ONLINE DATING: "MURDERERS, RAPISTS AND CON ARTISTS, OH MY"

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I. INTRODUCTION

The launch of the first online dating site in 19951 led to a dramatic shift in the way many people meet their mates.2 The numbers tell the story. Researchers estimate that in 2011, approximately seventy-five percent of the fifty-four million singles in the United States logged on to find that “special someone.”3 Many found success. In fact, according to recent studies, seventeen percent of marriages last year were between couples that met on the Internet.4 Generally, this phenomenon seems like a good thing but there is a dark and potentially dangerous side that exists, along with the potential for psychological and financial harm. This happens because, although most subscribers legitimately search for soul mates, a few look for victims. These predators have a nefarious and illegal plan, generally designed to help them obtain money from naïve participants. Their schemes vary from minor harm to murder.

With so many people engaged in an activity that generates a great deal of emotion — and almost two billion dollars in revenue5 — it is not

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4. Statistic Brain, supra n. 3. It seems like everyone is doing it. See e.g. ASPCA, You're Invited to Our #PuppyLove Dating Show and Trivia Party!, http://blog.aspca.org/content/youre-invited-our-puppylove-dating-show-trivia-party?utm_source=newsalterntemail_020813&utm_medium=email&utm_campaign=newsalert (Feb. 4, 2013) (noting that for Valentine’s Day in 2013, the ASPCA hosted a dating show for dogs).

5. See Kim, supra n. 3, at 445; see also Sam Laird, For Love or Money: Does Online Dating Really Work?, http://mashable.com/2012/03/24/online-dating-infographic-2 (accessed Mar. 24, 2012) (predicting revenue of $1.9 billion in 2012). The numbers do vary widely. See e.g. Regina Fischer, 1 in 5 singles have dated someone they met online, News-Register

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surprising that participants litigate all types of disagreements. For example, a number of disgruntled clients sued online dating services for breach of contract or misrepresentation. In addition, homosexuals filed discrimination claims against eHarmony when the company refused to let them join based on their sexual orientation. These issues have been addressed in the legal literature. However, despite the many situations involving illegal conduct by one dater against another, this article is the first to review such criminal prosecutions.

This is a cautionary tale that includes examples of crimes and unlawful scams perpetrated by scoundrels who use dating websites to take advantage of vulnerable, lonely people looking for love. After categorizing representative appellate opinions by primary offense, Part II explores the factual situations in the cases and, while certainly not blaming the victim, suggests how at least some of the damage could have been avoided if the “target” had been more attuned to the potential problems and possible ways to avoid them. Part III notes that, although a few states have begun to regulate dating services, most of the laws do not address safety. Further, even those laws that do refer to background checks require nothing more than notification of whether companies search criminal records. This section also warns users against depending too heavily on such investigations because they often have significant limitations. Part IV concludes that no matter what measures a business implements, no activity is one hundred percent risk-free. However, so long as subscribers follow the tips listed on most websites, using common sense is their best chance at minimizing the possibility of harm when going online to seek a partner.

Online, http://newsregisteronline.com/?p=1243 (Apr. 30, 2012) (estimating $1.2 billion). Despite the phenomenal growth within the last few years, some people have turned to social networking sites to meet romantic partners and other companions. Lindsay S. Feuer, Who Is Poking Around Your Facebook Profile?: The Need to Reform the Stored Communications Act to Reflect a Lack of Privacy on Social Networking Websites, 40 Hofstra L. Rev. 473, 474, 477-80 (Win. 2011) (explaining the evolution of social networking websites and “[the] new set of challenges”). While online dating sites may have similar “organic, interactive qualities,” their purpose is to help participants find potential mates. Liveuniverse, Inc. v. Myspace, Inc., 2007 WL 6865852 at *6 (C.D. Cal.). Social networking websites, on the other hand, “have significantly more functions and appeal.” Id. Therefore, while these sites may also be used for dating, if a particular company suddenly shut down, “its members would not fill the social void by turning to online dating sites. Instead, they would likely set up profiles on a different social networking website.” Id. Recognizing these differences, this article focuses only on online dating services.

6. Phyllis Coleman, Online Dating: When “Mr. (Or Ms.) Right” Turns Out All Wrong, Sue the Service! 36 Okla. City U. L. Rev. 139, 158-66 (2011) [hereinafter Sue the Service!].


