

COMMONWEALTH OF MASSACHUSETTS

HAMPSHIRE, s.s.

JUVENILE COURT
DEPARTMENT OF THE
TRIAL COURT
NO. YO10H002-3

COMMONWEALTH

APR - 8 2010

V.

FLANNERY MULLINS

**COMMONWEALTH'S MEMORANDUM OF LAW IN SUPPORT OF ITS
MOTION FOR JOINDER OF YOUTHFUL OFFENDER INDICTMENTS AND
DELINQUENCY COMPLAINTS PURSUANT TO MASS.R.CRIM.P. 9(a)(3)
AND G.L. C. 119, Section 54**

Now comes the Commonwealth in the above-captioned matter and respectfully files its memorandum of law in support of its motion to join, pursuant to *Mass.R.Crim.P. 9(a)(3)* and *G.L. c. 119, section 54*, the defendant's youthful offender indictment and four (4) delinquency complaints for trial. As grounds for its motion the Commonwealth submits the following:

ISSUE PRESENTED

WHETHER THE YOUTHFUL OFFENDER INDICTMENTS CHARGING THE DEFENDANT WITH OFFENSES STEMMING FROM ACTIVITY ON THE GROUNDS OF SOUTH HADLEY HIGH SCHOOL, OR PROPERTY ADJACENT THERETO, AT DIVERS TIMES BETWEEN SEPTEMBER 1, 2009 AND JANUARY 14, 2010, HAS A SUFFICIENT TEMPORAL AND SCHEMATIC NEXUS OR SHOWS A COMMON COURSE OF CONDUCT OR SERIES OF CRIMINAL EPISODES CONNECTED TOGETHER SO AS TO RENDER JOINDER OF THESE YOUTHFUL OFFENDER INDICTMENTS WITH THE DELINQUENCY COMPLAINTS CHARGING HER WITH DISTURBANCE OF A SCHOOL ASSEMBLY, CRIMINAL HARASSMENT AND VIOLATION OF CIVIL RIGHTS WITH BODILY INJURY RESULTING PROPER?

STATEMENT OF THE CASE

On March 26, 2010, the defendant, Flannery Mullins, was indicted, as a youthful offender, by the March 2010 sitting of the Hampshire County Grand Jury upon a two count indictment charging one count each of violation of civil rights (with bodily injury resulting) in violation of the law as defined by *G.L. c. 265, section 37* and stalking in violation of *G.L. c. 265, section 43(a)*. Hampshire County Indictment #010-052. Specifically, the youthful offender indictment alleges that the defendant did, by force or threat of force, willfully injure, intimidate or interfere with, or attempt to injure, intimidate or interfere with, or oppress or threaten Phoebe Prince in the free exercise or enjoyment of any right(s) or privilege(s) secured to her by the constitution or laws of the Commonwealth of Massachusetts or by the constitution or laws of the United States, and bodily injury resulted to her; and did willfully and maliciously engage in a knowing pattern of conduct or series of acts over a period of time directed at a specific person, Phoebe Prince, which seriously alarmed or annoyed her and would cause a reasonable person to suffer substantial emotional distress and did make a threat with the intent to place the person in imminent fear of death or bodily injury. The case was transferred to the Hampshire Division of the Juvenile Court, per Order of the Court, Carhart, J., on the date the youthful offender indictment was returned. *G.L. c. 264, section 4*. The defendant is scheduled to be arraigned upon that charge, #YO10H0002-3, in the Franklin/Hampshire Juvenile Court, Hadley sitting, on April 8, 2010.

Previously, on March 24, 2010, detectives from the Massachusetts State Police Detective Unit attached to the Northwestern District Attorney's Office sought and received delinquency complaints naming the defendant and charging her with one charge

each of violation of civil rights, with bodily injury resulting in violation of *G.L. c. 265, section 37*, criminal harassment in violation of *G.L. c. 265, section 43A* and disturbance of a school assembly in violation of *G.L. c. 272, section 40*, DL10H0061- DL10H0063. Specifically, the delinquency complaints allege, in seriatim, that the defendant did, by force or threat of force, willfully injure, intimidate or interfere with, or attempt to injure, intimidate or interfere with, or oppress or threaten Phoebe Prince in the free exercise or enjoyment of any right(s) or privilege(s) secured to her by the constitution or laws of the Commonwealth of Massachusetts or by the constitution or laws of the United States, and bodily injury resulted to her; did willfully and maliciously engage in a knowing pattern of conduct over a period of time directed at Phoebe Prince, which seriously alarmed her and would cause a reasonable person to suffer emotional distress; and did willfully interrupt or disturb a school or other assembly of people met for a lawful purpose. The defendant is scheduled to be arraigned upon these delinquency complaints on April 8, 2010.

