Courtroom 204 9 am November 6, 2013 Demurrer Hearing CASE 211314234
https://www.youtube.com/watch?v=z22YMcTFqXM (or 1st vid on: www.youtube.com/user/fightfeces/videos)

OK, SO AT THIS HEARING I HAD BEEN IN BRUTAL MAXIMUM SECURITY JAIL FOR 24 MORE HOURS. I WAS IN A JAIL SUIT, DELIVERED BY JAIL VAN. I WAS HANDCUFFED AND SHACKLED. I WAS THIRSTY, DESPITE HANDCUFFS, I POURED SOME WATER AND DRANK IT. IT WAS THEN TAKEN AWAY FROM ME. AFTER THE HEARING, I WAS PLACED FOR A LONG TIME IN A COURT HOLDING CELL WITH NO WATER. **I FLUSHED THE TOILET TWICE AND DRANK UP. OUR VENEER OF CIVILIZATION IS STRIPPED INSTANTLY.... YOU DON'T GET IT UNTIL IT HAPPENS TO YOU.**

Situation: the demurrer hearing had been scheduled for November 5 at 9 am. I appeared and the prosecutor presented my attorney (Kevin Bons) with his written response. My attorney requested time to review the prosecutor's response so the matter was pended until the next day. At that point, Tony Veach of Eugene Violent Crimes was at the November 5 hearing. He and/or prosecutor announced at that hearing that I had violated a term of pre-release. Bail was raised to $400,000 in addition to them holding the $200,000. Tony Veach... according to the jail staff member I asked... had specifically told them I was not allowed to communicate for 24 hours to ensure my captivity in maximum security jail. He took me into the public area outside Courtroom 204 (where the public lines up to conduct business at the public windows). I was in my suit and tie. I was handcuffed and advised I was being arrested for violating one of the very large number of pre-trial release conditions that (in my opinion) illegally limit legal behavior. For example, buying a lottery ticket is not allowed. Shouting at someone is not allowed. Accepting a commission based job is not allowed. The list of legal conduct limited by the pre-release conditions is exhaustive.

He also presented me with a search warrant of my home along with Judge Rooke-Ley's permission to seize my computer equipment and not return it (yet). A handful of the same faxes was presented to her and she robo-signed the warrant thus violating the most secure things a human has: his home, his art, his family photos, his work, and his very thoughts. It is absolutely Stalinist and un-American.

That was 4 months after arrest in a misdemeanor case. That strongly suggests to the average person...given the demurrer... that prosecution knew they did not have a case despite their best efforts to hype one up and fabricate it. I believe that proposition is supported by the prosecutor at the sentencing hearing. I assert they were “fishing”... they were looking for other 'stuff' they hoped could be there. Imagine their surprise to find my computer activity was beyond reproach and in fact contains significant further exculpatory content which I have no access to.

When I got out of jail, I worked with Mr. Bons on getting my $20,000 back in the timeframe the judge indicated was needed. Mr. Bons is a really great attorney but he and I disagreed regarding the timeframe needed for the motion. I did not want to select another attorney but when I saw that I was fast running out of time to avoid a judgment for the entire $200,000... I moved over to Mr. Halpern who was able to file the motion on the very last possible day and successfully gain relief for $200,000.

The first minute is the end of a conversation between Erik Hasselman and Atty. Kevin Bons and then the hearing starts.....

The above facts are to establish 'context' of the hearing. **Transcript starts on next page.**

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Audio starts a minute before the hearing. I transcribed that bit of conversation between my attorney and the prosecutor as I feel it speaks to my claim of "fabricated crime".

Mr. Hasselman: ...that I think a trier of facts is gonna say 'guess what there was a line that was crossed...." (Mr. Bons says "why don't you get....)

Courtroom Staff Announces "All Rise, Court Court for Lane County is in Session, Honorable Judge Jay McAlpin presiding.

Judge: please be seated. We are here on v. Andrew Glen Clark case 211314234. Here on defendan'ts demurrer. Ahh... I read the demurrer, I read the memorandum, I read the state's response....Mr. Bons.

