SUPPLEMENTAL BRIEF FOR APPELLEE

DISTRICT OF COLUMBIA
COURT OF APPEALS

No. 23-CM-147

GENE R. LENINGER, Appellant,

v.

UNITED STATES OF AMERICA, Appellee.

APPEAL FROM THE SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION

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Cr. No. 2022-CMD-4713

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ISSUES PRESENTED

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II. Whether there was sufficient evidence to support the stalking conviction, where: (1) there were three communications that did not involve the content of speech and thus satisfied *Mashaud*; and (2) based on these three communications, a reasonable jury could conclude that Leninger engaged in a course of conduct he should have known would cause a reasonable person in the victim's circumstances to suffer serious emotional distress.

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COUNTERSTATEMENT OF THE CASE

The United States incorporates by reference its counterstatement of the case and summary of the trial evidence presented in its initial brief (see Brief for United States at 1-14).

On July 25, 2023, appellant Gene R. Leninger filed his opening brief and raised two issues. First, Leninger contended that there was insufficient evidence to support his conviction for stalking because the government had failed to prove that his course of conduct would cause a

reasonable person in the victim's circumstances to feel the requisite level of emotional distress (Brief for Leninger at 17-20). Second, Leninger contended that the trial court erred in its response to a jury note by denying his request (1) for a special unanimity instruction on the specific occasions that the jury found constituted stalking, and (2) to clarify that the jury had to find that he possessed the requisite mens rea on these occasions (*id*. at 21-28).

After briefing had been completed in the instant appeal and the case was scheduled for oral argument, this Court issued an order on April 24, 2024, removing the case from the calendar and directing the parties to file supplemental briefs. Specifically, this Court noted that neither party, in discussing the sufficiency of the evidence issue, had addressed its recent holding in *Mashaud v. Boone*, 295 A.3d 1139, 1144 (D.C. 2023) (en banc), that "the stalking statute only applies to speech that is constitutionally unprotected." This Court thus ordered Leninger "to file a supplemental brief addressing the impact of the *Mashaud* case on the sufficiency of the evidence in this matter," and ordered the government to file a responsive supplemental brief. On May 20, 2024, Leninger filed his supplemental brief, to which the government now responds.

SUMMARY OF ARGUMENT

The trial court did not plainly err in failing, sua sponte, to find that the stalking statute, as applied to Leninger, violated the First Amendment. In *Mashaud v. Boone*, 295 A.3d 1139 (D.C. 2023) (en banc), this Court held that where the course of conduct establishing criminal stalking involves the content of speech, that speech must fall within a categorical exception to the First Amendment's protection, such as defamation or true threats. *Id.* at 1144. However, where the content of speech is not involved, no such restriction applies. *Id.* at 1160-61.

Even assuming, arguendo, that some of Leninger's course of conduct involved the content of speech and did not fall within a categorical exception to the First Amendment's protection as required by *Mashaud*, Leninger cannot establish that his substantial rights were affected by the error. The jury could have properly considered three communications that did not involve the content of speech under *Mashaud* and would have found Leninger guilty in any event. Reversal is therefore not warranted.

There was sufficient evidence to support the stalking conviction, given that there were three communications that did not involve the

content of speech and thus satisfied *Mashaud*. Based on these communications, a reasonable jury could conclude that Leninger engaged in a course of conduct he should have known would cause a reasonable person in the victim's circumstances to suffer serious emotional distress.

ARGUMENT

I. The Trial Court Did Not Plainly Err in Failing, Sua Sponte, to Find That the Stalking Statute as Applied to Leninger Violated the First Amendment.

Leninger contends that his conviction must be vacated under *Mashaud v. Boone*, 295 A.3d 1139 (D.C. 2023) (en banc), because the stalking statute as applied to him violated his First Amendment right to free speech (Brief for Leninger at 2, 9-10, 16-20). Specifically, he claims that the occasions comprising his course of conduct involved the content of his communications and these communications constituted protected speech under the First Amendment (*id.* at 16-19). His contentions are without merit.