8. See eHarmony Australia, infra n. 423.
II. Cases

Since the creation of online dating nearly twenty years ago, numerous prosecutions for a variety of crimes have been reported. Some constituted insignificant infractions, while in other situations defendants were charged and convicted of serious felonies — including first degree murder. To explain the magnitude of the problem, it is necessary to classify the decisions, as well as to provide a brief discussion of their facts and the resolutions.

A. Murder

Sometimes, people kill the romantic partner they met online. In fact, certain cases reveal this was the plan all along. See infra pt. II(A) and accompanying notes (discussing murder cases).

9. Initially, there was a stigma associated with online dating, but most experts believe it no longer exists. See e.g. Eli J. Finkel, Paul W. Eastwick, Benjamin R. Karney, Harry T. Reis, & Susan Sprecher, Online Dating: A Critical Analysis from the Perspective of Psychological Science, 13 Psych. Sci. in the Pub. Interest 3, 4, 11-12, http://psi.sagepub.com/content/13/1/3.full.pdfml (2012) (concluding that while “the public may have had negative attitudes toward online dating in its early years, ‘people no longer think of online dating as a last resort for desperadoes and creeps,’” but also noting that “although some stigma about online dating may still exist, rates of participation in online dating have grown dramatically in recent years”) (citations omitted)).

10. See infra pt. II(A) and accompanying notes (discussing murder cases).

11. See e.g. Brooks v. State, 640 S.E.2d 280, 283 (Ga. 2007). John Levi Brooks and twenty-seven-year-old Telma Morris met through an online dating service a month before he killed her by manual strangulation. Id. His cousin, who lived with Brooks, testified the couple left home in her car at about 4:00 p.m. Id. The next morning, Brooks was driving the victim's automobile, left it in a motel where it was later found, and dumped some of her things that he removed from the vehicle. Id. His uncle testified Brooks had said Morris had called too much and “was getting on [his] nerves.” Id. Police eventually traced the car back to Brooks who was arrested and convicted of “malice murder and kidnapping with bodily injury,” for which he received concurrent life imprisonment sentences. Id. at n.1. The Georgia Supreme Court, which rejected evidentiary challenges and claims based on denial of effective assistance of trial counsel, affirmed. Id. at 283.

At times, when people wish someone would die but they do not want to kill him themselves, they turn to a person who murders for a living. Such was the case in People v. Goodman, where April Goodman wanted her former husband — who she met through a dating service — dead. 806 N.E.2d 1124, 1127 (Ill. Ct. App. 2004). She began discussions with someone she thought was a hit man but who, fortunately for her ex-spouse, actually was an undercover policeman. Id. They met and agreed upon a price. Id. The second time they got together, she gave him a down payment. Id. Both conversations were recorded. Id. April was arrested and convicted of solicitation of murder for hire. Id. This seems to be the classic “murder for hire case” in a dating service context, but Great Expectations was not online at the time.

12. In other cases, it appears one person may simply get angry about something that happened between the two, and the situation intensifies until one is dead. For example, in United States v. Huck, 576 F. Supp. 1546 (N.D. Ill. 1984), Bobbie Ryan arranged through a dating service to visit Peter Hoban at his townhouse. Id. at 1547. Ryan arrived at about 8:00 p.m., and they “visited . . . for several hours.” Id. Later, Hoban became intoxicated
vides a particularly egregious example. Following a divorce from his second wife, Dennis Larson ("Larson") moved across the country and joined a dating website with the goal of "immediate marriage."14 Within two weeks of meeting Kathy Frost ("Frost"), a nurse's aide, Larson proposed and they married shortly thereafter.15 Larson and Frost met with an insurance representative the day after their wedding.16 They purchased a combined universal life insurance policy with $300,000 of coverage for Larson's life and $200,000 of coverage on Frost's life (including double indemnity for accidental death), named each other as primary beneficiaries to their policy, and prepaid for two months.17 Subsequently, Larson contacted the agent about reducing the face amount of the policies and scheduled a meeting for Monday, October 12, to discuss the changes.18