Mr. Bons: Thank you your honor, may it the please the court, may it please counsel. We are here on demurrer today. I filed a written document I assume the court had the opportunity to review those documents. State filed a response to those documents. And I am going to address a couple of points. I think the demurrer is in the box I think it is probably sufficient for the main argument but let's address the issue of whether a demurrer is untimely or not. It's clearly not untimely when it goes to the issue of "does the information state facts that constitute an offense". A demurrer can be made at anytime up to the case (?) and there are several cases on Point....State v. Winvers 315 OR 103 State v. Mack 20 OR 234, State v. Zimber (?) 5 OR @ 253... all these cases demurrers are made even to the fact, even after the state case in (?) during trial. So I think the demurrer is not untimely as it goes to the essential elements. So that moves us to Step B in the analysis.... of whether or not... on what...what can be demurred? It is pretty clear from the State's filing and from my filings that the essential elements must be plead. When we move on beyond the essential elements then we determine whether or not threat is an essential element. I think Rangel answers that question definitively, it says that threat has to be an essential element in this case. Rangel identifies and actually articulates what is required to be an essential element, it has to be an unequivocal threat, there has to be a bunch of sub-elements involved in what is a threat. We don't have to go into the sub-elements in this case because there has been no allegations of any threat was made. This case ...for factual background purposes....this case involves 10 faxes to the Ogletree firm. Those faxes contain a bunch of

(at this point my attorney admonishes me for attempting to tell him the 10 faxes were NOT all to Ogletree, I had been accused of 2,500 faxes, etc. I felt it relevant but he noted that he nor the court appreciates it. When chained hand and foot in jail clothing for words.... that is silencing.)

...continues.... those faxes were stacked (?), there is no allegation of any personal contact or anything other than communicative has been done, therefore I believe threat is an essential element, it certainly one that is going to have to be proven by the state at trial. It needs to be in the information file. I have several cases on Point. The first is State v. Ryan 35-or-670, a 2011 case. It pretty clearly indicates that when free speech, Article 1Section 8 of the Oregon Constitution is involved there is a direct conflict with the stalking statutes and when that is the case there is an elevated proof requirement and that proof requirement requires threat and it has to be unequivocal, it has to be objectionably reasonable for the victim to believe he or she is being threatened with imminent...not just serious physical harm but imminent serious physical harm. And...it simply those are the sub-elements of that offense. There are

certainly a bunch of other cases, I will give a few more just to flush it out a little more. State v. Ko, that is KO, State 24 OR at 403 again another 2011 case. (Judge says asks him to repeat case, he does). The next case I would give you is, well you got Rangel in there I already cited Rangel. The other one is State v. Shields and again this is a 2002 case, 184 OR at 505. And all these cases motions for acquittal were made on the issue of whether or not threat was proven at trial. I think if the...it is pretty clear from reading those cases that the analysis of whether a threat was proven at trial was the key issue in deciding whether motion for acquittal was to be granted or not granted....makes this an essential element of this offense so...

Judge: and so let me ask you this Mr. Bons. Isn't it possible for a hypothetical case to be subject to well taken granted motion of acquittal but not acquit-able under this theory.

In my opinion, this was where the judge made an error against the Construct of Oregon Criminal law as it applies to misdemeanor cases under the circumstances at hand....a person in chains from jail. The judge asked a hypothetical but rhetorical question that could only be answered in the affirmative. It gave me the notion that the judge would continue that at trial if there ever was one up to 2 years later. He also erred in accepting Leah Lively as victim. She did not file for an SPO and was added after fact. There is no evidence she ever saw the offending material, it was sent to a large office.