A. Standard of Review

Because Leninger did not raise any First Amendment challenge to the stalking statute before the trial court, his claim is unpreserved and

should be reviewed for plain error only. *See Keerikkattil v. United States*, 313 A.3d 591, 601 (D.C. 2024) (applying plain-error review to First Amendment challenge to stalking jury instruction based upon *Mashaud* where defendant failed to raise issue with trial court). Under the plain-error standard, a defendant must demonstrate:

> (1) "error," (2) that is "plain," and (3) that "affect[s] substantial rights." . . . If all three conditions are met, an appellate court may then exercise its discretion to notice a forfeited error, but only if (4) the error "seriously affect[s] the fairness, integrity, or public reputation of judicial proceedings."

Johnson v. United States, 520 U.S. 461, 466-67 (1997) (quoting *United States v. Olano*, 507 U.S. 725, 732 (1993)). "An error is plain when it is clear or obvious, rather than subject to reasonable dispute under current law." *Wills v. United States*, 147 A.3d 761, 772 (D.C. 2016) (internal quotation marks and citations omitted). The plainness of the error is assessed "in light of the state of the law at the time of appellate review, not the state of the law at the time of trial." *Id.* (citing *Muir v. District of Columbia*, 129 A.3d 265, 267 (D.C. 2016); *Henderson v. United States*, 568 U.S. 266, 276 (2013)). An error affects substantial rights if the defendant shows "a reasonable probability of a different outcome but for

the established error." *Geter v. United States*, 306 A.3d 126, 139 (D.C. 2023) (internal quotation marks and citations omitted).

B. The District's Stalking Statute

The District's stalking statute makes it unlawful, inter alia, for "a person to purposefully engage in a course of conduct directed at a specific individual . . . [t]hat the person should have known would cause a reasonable person in the individual's circumstances to . . . [f]ear for his or her safety or the safety of another person; . . . [f]eel seriously alarmed, disturbed, or frightened; or . . . [s]uffer emotional distress." D.C. Code § 22-3133(a)(3). "'To engage in a course of conduct' means directly or indirectly, or through one or more third persons, in person or by any means, on 2 or more occasions, to . . . [f]ollow, monitor, place under surveillance, threaten, or communicate to or about another individual." D.C. Code § 22-3132(8)(A). The statute defines "[c]ommunicating" as "using oral or written language, photographs, pictures, signs, symbols, gestures, or other acts or objects that are intended to convey a message." D.C. Code § 22-3132(3). "Emotional distress" is defined as "significant mental suffering or distress that may, but does not necessarily, require

medical or other professional treatment or counseling." D.C. Code § 22-3132(4).

A conviction for stalking requires proof that a defendant possessed a culpable mental state during at least two of the occasions that comprise the course of conduct. *Coleman v. United States*, 202 A.3d 1127, 1139-40 (D.C. 2019). Moreover, "to trigger criminal liability, the level of fear, alarm, or emotional distress must rise significantly above that which [is] commonly experienced in day to day living and must involve a severe intrusion on the victim's personal privacy and autonomy." *Id.* at 1145 (internal quotation marks and citations omitted). "Ordinary uneasiness, nervousness, [and] unhappiness are insufficient." *Id.* (internal quotation marks and citation omitted).

C. The Decision in *Mashaud v. Boone*

In *Mashaud*, this Court considered whether the District's stalking statute could be reconciled with the First Amendment. 295 A.3d at 1143. There, the Superior Court issued a civil-protection order (CPO) against Mashaud, after it found good cause to believe that Mashaud, a married man, stalked Boone when he truthfully revealed to Boone's family, friends, and colleagues through an email message, Facebook messages,

and a blogpost that Boone had an affair with Mashaud's wife. *Id*. at 1144-46. At trial, Mashaud did not deny sending the messages or authoring the blogpost, but instead argued that his communications to and about Boone were protected by the First Amendment. *Id*. at 1146.

On appeal, the en banc Court agreed with Mashaud. *See Mashaud*, 295 A.3d at 1155. First, the Court held that, in the absence of some narrowing construction, the stalking statute would be substantially overbroad and unconstitutional on its face. *Id.* at 1155-59. By its plain terms, the statute criminalized any communication that one should have known would reasonably cause another to suffer emotional distress, which encompassed a vast amount of speech based on its content, "without regard to its truth or falsity or whether it was of public or purely private concern." *Id*. at 1144, 1156-59. "To save the District's stalking statute from unconstitutionality," the Court interpreted the statute's savings clause, which provided that "[t]his section does not apply to constitutionally protected activity," D.C. Code § 22-3133(b), to mean that the statute covers only speech that fits within the "'well-defined and narrowly limited classes of speech'" outside the protections of the First Amendment – e.g., threats, obscenity, defamation, fraud, incitement, and

