced with attorney misbehavior in the courtroom "that does not require immediate redress to preserve order").[40]

64. As to due process, "[e]xcept in cases of flagrant contemptuous conduct," *Sussman*, 374 Mass. at 697, it is unlawful for a judge to exercise his power of summary contempt "in the absence of a prior warning as to the conduct which would place the offender in contempt." *Id.* Even assuming, solely for the sake of argument, that Attorney Athanassiou's conduct was "contumacious" within the meaning of the law of summary contempt, nothing in the record even remotely suggests that anything Attorney Athanassiou did or said caused order in courtroom 5 to "disintegrate[]."*Sussman*, 374 Mass. at 700.

65. In the absence of any flagrant misconduct, Rule 43 requires notice and an opportunity to be heard *before* any punishment is imposed, see Mass. R. Crim. P. 43(b)(1), and only permits a judge to "order the alleged contemnor held . . . pending the [required] hearing . . . if the judge finds it necessary to maintain order in the courtroom or to assure the alleged contemnor's appearance." Mass. R. Crim. P. 43(b)(2). The notice required before a judge may lawfully exercise his

[40] As a former CPCS staff attorney with "much pride in [his] CPCS time," Judge Gobourne was presumably aware that Attorney Athanassiou's supervisor would have welcomed hearing any concerns about Attorney Athanassiou's in-court conduct that Judge Gobourne asked to discuss.

summary contempt authority is "such . . . that it must be made clear to the attorney that such conduct is impermissible and that specified sanctions may be imposed for its repetition." *Sussman*, 374 Mass. at 697.

66. Judge Gobourne did not give Attorney Athanassiou the notice required by Rule 43. Nor did he attempt to explain, either before or after he had Attorney Athanassiou taken into custody, why such drastic action was necessary either to maintain order in the courtroom or to ensure that Attorney Athanassiou would appear for the contempt hearing required by the rule. Under these circumstances, one might reasonably be skeptical of Judge Gobourne's vague post hoc claim that he decided to lock up Attorney Athanassiou not because of anything that can be heard on the FTR audio recording but because he found his "attitude," "facial expressions," "body expressions, and "recalcitrance" to be contemptuous.

67. This is not a case of good faith error or legal mistake by a judge. This is a case of outrageous disregard for fundamental legal principles and rights that any competent judge would be well aware of. Nothing good can happen when a judge, without any semblance of due process, has defense counsel who is doing his job as best he can handcuffed, removed from the courtroom, stripped of his personal possessions, shackled in leg irons, and locked up in a cell until such time as the judge finds it convenient to revisit the matter.

68. But the damage done by Judge Gobourne's disregard of Rule 43 goes beyond the indignities inflicted upon Attorney Athanassiou personally. "Impartiality, and the appearance of impartiality . . . are thwarted by the failure of judicial restraint; by the hasty use of the contempt power, or the unwarranted threat of its use; by unwarranted intimidation of any kind which may serve to repress the attorney in his performance of his duty as a vigorous advocate." *Sussman*, 374 Mass. at 702 (Hennessy, C.J., concurring).

69. Chief Justice Hennessy's observations in *Sussman* point to why Judge Gobourne's misconduct presents a grave danger of interfering with criminal defendants' rights to receive effective assistance of counsel and zealous advocacy in their defense. As *Sussman* makes clear, a judge must be especially circumspect in initiating contempt proceedings against a criminal defense attorney, because "[t]o do otherwise would chill the less courageous attorney in his efforts to represent his client effectively." *Sussman*, 374 Mass. at 696. These concerns are particularly acute here, where a defense attorney was found in contempt and taken into custody in such a peremptory, mercurial, and cavalier manner.

70. Attorney Athanassiou's ordeal has had lasting negative effects:

> The criminal defense bar of Bristol County is well aware of what happened to Attorney Athanassiou when he stood up for this client's rights. All criminal defendants have the right to zealous representation , and they will not be able to get it in any courtroom in which Judge Gobourne presides if defense lawyers fear for their liberty every time they get up to speak. "Trial counsel c[an] not serve

> the defendant with undivided loyalty in these circumstances because his own interests in avoiding prosecution or disciplinary action [a]re inherently in conflict with those of his client." *Commonwealth v. Beltran*, [105 Mass. App. Ct. 341, 343 (2025).[41]

71. Grounds for judicial discipline include "conduct prejudicial to the administration of justice or conduct unbecoming a judicial officer . . . that brings the judicial office into disrepute." G.L. c.211C, §2(5)(d). Judge Gobourne's conduct in this case falls squarely within the above definition and warrants discipline.

72. For the above reasons, Judge Gobourne's conduct also violated many of the provisions of the Code Judicial Conduct, including:

> Canon 1; Rule 1.1 (A judge shall comply with the law, including the Code of Judicial Conduct).
>
> Canon 1; Rule 1.2 (A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety).
>
> Canon 2; Rule 2.2 (A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially).
>
> Canon 2; Rule 2.3 (A judge shall perform the duties of judicial office, including administrative duties, without bias, prejudice, or harassment).
>
> Canon 2; Rule 2.5 (A judge shall perform judicial and administrative duties competently, diligently, and in a timely manner).
>
> Canon 2; Rule 2:.6 (A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law).

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[41] Add. 42 (Letter from Attorney Evans to First Justice Finnerty) (Mar. 27, 2025).

Canon 2; Rule 2.8 (A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court personnel, and others with whom the judge deals in an official capacity).

73. There are further reasons for discipline in this case, despite any claim that may be made that this was "only" an error. Foremost, if disciplinary action is not taken, Judge Gobourne's abuse of judicial power may well be repeated. And second, one of the reasons not to engage in disciplinary action against judge based on legal error is that our appellate practice allows for the correction of such errors. See *Matter of Troy,* 364 Mass. 16, 40 (1973). But here no such action is possible because Judge Gobourne vacated his contempt finding, thereby mooting out any appeal.

74. Moreover, even though he vacated his contempt order, Judge Gobourne did not acknowledge error. To the contrary, he doubled down, opining that Attorney Athanasiou's "attitude" "bodily movements," "facial movements" and "recalcitrance" were contumacious, and promising to keep "fight[ing]" attorneys as well as his own superiors to show lawyers the right way to conduct themselves in his presence. Given these audacious statements, absent disciplinary action by this Commission, a repetition of Judge Gobourne's abuse of judicial power would seem to be preordained.

Conclusion

75. Accordingly, I ask, pursuant to G.L. c. 211C, the Code of Judicial Conduct (S.J.C. Rule 3:09), and the rules of this Commission, that an investigation be initiated regarding Judge Gobourne's above-described conduct. I understand that this complaint and any other communication to or from the Commission on Judicial Conduct are confidential to the extent required by G.L. c.211C, §6, and Commission Rule 5. I also understand that this complaint becomes the property of the Commission upon its submission and will not be returned to me.

Respectfully submitted,

/s/ Arnie Lucinda Stewart

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Dated: June 6, 2025

COMMONWEALTH OF MASSACHUSETTS
COMMISSION ON JUDICIAL CONDUCT

SUFFOLK, ss CJC COMPLAINT NO. _____

IN THE MATTER OF THE HONORABLE FRANCO J. GOBOURNE

ADDENDUM TO COMPLAINT PURSUANT TO G.L. c.211C

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Attachment A

Commonwealth v. Robson Martins DaSilva,
No. 2332CR003324
MassCourts docket

2332CR003324 Commonwealth vs. Martins Dasilva, Robson

- Case Type:
- Criminal
- Case Status:
- Open
- File Date
- 09/14/2023
- DCM Track:
-
- Initiating Action:
- INDECENT A&B ON CHILD UNDER 14 c265 §13B
- Status Date:
- 09/14/2023
- Case Judge:
-
- Next Event:
- 06/05/2025

All Information | Party | Charge | Event | Docket | Disposition

Party Information

Martins Dasilva, Robson
- Defendant

Alias

Party Attorney
- Attorney
- CPCS Fall River, Office
- Bar Code
- CPCSFR
- Address
- Phone Number
- (508)675-9481

More Party Information

Party Charge Information

- **Martins Dasilva, Robson**
- - Defendant
  Charge # 1:
  265/13B/A-5 - Felony INDECENT A&B ON CHILD UNDER 14 c265 §13B
- Original Charge
  - 265/13B/A-5 INDECENT A&B ON CHILD UNDER 14 c265 §13B (Felony)
  - Amended Charge
  -

- **Martins Dasilva, Robson**
- - Defendant
  Charge # 2:
  268/13B/A-5 - Felony WITNESS/JUROR/POLICE/COURT OFFICIAL, INTIMIDATE c268 §13B
- Original Charge
  - 268/13B/A-5 WITNESS/JUROR/POLICE/COURT OFFICIAL, INTIMIDATE c268 §13B (Felony)
  - Amended Charge
  -