On Friday, October 9, Frost told her mother that although she was afraid of heights and water, she agreed to go to Acadia National Park with her new husband because he loved the outdoors.19 The couple went on Saturday but decided to return the following day due to the crowds.20 That night, Frost told a friend she was unhappy with her marriage but that and made several unsolicited sexual advances toward Ryan. Id. However, after a brief struggle, Hoban fell asleep in his second-floor bedroom. Id. While Hoban was sleeping, Ryan went downstairs and took some of his property. Id. Ryan stated that she removed the property because she wanted to financially, but not physically, hurt Hoban. Id. Ryan then placed crumpled-up newspapers near a couch on the first floor, and set them on fire. Id. She did the same thing in the basement. Id. Although Ryan realized this was dangerous, she testified "she did not believe the carpet would 'form a blaze and burn up a building.'" Id. Nevertheless, she left the townhouse, the fires spread, and Hoban died as a result. Id.

After she was convicted of aggravated arson and murder, Bobbie Ryan filed a petition for writ of habeas corpus. Id. at 1546. She asserted she was denied due process and the right to jury trial by the judge's refusal to instruct jurors on criminal damage to property, a lesser-included offense. Id. at 1547. Rejecting her theory that she acted recklessly when she set the fires, the court said, "the evidence of 'recklessness' was not so 'unequivocally strong' that failure to give the criminal damage to property instruction could be said to have amounted to a 'fundamental miscarriage of justice.'" Id. at 1548. In other words, "Ryan has failed to sustain her 'especially heavy' burden of establishing constitutional error." Id. In addition, although they were given an involuntary manslaughter instruction, the fact that jurors returned a verdict of murder instead indicates they rejected the defense theory that Ryan acted recklessly. Id. Because of the date, it seems clear this was not an online service.

14. Id. at 768.
15. Id.
16. Id.
17. Id.
18. Id.
19. Id.
20. Id. at 768-69.
it was better than being alone.\textsuperscript{21} She also said she planned to return to Acadia with Larson.\textsuperscript{22}

On Sunday evening, October 11, Larson reported to the park rangers that his wife had fallen and showed them her body on the rocks eighty feet down the cliff.\textsuperscript{23} Maine State Police Detective Jeffrey Harmon began an extensive investigation the next day.\textsuperscript{24} During several interviews, Larson insisted his wife must have slipped on the rocks after they had separated.\textsuperscript{25} In early November, he returned to Montana and requested payment on Frost’s life insurance policy.\textsuperscript{26} Three months after the incident, Larson finally admitted he had lied and that during an argument, he pushed Frost over the edge.\textsuperscript{27} Police arrested him, convicted him of “intentionally or knowingly causing [the] death [of his wife Kathy Frost Larson],”\textsuperscript{28} and sentenced him to fifty years.\textsuperscript{29}

The Supreme Judicial Court of Maine rejected Larson’s insufficiency of evidence claim and noted that combined with all of the other facts (including a confession) that proved corpus delicti,\textsuperscript{30} testimony showing that Larson had previously revealed to a friend “a scheme of marrying a foreign woman, purchasing life insurance for her, arranging her accidental death, and collecting the proceeds of her insurance” justified the state’s theory that Larson executed his plan.\textsuperscript{31} Stating that the testimony’s “probative value mitigates its remoteness which, in this situation affects the weight” given to the testimony rather than its admissibility,\textsuperscript{32} the Court affirmed Larson’s conviction.\textsuperscript{33}

Unlike the plotted murder in Larson, other cases show that sometimes murder is an (obviously) inappropriate reaction to an unwanted breakup.