The time frame alleged for both the youthful offender indictments and the delinquency complaints is at divers dates and time between September 1, 2009 and January 14, 2010; the location of the offenses is South Hadley High School in South Hadley, Massachusetts, or upon adjacent property thereto. The Commonwealth has filed a motion to join the defendant's youthful offender indictments with the defendant's three (3) delinquency complaints.

STATEMENT OF THE FACTS

Based upon information known to the Commonwealth (and contained in the probable cause statement submitted with the application for delinquency complaints in

this matter), the following information has been collected through witness interviews and/or first-hand observation(s) of investigators: On Thursday, January 14, 2010, at approximately 4:55 p.m., the Massachusetts State Police Detective Unit, attached to the Northwestern District Attorney's Office, was contacted regarding an alleged suicide by hanging at 356 Newton Street, 2nd floor, South Hadley, Massachusetts. At approximately 5:17 p.m., investigators attached to the Northwestern District Attorney's Office arrived on scene, met with, and were briefed by Detective Mark Dominick of the South Hadley Police Department. Responding personnel discovered the lifeless body of a white female, hanging in the rear stairwell of the apartment. At that time, the decedent was identified as Phoebe Prince, a resident of the home.

Subsequently, on January 15, 2010, Dr. Andrew W. Sexton, a forensic pathologist with the Office of the Chief Medical Examiner for the Commonwealth of Massachusetts, Western Division, located in Holyoke, Massachusetts, performed a postmortem examination on the body of Phoebe Prince. Dr. Sexton observed a ligature mark about the neck of Ms. Prince. At the conclusion of the examination, Dr. Sexton opined the cause of death was asphyxia due to hanging and the manner of death was suicide.

In an initial interview with the decedent's mother, investigators learned that Ms. Prince, who had enrolled at the High School in September 2009, was "getting bullied" by other students at South Hadley High School. According to the published school calendar for the South Hadley Public Schools, the first day of school for the 2009-2010 school calendar year was September 1, 2009.

In December 2009, Austin Renaud, an upperclassman at South Hadley High School, was reported to have engaged in a dating relationship with Ms. Prince and this

fact was known to his on/off girlfriend, the defendant Flannery Mullins, a South Hadley High School sophomore and her friend Sharon Chanon Velazquez, a South Hadley High School junior. At diverse dates and times during the school year, Flannery Mullins voiced her dislike of Ms. Prince's relationship with her boyfriend to Ms. Prince, the defendant's friends and acquaintances, and other high school classmates. Sharon Chanon Velazquez, individually or in conjunction with Flannery Mullins voiced her dislike of Ms. Prince's relationships with Austin Renaud to Ms. Prince, her (Ms. Velazquez's) friends and acquaintances, and other high school classmates. One witness told investigators, in a written statement, that Ms. Prince was not an aggressive person, and stated that:

She (Ms. Prince) definitely didn't want to fight with the girls in the school. She just wanted to keep to herself and keep things the way they were. She wanted people to stop picking on her, to stop being bullied. She wanted people to leave her alone. She wanted people to stop spreading rumors and stop the girls from talking about her.

On Wednesday, January 13, 2010, Mrs. Prince told a confidant that she was accused by other girls at school of "taking away" another girl's (Flannery Mullins's) boyfriend; that she (Ms. Prince) was being targeted by peers and that accusations at school escalated to making threats of harming her. On January 13th, Ms. Prince explained school "has been close to intolerable lately".

An initial examination of Ms. Prince's cellular telephone was conducted by investigators who were able to determine that several text messages were exchanged between Ms. Prince and an identified telephone number approximately two (2) hours prior to her death. Investigators subsequently learned, through witness interviews, that Ms. Prince had exchanged text messages with a friend during the afternoon hours of her death. The texts focused around the verbally abusive incidents Ms. Prince had been

subjected to by Sean Mulveyhill, Kayla Narey and Ashley Longe earlier on the date of her death and her despair at the on-going taunting to which she was subjected. Following the last outgoing message, documented at 2:48 pm on January 14th, there were no further outgoing texts recovered from Ms. Prince's cellular telephone, although a forensic search of the telephone revealed two (2) additional messages in the "inbox" that went unanswered by Ms. Prince.