- **Martins Dasilva, Robson**
- - Defendant
  Charge # 3:
  272/105/E-0 - Felony PHOTOGRAPH SEXUAL OR INTIMATE PARTS OF CHILD c272 §105(b)

Add. 2

- Original Charge
  - 272/105/E-0 PHOTOGRAPH SEXUAL OR INTIMATE PARTS OF CHILD c272 §105(b) (Felony)
  - Amended Charge

- **Martins Dasilva, Robson**
- - Defendant

Charge # 4:

265/13B/A-5 - Felony INDECENT A&B ON CHILD UNDER 14 c265 §13B

- Original Charge
  - 265/13B/A-5 INDECENT A&B ON CHILD UNDER 14 c265 §13B (Felony)
  - Amended Charge

Events

Date	Session	Location	Type	Result
09/15/2023 08:30 AM	Arraignment Session, Courtroom 1		Arraignment	Held - Bail or Conditions of Release ordered
10/19/2023 08:30 AM	Trial Session, Courtroom 2		Probable Cause Hearing	Reschedule of Hearing
11/13/2023 08:30 AM	Trial Session, Courtroom 2		Pretrial Hearing	Reschedule of Hearing
12/13/2023 09:00 AM	Pretrial Session, Courtroom 5		Pretrial Hearing	Reschedule of Hearing
12/18/2023 08:30 AM	Arraignment Session, Courtroom 1		Motion Hearing (CR)	Held - Motion allowed
01/12/2024 08:30 AM	Pretrial Session, Courtroom 5		Hearing to Review Status	Reschedule of Hearing
01/16/2024 08:30 AM	Pretrial Session, Courtroom 5		Hearing to Review Status	Reschedule of Hearing
01/22/2024 08:30 AM	Pretrial Session, Courtroom 5		Hearing to Review Status	Reschedule of Hearing
01/29/2024 08:30 AM	Pretrial Session, Courtroom 5		Hearing to Review Status	Review Completed
02/12/2024 08:30 AM	Pretrial Session, Courtroom 5		Hearing to Review Status	Reschedule of Hearing
03/04/2024 08:30 AM	Pretrial Session, Courtroom 5		Hearing to Review Status	Reschedule of Hearing
04/02/2024 08:30 AM	Pretrial Session, Courtroom 5		Hearing to Review Status	Review Completed
04/22/2024 08:30 AM	Pretrial Session, Courtroom 5		Hearing to Review Status	Review Completed
05/21/2024 08:30 AM	Pretrial Session, Courtroom 5		Pretrial Hearing	Held
06/18/2024 08:30 AM	Pretrial Session, Courtroom 5		Motion Hearing (CR)	Reschedule of Hearing
07/30/2024 08:30 AM	Pretrial Session, Courtroom 5		Motion Hearing (CR)	Reschedule of Hearing
09/24/2024 09:00 AM	Pretrial Session, Courtroom 5		Discovery Compliance & Jury Election	Reschedule of Hearing
11/26/2024 08:30 AM	Pretrial Session, Courtroom 5		Discovery Compliance & Jury Election	Reschedule of Hearing
01/23/2025 08:30 AM	Pretrial Session, Courtroom 5		Discovery Compliance & Jury Election	Reschedule of Hearing

Add. 3

Date	Session	Location	Type	Result
02/25/2025 08:30 AM	Pretrial Session, Courtroom 5		Pretrial Hearing	Reschedule of Hearing
03/18/2025 08:30 AM	Pretrial Session, Courtroom 5		Motion Hearing (CR)	Reschedule of Hearing
03/25/2025 08:30 AM	Pretrial Session, Courtroom 5		Motion Hearing (CR)	Reschedule of Hearing
03/28/2025 10:00 AM	Arraignment Session, Courtroom 1		Motion to Continue	Held - Motion allowed
04/18/2025 08:30 AM	Pretrial Session, Courtroom 5		Motion Hearing (CR)	Reschedule of Hearing
04/28/2025 08:30 AM	Arraignment Session, Courtroom 1		Motion to Continue	Held - Motion allowed
04/29/2025 09:00 AM	Pretrial Session, Courtroom 5		Motion Hearing (CR)	Reschedule of Hearing
06/05/2025 09:00 AM	Pretrial Session, Courtroom 5		Motion Hearing (CR)	

Docket Information

Docket Date	Docket Text	Image Avail.
09/14/2023	Complaint issued with arrest warrant.	
09/14/2023	Warrant Issued: Straight Warrant issued on 09/14/2023 for Martins Dasilva, Robson	
09/14/2023	Served: Straight Warrant served on 09/14/2023 for Martins Dasilva, Robson	
09/15/2023	Habeas Corpus for prosecution issued to Bristol County House of Correction returnable for 10/19/2023 08:30 AM Probable Cause Hearing: Further Orders: ****TRANSPORT**** Judge: Coyne, Hon. Sabine	
09/15/2023	Defendant is ordered committed without bail because DEFENDANT HELD ON DANGEROUSNESS (276 s. 58A) to Bristol County House of Correction returnable for 01/12/2024 08:30 AM Hearing to Review Status; mittimus issued. Court location of next event (if not this court): Fall River District Court Further Orders: ****TRANSPORT***** Judge: Coyne, Hon. Sabine	
09/15/2023	Appearance filed On this date Robert J Eagan, Esq. added as Appointed - Able to Contribute for Defendant Robson Martins Dasilva Appearance filed for the purpose of Case in Chief by Judge Hon. Sabine Coyne.	
09/15/2023	Event Resulted: Arraignment scheduled on: 09/15/2023 08:30 AM Has been: Held - Bail or Conditions of Release ordered Comments: after hrg. defendant found to be a danger held without Hon. Sabine Coyne, Presiding	
09/15/2023	Defendant arraigned before Court, advised of right to counsel. Judge: Coyne, Hon. Sabine	
09/15/2023	Order and reasons for pretrial detention on finding of dangerousness (C276/58A) Judge: Coyne, Hon. Sabine	Image

Docket Date	Docket Text	Image Avail.
10/19/2023	Event Resulted: Probable Cause Hearing scheduled on: 10/19/2023 08:30 AM Has been: Reschedule of Hearing For the following reason: On Order of the Court Hon. Kevin J. Finnerty, Presiding	
10/19/2023	Habeas Corpus for prosecution issued to Bristol County House of Correction returnable for 11/13/2023 08:30 AM Pretrial Hearing: Further Orders: ***** TRANSPORT **** Judge: Finnerty, Hon. Kevin J.	
11/13/2023	Event Resulted: Pretrial Hearing scheduled on: 11/13/2023 08:30 AM Has been: Reschedule of Hearing For the following reason: On Order of the Court Hon. Kevin J. Finnerty, Presiding	
11/13/2023	Habeas Corpus for prosecution issued to Bristol County House of Correction returnable for 12/13/2023 09:00 AM Pretrial Hearing: Further Orders: no transport Judge: Finnerty, Hon. Kevin J.	
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11/21/2023	Defendant's motion to Dismiss Appointed Attorney and Appoint New Attorney filed with the following, if any, supporting documents:	Image
12/13/2023	Event Resulted: Pretrial Hearing scheduled on: 12/13/2023 09:00 AM Has been: Reschedule of Hearing For the following reason: On Order of the Court Hon. Cynthia M. Brackett, Presiding	
12/13/2023	Habeas Corpus for prosecution issued to Bristol County House of Correction returnable for 12/18/2023 08:30 AM Motion Hearing (CR): Further Orders: transport Judge: Brackett, Hon. Cynthia M.	
12/18/2023	Event Resulted: Motion Hearing (CR) scheduled on: 12/18/2023 08:30 AM Has been: Held - Motion allowed Hon. Kevin J. Finnerty, Presiding	
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12/18/2023	Appearance filed On this date Robert J Eagan, Esq. dismissed/withdrawn as Appointed - Able to Contribute for Defendant Robson Martins Dasilva	
12/18/2023	Appearance filed On this date Office CPCS Fall River added as Appointed - Indigent Defendant for Defendant Robson Martins Dasilva Appearance filed for the purpose of Case in Chief by Judge Hon. Kevin J. Finnerty.	
12/18/2023	Legal Counsel Fee Waived. Judge: Finnerty, Hon. Kevin J.	
12/18/2023	Interpreter requested for next court date. Judge: Finnerty, Hon. Kevin J.	
01/08/2024	Petition for review of bail filed Originating Court: Fall River District Court Receiving Court: Bristol County Case Number: 2473BP0003 ;	