\textsuperscript{21} Id. at 769.
\textsuperscript{22} Id.
\textsuperscript{23} Id.
\textsuperscript{24} Id.
\textsuperscript{25} Id.
\textsuperscript{26} Id.
\textsuperscript{27} Id.
\textsuperscript{28} Id.
\textsuperscript{29} Id.
\textsuperscript{30} Id. at 770-71. The court stated that “to prove corpus delicti, i.e., that the victim’s body was indeed that of Kathy Frost Larson and that the death had been caused by a criminal agency . . . [the State bears different burdens of proof . . . [F]irst, to present evidence independent of the defendant’s own statements adequate to prove both elements of corpus delicti to a probable cause standard and, second, to present evidence, including any post crime admissions or confessions made by the defendant adequate to establish the corpus delicti beyond a reasonable doubt.” Id. at 770.
\textsuperscript{31} Id. at 770.
\textsuperscript{32} Id. The court also concluded there was “no merit whatsoever in defendant’s argument, made for the first time after his conviction, that the state court lacked jurisdiction to try him because the crime occurred in a national park.” Id. at 771.
\textsuperscript{33} Id. at 768.
Lester Winningham Jr. ("Winningham") met Deborah Houchin ("Houchin") through an online service and moved in with her "relatively shortly after they started dating." A year and a half later, he proposed, and she accepted. However, when she mentioned a prenuptial agreement, he became angry and they called off the engagement. Although Winningham and Houchin reconciled a couple of times, they had split up before she was killed. In fact, she "had resumed Internet dating and had gone around the office 'touting it around . . . that she had 400 hits.'" This angered Winningham and he began to sleep in the office at the clinic where they both worked. In addition, Houchin's dog mysteriously disappeared. When Houchin did not show up for work one morning, a clinic employee contacted the police.

Though Houchin's body was found, it was so badly burned that the body had to be identified using dental records. Co-workers described the relationship as "a 'yo-yo' . . . where at times they were together and at other times they were not." The jury deliberated for about four hours before returning a guilty verdict; the judge sentenced Winningham to life imprisonment, and he appealed.

The Court of Appeals of Texas held the evidence legally and factually sufficient to support Winningham's conviction. For example, a bullet found in Houchin's home contained her DNA, and according to expert testimony, it had been fired from the same gun as a bullet found in her body. Additionally, the assailant wrapped her body in a tarp and set it on fire. Furthermore, dog hair, human hair, and Houchin's blood were found inside Winningham's trunk. Thus, along with the other physical evidence, "the jury could have reasonably inferred that Houchin's body was once in Winningham's trunk." Prosecutors also proved that "Houchin was murdered after a tumultuous relationship with Winning-
ham and shortly after a heated public feud." In addition, evidence showed that Winningham was particularly upset with Houchin about their work and private relationships. Moreover, the court concluded that, based on Winningham's peculiar actions on the night of Houchin's murder and the day after, jurors could reasonably infer he killed her.

The appellate judges also noted that shortly after Houchin was murdered, Winningham attempted to get an expedited passport and withdrew a large amount of cash. Therefore, the jury could logically have concluded Winningham planned to flee the country. Applying the appropriate test of viewing the evidence in the light most favorable to the verdict, "a rational trier of fact could have found that the testimony of the witnesses and other evidence at trial were sufficient to establish the elements of murder beyond a reasonable doubt."

It is worth noting that online daters themselves are not the only ones at risk; sometimes others are injured or even killed. For example, James Lynn Kidwell ("Kidwell") and Rebecca Barney ("Rebecca"), who began a relationship through a dating website, met at a bar in Tulsa, Oklahoma. Shortly before 2:00 a.m. the next morning, Kidwell accompanied Rebecca to the home she shared with her ex-husband, Fred. Within ninety minutes of leaving the bar, a 911 call reported a fire at the Barney house. The dispatcher spoke to someone who identified himself as Kenneth Maxwell ("Maxwell"), but the call abruptly terminated after the dispatcher heard another man's voice in the background. Firefighters arrived at 3:14

50. Id.
51. See id. at 294-95. Houchin actually helped Winningham finish school and start a practice at the clinic where Houchin was also a therapist. Id. at 294.
52. Id. at 309.
53. Id.
54. Id.
55. Id. at 309-10.
56. See also Nourn v. Lattimore, 2010 WL 3666079 (S.D. Cal.), where seventeen-year-old, Ny Nourn, met Ronald Barker online and they quickly developed an "intimate relationship." Id. at *1. A few months later, she had sex with her boss, David Stevens. Id. Ironically, she and Stevens worked for the "Perfect Match" dating service. Id. When she told Barker about Stevens, he said the only way he would stay with her is if they killed Stevens, which they did. Id. at **1-2. Later, Nourn confessed that they shot Stevens and burned his body. Id. at *2. She was convicted of first-degree murder with special circumstances, but was retried and found guilty of second degree and sentenced to fifteen years to life. Id. at *3. More than a decade later, a federal district court denied her habeas petition. Id. at *6. She was seeking relief based on a variety of errors including double jeopardy, insufficient evidence, and ineffective assistance of counsel. Id. at *3.
58. Id.
59. Id.
60. Id.
a.m. and saw a man, later identified as Maxwell, in a vehicle blocking the road.\textsuperscript{61} He had been shot in the back of the head.\textsuperscript{62}

