

**DISTRICT ATTORNEY  
COUNTY OF NEW YORK  
ONE HOGAN PLACE  
New York, N. Y. 10013  
(212) 335-9000**



**CYRUS R. VANCE, JR.**  
DISTRICT ATTORNEY

August 3, 2018

Honorable Felicia Mennin  
New York State Supreme Court  
111 Centre Street, Part 21  
New York, NY 10013

Re: People v. Daniel Hernandez  
Indictment No. 00877/2015

Dear Judge Mennin:

At the Court's request, I am submitting this letter to advise the Court of the People's position on sentencing. For the reasons set forth below, the People have determined that defendant violated the written plea agreement that the parties executed on October 20, 2015.<sup>1</sup> Pursuant to the terms of the plea agreement, defendant should now be sentenced to an indeterminate term of one to three years in state prison on his plea of guilty to one count of Use of a Child in a Sexual Performance, in violation of Penal Law § 263.05. Additionally, the People oppose a Youthful Offender adjudication in this matter.

Defendant was charged by Indictment 00877/2015 with four counts of Use of a Child in a Sexual Performance, for his role in creating sexually explicit videos depicting a thirteen-year-old child having sexual contact with adult males, and for disseminating the videos on his social media accounts. Upon review of mitigating information submitted by defendant, the Court and the People permitted defendant to enter into a plea agreement whereby sentencing would be deferred for two years. As part of the agreement, defendant would have the opportunity to avoid prison and earn a Youthful Offender adjudication in lieu of a criminal conviction.

Defendant pled guilty and signed the written plea agreement, which included the condition that he not commit any future crime or violation (Plea Agreement, ¶ 9). The Honorable Michael Sonberg advised defendant during the plea colloquy that the Court was imposing additional conditions, including that he "stay out of trouble" and "not [be] arrested and charged with any new offense"<sup>2</sup> (Plea Colloquy, p. 13, lines 20-22). Under the express terms of the plea agreement, the People have the sole discretion to decide whether the defendant has committed a violation (Plea Agreement, ¶ 13). As detailed below, the People have determined that defendant violated the plea agreement by committing new crimes.

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<sup>1</sup> A copy of the written agreement is attached hereto as Exhibit 1 and hereinafter referred to as the "Plea Agreement."

<sup>2</sup> Minutes of the plea colloquy are attached hereto as Exhibit 2.

### **Defendant Violated the Plea Agreement**

Defendant appeared before the Court at the conclusion of the two-year period on October 24, 2017, and stated that he had not obtained his GED as required by the plea agreement. At defendant's request, the Court granted defendant an additional adjournment to pass the GED exam. Defendant is a musician and recording artist and, during this time, his music career began to flourish. Defendant became well-known by his stage name "Tekashi69" or "6ix9ine." Beginning in approximately November 2017, defendant experienced considerable commercial success, and traveled throughout the country, performing and promoting his music.

Defendant violated the terms of the plea agreement on January 6, 2018, by committing a crime in Houston, Texas.<sup>3</sup> In that case, defendant grabbed a sixteen-year-old fan by the neck and demanded that the fan delete the cell phone video the fan took of the defendant walking through a mall.<sup>4</sup> As a result, defendant is currently charged in Harris County, Texas, with a misdemeanor Assault, in violation of Texas Penal Code § 22.01(a)(1). That case is next on in Harris County Criminal Court on August 22, 2018 for a control date.<sup>5</sup> Defendant's commission of that crime is a clear violation of the plea agreement.

Defendant again violated the terms of the plea agreement on May 20, 2018, when he was arrested in Brooklyn for the crime of Aggravated Unlicensed Operation of a Motor Vehicle in the Third Degree, in violation of VTL § 511(1)(a). In that case, a police officer observed defendant park his vehicle in front of a fire hydrant, and a subsequent check of the Department of Motor Vehicles records revealed defendant's driver's license was suspended. During his arrest processing, defendant injured a police officer's hand by squeezing the officer's hand against the handcuffs. On May 21, 2018, defendant was charged with Assault in the Third Degree, in violation of Penal Law § 120.00(1), Obstructing Governmental Administration in the Second Degree, in violation of Penal Law § 195.05 and related crimes, in addition to the crime of Aggravated Unlicensed Operation of a Motor Vehicle.<sup>6</sup> His cases are next to be heard on October 1, 2018 in Part AP2 in Kings County Criminal Court. Defendant's commission of these crimes also violated the plea agreement.

### **The People's Determination Was Made in Good Faith**

As the Court is aware, when it is alleged that a defendant has breached a condition of a plea agreement and the defendant seeks to challenge that determination, the Court must hold a hearing. People v. Outley, 80 N.Y.2d 702, 712 (1993). The prosecution is not required to support assertions made at an Outley hearing with admissible evidence; due process requires only that "an offender not be sentenced on the basis of materially untrue assumptions or 'misinformation,'" or upon "pure speculation." People v. Naranjo, 89 N.Y.2d 1047, 1049 (1997). The paramount concern in determining "whether sentencing is conducted in a fundamentally fair manner in accordance with the constitutional limitations...[is] whether the defendant has been afforded an opportunity to refute those aggravating factors which may have negatively influenced the [sentencing] court." People v.

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<sup>3</sup> At the time the crime occurred, defendant had not earned a GED and asked this Court on January 30, 2018 for additional time to take the exam. Defendant ultimately passed the GED exam on April 10, 2018.

<sup>4</sup> In New York State, this conduct would support a charge of Coercion in the First Degree, in violation of Penal Law § 135.65(1), a D felony.

<sup>5</sup> The complaint and information filed in Harris County Criminal Court are attached hereto as Exhibit 3.

<sup>6</sup> The complaints filed in Kings County Criminal Court are attached hereto as Exhibit 4.

Perry, 36 N.Y.2d 114, 119 (1975). The Court is “not required to conduct an evidentiary hearing to determine the veracity of defendant’s excuses.” People v. Albergotti, 17 N.Y.3d 748, 750 (2011).

In the instant matter, the plea agreement grants the prosecution the authority to determine whether defendant has complied with or violated the conditions of the plea (Plea Agreement, ¶ 13). Accordingly, the scope of the Outley hearing is limited to whether the People were arbitrary or capricious in determining that defendant violated the plea agreement or whether they made a good faith judgment as to defendant’s breach. *See, e.g., People v. Anonymous*, 11 A.D.3d 245 (1st Dept. 2004) (finding defendant’s argument unpreserved, but stating that “[w]ere we to review this claim, we would find that there was no evidence of arbitrary or capricious conduct by the People, who had a legitimate basis for determining that defendant was continuing to sell drugs, in violation of the agreement”); People v. Anonymous, 305 A.D.2d 267(1st Dept. 2003)(same); People v. Anonymous, 305 A.D.2d 156, 157 (1st Dept. 2003) (“The People’s determination that defendant breached the agreement by failing to maintain contact with the police was made in good faith and was not arbitrary or capricious.”); People v. Anonymous, 278 A.D.2d 111 (1st Dept. 2000) (“Inasmuch as the People’s determination that the agreement went unfulfilled was made in good faith, defendant’s motion for specific performance or leave to withdraw his plea was properly denied”)(citation omitted); People v. Anonymous, 253 A.D.2d 709, 710 (1st Dept. 1998)(“In any event, pursuant to the agreement, the determination of the value of defendant’s services was within the People’s sole discretion and since their determination that defendant’s cooperation failed to comply with the agreement was made in good faith, defendant’s claim is without merit.”).