Docket Date	Docket Text	Image Avail.
01/12/2024	Event Resulted: Hearing to Review Status scheduled on: 01/12/2024 08:30 AM Has been: Reschedule of Hearing For the following reason: On Order of the Court Hon. David P Sorrenti, Presiding	
01/12/2024	Defendant is ordered committed without bail because OTHER REASON: to Bristol County House of Correction returnable for 01/16/2024 08:30 AM Hearing to Review Status; mittimus issued. Court location of next event (if not this court): Fall River District Court Further Orders: ** TRANSPORT ** Judge: Sorrenti, Hon. David P	
01/16/2024	Defendant is ordered committed without bail because OTHER REASON: to Bristol County House of Correction returnable for 01/22/2024 08:30 AM Hearing to Review Status; mittimus issued. Court location of next event (if not this court): Fall River District Court Further Orders: ****TRANSPORT**** Judge: Sorrenti, Hon. David P	
01/16/2024	Event Resulted: Hearing to Review Status scheduled on: 01/16/2024 08:30 AM Has been: Reschedule of Hearing For the following reason: Defendant ill Comments: in isolation Hon. David P Sorrenti, Presiding	
01/22/2024	Event Resulted: Hearing to Review Status scheduled on: 01/22/2024 08:30 AM Has been: Reschedule of Hearing For the following reason: On Order of the Court Hon. Franco J Gobourne, Presiding	
01/22/2024	Defendant is ordered committed without bail because OTHER REASON: to Bristol County House of Correction returnable for 01/29/2024 08:30 AM Hearing to Review Status; mittimus issued. Court location of next event (if not this court): Fall River District Court Further Orders: ****TRANSPORT**** Judge: Gobourne, Hon. Franco J	
01/29/2024	Event Resulted: Hearing to Review Status scheduled on: 01/29/2024 08:30 AM Has been: Review Completed Hon. Kevin J. Finnerty, Presiding	
01/29/2024	Defendant is ordered committed without bail because OTHER REASON: to Bristol County House of Correction returnable for 02/12/2024 08:30 AM Hearing to Review Status; mittimus issued. Court location of next event (if not this court): Further Orders: transport Judge: Finnerty, Hon. Kevin J.	
01/29/2024	Commonwealth's motion for Protective Court Order; Oral motion regarding toll on defendant's time held filed with the following, if any, supporting documents: UNDER ADVISEMENT Judge: Finnerty, Hon. Kevin J.	
01/29/2024	Commonwealth's motion for Protective Court Order RE: Discovery and Related Documents/Images filed and ALLOWED. *** NOTE: Order Amended by the Court as Indicated by (*) Judge: Finnerty, Hon. Kevin J.	Image
01/31/2024	Finding of the Superior Court on Bail Review Petition under G.L. c.276, §58. Judge: White, Jr., Hon. William M	Image

Add. 6

Docket Date	Docket Text	Image Avail.
02/12/2024	Event Resulted: Hearing to Review Status scheduled on: 02/12/2024 08:30 AM Has been: Reschedule of Hearing For the following reason: On Order of the Court Hon. Cynthia M. Brackett, Presiding	
02/12/2024	Defendant is ordered committed without bail because OTHER REASON: to Bristol County House of Correction returnable for 03/04/2024 08:30 AM Hearing to Review Status; mittimus issued. Court location of next event (if not this court): Fall River District Court Further Orders: ***TRANSPORT**** Judge: Brackett, Hon. Cynthia M.	
02/12/2024	Commonwealth's motion for protective court order re discovery and related documents images filed with the following, if any, supporting documents:	Image
03/04/2024	Event Resulted: Hearing to Review Status scheduled on: 03/04/2024 08:30 AM Has been: Reschedule of Hearing For the following reason: On Order of the Court Hon. Kevin J. Finnerty, Presiding	
03/04/2024	Defendant is ordered committed without bail because OTHER REASON: to Bristol County House of Correction returnable for 04/02/2024 08:30 AM Hearing to Review Status; mittimus issued. Court location of next event (if not this court): Fall River District Court Further Orders: *****TRANSPORT***** Judge: Finnerty, Hon. Kevin J.	
04/02/2024	Defendant is ordered committed without bail because OTHER REASON: to Bristol County House of Correction returnable for 04/22/2024 08:30 AM Hearing to Review Status; mittimus issued. Court location of next event (if not this court): Further Orders: ***** TRANSPORT BODY ****** Judge: Finnerty, Hon. Kevin J.	
04/02/2024	Event Resulted: Hearing to Review Status scheduled on: 04/02/2024 08:30 AM Has been: Review Completed For the following reason: On Order of the Court Hon. Kevin J. Finnerty, Presiding	
04/17/2024	Finding of the Superior Court on Bail Review Petition under G.L. c.276, §58. Judge: Superior Court, Judge of Judge: White, Jr., Hon. William M	Image
04/22/2024	Event Resulted: Hearing to Review Status scheduled on: 04/22/2024 08:30 AM Has been: Review Completed Hon. Kevin J. Finnerty, Presiding	
04/22/2024	Defendant is ordered committed to Bristol County House of Correction in lieu of having posted bail in the amount ordered: ($25,000.00 Bond; $2,500.00 Cash), returnable for 05/21/2024 08:30 AM Pretrial Hearing; mittimus issued. Court location of next event (if not your court): Further Orders: DO NOT TRANSPORT **GPS & Passport Surrender Requirement** Judge: Finnerty, Hon. Kevin J.	
05/21/2024	Event Resulted: Pretrial Hearing scheduled on: 05/21/2024 08:30 AM Has been: Held Hon. Cynthia M. Brackett, Presiding	

Docket Date	Docket Text	Image Avail.
05/21/2024	Defendant is ordered committed to Bristol County House of Correction in lieu of having posted bail in the amount ordered: ($25,000.00 Bond; $2,500.00 Cash), returnable for 06/18/2024 08:30 AM Motion Hearing (CR); mittimus issued. Court location of next event (if not your court): Fall River District Court Further Orders: PLEASE TRANSPORT BODY DEFENDANT NEEDS GPS AND TO SURRENDER PASSPORT	
06/06/2024	Order of pretrial conditions of release under G.L. c. 276 § 58, G.L. c.276 § 42A filed. Judge: Finnerty, Hon. Kevin J.	Image
06/18/2024	Defendant's motion for discovery filed with the following, if any, supporting documents: affidavit in support of motion	Image
06/18/2024	Event Resulted: Motion Hearing (CR) scheduled on: 06/18/2024 08:30 AM Has been: Reschedule of Hearing For the following reason: On Order of the Court Hon. Franco J Gobourne, Presiding	
07/30/2024	Event Resulted: Motion Hearing (CR) scheduled on: 07/30/2024 08:30 AM Has been: Reschedule of Hearing For the following reason: On Order of the Court Hon. Kristen A Stone, Presiding	
08/01/2024	Finding of Judge on matter taken under advisement the motion is ALLOWED. With respect to all items in the Commonwealth's possession Judge: Stone, Hon. Kristen A	Image
09/24/2024	Event Resulted: Discovery Compliance & Jury Election scheduled on: 09/24/2024 09:00 AM Has been: Reschedule of Hearing For the following reason: On Order of the Court Hon. William J Galvin, Presiding	
11/26/2024	Event Resulted: Discovery Compliance & Jury Election scheduled on: 11/26/2024 08:30 AM Has been: Reschedule of Hearing For the following reason: On Order of the Court Hon. Marjorie P Tynes, Presiding	
11/26/2024	Defendant's motion for funds filed and ALLOWED.	Image
11/26/2024	Defendant's motion for discovery filed with the following, if any, supporting documents:	Image
01/23/2025	Event Resulted: Discovery Compliance & Jury Election scheduled on: 01/23/2025 08:30 AM Has been: Reschedule of Hearing For the following reason: On Order of the Court Hon. David P Sorrenti, Presiding	
02/13/2025	Hospital record of patient deposited with clerk-magistrate (G.L. c.233 §79). South coast Hospital records received - placed in file	
02/25/2025	Event Resulted: Pretrial Hearing scheduled on: 02/25/2025 08:30 AM Has been: Reschedule of Hearing For the following reason: On Order of the Court Hon. Cynthia M. Brackett, Presiding	
02/25/2025	Commonwealth's motion for certificate of discovery compliance filed with the following, if any, supporting documents:	Image
02/25/2025	Commonwealth's motion for response to defendant's motion for discovery I filed with the following, if any, supporting documents:	Image
02/25/2025	Defendant's motion to comply with discovery/produce records filed with the following, if any, supporting documents:	Image
02/25/2025	Commonwealth's motion for notice of expert testimony filed with the following, if any, supporting documents:	Image
02/25/2025	Commonwealth's motion for notice of first complaint filed with the following, if any, supporting documents:	Image