From the date of Ms. Prince's death on January 14th to the present, investigators from the Massachusetts State Police Detective Unit attached to the Northwestern District Attorney's Office and the South Hadley Police Department have interviewed and obtained statements from multiple witnesses, that reveal a pattern of assaultive conduct, through an act or series of acts, directed toward Phoebe Prince by the defendant occurring at divers dates and times between September 1, 2009 and January 14, 2010 on the grounds of South Hadley High School, located at 356 Newton Street, South Hadley, Massachusetts, or the grounds adjacent thereto, based upon the defendant's hostility of Ms. Prince's relationship with her (the defendant's) male friend, Austin Renaud. Specifically, one witness told investigators that she had spoken with Ms. Prince and learned that the defendant, Flannery Mullins, had told other students that she (the defendant) was going to "beat Phoebe up" and that she (Ms. Prince) "needed to watch out at break after second block..." This witness also stated that, on one occasion, Ms. Prince, went to school administrators because she "was scared and wanted to go home". The witness reported that Ms. Prince returned to class and told her that no action was going to be taken/nothing happened and that "she was still going to get beat up".

Investigators learned, during this investigation, that on January 7, 2010, Ms. Prince spoke with a school administrator about the defendant's threatened attack. Investigators learned of an incident in physical education class, approximately one week prior to Ms. Prince's death, involving the defendant that had been reported to a school administrator. According to one witness, he heard the defendant talking to other girls before class about how, "she [Ms. Prince] should get her ass kicked". The defendant, herself, later asked the witness, if he heard what she said earlier. The defendant further stated that "freshman Phoebe girl was trying to get with my boyfriend", and that she (the defendant) was "so pissed." Another witness reported to investigators that she learned from Ms. Prince, while in English class, that the defendant threatened to beat her (Ms. Prince) up. According to the witness, she had already heard the information as it was "spreading around fast" at the school and noted that "Phoebe was really upset about it..." The witness told investigators that Ms. Prince told her that "she was not a tough girl" and that she did not want to fight the defendant as she would not know what to do. The witness said that Ms. Prince asked her what she should do and the witness recalled telling Ms. Prince to stay with her friends and to avoid the defendant.

A witness reported that she met Ms. Prince and another female student in the hallway. According to the witness, as the girls made their way through the hallway, Ms. Prince requested to stay on the inside of the group in fear "that someone might come out of the classrooms and beat her [Ms. Prince] up." At some point during their walk, according to the witness, Ms. Prince entered a school bathroom. The defendant was advised as to Ms. Prince's whereabouts by another student, if the defendant "wanted to do anything." According to the witness, the defendant did go in the bathroom. Ms.

Prince told the witness later, that "she saw Flannery in the bathroom and got out of there really fast".

Another female student, that at the end of December 2009, she witnessed an incident in which a student, identified as Sharon Chanon Velazquez, confronted Ms. Prince in the cafeteria of the high school. According to the witness, Ms. Chanon-Velazquez, called Ms. Prince a "whore" and told her to stay away from "people's men." The witness believed what Ms. Chanon Velazquez said to Ms. Prince was a threat. After the incident, the witness said that Ms. Prince was upset, went into the bathroom, and was hiding in one of the bathroom stalls. When the witness left the lunchroom and approached the bathroom where Ms. Prince was, the witness observed the defendant in the hallway heading toward the same bathroom. The witness reported that she knew that the defendant had problems with Ms. Prince because she (the defendant) was "jealous" that Ms. Prince had been talking with her (the defendant's) boyfriend Austin Renaud. The witness said that she asked Flannery Mullins not to enter the bathroom because Ms. Prince was inside. The defendant did not listen to her and entered the bathroom anyway. The witness stated that she followed the defendant into the bathroom and observed her standing by the bathroom sink "like she was waiting for Phoebe." According to the witness Ms. Prince left the bathroom and Flannery Mullins left right after her. She stated that later, she saw Flannery Mullins talking with another female student while Ms. Prince was in the hallway crying and a male student was comforting her. During these three (3) incidents, documented by investigators, Flannery Mullins' comments were loud enough that they were overheard by other students and in one (1) specific incident, a male student was alarmed enough by what he heard to bring it to a teacher's attention.

Investigators also learned that Flannery Mullins, during school hours, intentionally directed comments toward Ms. Prince maligning, among other things, her national origin; specifically, Ms. Prince's Irish heritage. One witness told police investigators that remarks were made toward Ms. Prince, by the defendant, who would refer to Ms. Prince as a "slut" or an "Irish slut". The witness stated that Ms. Prince reported these comments directly to the witness and that she also witnessed one incident herself. During that incident, the witness heard Flannery Mullins call Ms. Prince an "Irish slut" while in the hallway at South Hadley High School. Another witness also reported that she saw the defendant yell at Ms. Prince one time in the hallway "when everyone was passing by". That witness recalled that the defendant called Ms. Prince a "whore" and told her to stay away from her boyfriend.