Courts have routinely enforced provisions in plea agreements under which it is left to the District Attorney’s office to determine in its sole discretion whether and/or to what extent defendant satisfied the terms of the plea. For example, in a case arising from a cooperation agreement with the New York County District Attorney’s Office, the First Department held that: “Defendant was not entitled to a hearing to determine the extent of his cooperation, since, under the express terms of the plea agreement, it was entirely within the People’s discretion to determine whether the degree of cooperation provided merited leniency, and, in any event, there is no evidence that the cooperation defendant provided was meaningful.” People v. Anonymous, 265 A.D.2d 200, 200 (1st Dept. 1999). *See* People v. Anonymous, 305 A.D.2d 156 (1st Dept. 2003)(“Defendant waived a judicial determination of any factual issues concerning his compliance or noncompliance with the agreement.”); People v. Johnson, 291 A.D.2d 245, 246 (1st Dept. 2002)(“[t]he agreement explicitly stated that the People were to be the sole arbiters of . . . whether defendant’s cooperation was sufficient to warrant lenient treatment”); People v. Lopez, 290 A.D.2d 323 (1st Dept. 2002)(“In any event, the cooperation agreement clearly provided that it was up to the People to determine whether defendant’s cooperation was satisfactory.”); People v. Anonymous, 251 A.D.2d 179 (1st Dept. 1998) (“Since defendant violated his obligation under the cooperation agreement to ‘fully, fairly and truthfully disclose all information,’ as determined by the People, the court properly enhanced the sentence.”).

Defendant unquestionably violated the terms of the agreement when he assaulted a sixteen-year-old in Texas, drove without a license, and assaulted a police officer in Brooklyn. The complaints from these cases demonstrate a legitimate, good faith basis for the People’s determination. The Court should therefore sentence defendant to an indeterminate term of one to three years in state prison on his plea of guilty to one count of Use of a Child in a Sexual Performance, in violation of Penal Law § 263.05.

### **The People Oppose Youthful Offender Adjudication**

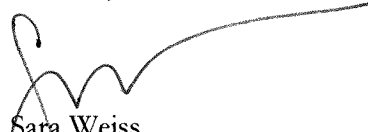
Based on the gravity of defendant's crime against a child, his arrests on new charges, and his continued use of social media to promote a culture of violence and glorify gang activity, the People strongly oppose a Youthful Offender adjudication in this case. Since defendant's plea of guilty on October 20, 2015, he has not only become a successful recording artist, but is also now a self-admitted member of a violent gang called the 9 Trey Bloods.

As the People will detail for the Court at sentencing, defendant regularly displays firearms and references his gang in his music videos, as well as in the social media posts he broadcasts to his over nine million followers on Instagram. Defendant also uses social media to start feuds with other artists, repeatedly inviting his rivals and others to use violence. Defendant's behavior undermines any argument that the interests of justice are served by relieving him from the onus of a criminal record.

While defendant is eligible for youthful offender treatment because he was eighteen when he committed this crime, he is not automatically entitled to such treatment. People v. Dayton, 39 N.Y.2d 580, 584 (1976). Youthful offender treatment is predicated, among other things, on a court's determination that "justice would be served by relieving the eligible youth from the onus of a criminal record." CPL § 720.20. In determining whether to treat a defendant as a youthful offender, courts should consider "all of the circumstances of a case," People v. Caruso, 94 A.D.3d 529, 531 (1st Dept. 2012), including the gravity of the crime, the manner in which it was committed, the recommendation in the pre-sentence report, defendant's criminal history, and prospects for rehabilitation. People v. Cruickshank, 105 A.D.2d 325, 334 (3rd Dept. 1985), aff'd, People v. Dawn Maria C., 67 N.Y.2d 625 (1986). These factors should be weighed in light of the purpose of the statute, which is to avoid stigmatizing a youth for "hasty or thoughtless acts." Drayton, 39 N.Y.2d at 584; People v. Victor J., 283 A.D.2d 205, 206 (1st Dept. 2001).

Defendant has had over two years to demonstrate to this Court that the role he played in the sexual exploitation of a thirteen-year-old child was an aberration in his otherwise law abiding life. He has failed to do so. Defendant's new assault charges, his self-proclaimed status as a member of the 9 Trey Bloods, and his conduct related to that gang, seriously compromise his prospects for rehabilitation. Defendant should therefore be sentenced as an adult for the crime he committed against a child, and accept the consequences of that conviction, including registration under the Sexual Offender Registration Act. Accordingly, the People will ask this Court to enforce the terms of the plea agreement and sentence defendant, as an adult, to an indeterminate term of one to three years' incarceration.

Sincerely,



Sara Weiss  
Assistant District Attorney

cc: Ian Niles, Esq., Lance Lazzaro, Esq.

## **EXHIBIT 1**

CRIMINAL COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: 21

-----X  
THE PEOPLE OF THE STATE OF NEW YORK :

-against-

: Ind. No. 877/2015

DANIEL HERNANDEZ,

:

Defendant. :

-----X

PLEA AGREEMENT

On the understandings set forth below, the defendant Daniel Hernandez will plead guilty to one count of Use of Child in a Sexual Performance, in violation of PL § 263.05, in full satisfaction of the indictment.

1. The date of sentencing will be adjourned for two (2) years until October 20, 2017. The parties agree that the period of time between the defendant's plea and sentencing will (i) afford the defendant an opportunity to comply with the conditions set forth below, and (ii) provide the Court and the Prosecutor additional information pertinent to the fair resolution of this case. Defendant hereby waives any claim that the adjournment of sentencing is unreasonable.
2. During that two year adjournment period, the defendant will be placed on one year of Interim Probation through the New York City Department of Probation and will comply with any and all conditions of probation set forth by the Department of Probation. Successful compliance with probation includes attending any and all program, activity, or testing (including drug testing) and abiding by all rules, regulations, and requirements set forth by the Department of Probation. Following the completion of one year on Interim Probation, the defendant must continue to abide by the conditions set forth in paragraphs 3 through 9 of this agreement but will not be monitored by the Department of Probation. The defendant will appear before the Court quarterly to provide intermittent updates and proof of his compliance with the conditions.