Add. 8

Docket Date	Docket Text	Image Avail.
03/18/2025	Event Resulted: Motion Hearing (CR) scheduled on: 03/18/2025 08:30 AM Has been: Reschedule of Hearing For the following reason: On Order of the Court Hon. Paul G Pino, Presiding	
03/25/2025	Event Resulted: Motion Hearing (CR) scheduled on: 03/25/2025 08:30 AM Has been: Reschedule of Hearing For the following reason: On Order of the Court Hon. Franco J Gobourne, Presiding	
03/28/2025	Event Resulted: Motion to Continue scheduled on: 03/28/2025 10:00 AM Has been: Held - Motion allowed Hon. Kevin J. Finnerty, Presiding	
03/28/2025	Defendant's motion to reschedule or continue scheduled court hearing filed and ALLOWED.	Image
03/28/2025	Event Resulted: Motion Hearing (CR) scheduled on: 04/18/2025 08:30 AM Has been: Reschedule of Hearing For the following reason: On Order of the Court Hon. Kevin J. Finnerty, Presiding	
04/28/2025	Event Resulted: Motion to Continue scheduled on: 04/28/2025 08:30 AM Has been: Held - Motion allowed Hon. Heath Antonio, Presiding	
04/28/2025	Defendant's motion to reschedule or continue scheduled court hearing filed and ALLOWED.	Image
04/28/2025	Event Resulted: Motion Hearing (CR) scheduled on: 04/29/2025 09:00 AM Has been: Reschedule of Hearing For the following reason: On Order of the Court Hon. Heath Antonio, Presiding	

Case Disposition

Disposition	Date
Pending	09/15/2023

Attachment B

Transcript of Proceedings before Judge Gobourne
March 25, 2025

VOL.: I
PAGES: 1-14
EXHIBITS: 0

COMMONWEALTH OF MASSACHUSETTS

BRISTOL, SS FALL RIVER DISTRICT COURT

* * * * * * * * * * * * * * * * * * *

COMMONWEALTH

v. Case No. 2332CR003324

MARTINS DASILVA, ROBSON

* * * * * * * * * * * * * * * * * * *

MOTION HEARING

BEFORE THE HONORABLE FRANCO J. GOBOURNE

APPEARANCES:

For the Commonwealth:
By Kalene E. Kobza, Esq.
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Committee for Public Counsel Services
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Fall River, Massachusetts
Courtroom: 5
March 25, 2025

Jennifer Ferris
Approved Court Transcriber

(9:31 a.m.)

THE CLERK: The matter of Robson Martins DaSilva.

MS. KOBZA: Good morning, Your Honor. Kalene Kobza for the Commonwealth.

THE COURT: Good morning.

MR. ATHANASSIOU: Good morning, Your Honor. Nicholas Athanassiou for Mr. Robson Martins DaSilva.

THE COURT: Good morning.

MR. ATHANASSIOU: His presence was waived for today.

THE COURT: All right. Robinson DaSilva?

THE CLERK: Oh, Robson DaSilva.

MR. ATHANASSIOU: Robson DaSilva.

THE CLERK: I apologize, Your Honor.

THE COURT: I'm sorry. Let me see the complaint. I'm -- I'm not --

THE CLERK: (Inaudible), Your Honor.

THE COURT: Martins DaSilva. Martins DaSilva.

THE CLERK: They're in response to these two motions, Your Honor.

THE COURT: What is this on for today? Motion hearing.

MR. ATHANASSIOU: So, Your Honor, it was on for hearing last week. The -- Madam Prosecutor was -- was ill. It -- we're essentially awaiting discovery from the Commonwealth. This is a case -- I'm actually the second attorney in this case. But a combination of DNA discovery, and then also forensic phone

extraction. My client's cellphone was seized by the police. There was an allegation as to one of the charges that a picture was taken by him. And so at this point we don't have the discovery yet. I know that Madam Prosecutor has been making considerable efforts to get a lot of the discovery to me. However, there is some discovery that remains outstanding.

In addition, the reason why it was on for a motion, Your Honor, is because the Commonwealth had recently disclosed some additional exculpatory information regarding the complainant attending counseling, and then also regarding the complainant's family using Catholic Social Services to try to get a U visa. So I would need to bring Rule 17 motions based on that information. Unfortunately, I've been ill as well for the past couple of days, so I haven't had a chance to get those to the Court, but --

THE COURT: Do you have them today?

MR. ATHANASSIOU: No, I don't, Your Honor. As I said, I was ill the past couple of days.

THE COURT: When did you find out about this alleged exculpatory information?

MR. ATHANASSIOU: I believe --

THE COURT: This -- Counsel, stop pacing. Face the -- face the --

MR. ATHANASSIOU: Excuse me, Your Honor?

THE COURT: -- bench.

MR. ATHANASSIOU: Excuse me, Your Honor.

THE COURT: You better be careful -- wait. Before you come out with more words, Counsel, you better be careful what you say. I'm asking you to stop pacing and face the Court.

MR. ATHANASSIOU: Your Honor, I understand. I would respectfully ask the Court --

THE COURT: That's -- no, that's enough. That's enough.

MR. ATHANASSIOU: Your Honor, my client has a right to be heard.

THE COURT: I'm asking you to -- I'm asking you to --

(Crosstalk)

THE COURT: -- be quiet. And I'm asking you to face the Court. Take him into custody. Take him into custody. I find you in contempt of Court, Counsel.

We can have him an attorney come down from 1 and speak to this gentleman.

(Proceedings recessed at 9:34 a.m.)

(Case re-called at 12:00:24 p.m.)

THE COURT: Anything else?

THE CLERK: That's it. And we have just the --

(Audio skips from 12:00:28 to 12:00:38)

MR. EVANS: -- Athanassiou?

THE COURT: You may.

MR. EVANS: I'd just ask the Court to consider releasing him.

THE COURT: Well, you can ask at 2:00. I'll consider it. All right?

(Proceedings recessed at 12:00:48 p.m.)

(Case re-called at 2:42 p.m.)

THE CLERK: Court is in session.

THE COURT: Okay. Good afternoon.

Counsel, identify yourself for the record.

MR. EVANS: Good afternoon, Your Honor. Benjamin Evans on behalf of Attorney Nick Athanassiou.

THE COURT: Okay. So what's going on, Mr. Evans? What's Mr. Athanassiou have to say to me?

MR. EVANS: Well, Your Honor, I'm asking you to release Attorney Athanassiou immediately. And I'm also asking the Court to withdraw the contempt finding. I listened to the FTR recording, and I spoke with other people who were present this morning at 9:30 when the Court took Attorney Athanassiou into custody. And -- and I can say, Your Honor, the record seems to me to be clear that Attorney Athanassiou never intended to disrespect the Court, never intended to disrupt the Court. He was attempting to advocate for his client. And, you know, we certainly apologize if the Court construed anything Mr. Athanassiou did or said as disrespectful. However, I think the Court's point has certainly been made. Attorney Athanassiou's been in custody since 9:30. He's been, you know, humiliated and embarrassed in front of his colleagues. It potentially affects his ability to gain the trust of future clients, current clients. And, moreover, the situation that -- that I heard on the FTR recording is clearly

distinguishable from any case where any court has upheld a finding of -- of contempt.

I mean, this is clearly distinguishable from the *Wilson* case where, you know, an attorney was yelling and raising his voice during voir dire, a selection of jurors. It's clearly distinguishable from that. It's even -- when you look at the leading case, the *Sussman* case, and that was a situation where a lawyer asked a question that the Court had previously ruled was not permitted, in that case the SJC said this is not contempt. This certainly doesn't rise to what Rule 43 talks about, what the case law talks about in terms of disrupting the Court. So for that reason, I'd ask the Court to release Attorney Athanassiou and withdraw the contempt finding.

THE COURT: Okay. Well, I tell you this is that Mr. Athanassiou -- it may not have heard -- you may not have heard it on the tape but his attitude, his facial expressions, and his body expressions, and his rec- -- recalcitrance is contemptuous. I asked him to stop speaking. Everyone's telling me -- and I'll be honest with you, I -- I got a call from the Chief Justice, and he was telling me you don't have it. But when you read the -- the -- when I read the -- the rules and what could be considered contempt, I feel that his -- his -- his actions did fall as contemptuous. I asked him to just face the Court. I asked him to stop pacing. He didn't even want to let me finish my sentence.

Now I will admit maybe I should have been more -- a little

bit more patient. But it's not the first time that Counsel has acted this way to me or to others, okay? And I hope, Mr. Athanassiou, that you understand that this kind of behavior is not going to be accepted any further. I have no problems with an attorney advocating for their client in the -- in the most meaningful way. But disdain and aggressiveness towards the Court, that's inappropriate. And I practiced under CPCS for a long time, and I was taught better. You win and you lose. But you show respect to the Court. You carry yourself professionally and respectfully towards the Court, and that's what you failed to remember. And I have much pride in my CPCS time, and you have let me down, and I believe you've let yourself down, and the office of CPCS down.