Mr. Bons: Yes, if there was facts at trial that did not prove one of the elements, that is for a motion of acquittal but the issue here is whether it is an essential element clearly anything up for a motion for acquittal, any element that wasn't proven at trial, I would assert that becomes and essential element of the offense itself. Therefore, I mean... if it was an essential element then there would be no motion reason to, no grounds for motion of acquittal after the case in (chief?) was stayed, was I clear there or unclear (judge affirms). Ok, … those those are my basic points here. There is some other stuff the state just clearly gets wrong and it is the response. They quote some language that I simply did not state, something about me...let me pull that filing up here...there was a little bit of a mad dash to prepare for this, I apologize. (brief delay). In the state's response they talk about a corporation cannot be a victim. They quote something that I never said, I don't know what that is about..."by definition cannot be stalked, assaulted, raped, or murdered." I never talked anything about assaulted, raped, or murdered, it is certainly not on my motion for demurrer. My point for saying the state goes into kind of a convoluted person theory in that a corporation can be a person. It is pretty clear on person crimes I think that a person is an actual real person, not a corporate entity. I don't think there is any other reading of the law that would result in an absurd results and certainly the legislature did not intend to have absurd results, I will give a couple examples here. In the case of stealing Kmart's computer. That is clearly a threat but it is clearly not a kidnapping. There is no kidnapping when you go in and steal a computer from Kmart. Kmart is not a person, the equipment they operate is not a person. So clearly kidnapping is a person crime that requires a real person not a corporate entity be kidnapped. So I don't put much credence in the state's argument on that regard. Stalking same thing. I think you can trespass pretty clearly onto a corporate grounds, you can perform a variety of torts on a corporation but you certainly cannot stalk a corporation. Beyond the elevated (?) requirements involved in communicative stalking, I don't think a corporation can feel anything much less feel the imminent threat of serious bodily harm that is required under the statute to make a threat. Clearly there are civil remedies that can apply here. And there is a variety of civil remedies that probably would be apt for this case but we are not here to talk about civil remedies, we are here to talk about criminal remedies.

Uh …. and I think that is all I have right now unless you have some questions your honor.

Judge: I don't. Mr. Hasselman.

Mr. Hasselman: Judge, my response kind of speaks for itself, I tried to keep it relatively limited but I would say that it appears that what the defendant is inviting the court to do is to in fact do an analysis of whether or not there is sufficient evidence to support the charge given the Rangel case and its progeny. The fact of the matter is that is not what a demurrer is. The demurrer in the previous case, in the Rangel case, had to do with deciding the constitutionality of the statutes. And the Oregon Supreme court decided that the Constitution does not prohibit this charge, that it is not over-broad, and that it can be cured by adding those additional requirements if the communication the contact is by communication only. That can be that can be accomplished by an instruction to the jury or if it is a bench trial the judge taking those matters into consideration but, the counsel cited no authority and no cases that have indicate that pleading a charge with the plain language and the verbatim language of the statute is insufficient to be definite and certain or to be lacking in putting the defendant on notice of what he is charged with. The defendant is obviously on notice what he is charged with because he is responding to it as if he understands that his repeated communications with this law firm are the subject of the state's complaint. And as such, I think the defendant has failed in those particular subsections that are available to him for grounds of demurrer under the statute. Now, Mr. Bons indicates that threat has to be an essential element now after Rangel to the case and I would suggest to the court that it is and it is plead that way by pleading that the defendant knowingly alarmed and coerced those people and that alarm and coercion was reasonable which are both plead in each and every count of the information. Secondly Mr. Bons indicates he doesn't know where I am pulling this raped and murdered allegation out of. I am sure the court knows because the defendant filed the original demurrer on this and Mr. Bons in his memorandum did not say that he was completely supplanting the defendan'ts motion, merely that he was supplementing it. And so I referenced the defendan'ts motion in which he said that a corporation cannot be a victim because it can't be raped murdered, assaulted murdered, or stalked. And I indicated that I concede a corporation cannot be raped or murdered but don't concede a corporation cannot be stalked because looking at the facts in this case indicate that. To the extent the court needs any facts on the record to, in which to put the parties in context I would ask the court to take judicial notice of the probable cause affidavit that was submitted in support of a motion for an arrest warrant which was granted by a member of the bench.

Your honor, I object to that motion. I have not been provided with that yet and it certainly has not been provided to me to date.

No no, the probable cause for the (original arrest) and you have that in discovery.

I do.

And so to the extent that you need to but from the state's perspective I don't believe this court should be in the position to try the case as to whether the state has sufficient evidence to over the additional burdens the Oregon Supreme Court has put on communication based threats. There is nothing in Rangel or any other case I was able to come across that said that once the court made that decision as far as the sufficiency of the evidence to support the charge that it put any requirement on the state to in fact to include those as elements of the crime in the accusatory instrument. And as such its premature for this court to be making the decision as to whether the evidence is sufficient to suggest to the court