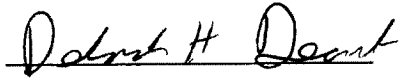
3. The defendant shall also abide by the following restrictions on his use of the Internet and social media applications:
  - a. The defendant shall not post, tweet, share, or in any way publish on the Internet, or any social media application, any nude, semi-nude, or otherwise sexually explicit images of women or children. This includes any and all images depicting women and/or children engaged in sex acts or simulated sex acts.
  - b. The defendant shall not post, tweet, share, or in any way publish on the Internet, or any social media application, any images depicting violence against women or children, whether actual, simulated, or threatened violence. This includes depictions of the use of weapons against women or children as well as any and all depictions of torture.
  - c. The defendant shall not have any third party post, tweet, share, or in any way publish on the Internet, or any social media application, any images of the type referenced in paragraphs 3(a) and 3(b) on his behalf. In the event the defendant learns a third party has published a prohibited image and tagged, linked, shared, or in any way identified the image with the defendant, the defendant must (i) un-tag or un-link himself from that image and (ii) immediately report the image to the administrator of the social media application in order to have the image deleted.
  - d. The term "images" as used in paragraph 3(a)-3(c) includes any and all images, including video images and still images, whether photographic, painted, hand drawn, or computer generated.
4. During the two year adjournment period, defendant will maintain admittance to the Puerto Rican Family Institute, Inc. Mental Health Clinic, an outpatient mental health services program. The defendant must successfully continue with any and all mental health services, including individualized therapy sessions, required by the Clinic to the satisfaction of the Clinic, the Court, and the prosecutor. Successful compliance with this condition includes attending all therapy sessions as well as any other program, activity or testing (including drug testing) and abiding by all rules, regulations and requirements of The Clinic.
5. The defendant consents to submitting, through his attorney, updates from The Clinic regarding his compliance and progress in The Clinic. He is required to submit an update at each court appearance up to and including his sentencing date. In addition, the Prosecutor may contact The Clinic and any of its employees regarding the defendant's progress at any time up to and including his sentencing date. Defendant will execute a HIPAA waiver and any other documents necessary to accomplish this reporting.
6. During the period between the defendant's guilty plea and his sentencing, the defendant must complete no less than three hundred (300) hours of community service through the New York City Parks Department.

7. During the period between the defendant's guilty plea and his sentencing, the defendant must obtain a GED.
8. Within the sixty days (60) of entering a plea of guilty, the defendant must write a letter of apology to the complaining witness and her family. The letter of apology must articulate why the defendant's participation in activities depicted in the videos and his participating in filming the videos was harmful to the complaining witness and her family. The letter must also articulate the reasons why publishing the videos on social media and sharing the videos with others caused additional harm to the complaining witness and her family. The defendant, through his attorney, will provide the letter to the Prosecutor and the Court. The Prosecutor will provide a copy of the letter to the complaining witness and her family. Additionally, one copy of the letter shall remain in the Court file, and the original letter will remain in the file of the Prosecutor.
9. The defendant may not commit any crime or violation during the two year adjournment. In the event the defendant is re-arrested, the defendant's case will be restored to the Court's calendar at the earliest opportunity.
10. If the defendant completes each of the above conditions successfully and commits no new crimes prior to the sentencing date, the People will not oppose a Youthful Offender adjudication. As a result, the defendant will not be required to register as a sex offender. At the time of sentencing, he will be sentenced to complete a sentence of four (4) years Probation and the defendant will receive credit for the one (1) year he served on Interim Probation.
11. If the defendant fails to complete any one of the above described conditions of this agreement, the parties agree that the Court will impose a sentence of incarceration in state prison. The least such sentence the Court shall impose is 1 to 3 years of incarceration, whether or not the defendant is adjudicated a Youthful Offender.
12. In the event the defendant violates the terms and conditions of this agreement, the People will oppose Youthful Offender treatment and recommend a sentence of imprisonment, the duration of which will depend on the nature of the violation. However, after hearing from both parties, the Court will make a determination as to whether the defendant will be adjudicated a Youthful Offender. The defendant understands that if he is not adjudicated a Youthful Offender, the defendant must register as a sex offender, pursuant to the Sexual Offender Registration Act.
13. Whether the defendant is determined to have violated the terms and conditions of his agreement is at the sole discretion of the Prosecutor.
14. On the date the defendant pleads guilty, the defendant shall execute a written waiver of his right to appeal which shall remain in effect under any of the plea/sentencing alternatives.

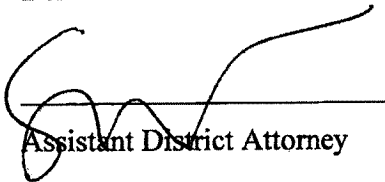


15. As consideration for and as of part of this plea agreement, the defendant waives his right to appeal from the judgment of conviction, including but not limited to the issue that the adjournment of his sentence is unlawful. Defendant has discussed the matter fully with his attorney and understands the nature of the rights being waived (including the right to prosecute the appeal as a poor person and to have an attorney assigned if indigent). This agreement contains all the understandings between the parties.

DATED: October 20, 2015



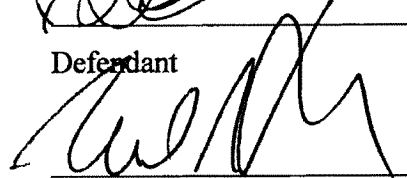
Defendant's Counsel



Assistant District Attorney



Defendant



Supreme Court Judge

HON. MICHAEL R. SONBERG

PL21 OCT 20 2015

CONSENT FOR THE RELEASE OF CONFIDENTIAL INFORMATION

(II):

CRIMINAL JUSTICE SYSTEM REFERRAL

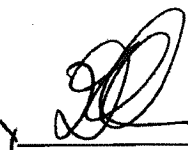
I, Daniel Hernandez, hereby consent to communication between The Puerto Rican Family Institute, Inc, Mental Health Clinic, 28 Debevoise Street, Brooklyn, NY 11206, and the Court, the District Attorney's Office, my attorney, and my Probation or Parole Officer, if any:

The purpose of and need for the disclosure is to inform all the parties listed above as to my progress in treatment on a monthly basis and whether I have successfully completed or failed to complete treatment. The extent of information to be disclosed is as follows:

1. The parties shall receive a monthly report that will state my status in treatment.
2. If I fail to continue with outpatient mental health services for any reason, the parties shall be informed of the date and the reason for my failure. If I contest the determination that I have failed to comply with outpatient mental health services at The Clinic, the full circumstances surrounding that determination will be disclosed.
3. I understand that this Consent will remain in effect and cannot be revoked by me until I have been sentenced under Indictment No. 877/2015 or I have failed to complete treatment and the charges have otherwise been resolved.

I also understand that any disclosure is bound by Part 2 of Title 42 of the Code of Federal Regulations governing confidentiality of alcohol and drug abuse patient records.

10/20/15  
(Date)

  
\_\_\_\_\_  
Signature of Defendant

## **EXHIBIT 2**

1 SUPREME COURT  
CRIMINAL TERM

NEW YORK COUNTY  
PART: 21

2 -----x  
3 THE PEOPLE OF THE STATE OF NEW YORK : INDICTMENT #  
877/2015

4 -against-

5 DANIEL HERNANDEZ,

6 Defendant.

-----x PLEA

8 111 Centre Street  
9 New York, New York 10013  
October 20, 2015

11 B E F O R E:

HONORABLE MICHAEL R. SONBERG,  
JUSTICE OF THE SUPREME COURT

13 A P P E A R A N C E S:

14 FOR THE PEOPLE:

15 CYRUS R. VANCE, JR., ESQ.,  
16 New York County District Attorney  
17 BY: SARA WEISS, ESQ.,  
Assistant District Attorney

18  
19 FOR THE DEFENDANT:

20 The Legal Aid Society  
21 New York County  
49 Thomas Street  
22 New York, New York  
23 BY: DEBORAH DEARTH, ESQ.,  
of counsel

1 THE CLERK: This is calendar number 12, Daniel  
2 Hernandez, Indictment Number 0877 of 2015.

3 Counsel, note your appearance for the record,  
4 please.

5 MS. WEISS: ADA Sara Weiss for the People.

6 MS. DEARTH: Legal Aid Society by Deborah Dearth.

7 THE COURT: So Ms. Weiss had sent over a draft of a  
8 plea agreement, I looked at it and made some changes, some  
9 minor, some not.