I hope you have learned something from today. And it serves me no purpose because then I have to have a fight, both with your attorneys and with my superiors. But I'm willing to have that fight if I need to show you and other lawyers the proper way to represent themselves -- to carry themselves and represent their clients. So I hope you -- I hope you've learned something from this experience, okay? You're a grown man. I'm not trying to talk to you like a -- a defendant. You're not a criminal; you're a professional, okay?

I'll drop the contempt. Release him.

THE CLERK: Okay. The finding of contempt has been dropped. And then when he comes -- when he's released do you want him to

address the Commonwealth (inaudible) courtroom?

THE COURT: No. That'll go to another date.

THE CLERK: Okay.

MR. EVANS: We're looking for something in late May.

THE COURT: For what, Counsel?

MR. EVANS: For Mr. Romans (sic) -- Martins DaSilva.

THE COURT: No, let's give -- give him an April date because there are a bunch of motions. The Commonwealth has provided discovery. I want an early April date so we can get this case moving. This case is over 555 days old. It's going to get moving. Give me an early April date.

MR. EVANS: Let's do Friday, the 18th.

THE COURT: Okay.

THE CLERK: Thank you. So the matter's continued to April the 18th. That'll be for a motion hearing in this courtroom, courtroom number 5.

THE COURT: Okay. And as an aside, I see Mr. Benedetti here in the courtroom. I started with Mr. Benedetti. He and I were in the same class together taking training together in CPCS. So, like I say, I have respect for that office. You better gain some more respect for your -- your position. Thank you.

(Proceedings adjourned at 2:48 p.m.)

C E R T I F I C A T I O N

I, Jennifer Ferris, an Approved Court Transcriber, do hereby certify that the foregoing is a true and accurate transcript of the audio recording of the above-entitled matter provided to me in the form of an electronic sound recording.

I, Jennifer Ferris, further certify that the foregoing is in compliance with the Administrative Office of the Trial Court Directive on Transcript Format.

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

Jennifer Ferris

May 6, 2025

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The Commonwealth of Massachusetts
OFFICE OF COURT MANAGEMENT, Transcription Services

AUDIO ASSESSMENT FORM

TODAY'S DATE: May 6, 2025 **TRANSCRIBER NAME:** Jennifer Ferris

CASE NAME: Commonwealth vs. Robson Martins DaSilva

CASE NUMBER: 2332CR003324

RECORDING DATE: March 25, 2025 **TRANSCRIPT VOLUME:** 1 OF 1

TYPE: ☑ FTR ☐ JAVS **QUALITY:** ☐ EXCELLENT ☑ GOOD ☐ FAIR ☐ POOR

ISSUES:

☐ background noise

☐ low audio

☐ low audio at sidebar

☐ simultaneous speech

☑ speaking away from mic.

☐ other: pronunciation unclear

Time stamp(s) of indiscernible word(s):

9:32:02, 2:47:42

COMMENTS:

Attachment C

Affidavit of Attorney Allyson Totaro
June 2, 2025

COMMONWEALTH OF MASSACHUSETTS
COMMISSION ON JUDICIAL CONDUCT

SUFFOLK, ss CJC COMPLAINT NO. _____

IN THE MATTER OF HON. FRANCO J. GOBOURNE

AFFIDAVIT OF ATTORNEY ALLYSON TOTARO

I, Allyson Totaro, state that the following is true to the best of my knowledge, information, and belief.

1. Since 2014, I have been employed by the Committee for Public Counsel Services (CPCS) as a staff attorney in the Fall River office of CPCS's Public Defender Division (PDD).

2. I handle cases in Fall River District Court, Attleboro District Court, and Bristol County Superior Court.

3. On the morning of March 25, 2025, I appeared in Fall River District Court to represent several defendants with matters scheduled in courtroom 5, which is Fall River District Court's pretrial session.

4. My colleague, Attorney Nicholas Athanassiou, was also present in courtroom 5 that morning.

5. The presiding judge was the Honorable Franco J. Gobourne.

6. Attorney Athanassiou was in courtroom 5 to answer on one of his cases, *Commonwealth v. Martins DaSilva*, 2332CR003324.

7. Attorney Athanassiou's case was called by Assistant Clerk Cedric Houghton at approximately 9:31 a.m.

8. Attorney Athanassiou stated to Judge Gobourne that he had recently learned of the existence of potentially exculpatory information that would require the filing of Rule 17 discovery motions and that he did not have the motions to file that day because he had recently been out sick.

9. While providing Judge Gobourne with background information about the status of pretrial discovery in the case, Attorney Athanassiou walked two or three steps back and forth, briefly turning his back to the bench as he did so.

10. I observed that Attorney Athanassiou's case file was on the table behind him designated for defense counsel.

11. Judge Gobourne asked Attorney Athanassiou when he had learned about the exculpatory information.

12. Attorney Athanassiou attempted to answer but before he could do so, Judge Gobourne commanded him to stop pacing and to face the bench.

13. Attorney Athanassiou immediately stopped walking and turned to face the judge.

14. Attorney Athanassiou attempted to speak, but Judge Gobourne cut him off and ordered him to stop pacing and face the bench.

15. Attorney Athanassiou said something in response to Judge Gobourne's commands; I do not recall his words, but my impression was that Attorney Athanassiou was trying to preserve his client's rights under circumstances made very difficult by Judge Gobourne's apparent anger.

16. Judge Gobourne ordered Attorney Athanassiou to be quiet and to face the Court, and then, immediately thereafter, ordered the court officers to take Attorney Athanassiou into custody, stating that Attorney Athanassiou was in contempt of court.

17. The court officers were officers Tracy Perez and Daniel Grew.

18. When Judge Gobourne ordered the court officers to take Attorney Athanassiou into custody, Attorney Athanassiou put his hands behind his back.

19. Officer Perez shook her head from side to side and cuffed Attorney Athanassiou's hands in front of him.

20. There is a prisoners' dock in courtroom 5 consisting of a bench situated behind a long pane of plexiglass.

21. Behind the prisoners' dock is a doorway that leads to a hallway; down that hallway is an elevator which is used to bring defendants to and from the lockup on the first floor of the courthouse.

22. After handcuffing Attorney Athanassiou, the court officers escorted him through this doorway.

23. About three minutes had elapsed between the time that Attorney Athanassiou answered on his case and when he was taken out of the courtroom in handcuffs.

24. I did not observe Attorney Athanassiou turn his back towards the bench at any point after Judge Gobourne first ordered him to stop pacing and to face the bench.

25. I did not hear Attorney Athanassiou raise his voice at any point while he was addressing Judge Gobourne.

26. I did not hear Attorney Athanassiou say anything at all after Judge Gobourne ordered him to be quiet.

27. I did not observe Attorney Athanassiou make any facial expressions that seemed unusual or that could reasonably be taken as disrespectful.

28. I did not observe Attorney Athanassiou make any gestures or body movements that seemed unusual or that could reasonably be taken as disrespectful.

29. As soon as Attorney Athanassiou was removed from courtroom 5, I informed my office that Attorney Athanassiou had just been taken into custody by Judge Gobourne.

30. Thereafter, I remained in courtroom 5 and answered on my cases.

31. At some point during the morning, Judge Gobourne called me to sidebar and told me that he would have the duty attorney speak to Attorney Athanassiou.

32. I told Judge Gobourne that Attorney Athanassiou was the duty attorney that day.

33. I was still in courtroom 5 when Judge Gobourne finished the list at noon.

34. After the list had been completed, Attorney Benjamin Evans—the acting Attorney-in-Charge of the PDD's Fall River office—asked to be heard on the Attorney Athanassiou matter.

35. Judge Gobourne shook his head and said he would hear from Attorney Evans at 2 p.m.

36. I observed Attorney Athanassiou on two or three occasions while he was being held in the lockup on March 25; on each occasion, his feet were shackled.

37. At 2 p.m., I was back in courtroom 5, along with nine other attorneys, including Attorney Evans, staff attorneys from our Fall River office, private bar advocates, and CPCS's Chief Counsel, Anthony Benedetti.

38. One of the court officers informed those assembled that Judge Gobourne would take up the Athanassiou matter at 3:30 p.m.

39. Chief Counsel Benedetti asked the court officers to let Judge Gobourne know that he was present; eventually, one of the court officers went back towards the judge's chambers.

40. At about 2:45 p.m., Attorney Athanassiou was escorted by court officers into the prisoners' dock.

41. Judge Gobourne then took the bench.

42. Attorney Athanassiou was handcuffed while he was in the prisoners' dock; I do not know if his feet were shackled because I could not see his legs.

43. At the end of the afternoon hearing, Judge Gobourne ordered the court officers to release Attorney Athanassiou.

44. The court officers led Attorney Athanassiou out of the courtroom through the doorway described in ¶ 21.

45. I, along with all of the attorneys who had been present in courtroom 5 since 2 p.m., went down to the first floor lobby where we met Attorney Athanassiou when he was brought out of the lockup.

