

**COPY**

**DISTRICT COURT OF NASSAU COUNTY  
FIRST DISTRICT CRIMINAL PART 1**

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THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiff(s)

**DOCKET NO. CR-009336-18NA**

**Present:**

against

**Hon. TRICIA M. FERRELL**

TINY INEZ THOMPSON,

Defendant(s)

-----X  
**The following named papers numbered 1 to 3  
submitted on this motion on August 15, 2018**

	<b>papers numbered</b>
<b>Notice of Motion</b>	<b>1</b>
<b>Affirmation in Opposition</b>	<b>2</b>
<b>Reply Affidavits</b>	<b>3</b>

The defendant is charged with one violation of the Penal Law Section 120.45(3), Stalking in the Fourth Degree, and now moves for an order:

1. Dismissing the accusatory instrument as facially and jurisdictionally insufficient;
2. Granting the defendant discovery and inspection pursuant to the Criminal Procedure Law, the Constitution of the United States and the New York State Constitution;
3. Granting a Bill of Particulars;
4. Precluding the prosecution from using certain evidence for failure to comply with the Discovery Demand and Request for a Bill of Particulars;
5. Precluding the prosecution from offering any evidence of the defendant's prior convictions or bad acts pursuant to *People v. Sandoval* (34 NY2d 371 [1974]);
6. Granting dismissal of the sole count or suppressing evidence obtained from law enforcement officials or their agents on the grounds that they lacked probable cause; in the alternative the

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defendant is requesting a probable cause hearing pursuant to *Dunaway v. New York* (442 US 200 [1979]); and

7. Granting the defendant the right to make additional pre-trial motions.

The prosecution opposes the defendant's application in most respects.

The defendant's application is decided as follows:

1. The defendant's application to dismiss the sole count as facially insufficient is granted.

The sole count before the court is Penal Law Section 120.45(3), Stalking in the Fourth Degree.

A person is guilty of Stalking in the Fourth Degree when he or she intentionally, and for no legitimate purpose, engages in a course of conduct directed at a specific person, and knows or reasonably should know that such conduct is likely to cause such a person to reasonably fear that his or her employment, business or career is threatened, where such conduct consists of appearing, telephoning or initiating communication or contact at such person's place of employment or business, and the actor was previously clearly informed to cease that conduct.

The accusatory instrument refers to the incident occurring "on or about the 2<sup>nd</sup> day of September, 2017." The deponent's "to wit" clause refers to a period of time "on or about and in between September 2<sup>nd</sup>, 2017 and September 8<sup>th</sup>, 2017, and alleges the defendant intentionally and with no legitimate purpose engaged in a course of conduct directed at the complainant which includes the following:

Having security cameras pointed directly at the complainant's house;

Videotaping the complainant when he enters and leaves his home;

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**Following the complainant while he drives his car on the street;**

**Setting her car alarm off when the complainant leaves or enters his residence;**

**Leaving pamphlets at the complainant's job pertaining to stalking; and**

**Posting twice on her Facebook account allegations that the complainant used his influence as a county employee to stalk her, get her kicked out of her house and have other people follow and stalk her.**

**The supporting deposition of the complainant states in pertinent part the following acts the defendant allegedly committed:**

**Placing a sign on her lawn that said, "Joe across the street is a contract killer," around 2011;**

**Videotaping the complainant with a video camera cutting his lawn, going in and out of his house, and getting into his car;**

**Videotaping the complainant's family and friends coming to his house;**

**Videotaping UPS drivers if they drop something off at the complainant's house;**

**Placing pamphlets in the driveway and parking lot of the complainant's job accusing the police, fire and sanitation departments' employees of stalking and harassing a person [her] during their work hours on March 30, 2016;**

**Throwing pamphlets on the complainant's lawn accusing the county and the complainant of stalking her;**

**Videotaping the complainant and blowing her car horn as the complainant entered his car after exiting a store;**

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**Posting a statement on her Facebook page on September 7, 2017, (tagging the sanitation, police and fire departments) accusing the complainant of influencing county officers to run her out of the county, using his connections to bully and stalk her and accusing the complainant of terrorizing her;**

**Posting a statement on her Facebook page on September 8, 2017, tagging the sanitation, police and fire departments, and accusing them along with UPS, of staking and bullying her;**

**Driving slowly in front of the complainant sometime in November of 2016, while hanging a sign out of her car window which stated, "Stalking is a crime."**

**The defendant argues that the non-hearsay allegations of fact in the accusatory instrument, coupled with those included in the supporting deposition fail to set forth every element of the offense charged and the defendant's commission thereof. More specifically, the defendant contends that the allegations fail to show that the defendant engaged in a course of conduct wherein she acted with no legitimate purpose; said conduct didn't consist of appearing, telephoning or initiating communication or contact at such person's place of employment or business; and she wasn't previously clearly informed to cease that conduct.**

**Both parties have pointed this court to Criminal Procedure Law Sections 100.40(1) when reviewing the sufficiency of an accusatory instrument. The prosecution also reminds the court that it must view the facts in the light most favorable to the prosecution, however the deficiencies contained in the accusatory instrument here, along with the accompanying supporting deposition, are of such significance that the court must dismiss this case.**

**The defendant's charges relate to conduct that must consist of appearing, telephoning or initiating communication or contact at such person's place of employment or business. Penal Law Section 120.45(3) Review of all of acts allegedly committed by the defendant during the time period contained in the accusatory instrument and relating to the defendant's place of employment is limited to the following:**

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Placing pamphlets in the driveway and parking lot of the complainant's place of employment on March 30, 2016, accusing the police, fire and sanitation departments' employees of stalking and harassing a person [the defendant] during their work hours.

The supporting deposition indicated that these pamphlets were "found" at the defendant's place of employment but there was no witness statement indicating this defendant was seen possessing the pamphlets or placing them at the defendant's place of employment. Assuming that the defendant did in fact commit these acts, the defendant was informed to stop distributing these flyers on April 3, 2016, as represented by her attorney, and none of the remaining allegations show that the defendant failed to comply with Detective Malone's April 3<sup>rd</sup> directive. The other acts as alleged are troubling, but don't relate to the sole charge before this court. It's unknown why these other acts have been formally left unaddressed.

The prosecution also points this court to the Facebook posts which "tagged" the defendant's place of employment. These two posts from the defendant's page accuse the complainant of many things and within the posts, the complainant's employer was "tagged". Whether these additional acts can be considered initiating communication or contact at such person's place of employment need not be addressed by this court in great detail because its unknown whether these "tags" served to initiate communication or contact with the complainant's job; no such allegations have been made. Additionally, no where in the allegations has it been stated that the defendant was "previously clearly informed to cease *that* conduct."

Based upon the foregoing, the sole charge filed against the defendant is dismissed. Its unknown why the aforementioned defects raised by the defendant haven't been cured, especially since these charges have been pending for quite some time and the defendant's motion was filed approximately two (2) months ago. In light of the amount of time which has elapsed since the filing of this accusatory instrument, the prosecution's inability to announce "readiness" since that filing was insufficient and no effort has been made to rectify this deficiency, the case is hereby dismissed. Criminal Procedure Law Sections 170.30(1)(a), (e) and (f).

All other applications by the defendant are denied as moot in light of the

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aforementioned dismissal.

Herein lies the decision and order of the court.

So Ordered:



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DISTRICT COURT JUDGE

Dated: September 25, 2018

CC: Honorable Madeline Singas, District Attorney  
Law Offices of Frederick K. Brewington

TMF:blm