10 And I gather those were acceptable to you and your  
11 colleagues?

12 MS. WEISS: Yes. And I incorporated all of the  
13 Court's edits.

14 I sent it to Ms. Dearth and we have an executed  
15 agreement.

16 MS. DEARTH: Yes.

17 MS. WEISS: Pending the Court's decision.

18 THE COURT: Okay. So why don't you let me have it,  
19 please.

20 (Handed.)

21 THE COURT: I only need one. I only sign one.

22 You can have the others stamped up, but there is  
23 only one original document.

24 The Court doesn't sign multiple documents unless  
25 it's necessary for some administrative agency that requires

1 multiple ones.

2 And just so the record is clear, the primary change  
3 I made was that there is a two year adjournment, a year of  
4 which after the plea, a year of which Mr. Hernandez is going  
5 to be on interim probation supervision.

6 I wasn't comfortable with the concept that he would  
7 only get credit for that year when he was sentenced.

8 The statute says that you get credit for the year  
9 you are on interim probation supervision, but also limits  
10 that period to one year.

11 So what I did and what's accepted is that the  
12 probationary sentence will be a four-year sentence, he will  
13 get credit for the year, which means he will have an  
14 additional three years, once he's sentenced and has a period  
15 of a year when he is on interim supervision and another year  
16 when he is going to have to report quarterly.

17 And he's also going to have to report while he is  
18 on interim supervision, that's part of the interim probation  
19 supervision protocol.

20 MS. DEARTH: Yes, he understands.

21 THE COURT: So why don't you enter the plea.

22 MS. DEARTH: Your Honor, my client has authorized  
23 me to plead guilty on his behalf to Penal Law 263.05, Use of  
24 a Child in a Sexual Performance, with the understanding that  
25 we put in a written document.

1 THE COURT: Mr. Hernandez, raise your right hand,  
2 please.

3 Do you swear or affirm the statement you are about  
4 to make will be the truth, the whole truth and nothing but  
5 the truth?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Put your hand down.

8 By your plea of guilty, do you admit that in the  
9 County of New York, during the period from February 21st to  
10 22nd of 2015, that you induced a child less than 17 years of  
11 age to engage in a sexual performance knowing the character  
12 of the performance in which she was engaged?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: And what was the nature of the sexual  
15 performance?

16 What did she do?

17 THE DEFENDANT: (Pause.)

18 THE COURT: Mr. Hernandez, this is for you to tell  
19 me what happened.

20 You know what this is about. And this isn't to put  
21 any pretty flowers around it.

22 This case is what it is. So Mr. Hernandez, what is  
23 it that you had her do?

24 THE DEFENDANT: She was in a video. She was in a  
25 sexual act.

1 THE COURT: Was she dressed or undressed?

2 THE DEFENDANT: Undressed.

3 THE COURT: Totally?

4 THE DEFENDANT: Half.

5 THE COURT: I'm sorry?

6 THE DEFENDANT: Yeah, I think she was undressed.

7 THE COURT: And what was the sexual act that was  
8 happening in the video?

9 THE DEFENDANT: Regular --

10 THE COURT: I'm sorry, sir?

11 THE DEFENDANT: I don't know how to describe it.  
12 She was in a sexual act with someone.

13 (Defense counsel conferring with the defendant at  
14 this time.)

15 \*\*\*\*\*

16 THE DEFENDANT: She was sitting on the lap of  
17 another gentleman.

18 THE COURT: And what was happening when she was  
19 sitting on his lap?

20 THE DEFENDANT: He was putting his hand on her  
21 vagina.

22 THE COURT: Okay. And it was just on her vagina or  
23 was it more than that?

24 THE DEFENDANT: No, it was --

25 THE COURT: Sir, sir, you keep looking at something



1 and that really gets me concerned because you were there.  
2 You arranged for this.

3 Correct?

4 THE DEFENDANT: Yes.

5 THE COURT: So you have watched this; right?

6 THE DEFENDANT: Yes.

7 THE COURT: So what happened? She is sitting on  
8 his lap and what is he doing to her?

9 THE DEFENDANT: She was in a sexual act with him.

10 THE COURT: Sexual act encompasses a multitude of  
11 things. Tell me what words.

12 THE DEFENDANT: She was in a sexual intercourse  
13 with him. She was --

14 THE COURT: He had his penis in some part of her  
15 person?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: And what part of her person was that,  
18 was that her vagina or her anus or?

19 THE DEFENDANT: Her vagina.

20 MS. WEISS: Your Honor, may we approach?

21 THE COURT: Sure.

22 (Conversation was held off the record.)

23 \*\*\*\*\*

24 THE COURT: Mr. Hernandez, in one of the videos  
25 that was posted, was she performing oral sex on another

1 person?

2 THE DEFENDANT: Yeah.

3 THE COURT: And were you standing behind her?

4 THE DEFENDANT: No, no, sir.

5 (Defense counsel conferring with the defendant at  
6 this time.)

7 \*\*\*\*\*

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: And were you moving your hips as though  
10 you were, not that you actually were, but as though you  
11 were penetrating her as well?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Is that acceptable, Ms. Weiss?

14 MS. WEISS: Yes, it is, your Honor.

15 THE COURT: Have you authorized your attorney on  
16 your behalf to withdraw your plea of guilty -- of not guilty  
17 previously entered and to now plead guilty to Use of a Child  
18 in a Sexual Performance, which is a Class C felony, in  
19 violation of Penal Law Section 263.05?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Do you understand and agree that under  
22 no circumstances will you be permitted to withdraw the plea  
23 of guilty which you are now entering?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Has anyone threatened you or forced you

1 into taking this plea?

2 THE DEFENDANT: No, your Honor.

3 THE COURT: Are you taking any drugs or medication,  
4 whether legal or illegal, that have an affect on your  
5 ability to understand what's happening here today?

6 THE DEFENDANT: No, your Honor.

7 THE COURT: Are there any immigration consequences  
8 for Mr. Hernandez?

9 MS. DEARTH: No.

10 THE COURT: Has anyone made any promise to you,  
11 that is your own attorney, the District Attorney or anyone  
12 else as to what the sentence of the Court will be in order  
13 to induce you to plead guilty other than the promises  
14 contained in the written plea agreement, which is dated  
15 today's date, and which you signed earlier?