that has or the defendant has breached this... these statutes. I think the court's question in Mr. Bon's hearing his argument was right on track that at this point it would be appropriate for the court to disallow the demurrer but keep in mind that the defendant still preserves his rights to indicate the evidence is insufficient to meet the requirements of Rangel in relation to his free speech arguments when it comes to the proof at trial. Discovery is not completed in this case. There are more reports that I have to disclose to the defendant. I recently received some communications from the alleged victims which indicate that the defendant had been sent correspondence prohibiting his contact with the involved parties with the exception of one designated attorney in their firm. The evidence after shows the defendant continued to contact multiple parties despite that admonishment to the otherwise but the court doesn't have any of that and the court shouldn't have any of that is the state's position at this point because that is for the parties in preparation of litigation. The court's function right now during the demurrer is to look at the charging instrument itself and see if any of those grounds that are laid out in 135.630 exist to grant the defendant the relief he is requesting and I suggest they don't.

I agree it is an interesting and novel question whether a corporation can qualify as a person for pursposes of the statute but on the face I suggest to the court that when you have a statute in place that says where appropriate a court, excuse me, a corporation, a governmental entity...all those different potential …..parties that represent conglomerates of people rather than just n individual, person is defined as that under the criminal code and there is nothing under ORS chapter 163 or specifically ORS 163.732 the stalking statute that indicates that it has to be an individual human being. And as such, I am asking the court at this point to disallow his demurrer on that ground as well.

Again as my argument in my response to the defendan'ts demurrer says “if in fact the court concludes that stalking is not a crime that can be committed against a conglomerate of people like a private corporation then the relief is to asking is to demur to the entire charge. I would ask the court to again disallow and merely allow the state to proceed with the individually named human being, who is also in...plead in that particular count. As the court well knows again that the name of the victim or the identity of the victim under criminal law is not a material element and there can be variance in a charging instrument between the proof at trial and the pleading suggest without that being fatal to the accusatory instrument even in trial so again, what the defendant is asking you do in this case is to wipe out a named victim and that is not again I suggest a purview of the and something that is contemplated by the statues related to grounds for demurrer.

Judge: Mr. Bons

Mr. Bons: The state indicated that I have cited no cases that require all essential of an offense to be plead. I would point the court to US v. Livingston...I have copies here for the state and for the court. In US v. Livingston it makes it absolutely clear that all essential elements in order to pass, to survive the demurrer must be plead in the charging instrument. That is 725 f3rd 1141, it's a 2013 case. That is at 1145. It is, there is no doubt that all essential elements must be plead. The real question is whether or not in a communicative stalking whether or not a threat is a essential element. I think after Rangel there is no doubt about this, just zero doubt about whether it is an essential element. Certainly I would recognize that you could plead, you know have to use the words threat perhaps in the charging instrument but Rangel gives you a very good definition of what a threat is and the language used in the charging instrument in this case the (?) case does not meet that definition, not even close to meeting that definition. I would go on to say that if the allegations were made here today to virtually any judge in this courthouse in a civil stalking order...trying to get a civil stalking protection order I don't think

there is judge in town..in this court that would grant that on these allegations made here that simply faxes were made, they would want to about unequivocal threat, they would want additional information before they granted those things. I just don't think it passes muster here. This argument about that we can do all this at trial... he is in custody right now your honor. His liberties are being taken right now. He is paying out the waazoo for ankle bracelets. There is a lot...he has constitutional liberties that are not being taken care of right now. This is not some abstract theory here. We have a gentleman in custody those liberties are protected through the demurrer process and that is an equivalent to a motion, you know a rule 21 motion in a civil case. This allows the defendant to go and attack the charging instrument and its meant to do that and that is certainly what we are doing here.

Lastly I will point to this 'person' in plain language. The statues ...the case law... are pretty clear. If a word is not defined in the statute than you use the plain language meaning of that word. I think Webster's clearly says "person" I don't have that quotation here for you but I think the court can do that analysis pretty quickly but a person is a real body. It is a real breathing living entity, it certainly is not a corporation. If they intended to make it something more than that, then I think it is on the legislature to go ahead and define it as such, nothing further your honor.