Signed under the pains and penalties of perjury this 2nd day of June, 2025.



Allyson Totaro
BBO #690420

Attachment D

Affidavit of Attorney Benjamin Evans
May 29, 2025

COMMONWEALTH OF MASSACHUSETTS
COMMISSION ON JUDICIAL CONDUCT

SUFFOLK, ss CJC COMPLAINT NO. _____

IN THE MATTER OF HON. FRANCO J. GOBOURNE

AFFIDAVIT OF ATTORNEY BENJAMIN EVANS

I, Benjamin Evans, state that the following is true to the best of my knowledge, information, and belief.

1. I am a duly licensed attorney in the Commonwealth of Massachusetts, employed by the Committee for Public Counsel Services (CPCS), Public Defender Division (PDD), in its office in Fall River, Massachusetts.

2. I have worked as a staff public defender for CPCS since 2005.

3. In 2011, I was promoted to the position of Supervising Attorney.

4. Attorney Carlos Brito is the Attorney-in-Charge of the PDD's Fall River office.

5. Attorney Brito went on leave in February 2025, at which time I took on the role of acting Attorney-in-Charge.

6. I was serving as acting Attorney-in-Charge of the Fall River office on March 25, 2025.

7. In my role as acting Attorney-in-Charge, I was responsible for the day-to-day supervision of the Fall River office's staff attorneys.

8. Attorney Nicholas Athanassiou and Attorney Allyson Totaro are PDD staff attorneys in our Fall River office.

9. On March 25, I was in courtroom 2 of the Fall River District Court on behalf of a client whose case was on the list that day.

10. Shortly after 9:30 a.m., I received a message from Attorney Totaro indicating that Attorney Athanassiou had just been found in contempt of court and taken into custody by Judge Franco J. Gobourne.

11. Judge Gobourne was presiding in courtroom 5 on March 25.

12. It was about 11 a.m. by the time I had finished what I needed to do on behalf of the client whose case was on the list in courtroom 2.

13. I then went to the lockup on the first floor of the courthouse, where I found Attorney Athanassiou locked up in a cell with shackles on his ankles.

14. I telephoned Attorney Karen Smolar, who is the Managing Director for the PDD's southern region and my immediate supervisor in Attorney Brito's absence.

15. I went to the courthouse law library, where I read Rule 43 of the Massachusetts Rules of Criminal Procedure and case law construing that rule, including *Commonwealth v. Diamond*, 46 Mass. App. Ct. 103, 106 (1999) ("As a

general matter, 'to maintain order' must be construed narrowly to guard against arbitrary imposition of penalty without due process"), *Commonwealth v. Nicholas*, 74 Mass. App. Ct. 164, 168 (2009) ("[S]ummary contempt is disfavored and narrowly construed"), and the leading case, *Sussman v. Commonwealth*, 374 Mass. 692 (1978), in which the Supreme Judicial Court held that justification for summary contempt "was clearly absent" where "court room order had [not] disintegrated" nor had the attorney's putative misconduct brought proceedings "to a standstill." *Id.* at 700.

16. Shortly before noon, I went to courtroom 5 and waited until Judge Gobourne had addressed the last case on the list.

17. I then went to the podium, received permission from Judge Gobourne to address the matter of Attorney Athanassiou, and asked Judge Gobourne to consider releasing him.

18. Judge Gobourne stated that I could ask him to release Attorney Athanassiou at 2:00 p.m., and then left the bench.

19. At about 1:00 p.m., I listened to the FTR audio recording of the proceedings in courtroom 5 from approximately 9:31 a.m., when Attorney Athanassiou's case was called, to approximately 9:34 a.m., when Judge Gobourne ordered that Attorney Athanassiou be taken into custody and declared that he was in contempt of court.

20. After listening to the recording, I was of the opinion that no basis whatsoever existed for Judge Gobourne to have found Attorney Athanassiou in summary contempt, including no evidence of contumacious conduct, no need for summary punishment to maintain order in the courtroom, and no adequate warning that contempt was on the table before issuance of the order that Attorney Athanassiou be taken into custody.

21. At 2:00 p.m., I was back in courtroom 5, now joined by CPCS Chief Counsel Anthony Benedetti, as well as Attorney Smolar and Attorney Totaro.

22. Also present were Attorney Jennifer Magaw and Attorney Robert Tutino, both staff attorneys in the PDD's Fall River office.

23. Four members of the Bristol County Bar Advocates were also present in courtroom 5: Attorney Sarah Emery, Attorney Melissa A. Hendrie, Attorney Jeremy Hersch, and Attorney Marc D. Roberts.

24. By 2:30 p.m., Judge Gobourne had still not taken the bench, even though he had told me at noon that he would hear my request that he release Attorney Athanassiou at 2:00 p.m.

25. I asked the court officers about the delay.

26. A court officer said that he had been told that Judge Gobourne would not come on the bench until 3:30 p.m., because he "had some writing to do."

27. At 2:42 p.m., a court officer announced that court was back in session.

28. After Judge Gobourne took the bench and I identified myself for the record, Judge Gobourne began by asking, "So what's going on Mr. Evans? What's Mr. Athanassiou have to say to me?"

29. I responded by asking Judge Gobourne to release Attorney Athanassiou immediately and to rescind the contempt finding because, based on the audio recording and my reading of the law of summary contempt, there was no factual or legal justification for Judge Gobourne's rulings.

30. Judge Gobourne stated that he had received a call from "the Chief Justice" and that "[e]veryone's telling me . . . you don't have it."

31. Judge Gobourne nonetheless maintained that Attorney Athanassiou's behavior was "contemptuous" because of his "attitude, . . . facial expressions, . . . body expressions, . . . and . . . recalcitrance."

32. Judge Gobourne stated that he hoped Attorney Athanassiou "ha[d] learned something from this experience."

33. Judge Gobourne stated that he was "willing to . . . fight . . . both with your attorneys and my superiors" if that is what he needed to do "to show you and other lawyers the proper way to . . . carry themselves and represent their clients."

34. Notwithstanding his stated opinion that Attorney Athanassiou was guilty of contempt of court, Judge Gobourne concluded the hearing by stating, "I'll drop the contempt. Release him."

35. On March 27, 2025, I sent a letter to Judge Kevin J. Finnerty, who is the First Justice of Fall River District Court.

36. In that letter, a copy of which is attached hereto, I wrote in part as follows:

> Judge Gobourne's decision to hold Attorney Athanassiou in contempt was outrageous and CPCS will be filing a complaint given this abuse of power. Attorney Athanassiou did nothing wrong. . . . The criminal defense bar of Bristol County is well aware of what happened to Attorney Athanassiou when he stood up for this client's rights. All criminal defendants have the right to zealous representation, and they will not be able to get it in any courtroom in which Judge Gobourne presides if defense lawyers fear for their liberty every time they get up to speak. "Trial counsel c[an] not serve the defendant with undivided loyalty in these circumstances because his own interests in avoiding prosecution or disciplinary action [a]re inherently in conflict with those of his client." *Commonwealth v. Beltran*, [105 Mass. App. Ct. 341, 343 (2025)].

SIGNED UNDER THE PENALTIES OF PERJURY THIS 29th DAY OF JUNE, 2025.

Benjamin Evans
BBO #664801

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Anthony J. Benedetti
Chief Counsel

Arnie L. Stewart
Deputy Chief Counsel

Carlos Brito
Attorney In Charge

March 27, 2025

Hon. Kevin J. Finnerty, First Justice
Fall River District Court
186 South Main Street
Fall River, MA 02720

Dear Judge Finnerty,

On Tuesday, at 9:35 a.m., Judge Gobourne ordered our colleague, Attorney Nick Athanassiou, incarcerated following a baseless accusation of contempt. Based on the recording of the proceeding, it appears that Attorney Athanassiou was pacing in the courtroom while he was making his argument. Judge Gobourne asked Attorney Athanassiou to stop pacing and face the bench. Attorney Athanassiou then twice said, "Excuse me, Your Honor," and the judge answered, "You better be careful. Wait. Before you come out with more words, counsel, you better be careful what you say." Attorney Athanassiou replied, "All right." Judge Gobourne then stated, "I'm asking you to stop pacing and face the court." Attorney Athanassiou responded, "Your Honor, I understand. I'm going to respectfully ask the court …" Judge Gobourne interrupted and asked Attorney Athanassiou to stop talking and Attorney Athanassiou reminded the court that his client had a right to be heard.