16 Has anyone made any other promises to you?

17 THE DEFENDANT: No, your Honor.

18 THE COURT: Ms. Weiss, do you want to put the  
19 primary portions, the salient portions of the plea agreement  
20 on the record just so Mr. Hernandez can hear them and if  
21 it's contrary to his understanding of them, he can tell us  
22 that.

23 MS. WEISS: Yes, your Honor.

24 As the written plea agreement outlines, the  
25 defendant pled today to Use of a Child in a Sexual

1 Performance.

2 If the defendant stays out of trouble for two  
3 years, and commits no new crimes or violations, he must do  
4 one year on interim probation and one year where he updates  
5 the Court quarterly about his progress.

6 He must complete 300 hours of community service  
7 through the Parks Department.

8 He must attend counseling at the clinic that's  
9 outlined in the plea agreement.

10 He must write a letter of apology to the  
11 complaining witness and her family, which he is to deliver  
12 to the Prosecutor within 60 days of today.

13 And he can do that through his attorney, of course.  
14 And during that time, he also may not post and must refrain  
15 from posting on the internet any sexual explicit images of  
16 women and children.

17 And if a third party posts him through a social  
18 media site, he is to take that site -- essentially  
19 disconnect himself with that image and notify the site  
20 administrators.

21 And if he does all of those things, your Honor, the  
22 People at the end of two years will recommend that he  
23 receive youthful offender treatment and a term of four years  
24 probation, taking into account that he would also get credit  
25 for the one year that he has served interim probation.

1                   However, if he fails, the defendant is to receive a  
2                   mandatory state prison sentence, the least of which can be,  
3                   I believe, it's one to three years.

4                   THE COURT: Even with youthful offender?

5                   MS. WEISS: Even if he were to receive youthful  
6                   offender, but if he fails, the People will argue, will  
7                   strenuously argue to the Court to not give him youthful  
8                   offender treatment, and also that he must then register as a  
9                   sexual offender.

10                  THE COURT: Do you understand all of that, Mr.  
11                  Hernandez?

12                  THE DEFENDANT: Yes, your Honor.

13                  THE COURT: Any questions about any of it?

14                  THE DEFENDANT: No. No, sir.

15                  THE COURT: Do you also understand that you are  
16                  waiving your right to appeal as a condition of your guilty  
17                  plea?

18                  MS. WEISS: Yes, your Honor.

19                  THE COURT: Has Ms. Dearth explained to you what's  
20                  meant by waiving your right to appeal?

21                  THE DEFENDANT: Yes, your Honor.

22                  THE COURT: And did he execute a written waiver of  
23                  his right to appeal?

24                  MS. WEISS: That's included in the written plea  
25                  agreement.

1 THE COURT: I understand that, but the paragraph 14  
2 of your agreement seems to anticipate a separate written  
3 agreement.

4 That's not the case, it's just the one that's in  
5 the agreement?

6 MS. WEISS: That is correct.

7 THE COURT: Do you understand that your right to  
8 appeal is a separate and important right that is being  
9 waived, that that's not among the rights which are waived by  
10 pleading guilty?

11 Do you understand that, sir?

12 MS. WEISS: Yes, your Honor.

13 THE COURT: Do you also understand that by agreeing  
14 to waive your right to appeal, your guilty plea and the  
15 sentence which will be imposed by final -- that no Appellate  
16 Court will review either your plea or your sentence?

17 MS. WEISS: Yes.

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Do you agree to accept the sentence  
20 that will be imposed?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Are you pleading guilty voluntarily, of  
23 your own free will, without anyone forcing you to do so and  
24 because you believe it to be the right thing to do?

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: Do you understand that by pleading  
2 guilty, you are waiving your absolute right to a trial by  
3 jury or by this Court on the question of your guilt or  
4 innocence?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Do you understand you are also waiving  
7 your right to confront any accusing witnesses and that you  
8 are also waiving your right against self-incrimination, that  
9 is, your right not to testify?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: In other words, do you understand that  
12 this plea of guilty has the same legal effect as a  
13 conviction after trial?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: And I want to dwell on something for a  
16 moment that's in the agreement.

17 But I want to make sure you understand that this is  
18 a condition I would place on this regardless, which is,  
19 there are a number of conditions you have to comply with for  
20 the next two years.

21 And these are somewhat laid out in here, but these  
22 are my personal conditions, which is, you have to cooperate  
23 with the Department of Probation, you are going to start off  
24 by having to go to them today so that they can prepare a  
25 recommendation for me and paperwork so I can place you on

1 interim probation supervision, technically in six weeks.

2 You are going to have to report to them  
3 periodically on interim probation supervision, that first  
4 year.

5 You have to discuss the facts of the case with them  
6 and you are going to have to be truthful in discussing the  
7 facts, that means I expect what you tell them is going to be  
8 consistent with what you've told me today.

9 Because if it's not, and I know this isn't  
10 especially comfortable for you to talk about, but that's  
11 part of what the sentence and rehabilitation is about, is  
12 coming to grips with what it is that you did.

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: If what you tell them isn't consistent  
15 with what you've told me, if it denies any responsibility on  
16 your part, if it says you had no idea of what was going on,  
17 that would mean that either you've lied to me or you've lied  
18 to them, that would violate the condition.

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Next condition is that you stay out of  
21 trouble, that you are not arrested and charged with any new  
22 offense.

23 And the final condition is that you come back to  
24 court on all the times that I tell you, you have to come  
25 back to court.



1 And if you violate any of those conditions, you may  
2 or may not get youthful offender treatment.

3 If you get youthful offender treatment, you can be  
4 sentenced to as much as one to a third to four years in  
5 state's prison; if you are denied youthful offender  
6 treatment, you can be sentenced to as much as an  
7 indeterminate sentence with a minimum of five years and a  
8 maximum of 15 years.

9 Or is this different?

10 MS. WEISS: I think it's not a violent. I think  
11 it's just a C so it's still an indeterminate.

12 THE COURT: It's indeterminate, and it would be 5  
13 to 15.

14 MS. WEISS: Right, yes, subject to the Sexual  
15 Offender Registration Act, but not subject to the Sexual  
16 Offender Guidelines for sentencing, strangely.

17 THE COURT: Yes. Do you understand that, sir?

18 MS. WEISS: Yes, your Honor.

19 THE COURT: Has everything I've asked you or said  
20 to you up to now been clear to you, and do you understand  
21 it?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Let the plea be entered.

24 THE CLERK: Daniel Hernandez, do you now withdraw  
25 your previously-entered plea of not guilty and do you now

1 plead guilty to count one, Use of a Child in a Sexual  
2 Performance, to cover and satisfy Indictment 877 of 2015.

3 Is that your plea, guilty?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: So we need six weeks for interim  
6 probation supervision, December 1st.

7 THE CLERK: December 1st?

8 THE COURT: Yes.

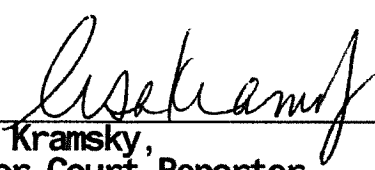
9 THE CLERK: All right.