Entering the home, first responders realized someone had started a fire in the kitchen by igniting the gas line.\textsuperscript{63} There was no sign of forced entry,\textsuperscript{64} but the firemen found Fred\textsuperscript{65} shot dead.\textsuperscript{66} They also discovered Rebecca lying naked on her bed with a critical gunshot wound to the head.\textsuperscript{67} Emergency personnel took Rebecca and Maxwell to the hospital; unfortunately, both died without ever regaining consciousness.\textsuperscript{68}

Based on the evidence,\textsuperscript{69} a jury found Kidwell guilty of first-degree murder on all three counts.\textsuperscript{70} The court sentenced him to consecutive life terms without the possibility of parole.\textsuperscript{71} Thereafter, the Tenth Circuit affirmed the district court's denial of his federal petition for a writ of habeas corpus.\textsuperscript{72}

61. Id.
62. Id.
63. Id.
64. Id.
65. Both the case and this article refer to the Barneys by first name to avoid confusion.
67. Id.
68. Id.
69. Id.

During its case-in-chief, the prosecution presented evidence that: (1) Mr. Kidwell admitted to police that he went to the Barneys' home between 1:45 and 2:00 a.m. on February 23, 2003; (2) firefighters discovered the Barneys and Mr. Maxwell less than two hours after Mr. Kidwell was last seen with Ms. Barney; (3) DNA extracted from semen collected from Ms. Barney's body matched Mr. Kidwell's DNA; (4) DNA samples collected from a sweatshirt at Mr. Kidwell's home and from the gearshift knob of Mr. Kidwell's vehicle matched Ms. Barney; (5) Mr. Kidwell's photo was found next to where the missing computer had been; (6) Mr. Kidwell placed Ms. Barney on a "block list" on the dating website where he met her; and (7) information relating to Ms. Barney had been deleted from Mr. Kidwell's computer.

The prosecution also presented testimony from Jack Harris, a jailhouse informant. Mr. Harris stated that Mr. Kidwell had told him he was worried about the voice heard in the background during Mr. Maxwell's 911 call. Mr. Harris testified: "'[Mr. Kidwell asked] do you think the FBI has the technology available to enhance it and get a voice print off of it? And I said I think so. [Mr. Kidwell responded] then I think I'm fucked.'"

Id. at 931-32.
70. Id. at 932.
71. Id.
72. Id. at 937. The court determined that Kidwell "failed to demonstrate that reasonable jurists would debate the correctness" of the denial of his petition for habeas corpus based on his claims therein. Id. The claims in Kidwell's petition included: 1) ineffective assistance of appellate counsel; 2) sufficiency of evidence; 3) refusal to give requested jury instruction; 4) Fourth Amendment; and 5) cumulative error. Id. at 932-37.
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B. Manslaughter

People v. Hinton presents an unusual factual situation. While serving parole following a burglary conviction, Quartus Hinton ("Hinton") met Kalish Harper ("Harper"), a narcotics officer, through an online dating site early in 2006. The couple dated about six months before he apparently became convinced that she was "messing around on him." At some point, she broke off the relationship.

Nevertheless, after repeated requests, Hinton persuaded Harper to meet him at a funeral service for his nephews. The two argued while they were leaving the "repast" later in the day. As they entered Harper's car, Hinton shot her six times. Witnesses heard the gunfire, noticed smoke coming from her Volkswagen bug, and saw Hinton with a pistol. Police discovered Harper dead on the ground and, although there was no firearm in or near the vehicle, the officers found the murder weapon in a sewer where Hinton reportedly dropped it.