Attorney Athanassiou again stated, "I'm going to ask the court …" before he was once again interrupted by Judge Gobourne stating, "I'm asking you to be quiet. I'm asking you to be quiet. And I'm asking you to face the court." Then Attorney Athanassiou did not respond or continue speaking. Nonetheless, immediately thereafter, Judge Gobourne ordered Attorney Athanassiou taken into custody and said he was finding him in contempt of court. See FTR 2:20-3:00. Attorney Athanassiou was placed in handcuffs and taken into lock-up by a court officer, and there he was processed, shackled and left in a holding cell. I have listened to the recording, and this entire exchange occurred in less than one minute.

At noon, I asked Judge Gobourne to address this matter since Attorney Athanassiou had already been in custody for over two hours. Even though there was nothing else happening in the courtroom, I was told by Judge Gobourne that I would not be heard until 2:00 p.m. When I returned at 2:00 p.m., I was told by court officers that the matter would not be addressed until 3:30 p.m., even though the courtroom was empty and available. Judge Gobourne returned to the bench at about 2:30pm.

Eventually Attorney Athanassiou was released, after over 5 hours shackled in a cell, and the contempt finding was rescinded, but not before Judge Gobourne scolded Attorney Athanassiou for not conducting himself professionally, further stating that Attorney Athanassiou let the judge down. During this admonishment, Judge Gobourne identified Attorney Athanassiou specifically as a staff attorney with the Public Defender Division of the Committee for Public Counsel Services and chastised him for not living up to his perception of our agency's standards. Judge Gobourne also implied that he would incarcerate other attorneys stating,

"I hope you have learned something from today. And it serves me no purpose, because then I have to have a fight. Both with your attorneys, and my superiors. But I'm willing to have that fight, if I need to show you and other lawyers the proper way to represent themselves, to carry themselves and represent their clients. So I hope you've learned something from this experience." The implication of these words is clear. Judge Gobourne will lock up other lawyers if he feels they need to be shown the proper way to carry themselves and represent their clients.

Judge Gobourne's decision to hold Attorney Athanassiou in contempt was outrageous and CPCS will be filing a complaint given this abuse of power. Attorney Athanassiou did nothing wrong. Not only was there no conduct worthy of a contempt sanction, Judge Gobourne did not follow the proper procedure for summary contempt proceedings. First, he failed to give a warning prior to his decision to take Attorney Athanassiou into custody. A "warning by the trial judge is ordinarily required before a finding of contempt can be made." Sussman v. Commonwealth, 374 Mass. 692, 700 (1978), citing Fisher v. Pace, 336 U.S. 155 (1949). Moreover, Mass. R. Crim. P. 43(b)(2) only permits a judge to hold the alleged contemnor pending the hearing "if the judge finds it necessary to maintain order in the courtroom or to assure the alleged contemnor's appearance." Attorney Athanassiou is a zealous advocate for his clients and a respected member of our office and the criminal defense bar of Bristol County. There was no finding, nor could there be, that he would not have appeared for an afternoon hearing, nor was it necessary to maintain order in the courtroom, as Attorney Athanassiou acted appropriately at all times.

"The exercise of the summary power of contempt is 'a delicate one and care is needed to avoid arbitrary or oppressive conclusions.'" Sussman v. Commonwealth, 374 Mass. 692, 696 (1978), quoting Bloom v. Illinois, 391 U.S. 194, 202 (1968).

Indeed, Massachusetts courts have recognized that summary contempt power should be "conceived narrowly and used with great restraint." Commonwealth v. Viera, 41 Mass. App. Ct. 206, 208 (1996). That did not happen here. The initial contempt finding, the unjustified incarceration of Attorney Athanassiou for over five hours, and the chastisement by the judge all disqualify Judge Gobourne from hearing any of Attorney Athanassiou's cases because his impartiality is, quite reasonably, in question. See Code of Judicial Conduct Rule 2.11(A) ("A judge shall disqualify himself or herself in any proceeding in which the judge cannot be impartial or the judge's impartiality might reasonably be questioned.).

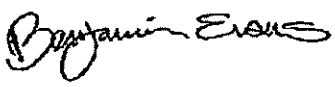
Moreover, Judge Gobourne's actions have and will continue to have a chilling effect on the defense bar to the detriment to our clients. "Contempt or the threat of contempt should not be used to chill an attorney's vigorous but respectful advocacy on behalf of a criminal defendant." Commonwealth v. Segal, 401 Mass. 95, 98 (1987). As the Supreme Judicial Court has noted, "[n]ot knowing where the judge has drawn the line between vigorous examination or argument and contempt of court, the lawyer might refrain from zealously advocating the client's position in order to avoid a contempt citation." Sussman v. Commonwealth, 374 Mass. 692, 697 (1978). Judge Gobourne made it clear that in spite of the Chief Justice's instruction that what happened here was not contempt, he felt it was contempt, and he was willing to have to this "fight" again if that is what it takes to keep attorneys in line.

The criminal defense bar of Bristol County is well aware of what happened to Attorney Athanassiou when he stood up for this client's rights. All criminal defendants have the right to zealous representation, and they will not be able to get it in any courtroom in which Judge Gobourne presides if the defense community fears for their liberty every time they get up to speak. "Trial counsel c[an] not serve the defendant with undivided loyalty in these circumstances because his own interests in avoiding prosecution or disciplinary action [a]re inherently in conflict with those of his client." Commonwealth v. Beltran, Mass. App. Ct. No. 23-P-776, *1 (Mar. 19, 2025). This results in an actual conflict of interest for all attorneys who appear before Judge Gobourne. See id. at * 13 (actual conflict arises where independent professional judgment of trial counsel is impaired by counsel's own interests).

As such, Judge Gobourne must be recused from all criminal cases, at least until the CPCS complaint is resolved.

In sum, attorneys in my office will request Judge Gobourne's recusal if forced to appear before him. It is likely bar advocates will as well. Our clients' rights are paramount and such action is necessary given his unwarranted treatment of Attorney Athanassiou. To protect all CPCS clients, as well as our staff attorneys and bar advocates, I respectfully request that you do not assign Judge Gobourne to any criminal session.

Yours,



Benjamin Evans
Acting Attorney in Charge
Fall River Office
Public Defender Division
Committee for Public Counsel Services
1822 North Main Street, Suite 205
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cc
Hon. Stacey J. Fortes, Chief Justice of the District Court
Edward W. Brooke Courthouse
24 New Chardon St.
Boston, MA 02114
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Attachment E

Affidavit of Attorney Nicholas Athanassiou
June 2, 2025

COMMONWEALTH OF MASSACHUSETTS
COMMISSION ON JUDICIAL CONDUCT

SUFFOLK, ss CJC COMPLAINT NO. _____

IN THE MATTER OF HON. FRANCO J. GOBOURNE

AFFIDAVIT OF ATTORNEY NICHOLAS ATHANASSIOU

I, Nicholas Athanassiou, do hereby depose and say that the following is true to the best of my knowledge, understanding, and belief.

1. I am an attorney in good standing and was admitted to the Massachusetts Bar in December 2008.

2. Since September 2008, I have been employed as a staff attorney by the Committee for Public Counsel Services (CPCS) in the Fall River office of CPCS's Public Defender Division (PDD).

3. I represent indigent clients in criminal proceedings.

4. I have appeared in Bristol Superior Court, New Bedford District Court, Attleboro District Court, and Fall River District Court.

5. I have also appeared before the Massachusetts Appeals Court. See *Commonwealth v. Ploude*, 101 Mass. App. Ct. 845 (2022).

6. On March 25, 2025, I was one of the duty day attorneys assigned to cover the arraignment session in courtroom 1 on the first floor of the Fall River District Court.

7. Shortly before 9:30 a.m., I left the arraignment session and went upstairs to the pretrial session in courtroom 5 on the fourth floor of the courthouse to answer on one of my cases, *Commonwealth v. Robson Martins DaSilva*, 2332CR003324.

8. My office was assigned to represent Mr. Martins DaSilva on December 18, 2023, as successor counsel, after prior counsel's motion to withdraw had been allowed.

9. The presiding judge in the pretrial session was Judge Franco Gobourne.

10. After arriving in courtroom 5, I asked the prosecutor on the case, ADA Kalene Kobza, if she had been able to obtain certain outstanding discovery.

11. ADA Kobza informed me that she had not yet obtained the discovery.

12. I sat down to wait for the case to be called.

13. In courtroom 5, there are two desks facing the judge, one on the right for the Commonwealth, and one on the left for defense counsel.

14. The desks are approximately twelve feet from the bench.

15. About six feet in front of the Commonwealth's desk is a podium, which is typically used during hearings by the prosecutor.

16. Conversely, defense attorneys typically stand to the left of the podium when addressing the Court.

17. Mr. Martins DaSilva's case was called shortly after 9:30 a.m.

18. I walked forward, placed my case file on defense counsel's desk, walked forward a few more steps, and stood to the left of ADA Kobza, who was standing behind the podium.

19. I did not bring my case file with me because it was relatively heavy and there was not another suitable place to put it while addressing the court.