Another individual spoke to investigators of an incident that occurred outside the female bathroom, in the area of the cafeteria, at South Hadley High School. This witness observed Ms. Prince and Flannery Mullins enter the female bathroom at different times. According to the witness, she saw Ms. Prince exit the bathroom first, crying. Soon thereafter, the witness saw the defendant exit the bathroom and make an unsolicited comment to Ms. Prince. In addition, another witness told investigators that she recalled two (2) occasions where she consoled Ms. Prince in the hallway of the school because she was crying about incidents where the defendant yelled at her.

Through witness statements, investigators also learned that the defendant used electronic media, specifically Facebook, to further harass Ms. Prince. In the weeks preceding her death, the defendant authored several postings on Facebook. All of the

postings, authored by the defendant, displayed her photo under each comment. One witness told investigators that she "definitely saw something on Flannery Mullins' facebook" before Ms. Prince's death. She reported that she saw a comment that said, "I used to like Irish girls and now I know that some of them are slutty." In the postings, four (4) other females engaged in dialogue with Flannery Mullins' comments, plus police interviews have revealed other students viewed Flannery Mullins' Facebook page and were able to ascertain its demeaning content explicitly toward Ms. Prince. The comments became a topic of discussion amongst Ms. Prince's peers at school.

Witnesses stated that Ms. Prince's reactions to the actions described in previous paragraphs varied from fear and apprehension to crying; and that, at various times, interfered with her school environment.

ARGUMENT

THE DELINQUENCY COMPLAINTS CHARGING THE DEFENDANT WITH OFFENSES STEMMING FROM HER ACTIONS TOWARD PHOEBE PRINCE AT SOUTH HADLEY HIGH SCHOOL, OR ITS ADJACENT PROPERTY, AT DIVERS DATES AND TIMES BETWEEN SEPTEMBER 1, 2009 AND JANUARY 14, 2010 HAVE A SUFFICIENT TEMPORAL AND SCHEMATIC NEXUS OR SHOW A COMMON COURSE OF CONDUCT OR SERIES OF CRIMINAL EPISODES CONNECTED TOGETHER SO AS TO RENDER JOINDER OF THE CHARGED DELINQUENCY COMPLAINTS WITH THE YOUTHFUL OFFENDER INDICTMENTS CHARGING HER WITH A VIOLATION OF CIVIL RIGHTS (WITH BODILY INJURY RESULTING) AND STALKING RELATING TO PHOEBE PRINCE PROPER.

Joinder of the defendant's youthful offender indictment with her delinquency complaints is proper. The crimes with which the defendant is charged are "related offenses" as that term is defined by *Rule 9*. In addition, joinder is in the best interests of justice. One trial will conserve judicial resources. The crimes with which the defendant is charged are factually interconnected, leaving many of the same witnesses to testify in

each case. Lastly, prejudice is unlikely because evidence of each crime should be admissible in separate trials as evidence of the defendant's common scheme, intent, identity or motive.

The propriety of joinder of indictments for trial is a matter within the sound discretion of the trial judge. *Commonwealth v. Gaynor*, 443 Mass. at 260, citing *Commonwealth v. Montanez*, 410 Mass. 290, 303 (1991); *Commonwealth v. Walker*, 442 Mass. 185, 199 (2004); *Commonwealth v. Wilson*, 427 Mass. 336, 345-346 (1998). Joinder is governed by *Mass.R.Crim.P. 9*, which provides that the trial judge shall join two or more related offenses for trial unless it is not in the best interests of justice. *Mass.R.Crim.P. 9 (a) (3)*. Thus, joinder requires first that the offenses are related, and second that joinder be in the best interests of justice

a. The defendant's youthful offender indictment and four delinquency complaints are "related" as that term is defined under Mass.R.Crim.P. 9.