speech integral to criminal conduct. *Mashaud*, 295 A.3d at 1144, 1159-62 (quoting *United States v. Stevens*, 559 U.S. 460, 468-69 (2010)). However, the Court made clear that its narrowing construction of the statute's application came into play "only when a stalking charge depend[ed] on the content of [a defendant]'s speech." *Id.* at 1161. Thus, "[i]n light of *Mashaud*, a jury cannot consider the content of a defendant's speech as one of the occasions comprising a course of conduct for stalking unless it finds that the speech falls within a categorical exception." *Keerikkattil*, 313 A.3d at 600 (citing *Mashaud*, 295 A.3d at 1161).

Second, this Court held that the statute was unconstitutional as applied to Mashaud because the stalking charge depended on the content of Mashaud's speech, and the course of conduct consisted solely of communications that did not fall within one of the narrow categories of speech that lacked First Amendment protections. *Mashaud*, 295 A.3d at 1160-61, 1170. Accordingly, this Court concluded that the trial court erred by finding that Mashaud committed the crime of stalking and issuing a CPO on that basis. *Id.* at 1171.

D. The Decision in *Keerikkattil v. United States*

In *Keerikkattil*, this Court addressed, inter alia, whether the trial court's failure to instruct the jury that it needed to find that Keerikkattil's communications fell within one of the narrowly defined categories of unprotected speech, as required by *Mashaud*, violated his First Amendment rights. 313 A.3d at 596. There, after being terminated from his consulting firm for acting inappropriately toward a junior colleague, Keerikkattil "embarked on a months-long campaign of retribution" against the victim, which included sending the victim threatening texts and emails; sending communications to the consulting firm and government agencies alleging that the victim had engaged in misconduct; and showing up at the doorstep of the victim's parents who lived across the country in Oregon. *Id.*

This Court reviewed Keerikkattil's unpreserved First Amendment challenge for plain error and held that any error did not affect his substantial rights and therefore did not warrant reversal. *Keerikkattil*, 313 A.3d at 596-97, 601-08. In so holding, the Court noted that, to establish the third prong of plain-error review, Keerikkattil had to "establish a reasonable probability that, if a *Mashaud*-based instruction

had been provided, the jury would not have found that on at least two occasions he knew or should have known that his intentional conduct would cause [the victim] emotional distress." *Id.* at 605 (footnote omitted).

Although the government had pressed nine occasions as comprising the course of conduct at trial, the Court noted that a conviction required only two occasions. *Mashaud*, 295 A.3d at 606. The Court focused its analysis on the final two occasions – i.e., the Oregon trip and the series of text messages Keerikkattil sent to the victim after the trip – both of which, it concluded, the jury could properly consider under *Mashaud*. *Id.* at 606-07. As to the trip, Keerikkattil never argued that his conduct in taking the trip amounted to speech or expressive conduct subject to First Amendment protection. *Id.* at 602, 606-07 ("[C]onduct . . . would not run afoul of *Mashaud*."). As to the series of text messages, the Court "look[ed] not to their content but only to the fact of their communication, which *Mashaud* allow[ed]." *Id.* at 607 ("If the stalking stemmed from the mere fact of communication, as opposed to the contents of the communication, *Mashaud*'s saving construction of Section 22-3133 poses no barrier."). The Court thus had to determine whether there was "a reasonable

probability that if the jury had been presented with only the subset of this evidence that it could properly consider under *Mashaud*, it would have reached a different result." *Id.* at 606.

Although the Court in *Keerikkattil* did not consider the content of the text messages Keerikkattil sent to the victim after his Oregon trip (as one of the occasions comprising the course of conduct), the Court made clear that it could "consider the content of other communications as evidence that inform[ed] [its] conclusions about whether the actus reus conduct at issue was likely to cause [the victim] emotional distress." *Keerikkattil*, 313 A.3d at 606 (citing, inter alia, *Wisconsin v. Mitchell*, 508 U.S. 476, 489 (1993) ("The First Amendment . . . does not prohibit the evidentiary use of speech to establish the elements of a crime or to prove motive or intent. Evidence of a defendant's previous declarations or statements is commonly admitted in criminal trials subject to evidentiary rules dealing with relevancy, reliability, and the like."). As the Court explained:

> Given that we are analyzing the government's evidence as if the only "occasions" for purposes of the criminal course of conduct were the Oregon trip and subsequent text messages, consideration of the content of other communications as context for these communications does not trigger First Amendment scrutiny because the other communications are

> not themselves being regulated. Consequently, we may consider, as a jury may have considered, the content of [ ] Keerikkattil's prior communications to determine the potential for the Oregon trip and the subsequent text messages to inflict emotional distress on someone in [the victim]'s circumstances.

