



MICHAEL D. O'KEEFE
DISTRICT ATTORNEY

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE
DISTRICT ATTORNEY
CAPE & ISLANDS DISTRICT

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December 27, 2018

VIA FAX (508) 325-5759

Criminal Clerk's Office
Nantucket District Court
16 Broad Street
P.O. Box 1800
Nantucket, MA 02554

Re: Commonwealth vs. Kevin S. Fowler
Docket No. 1888CR000598

Dear Sir/Madam:

Enclosed for filing please find the following document regarding the above-referenced matter:

1. Commonwealth's Response to the Defendant's Motion to Excuse Defendant's Presence at Arraignment.

Thank you,

A handwritten signature in black ink, appearing to read "Michael Giardino", with a stylized flourish at the end.

Michael Giardino
Assistant District Attorney
Cape & Islands

cc: Juliane Balliro

COMMONWEALTH OF MASSACHUSETTS

NANTUCKET, SS

DISTRICT COURT
CRIMINAL DOCKET
NO. 1888CR00598

COMMONWEALTH OF MASSACHUSETTS

v.

KEVIN S. FOLWER

**COMMONWEALTH'S RESPONSE TO THE DEFENDANT'S MOTION TO EXCUSE HIS
PRESENCE AT ARRAIGNEMENT**

Now comes the Commonwealth, by and through its District Attorney, Michael D. O'Keefe, and states that we do not agree to the defendant's presence being waived at his scheduled arraignment on January 7, 2019.

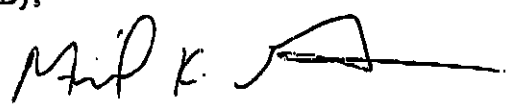
As reasons therefore, the Commonwealth states that a defendant's appearance at arraignment is required by Mass.R.Crim.P., Rule 7 (as amended in 2012). In relevant part the rule states "a defendant who receives a summons... shall be ordered to appear before the court for arraignment on a date certain. Id. at (a)(1).

In this case, a hearing before a clerk magistrate was held in the Nantucket District Court. Following that hearing and a finding of probable cause by the magistrate, attorneys for the defendant and the Commonwealth discussed an arraignment date with the magistrate. The parties agreed on January 7, 2019 at eleven a.m..

At no time was there any agreement between the defendant and the Commonwealth with respect to the issue of the defendant's appearance for arraignment. Furthermore, during a telephone call on December 27, 2018 with attorney Balliro, she was specifically informed that the Commonwealth would not agree to the waiver.

Allowing the defendant's presence be waived would be a direct violation of Rule 7., and his motion should be denied.

Respectfully Submitted,
Michael O'Keefe
By,



Assistant District Attorney
Michael K. Giardino
3231 Main St.
P.O. Box 445
Barnstable, MA 02630
Tel. (508) 362-8113
BBO# 685880

Date: 12/27/18

CERTIFICATE OF SERVICE

I, **Michael K. Giardino**, Assistant District Attorney, hereby certify that I have on this date served a copy of the documents attached to the interested parties, Attorney Julieane Balliro, One Post Office Square, 30th floor, Boston, MA 02109 by mail and email.



Michael K. Giardino
Assistant District Attorney
Cape & Islands District
3231 Main St.
Barnstable, MA 02630

Dated: 12/27/18