Where the offenses "are based on the same criminal conduct or episode or arise out of a course of criminal conduct or series of criminal episodes connected together or constituting parts of a single scheme or plan," the offenses are related. *Commonwealth v. Mamay*, 407 Mass. 412, 416 (1990). Time and space play an important role in determining whether offenses are related for the purposes of joinder. *Commonwealth v. Zemtsov*, 443 Mass. 36, 44 (2004). See *Commonwealth v. Gaynor*, 443 Mass. 245, 260-263 (2005); *Commonwealth v. Delaney*, 425 Mass. 587, 594 (1997), cert. denied, 522 U.S. 1058 (1998). Factual similarities between the criminal episodes also play a role. See *Commonwealth v. Ferraro*, 424 Mass. 87 (1997). Here, the circumstances of the crimes charged demonstrate the defendant's participation in a series of criminal episodes that are sufficiently connected to support joinder of her youthful offender indictments and

delinquency complaints for trial. *Commonwealth v. Walker*, 442 Mass. at 200; *Commonwealth v. Zemtsov*, 443 Mass. at 44-45. All of the alleged criminal activity occurs in the same geographical area: the South Hadley High School or property adjacent to it. *Commonwealth v. Montez*, 450 Mass. 736, 746 (2008) (four criminal episodes of breaking and enterings, with the murder of one, a female occupant, all occurred within close proximity of each other and the defendant's apartment). It also is temporally connected; having occurred at divers dates and times between September 1, 2009 and January 14, 2010.

b. Joinder of the defendant's indictments for trial is in the best interests of justice.

Joinder of the defendant's indictments for trial also is in the best interests of justice. First, it serves the interests of judicial economy. Many of the same witnesses were involved in all or most of the cases and would be called to testify at the separate trials. *Commonwealth v. Gaynor*, 443 Mass. 245, 259-263 (2005) citing *Commonwealth v. Hoppin*, 387 Mass. 25, 32 (1982).

Next, the defendant would not be prejudiced by joinder. When, as it must, this Court considers the question of joinder by deciding it "in the context of the guarantee of a fair trial," for the defendant, the question turns, in large measure, on "whether evidence of the other . . . offenses would have been admissible at a separate trial on each indictment," *Mamay*, 407 Mass. at 417 (quoting *Commonwealth v. Sylvester*, 388 Mass. 749, 758 (1983)); *Commonwealth v. Gallison*, 383 Mass. 659, 672 (1981). See *Commonwealth v. Wilson*, 427 Mass. at 346. While evidence of other criminal conduct is not admissible to prove the propensity of the defendant to commit the indicted offense, *Commonwealth v. Gallison*, 383 Mass. at 672, for purposes of joinder, it may be used to show a common

scheme or pattern of operation. *Commonwealth v. Feijoo*, 419 Mass. at 494-495;

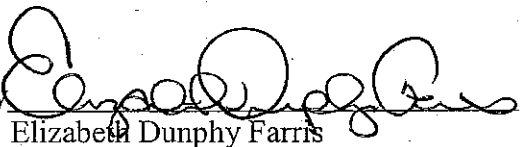
Commonwealth v. Gaynor, 443 Mass. at 260.

Since each of the prerequisites to joinder are present here, "as a matter of law" the cases should be joined for trial. *See Ferraro*, 424 Mass. at 91 (court found that "as a matter of law" the relatedness of the offenses required that they be joined for trial where defendant's sexual assaults on young boys all committed in similar fashion and in close geographic proximity were followed by anniversary telephone calls from the defendant to his victims which court found to be a "signature" modus operandi); *Commonwealth v. Sylvester*, 13 Mass. App. Ct. 360, 361-362 (1982) (court upheld joinder decision where it was not persuaded by defendant's argument that joinder of inherently odious sexual offenses against minor children would so disgust the jury that joinder was inherently prejudicial).

CONCLUSION

For the foregoing reasons, the Commonwealth's Motion for Joinder of Youthful Offender Indictment and Delinquency Complaints Pursuant to *Mass.R.Crim.P. 9 (a)(3)* and *G.L. c. 119, section 54* should be ALLOWED.

Respectfully Submitted,
THE COMMONWEALTH.

By 
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CERTIFICATE OF SERVICE

**I HEREBY CERTIFY THAT ONE (1) COPY OF THE
COMMONWEALTH'S MOTION FOR JOINDER OF YOUTHFUL OFFENDER
INDICTMENT AND DELINQUENCY COMPLAINTS PURSUANT TO
MASS.R.CRIM.P. 9(a)(3) AND G.L. C. 119, SECTION 54 HAS BEEN DELIVERED,
FIRST CLASS POSTAGE PREPAID, TO ALFRED P. CHAMBERLAND, 9
CAMPUS LANE, P.O. BOX 217, EASTHAMPTON, MA, 01027, ATTORNEY FOR
THE DEFENDANT, FLANNERY MULLINS, THIS 8TH DAY OF APRIL 2010.**



**Elizabeth Dunphy Farris
Deputy First Assistant District Attorney
Northwestern District
BBO #545992**