Keerikkattil, 313 A.3d at 606.

Based upon the totality of evidence, the Court could "discern no reasonable probability that the jury would have reached a different conclusion if it considered only the harm inflicted by the Oregon trip and the fact of communication from the following text messages." *Keerikkattil*, 313 A.3d at 608. Keerikkattil flew across the country to arrive unannounced and uninvited at the home of the victim's parents, whom he had never met and with whom he had no connection. *Id.* at 607. As the Court recognized, his "trip conveyed both the lengths to which he was willing to go to hurt [the victim] as well as a suggestion that his retributive efforts might reach her loved ones too." *Id*. Keerikkattil thus should have known that the trip would cause someone in the victim's circumstances emotional distress. *Id*. He also should have known that the mere fact of the additional text messages he sent to the victim after the trip "was likely to instill emotional distress in [the victim]." *Id*. at 608. While "the mere fact of sending a few text messages might not

ordinarily amount to criminal stalking," viewed in the context of their relationship, including Keerikkattil's "months-long campaign of retribution" against the victim and the victim's "explicit instructions not to contact [her]," "each new communication from [ ] Keerikkattil – irrespective of its content – reflected another intrusion into [the victim]'s life from which she could not escape." *Id*. at 596, 608.

E. Discussion

Even assuming, arguendo, that some of Leninger's communications comprising the course of conduct involved the content of speech and did not fall within a categorical exception as required by *Mashaud*, and that any error was plain at the time of appeal, Leninger cannot establish that his substantial rights were affected by the error. As in *Keerikkattil*, the jury could have considered at least some of the evidence properly under *Mashaud* and would have found Leninger guilty anyway.

At trial, the government focused on five occasions to establish the course of conduct underlying the stalking charge: (1) May 4, 2022; (2) May 6, 2022; (3) May 17, 2022; (4) June 27, 2022; and (5) July 1, 2022 (2/8/23 Transcript (Tr.) 75-76). However, Leninger's conduct on three of these occasions suffice to establish the stalking offense. The victim

expressly instructed Leninger on May 6, 2022, to cease all contact with her (2/7/23 Tr. 112; Government Exhibit (GX) 4-58). Despite this clear directive from the victim, Leninger persisted in making unwanted contact on three separate occasions: (1) on May 17, 2022, at about 3:00 a.m., Leninger flashed a light into the victim's bedroom window to signal her to come down into the courtyard with her dog (2/7/23 Tr. 113-16); (2) on June 27, 2022, Leninger sent the victim an email message asking how she was doing (2/7/23 Tr. 116-17; GX 4-60); and (3) on July 1, 2022, Leninger sent the victim another email message with a pin drop location of his apartment building (2/7/23 Tr. 119-20, 158; GX 4-60).

These final three communications comprise the prohibited course of conduct. In compliance with *Mashaud*, the jury could have found that the mere fact of these repeated communications violated the stalking statute, without regard to the content of the messages themselves. *See Counterman v. Colorado*, 600 U.S. 66, 86 (2023) (Sotomayor, J., concurring) ("The content of the repeated communications can sometimes be irrelevant, such as persistently calling someone and hanging up, or a stream of utterly prosaic communications.") (internal quotation marks omitted); *Keerikkattil*, 313 A.3d at 607 ("A jury may consider the act of

sending the communication – but not what lay within the communication – as part of a course of conduct that the defendant should have known would inflict emotional distress upon the victim.") (internal quotation marks and citations omitted). Moreover, the jury could have properly considered the content of Leninger's prior communications to the victim "as context" under *Mashaud* because these communications "[we]re not themselves being regulated" and "d[id] not trigger First Amendment scrutiny." *Id.* at 606. Had the jury considered only the permissible evidence – i.e., the subset of evidence it could properly consider under *Mashaud* – there was no reasonable probability that the jury would have reached a different outcome.