Judge: So a demurrer under ORS 135.630 subsection 4 whether facts alleged constitute an offense is timely, Mr. Bons is correct it can be filed at any time. A demurrer under 135.630 subsection 6 whether to make more definite and certain is not timely because a plea has already been entered so I am just analyzing this under subsection 4 whether facts constitute and offense. And in this situation, this is a situation in which someone could theoretically agree with every legal position Mr. Bons has taken and what would happen in other situations and still not grant the demurrer because this may be a situation in which is ripe for a motion of acquittal, it may be ripe or would have been ripe for a motion to make more definite and certain under subsection 6. But the facts alleged constitute and offense, at least from the case law, the case law is plead. I don't have to even reach the portion of a corporation whether it is a person or not because Mr. Hasselman is right, the identity of the named victim isn't a material element that could be substituted at any time. Again, Mr. Bons may want to know who that person is but that is not the motion that is in front of the court that is timely right now so the demurrer under 135.630 subsection 4 is disallowed. There is one other thing that I wanted to bring up. To my understanding Mr. Clark is in custody. He was taken into custody on that 'failure to comply' warrant yesterday. I also understand they have increased his security. The way our paperwork reads on that, so let me go through my full understanding of what happened. That when the release agreement was revoked, his security he has already been submitted has been...yanked back to the court for lack of a term of art, I am blanking on a term of art...forfeited The $20,000 that Mr. Clark already submitted has been forfeited Then his security has now been released to $40,000. There is a provision that allows for the court to reconsider the forfeiture of a somebody's security. ….if that is going to happen. The way that it reads it it is supposed to, it has to be done within 30 days or something like that. My understanding is that it is the criminal team's policy that any motions to reconsider the forfeiture of security needs to go to the chief criminal judge in this case Judge Vogt and she does not believe that you have to wait the 30 days before submitting that paperwork. Does that make sense?

Mr. Bons: It does your honor.

Judge: Alright, that is the one other kind of odd logistical issue I wanted to address. Anything I missed for the state.

Mr. Hasselman: Your honor, I don't believe so. I was looking at the docket...it seemed to me there is...

Judge: That is your (?), that is a review hearing, the state.

Mr. Hasselman: no, I mean just the notes in the docket. Oh, its noted, I know, it is one of counsel's complaints to Mr. Clark suffers having to pay for an ankle bracelet or being in custody, I would just note, as I guess at this point (???) we were set to be in trial this week but the defendant moved for postponement and it has been set into January. I recognize Mr. Clark may not be getting resolution to this matter as soon as possible but I think it is because Mr. Clark ended up changing attorneys and that attorney needed more time and he postponed that so part of that is the state does not want to accept full responsibility for his continuing bills in that respect because it was his motions to move the case further out.

Judge: certainly, correct, and what I was trying to hopefully to not too subtle, there are things you can order.

Mr. Bons: Your honor, I move, I would ask the court to make written findings on this demurrer please so that we can preserve the record here.

Judge: Alright, Mr. Hasselman, can you submit some written findings that you would like and then I will try to get those to you in what, two weeks? How much time would you like to meet your proposed time-frame.

Mr. Hasselman: I will try to order an audio recording of the courts orders today so the court declining to also decide the defendant's sub-section 6 argument on its merits?

Judge: Subsection 6 I think its... I am ruling it is not timely, that is something that has to be entered prior to a plea and a plea has occurred.
(HELLO! THE PLEA IS MADE IN JAIL WITHOUT ATTORNEY AND BEFORE ANY EVIDENCE IS AVAILABLE TO ANYONE BUT POLICE. YOU ONLY GET TO PLEAD GUILTY OR NOT GUILTY. THAT IS EXTREME VIOLATION OF DUE PROCESS.

Mr. Hasselman: Ok, so you are not getting to the merits on that, you are, you are saying it is the court's decision that it get that aspect on timely and then your ruling on subsection 4 is that the pleading is sufficient.
Judge: That's right, alright, Thank you, alright we will be in recess.

And then I was placed in a courthouse jail cell...the one lacking water other than from the toilet. They used to be jail cells to they have a bed structure with no mattress. There is a steel rim around the platform making it impossible to sit on it. The "innocent until proven guilty" misdemeanor suspect was handcuffed, shackled, jailed, had no where to sit, and had to drink from the toilet.

Way to GO.... Lane County Oregon. As a taxpayer I am appalled at the conduct of our justice system. It appears they ran out of real crime so they puff up nothing into a crime problem all for the money. Based on the conduct of (now retired) Tony Veach,"officer Z the molesting high school cop", or the EPD evidence room leakage (etc, etc...)...police are too often the actual crime and **violence** problem.