10 Stay in the courtroom, you need to wait for  
11 additional paper work from the Court.

12 \*\*\*\*\*

13 **REPORTER'S CERTIFICATION**

14 Certified to be a true and accurate transcript of the  
15 original stenographic notes.

16  
17   
18 Lisa Kramsky,  
19 Senior Court Reporter  
20  
21  
22  
23  
24  
25

## **EXHIBIT 3**

THE STATE OF TEXAS  
VS.  
**DANIEL HERNANDEZ**  
18 LOCUST ST  
BROOKLYN, NY 11206

SPN: 02943104  
DOB: W M 05/08/1996  
DATE PREPARED: 5/10/2018

D.A. LOG NUMBER: 2442546  
CJIS TRACKING NO.:  
BY: ACH DA NO: 2764642  
AGENCY: HPD  
O/R NO: 002544218  
ARREST DATE: TO BE

Pgs-1.

COMPL  
(999)

NCIC CODE: 1313 02

RELATED CASES:

MISDEMEANOR CHARGE: Assault

CAUSE NO:  
HARRIS COUNTY CRIMINAL COURT AT LAW NO:  
FIRST SETTING DATE:

2204713

BAIL: TO BE SET AT MAGISTRATION  
PRIOR CAUSE NO:  
CHARGE SEQ NUM: 1

**TO BE**  
**IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS:**

Before me, the undersigned Assistant District Attorney of Harris County, Texas, this day appeared the undersigned affiant, who under oath says that he has good reason to believe and does believe that in Harris County, Texas, **DANIEL HERNANDEZ**, hereafter styled the Defendant, heretofore on or about **January 6, 2018**, did then and there unlawfully, intentionally and knowingly cause bodily injury to Santiago Albarran, hereinafter called the Complainant, by grabbing the Complainant's neck with his hand.

Probable Cause

YOUR AFFIANT, D. MORRISON, AM A CERTIFIED PEACE OFFICER EMPLOYED BY THE HOUSTON POLICE DEPARTMENT (HPD) AND ASSIGNED TO THE HOMICIDE DIVISION - MAJOR ASSAULTS. BEING DULY SWORN, I STATE UPON MY OATH THAT I HAVE REASON TO BELIEVE AND DO BELIEVE THAT ON OR ABOUT JANUARY 6, 2018, AND BEFORE THE MAKING AND FILING OF THIS COMPLAINT, IN THE COUNTY OF HARRIS AND THE STATE OF TEXAS, DANIEL HERNANDEZ (DOB 05/08/1996) HEREAFTER KNOWN AS DEFENDANT, DID COMMIT THE MISDEMEANOR OFFENSE OF ASSAULT -BODILY INJURY. MY BELIEF IS BASED UPON THE FOLLOWING:

On January 6, 2018, HPD Patrol was dispatched to the Galleria Mall, located at 5805 Westheimer Rd in regards to an assault that just occurred. Upon arrival HPD was met by the complainant, Santiago Albarran, who stated the famous Rapper "6ix9ine", who Affiant knows by name and sight, grabbed him by the neck, causing small scratch marks and pain. The complainant further stated he ran into the Defendant when he pulled out his camera to video him. The complainant stated the Defendant then turned around and began to yell at him to erase the video. The complainant stated as the Defendant grabbed him, the Defendant's body guards began to surround him in a intimidating way, also yelling at him. The complainant stated his family was with him, and eventually to not get hurt again, he erased the video and went home where he called the Police.

Affiant then began the investigation and did get a picture of the complainant and the Defendant at the mall. Patrol did document seeing small scratch marks on the complainant's neck. Affiant then called the witness Leopoldo Albarran who stated she is the complainant's mother and did see the suspect grab her son, and she began to yell at the suspect to let go of her son. The witness stated her son did not assault the suspect.

**AGAINST THE PEACE AND DIGNITY OF THE STATE.**

Sworn to and subscribed before me on May 10, 2018

AFFIANT

ASSISTANT DISTRICT ATTORNEY  
OF HARRIS COUNTY, TEXAS  
BAR NO. 2469714

Signed: Paula Godhart

5/16/2018

Probable Cause found \_\_\_\_\_ Capias to issue \_\_\_\_\_

Date

Magistrate, Harris County, Texas

**COMPLAINT**

Certified Document Number: 2469714 - Page 1 of 1



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.  
Witness my official hand and seal of office  
this July 17, 2018

Certified Document Number: 79959336 Total Pages: 1

Chris Daniel, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

**In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail [support@hcdistrictclerk.com](mailto:support@hcdistrictclerk.com)**

02943104  
1 2204713

THE STATE OF TEXAS  
VS.  
DANIEL HERNANDEZ ✓  
18 LOCUST ST  
BROOKLYN, NY 11206

02943104

SPN:  
DOB: W M 05/08/1996 ✓  
DATE PREPARED: 5/10/2018

D.A. LOG NUMBER: 2442546  
CJIS TRACKING NO.:  
BY: ACH DA NO: 2764642  
AGENCY: HPD  
O/R NO: 002544218  
ARREST DATE: TO BE

NCIC CODE: 1313 02

RELATED CASES:

MISDEMEANOR CHARGE: Assault

CAUSE NO:  
HARRIS COUNTY CRIMINAL COURT AT LAW NO:  
FIRST SETTING DATE:

2204713

1

TO BE

BAIL: TO BE SET AT MAGISTRATION  
PRIOR CAUSE NO:  
CHARGE SEQ NUM: 1

IN THE NAME AND BY AUTHORITY OF THE STATE OF TEXAS:

Comes now the undersigned Assistant District Attorney of Harris County, Texas, in behalf of the State of Texas, and presents in and to the Harris County Criminal Court at Law No. \_\_\_ of Harris County, Texas, that in Harris County, Texas, DANIEL HERNANDEZ, hereafter styled the Defendant, heretofore on or about January 6, 2018, did then and there unlawfully, intentionally and knowingly cause bodily injury to Santiago Albarran, hereinafter called the Complainant, by grabbing the Complainant's neck with his hand.

**FILED**  
Chris Daniel  
District Clerk

MAY 10 2018

Time: \_\_\_\_\_  
Harris County, Texas

By \_\_\_\_\_  
Deputy

AGAINST THE PEACE AND DIGNITY OF THE STATE.