By the time Leninger sent the final three communications to the victim, their relationship, which had started as a neighborly friendship centered around their dogs, had deteriorated. On May 1, 2022, Leninger confessed his romantic feelings toward the victim via text message, but the victim made clear to him that she wished to remain friends (2/7/23 Tr. 85; GX 4-26). Despite having been rebuffed by the victim, Leninger continued to pursue the victim romantically and badgered her throughout the day on May 4, 2022, to meet with him in the courtyard

(2/7/23 Tr. 91-101; GX 4-45, 4-47, 4-49, 4-50). Later that evening, the victim agreed to meet with Leninger in person and confronted him, rejecting his advances for a second time (2/7/23 Tr. 101-08). On May 6, 2022, in a series of text messages, when Leninger would not relent, the victim told Leninger on four separate occasions, "I said no," and after the third time, she told Leninger, "I am now scared" (2/7/23 Tr. 109-12; GX 4-56 to 4-58). Yet Leninger still refused to accept no as an answer and asked her to reconsider (2/7/23 Tr. 112; GX 4-58). Fed up with his refusal to listen to her, the victim texted, "Please do not contact me anymore" (2/7/23 Tr. 112; GX 4-58). Finally, even though the victim unequivocally instructed Leninger not to contact her, Leninger contacted her on three more occasions, each time causing her significant mental distress (see 2/7/23 Tr. 113-16, 118, 120-21, 124-28, 152, 158).

Leninger argues that he could not have known that his final three communications to the victim would cause a reasonable person in the victim's shoes to feel serious emotional distress because the content of these communications was "innocuous" (Supplemental Brief for Leninger at 14-15). But, by this point, the content of his communications was immaterial – it did not matter what Leninger said to the victim; it was

the fact that he continued to contact her, despite her explicit command not to do so, that distressed her. Given the context of their relationship and all that had transpired between them,[1] Leninger should have known that the mere fact of these additional communications would cause a reasonable person in the victim's circumstances to suffer serious emotional distress. In light of the victim's numerous attempts to reject Leninger's advances and her final plea to him to stop contacting her (all of which fell on deaf ears), "each new communication from [him] – irrespective of its content — reflected another intrusion into [the victim]'s

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[1] Leninger contends that this Court is not permitted to look at the broader context of the relationship or any other prior acts of the defendant in determining whether a defendant possesses the requisite mens rea to support a stalking conviction (Supplemental Brief for Leninger at 8). He is wrong. This Court has stated that:

> [A] reasonable factfinder can certainly consider all of the previous acts in a defendant' s course of conduct in assessing whether he or she possessed the requisite mental state when he or she committed the two acts of following, monitoring, surveilling, threatening, or communicating that the government says support a conviction for stalking. Where a defendant has committed a series of alarming acts, the defendant's prior acts will usually justify a conclusion that he or she should have known that at least two of the acts would cause a reasonable person to feel seriously alarmed.

Coleman, 202 A.3d at 1141.

life from which she could not escape." *Keerikkattil*, 313 A.3d at 596, 608. "The harm from the fact of communication in these [ ] messages thus rose above 'that which is commonly experienced in day to day living' and crossed into 'a severe intrusion on a victim's personal privacy and autonomy.'" *Id*. at 608 (quoting *Coleman*, 202 A.3d at 1146).

In sum, there was "no reasonable probability that the jury would have reached a different conclusion if it considered only the harm inflicted by . . . the fact of communication" from Leninger's final three messages to the victim as comprising the course of conduct. *Keerikkattil*, 313 A.3d at 608. Because the error did not affect his substantial rights, Leninger cannot prevail on plain-error review, and reversal is not warranted.[2]

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[2] Leninger further contends that his conviction should be vacated because *Mashaud* held that the stalking statute was unconstitutionally overbroad and void for vagueness (Brief for Leninger at 19-20). However, the Court in *Mashaud* saved the stalking statute from "wholesale invalidation" by imposing a narrowing interpretation of the statute that made it constitutional. *Mashaud*, 295 A.3d at 1144, 1159. The three communications comprising the course of conduct here violated the stalking statute without regard to the content of those communications. Thus, Leninger's conviction survives constitutional scrutiny.

II. There Was Sufficient Evidence of Stalking.

Leninger contends that, because his stalking conviction was based on speech that was constitutionally protected, the evidence was insufficient to support his conviction (Brief for Leninger at 2, 9). He is mistaken. As discussed supra, there was a subset of evidence that the jury could properly consider under *Mashaud*, and this evidence was sufficient to support his conviction.