20. I said good morning to Judge Gobourne and identified myself on behalf of my client.

21. Upon realizing that I had mispronounced my client's name, I corrected myself and apologized to the Court.

22. Mr. Martins DaSilva's case was scheduled that morning for a motion hearing.

23. I stated to Judge Gobourne that the defense was still waiting to receive certain discovery from the Commonwealth, and that ADA Kobza had recently provided me with exculpatory information which would necessitate the filing of Rule 17 motions by the defense.

24. I further stated that I had not yet had a chance to file the Rule 17 motions because I had been ill for the past couple of days.

25. Judge Gobourne asked me, "When did you find out about this alleged exculpatory information?"

26. I was not sure of the date on which ADA Kobza had provided me with the exculpatory information and wanted to give Judge Gobourne an accurate answer to his question.

27. Accordingly, I turned my face and body away from Judge Gobourne with the intent of ascertaining the date of the disclosure either from ADA Kobza or from information in my file on the desk behind me.

28. In turning away from Judge Gobourne, my intent was not to disrespect the Court but to obtain the answer to his question.

29. I am aware that I have a tendency on occasion to walk back and forth while addressing the court, especially if I am feeling particularly nervous or anxious.

30. In this instance, however, I recall moving only briefly by taking a few steps in the area between the podium and the defense counsel desk, in an attempt to respond to Judge Gobourne's question to me.

31. Before I could ascertain the date that ADA Kobza had provided me with the exculpatory information, Judge Gobourne ordered me to "stop pacing" and "face the bench."

32. I immediately stopped, turned to face the Court, and made a conscious and deliberate effort to remain still.

33. I was surprised by Judge Gobourne's commands and said, "Excuse me, Your Honor?" I then said, "Excuse me, Your Honor."

34. Judge Gobourne rose from his seat, his eyes widened, and he said in a raised voice, "You better be careful. . . . Before you come out with more words, Counsel, you better be careful what you say. I'm asking you to stop pacing and face the Court."

35. I felt intimidated by Judge Gobourne's apparent loss of temper and by what felt like a hostile display of personal animosity.

36. I was also concerned that Judge Gobourne's apparent anger at me could prejudice my client and chill my ability to zealously advocate for him.

37. Still facing Judge Gobourne, I told him, "I understand."

38. In an attempt to preserve my client's rights, I put my hands together in a prayer-like fashion, and said to Judge Gobourne, "My client has a right to be heard."

39. Judge Gobourne stated, "That's enough," and ordered me to "be quiet" and "face the Court."

40. After Judge Gobourne ordered me to be quiet, I did not say a word, and I continued facing him.

41. Judge Gobourne nonetheless immediately ordered the court officers to take me into custody and then announced that he had found me in contempt of court.

42. I walked towards the court officers and extended my arms towards them to facilitate handcuffing.

43. The court officers escorted me through a doorway behind the prisoners' dock and then to an elevator, which took me to the lockup processing area on the first floor of the courthouse.

44. There, a court officer took off the handcuffs, told me to empty my pockets, and confiscated my property, including my cell phone.

45. My wristwatch, belt, and necktie were also confiscated.

46. I was then ordered to sit in a chair while a court officer shackled my legs together at my ankles.

47. After being shackled in leg irons, I was led to an empty cell, placed inside of it, and left there.

48. The cell was about ten feet by ten feet.

49. It was lit by a bright fluorescent light.

50. The cell walls were off-white in color and stained by some unidentifiable brown substance.

51. There was a concrete bench running along the side of one of the cell walls.

52. The cell also had in it a combination toilet and sink unit, i.e., a single fixture with a stainless steel sink and drinking fountain housed above a toilet.

53. The toilet did not have a flush handle and could not be flushed manually.

54. I sat down on the concrete bench.

55. On the bench with me was a pair of dead flies.

56. I tried to rest on the bench in such a way that the leg irons would not dig painfully into my ankles.

57. I felt anxious, stressed, and worried.

58. March 25 was my fiancée's birthday.

59. I thought about missing the chance to celebrate with her.

60. I thought about the possibility of being found guilty of contempt and being sentenced to jail by Judge Gobourne.

61. I imagined the further difficulties I would face if I were jailed, including possible dangers to my physical safety and health.

62. I worried about the possibility that Judge Gobourne would give me the maximum sentence of three months in jail for contempt.

63. I thought about the financial strain that would result from being incarcerated and the possibility of being unable to afford the monthly mortgage for my home.

64. I worried whether being found in contempt would cost me my job or even my ability to practice law.

65. I thought about the emotional strain that my incarceration would cause my fiancée and my family.

66. Time seemed to pass at an excruciatingly slow pace.

67. Over the next few hours, I frequently heard the sound of keys jangling as a court officer approached my cell.

68. Every time I heard that sound, I became hopeful that I was about to be released, only to lose that hope as the court officer continued walking past my cell.

69. At about 11:00 a.m., a court officer told me that Judge Gobourne would conduct a contempt hearing at 2 p.m.

70. This information gave me some sense of relief that I would at least know more about my fate in about three hours.

71. At about 11:30 a.m., a court officer handed me lunch, which was a turkey sandwich on stale bread with mushy brown lettuce and a plastic cup filled with sugary soda.

72. I poured the soda into the sink and used the cup to drink water.

73. I avoided using the toilet for as long as possible; but, after lunch, I could not wait any longer and urinated in the toilet.

74. A strong smell of urine thereafter permeated the cell.

75. At about 2 p.m., a court officer opened my cell door and led me in handcuffs and leg irons about twenty feet to the elevator.

76. I walked slowly, as the leg irons dug painfully into my ankles with each step.

77. I was taken by elevator to the fourth floor and put in the so-called "flip cell" for courtroom 5.

78. A flip cell is a cell located right next to the courtroom used to hold prisoners who are about to brought into the courtroom.

79. This flip cell was dirtier than my first-floor cell.

80. My handcuffs were removed but not the leg irons.

81. Because I had been moved to the flip cell, I expected to be brought into the courtroom relatively quickly.

82. When that did not happen, I felt frustrated because it seemed as if Judge Gobourne was unfairly prolonging my detention.

83. Finally, after what felt like a very long time, Attorney Evans came to the flip cell and told me that Judge Gobourne had decided to delay my hearing from 2 p.m. to 3:30 p.m. because the judge "had some writing to do."

84. At about 2:45 p.m., a court officer came into the flip cell, placed me in handcuffs, and led me into the prisoners' dock of courtroom 5.

85. There I stood, in handcuffs and leg irons, waiting for Judge Gobourne to take the bench.

86. A group of CPCS colleagues and private bar advocates were sitting in the courtroom.

87. I felt overwhelmed by emotion seeing my colleagues there in support of me.

88. Judge Gobourne entered the courtroom and took the bench.

89. Judge Gobourne did not immediately order that I be released from custody.

90. Instead, he asked Attorney Evans what I had to say for myself.

91. Attorney Evans asked Judge Gobourne to withdraw the contempt complaint and summarized the reasons why it was unlawful for him to have locked me up.

92. Judge Gobourne stated that my conduct was "contemptuous" because of my "attitude," "facial expressions," "body expressions," and "recalcitrance."

93. Judge Gobourne made disparaging remarks about my character, reputation, and professionalism.

94. Judge Gobourne stated that he could have been more patient.

95. Judge Gobourne stated that the Chief Justice had called him and told him, in effect, that my conduct was not contumacious.

96. Judge Gobourne stated that, going forward, he was willing to "fight" with me, other attorneys, and his superiors if he needed to do so in order to show attorneys how to carry themselves and represent their clients in court.

97. Despite his assertion that my conduct was contumacious, Judge Gobourne withdrew the contempt complaint.

98. I was brought back down to the lockup processing area on the first floor.

99. The handcuffs and leg shackles were removed, the property that had been confiscated from me was returned, and I was escorted into the courthouse lobby, where I was greeted by colleagues.

100. I had spent over five hours in custody.

101. I was shackled in leg irons for almost all of that time.

102. I was shaken up from my experience and distracted during what should have been a celebratory dinner for my fiancée's birthday.

103. When I returned to Fall River District Court the following week, I felt awkward and embarrassed interacting with the court officers.

104. When I went before the court, I felt anxious about inadvertently doing something that offended the judge and resulted in me being locked up again.

105. In preparing this affidavit, I have had to review the audio recording of the proceedings that day; each time I listen to it, I feel anxious again.

106. My only goal on March 25 was to represent my client to the best of my ability.

107. I did not intend to disrespect Judge Gobourne, nor do I believe that I did or said anything that could reasonably have been taken as disrespectful.

Signed under pains and penalties of perjury this 2nd day of June, 2025.

/s/ Nicholas Athanassiou
Nicholas Athanassiou
BBO #673856