\_\_\_\_\_  
ASSISTANT DISTRICT ATTORNEY  
OF HARRIS COUNTY, TEXAS  
BAR NO. 24097747

INFORMATION



I, Chris Daniel, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.  
Witness my official hand and seal of office  
this July 17, 2018

Certified Document Number: 79883959 Total Pages: 1

Chris Daniel, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

**In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail [support@hcdistrictclerk.com](mailto:support@hcdistrictclerk.com)**

## **EXHIBIT 4**



CRIMINAL COURT OF THE CITY OF NEW YORK  
PART APAR COUNTY OF KINGS

THE PEOPLE OF THE STATE OF NEW YORK

STATE OF NEW YORK  
COUNTY OF KINGS

V

DANIEL HERNANDEZ

POLICE OFFICER DANIEL BRIGUGLIO SHIELD NO.19092, OF 077 COMMAND SAYS THAT ON OR ABOUT MAY 20, 2018 AT APPROXIMATELY 04:14 PM AT 1566 STERLING PLACE COUNTY OF KINGS, STATE OF NEW YORK,

THE DEFENDANT COMMITTED THE OFFENSE(S) OF:

TR 4-08 (E) (2)	STOPPING, STANDING, OR PARKING - FIRE HYDRANT
VTL 511(1) (A)	AGGRAVATED UNLICENSED OPERATION OF A MOTOR VEHICLE
	IN THE THIRD DEGREE
VTL 509(1)	UNLICENSED OPERATOR

IN THAT THE DEFENDANT DID:

STOP, STAND, OR PARK A VEHICLE WITHIN 15 FEET OF HYDRANT, UNLESS OTHERWISE INDICATED BY POSTED SIGNS, MARKINGS OR OTHER TRAFFIC CONTROL DEVICES, OR AT THE DIRECTION OF A LAW ENFORCEMENT OFFICER, OR AS OTHERWISE PROVIDED IN THIS SUBDIVISION  
; OPERATE OR DRIVE A MOTOR VEHICLE UPON A PUBLIC HIGHWAY OF THIS STATE OR UPON ANY SIDEWALK OR TO OR FROM ANY LOT ADJACENT TO A PUBLIC GARAGE, SUPERMARKET, SHOPPING CENTER OR CAR WASHING ESTABLISHMENT OR TO OR FROM OR INTO A PUBLIC GARAGE OR CAR WASHING ESTABLISHMENT WITHOUT BEING DULY LICENSED PURSUANT TO THE PROVISIONS OF THIS CHAPTER; OPERATE A MOTOR VEHICLE UPON A PUBLIC HIGHWAY WHILE KNOWING OR HAVING REASON TO KNOW THAT SUCH PERSON'S LICENSE OR PRIVILEGE OF OPERATING SUCH MOTOR VEHICLE IN THIS STATE OR PRIVILEGE OF OBTAINING A LICENSE TO OPERATE SUCH MOTOR VEHICLE ISSUED BY THE COMMISSIONER WAS SUSPENDED, REVOKED OR OTHERWISE WITHDRAWN BY THE COMMISSIONER.

THE SOURCE OF DEPONENT'S INFORMATION AND THE GROUNDS FOR DEPONENT'S BELIEF ARE AS FOLLOWS:

DEPONENT STATES, THAT AT THE ABOVE TIME AND PLACE, WHICH IS A PUBLIC HIGHWAY, DEPONENT OBSERVED DEFENDANT DRIVING A 2017 CHEVROLET TRUCK NY STATE LICENSE NO. GNE2313 AND FURTHER OBSERVED THE DEFENDANT PARK THE AFOREMENTIONED VEHICLE IN FRONT OF A FIRE HYDRANT.

DEPONENT FURTHER STATES THAT DEPONENT CONDUCTED A CHECK OF THE OFFICIAL, COMPUTERIZED DEPARTMENT OF MOTOR VEHICLES DRIVING RECORD(S) (PURSUANT TO VTL 201) RELATING TO DEFENDANT.

DEPONENT OBSERVED SAID RECORD(S) TO INDICATE THAT, AT THE ABOVE TIME, DEFENDANT WAS DRIVING WITH HIS PRIVILEGE TO DO SO HAVING BEEN SUSPENDED IN THE STATE OF NEW YORK.

DEPONENT FURTHER OBSERVED THE OFFICIAL DEPARTMENT OF MOTOR VEHICLES RECORD(S) TO INDICATE THAT, AT THE ABOVE TIME, DEFENDANT HAD 4 SUSPENSIONS ON 2 DATES.

DEPONENT FURTHER STATES THAT DEPONENT'S BASIS FOR BELIEVING THAT THE DEFENDANT HAD REASON TO KNOW THAT HIS LICENSE WAS SUSPENDED IS AS FOLLOWS: THE ABOVE-DESCRIBED NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES COMPUTER CHECK REVEALED THAT DEFENDANT'S LICENSE WAS SUSPENDED FOR FAILURE TO ANSWER OR APPEAR IN RESPONSE TO A TRAFFIC SUMMONS, AND ALL SUCH SUMMONS HAVE PRINTED ON THEM THE WARNING "IF YOU DON'T ANSWER THIS TICKET BY MAIL WITHIN 15 DAYS YOUR LICENSE WILL BE SUSPENDED".

2018KNO24322



DEPONENT FURTHER STATES THAT THE NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES  
MAILS A NOTICE OF SUSPENSION TO ANY SUCH PERSON AT THEIR LAST KNOWN ADDRESS.

FALSE STATEMENTS MADE IN THIS DOCUMENT ARE  
PUNISHABLE AS A CLASS A MISDEMEANOR PURSUANT  
TO SECTION 210.45 OF THE PENAL LAW.

05/20/2018  
DATE

  
SIGNATURE

CRIMINAL COURT OF THE CITY OF NEW YORK  
PART APAR COUNTY OF KINGS

THE PEOPLE OF THE STATE OF NEW YORK

STATE OF NEW YORK  
COUNTY OF KINGS

V

DANIEL HERNANDEZ

POLICE OFFICER ANDRES TORIBIO SHIELD NO.10759, OF 077 COMMAND SAYS THAT ON OR ABOUT MAY 21,2018 AT APPROXIMATELY 08:10 AM AT 127 UTICA AVENUE COUNTY OF KINGS, STATE OF NEW YORK,

THE DEFENDANT COMMITTED THE OFFENSE(S) OF:

PL 120.05(3)  
PL 120.00(1)  
PL 195.05

ASSAULT ~~IN THE~~ SECOND DEGREE (DQO)  
ASSAULT IN THE THIRD DEGREE (DQO)  
OBSTRUCTING GOVERNMENTAL ADMINISTRATION IN THE  
SECOND DEGREE  
ATTEMPTED ASSAULT IN THE THIRD DEGREE (DQO)  
MENACING IN THE THIRD DEGREE (DQO)

IN THAT THE DEFENDANT DID:

WITH INTENT TO CAUSE PHYSICAL INJURY TO ANOTHER PERSON, CAUSE SUCH INJURY TO SUCH PERSON OR TO A THIRD PERSON; WITH INTENT TO CAUSE PHYSICAL INJURY TO ANOTHER PERSON, ATTEMPT TO CAUSE SUCH INJURY TO SUCH PERSON OR TO A THIRD PERSON; WITH INTENT TO PREVENT A PEACE OFFICER, POLICE OFFICER, PROSECUTOR AS DEFINED IN SUBDIVISION THIRTY-ONE OF SECTION 1.20 OF THE CRIMINAL PROCEDURE LAW, REGISTERED NURSE, LICENSED PRACTICAL NURSE, SANITATION ENFORCEMENT AGENT, NEW YORK CITY SANITATION WORKER, FIREFIGHTER, INCLUDING A FIREFIGHTER ACTING AS A PARAMEDIC OR EMERGENCY MEDICAL TECHNICIAN ADMINISTERING FIRST AID IN THE COURSE OF PERFORMANCE OF DUTY AS SUCH FIREFIGHTER, EMERGENCY MEDICAL SERVICE PARAMEDIC OR EMERGENCY MEDICAL SERVICE TECHNICIAN, OR MEDICAL OR RELATED PERSONNEL IN A HOSPITAL EMERGENCY DEPARTMENT, A CITY MARSHAL, A SCHOOL CROSSING GUARD APPOINTED PURSUANT TO SECTION TWO HUNDRED EIGHT-A OF THE GENERAL MUNICIPAL LAW, TRAFFIC ENFORCEMENT OFFICER, TRAFFIC ENFORCEMENT AGENT, OR EMPLOYEE OF ANY ENTITY GOVERNED BY THE PUBLIC SERVICE LAW IN THE COURSE OF PERFORMING AN ESSENTIAL SERVICE, FROM PERFORMING A LAWFUL DUTY, BY MEANS INCLUDING RELEASING OR FAILING TO CONTROL AN ANIMAL UNDER CIRCUMSTANCES EVINCING THE ACTOR'S INTENT THAT THE ANIMAL OBSTRUCT THE LAWFUL ACTIVITY OF SUCH PEACE OFFICER, POLICE OFFICER, PROSECUTOR AS DEFINED IN SUBDIVISION THIRTY-ONE OF SECTION 1.20 OF THE CRIMINAL PROCEDURE LAW, REGISTERED NURSE, LICENSED PRACTICAL NURSE, SANITATION ENFORCEMENT AGENT, NEW YORK CITY SANITATION WORKER, A FIREFIGHTER, INCLUDING A FIREFIGHTER ACTING AS A PARAMEDIC OR EMERGENCY MEDICAL TECHNICIAN ADMINISTERING FIRST AID IN THE COURSE OF PERFORMANCE OF DUTY AS SUCH FIREFIGHTER, AN EMERGENCY MEDICAL SERVICE PARAMEDIC OR EMERGENCY MEDICAL SERVICE TECHNICIAN, OR MEDICAL OR RELATED PERSONNEL IN A HOSPITAL EMERGENCY DEPARTMENT, A CITY MARSHAL, A SCHOOL CROSSING GUARD APPOINTED PURSUANT TO SECTION TWO HUNDRED EIGHT-A OF THE GENERAL MUNICIPAL LAW, A TRAFFIC ENFORCEMENT OFFICER, TRAFFIC ENFORCEMENT AGENT, OR EMPLOYEE OF ANY ENTITY GOVERNED BY THE PUBLIC SERVICE LAW IN THE COURSE OF PERFORMING AN ESSENTIAL SERVICE, CAUSE PHYSICAL INJURY TO SUCH PEACE OFFICER, POLICE OFFICER, PROSECUTOR AS DEFINED IN SUBDIVISION THIRTY-ONE OF SECTION 1.20 OF THE CRIMINAL PROCEDURE LAW, REGISTERED NURSE, LICENSED PRACTICAL NURSE, SANITATION ENFORCEMENT AGENT, NEW YORK CITY SANITATION WORKER, FIREFIGHTER, INCLUDING A FIREFIGHTER ACTING AS A PARAMEDIC OR EMERGENCY MEDICAL TECHNICIAN ADMINISTERING FIRST AID IN THE COURSE OF PERFORMANCE OF DUTY AS SUCH FIREFIGHTER, EMERGENCY MEDICAL SERVICE PARAMEDIC OR EMERGENCY MEDICAL SERVICE TECHNICIAN, OR MEDICAL OR RELATED PERSONNEL IN A HOSPITAL EMERGENCY DEPARTMENT, CITY MARSHAL, SCHOOL CROSSING GUARD APPOINTED PURSUANT TO SECTION TWO HUNDRED EIGHT-A OF THE GENERAL MUNICIPAL LAW, TRAFFIC ENFORCEMENT OFFICER TRAFFIC ENFORCEMENT AGENT, OR EMPLOYEE OF AN ENTITY GOVERNED BY THE PUBLIC SERVICE LAW; BY PHYSICAL MENACE, INTENTIONALLY PLACE OR ATTEMPT TO PLACE ANOTHER PERSON IN FEAR OF DEATH, IMMINENT SERIOUS PHYSICAL INJURY OR PHYSICAL INJURY; INTENTIONALLY OBSTRUCT, IMPAIR OR PERVERT THE ADMINISTRATION OF LAW OR OTHER GOVERNMENTAL FUNCTION OR PREVENT OR ATTEMPT TO PREVENT A PUBLIC SERVANT FROM PERFORMING AN OFFICIAL FUNCTION, BY MEANS OF INTIMIDATION, PHYSICAL FORCE OR INTERFERENCE, OR BY MEANS OF ANY INDEPENDENTLY UNLAWFUL ACT, OR BY MEANS OF

INTERFERING, WHETHER OR NOT PHYSICAL FORCE IS INVOLVED, WITH RADIO, TELEPHONE, TELEVISION OR OTHER TELECOMMUNICATIONS SYSTEMS OWNED OR OPERATED BY THE STATE, OR A COUNTY, CITY, TOWN, VILLAGE, FIRE DISTRICT OR EMERGENCY MEDICAL SERVICE OR BY MEANS OF RELEASING A DANGEROUS ANIMAL UNDER CIRCUMSTANCES EVINCING THE DEFENDANT'S INTENT THAT THE ANIMAL OBSTRUCT GOVERNMENTAL ADMINISTRATION.

THE SOURCE OF DEPONENT'S INFORMATION AND THE GROUNDS FOR DEPONENT'S BELIEF ARE AS FOLLOWS:

DEPONENT IS INFORMED BY SEAN CLAXTON THAT, AT THE ABOVE TIME AND PLACE, THE DEFENDANT DID INSTRUCT THE DEFENDANT TO REMOVE THE DEFENDANT'S ALREADY UNLOCKED HANDCUFFS AND THAT THE DEFENDANT REFUSED TO REMOVE SAID HANDCUFFS.

THE DEPONENT IS FURTHER INFORMED BY THE INFORMANT THAT THE INFORMANT ATTEMPTED TO REMOVE THE ABOVE-MENTIONED HANDCUFFS AND THAT THE DEFENDANT DID GRAB AND SQUEEZE THE INFORMANT'S HAND AGAINST THE DEFENDANT'S HANDCUFFS TO PREVENT THE INFORMANT FROM REMOVING THE DEFENDANT'S HANDCUFFS AND REFUSED TO LET GO DESPITE REPEATED REQUESTS BY THE INFORMANT TO DO SO.

THE DEPONENT IS FURTHER INFORMED BY THE INFORMANT THAT THE ABOVE DESCRIBED ACTIONS CAUSED INFORMANT TO SUFFER SWELLING AND REDNESS TO THE INFORMANT'S FINGERS AND, TO SUFFER SUBSTANTIAL PAIN, TO FEAR FURTHER PHYSICAL INJURY.

FALSE STATEMENTS MADE IN THIS DOCUMENT ARE  
PUNISHABLE AS A CLASS A MISDEMEANOR PURSUANT  
TO SECTION 210.45 OF THE PENAL LAW.

5-21-18  
DATE

  
SIGNATURE

2018KND24321  