A. Standard of Review and Applicable Legal Principles

"When considering the sufficiency of evidence, [this Court] 'view[s] the evidence in the light most favorable to the government, giving full play to the right of the fact-finder to determine credibility, weigh the evidence, and draw justifiable inferences of fact, and making no distinction between direct and circumstantial evidence.'" *White v. United States*, 207 A.3d 580, 587 (D.C. 2019) (quoting *Cherry v. District of Columbia*, 164 A.3d 922, 929 (D.C. 2017)). "The evidence is sufficient if 'any rational fact-finder could have found the elements of the crime beyond a reasonable doubt.'" *Cherry,* 164 A.3d at 929. (quoting *Hernandez v. United States*, 129 A.3d 914, 918 (D.C. 2016)). "Sufficient evidence in this case requires at least two occasions that satisfy *Mashaud*

and thus could form a course of conduct directed at [the victim] that [Leninger] 'should have known would cause a reasonable person in [the victim's] circumstances' emotional distress." *Keerikkattil*, 313 A.3d at 609 (citing D.C. Code §§ 22-3132(8), -3133(a)(3)).

B. Discussion

Here, there were three occasions that satisfied *Mashaud* – the fact of Leninger's communications with the victim on May 17, June 27, and July 1. These three occasions formed a course of conduct that Leninger "should have known would cause a reasonable person in [the victim's] circumstances" significant emotional distress. D.C. Code §§ 22-3132(8), -3133(a)(3). For the reasons discussed above, when viewed in the context of their prior interactions, the jury could reasonably conclude that Leninger should have known that the fact of his subsequent three communications with the victim would cause significant emotional distress to a reasonable person in the victim's circumstances. *See Coleman*, 202 A.3d at 1146 ("In the context of the two prior staring incidents, the fact that Mr. Coleman knew where the complainant lived, the early morning hour, and the two unequivocal requests that he leave the complainant alone, a factfinder could reasonably conclude that Mr.

Coleman should have known that his behavior on October 12 [in "linger[ing] around" in order to watch the complainant as she walked] would be seriously alarming to a reasonable person in the complainant's position."). The evidence was therefore sufficient to support Leninger's conviction for stalking.[3]

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[3] Leninger appears to contend that even if the stalking statute as applied to him did not violate his First Amendment rights, his conviction should still be vacated because there was insufficient evidence that he possessed the requisite mental state "for the reasons stated in his opening brief" (Supplemental Brief for Leninger at 20-21). The government likewise refers to its opening brief in responding to this argument (see Brief for United States at 16-24).

Finally, Leninger contends that his conviction must be vacated because the stalking statute did not intend to criminalize his behavior, which merely involved unwelcome speech with no allegations of following, monitoring, surveilling, attempted violence, or threats (Brief for Leninger at 21-22). But the statute, by its plain terms, indicates that the crime of stalking can be established by speech alone. *See* D.C. Code § 22-3132(8)(A) (a defendant "engage[s] in a course of conduct" when he, "on 2 or more occasions, . . . communicate[s] to or about another individual"). Moreover, the legislative history reveals that the Council contemplated that the stalking statute would cover repeated, unwelcome communication. *See* Council of D.C., Comm. on Pub. Safety & Judiciary, Rep. on Bill 18-151, at 32-33 (June 26, 2009) (Committee Report). The "purpose" of the legislation is not only "to enable law enforcement to intercept behaviors that potentially lead to violence . . . or even death," but also to less serious consequences such as "a loss in the quality of life." *Id.* at at 33 (June 26, 2009). Repeated, unwelcome advances, depending on their degree and nature, certainly could lead to a loss in the quality of life. Indeed, in its Committee Report, the Council provided "a familiar

(continued . . .)

example" of a potential stalking situation where, after a date, a man repeatedly contacts a woman, but the woman is not interested and does not respond to his communications. *Id.* at 32-33.

CONCLUSION

WHEREFORE, the government respectfully submits that the judgment of the Superior Court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have caused a copy of the foregoing to be served by electronic means, through the Court's EFS system, upon counsel for appellant, Donald L. Dworsky, Esq., on this 20th day of June, 2024.

/s/
ANNE Y. PARK
Assistant United States Attorney