Police arrested Hinton the next day. In his statements, Hinton declared that he got the gun from his brother that morning because, based on an alleged previous conversation he had with Harper's watch commander, he feared for his life. Hinton claimed he had spoken on the phone to Harper's commander, stating that he was "dating a police officer, the officer had threatened to have him arrested, she had put him on the line with a 'snitch', [sic] the caller was 'chewing the snitch out,' and she had released a friend of his as a personal favor to him." However, Harper's commander denied that he received the phone call and said that,
had he received such a call, he would have documented it and sent it to a superior and Internal Affairs.\textsuperscript{86}

In both statements, Hinton said he regretted making the call because doing so jeopardized Harper’s career and, thus, gave her “reason to get rid of him.”\textsuperscript{87} As a result of the conversation, he explained that Harper arranged for people to come to his house to hurt him.\textsuperscript{88} Although Hinton asserted in his first interview that he did not see Harper with a weapon after the funeral, he claimed in his second interview that he was afraid because he knew she carried a firearm and believed she “was getting to her gun” and “already had her hand in her purse.”\textsuperscript{89} When police asked Hinton what motivated him to kill Harper, he responded that she wanted to kill him and had previously said she would.\textsuperscript{90} He then claimed that Harper “hold[ing]ing his] being on parole over [his] head” did not play any part in his decision.\textsuperscript{91} He also asserted the murder was not “thought out”; otherwise, he would not have killed Harper with so many witnesses.\textsuperscript{92}

Following the verdict finding Hinton guilty of voluntary manslaughter, he sought a new trial based on purported juror misconduct and newly discovered evidence; the court rejected both arguments.\textsuperscript{93} Even assuming a juror might have misstated the law, under the circumstances there “was no substantial likelihood that [any juror] was impermissibly influenced [to Hinton’s detriment].”\textsuperscript{94} Second, Hinton’s new evidence that showed Harper conspired with others to have him killed would not lead a jury to conclude that Hinton, who was unaware of this event, reasonably believed Harper was retrieving the gun to kill him herself.\textsuperscript{95} Moreover, even if the evidence was material, the record disclosed “ample reason” to decide the new evidence “would not likely persuade a jury of anything.”\textsuperscript{96} Furthermore, the witness, a convicted felon, waited eighteen months to say anything to a cellmate he refused to identify.\textsuperscript{97} His identification of Harper “was slight,” without corroboration, and “[the] story was not compelling.”\textsuperscript{98}

\textsuperscript{86} Id.
\textsuperscript{87} Id. at *4.
\textsuperscript{88} Id.
\textsuperscript{89} Id. at **5-6 (internal citations omitted).
\textsuperscript{90} Id. at *5.
\textsuperscript{91} Id. (internal citations omitted).
\textsuperscript{92} Id. at *6 (internal citations omitted).
\textsuperscript{93} Id. at *12.
\textsuperscript{94} Id. at *16.
\textsuperscript{95} Id. at *20.
\textsuperscript{96} Id. at *21.
\textsuperscript{97} Id.
\textsuperscript{98} Id. at **20-21.
C. Sexual Battery

1. Child Molestation

Unfortunately, some abusers use dating sites to identify vulnerable singles with children. In one such case, twenty-eight-year-old Albert Sicairos “became interested” in Connie G. ("Connie") upon “learning she had two sons and four daughters.”\(^99\) Soon after they met online in 1997, when she was evicted from her apartment, she moved in with Sicairos.\(^{100}\) He “favored Connie’s sons, Christopher and Albert,” and took them on trips and showered them with gifts.\(^{101}\) Sicairos also watched the kids when Connie went out at night, and a few times a month, he babysat for her friend’s sons: eleven-year-old Isaac and his five-year-old brother.\(^{102}\)

They had only been living together a short time when Connie came home and found Sicairos in bed with his hand around ten-year-old Albert, who was dressed only in underwear.\(^{103}\) Although initially suspicious, she believed Sicairos when he said that, in his sleep, he thought Albert was Connie.\(^{104}\) However, in 2001, Connie became concerned again that Sicairos was behaving inappropriately towards her boys; their grades had fallen, and they seemed very angry but refused to tell her why.\(^{105}\) She confronted Sicairos and he evicted them.\(^{106}\) Connie’s son Christopher revealed that Sicairos had molested him, but only after Connie promised they would not resume living with him.\(^{107}\) At that point, Albert, who Sicairos had threatened to harm, told police that defendant had also abused him.\(^{108}\) Then Isaac, Connie’s friend’s son whom Sicairos babysat at times, disclosed the defendant had abused him too.\(^{109}\)

Sadly, these were not the first incidents in which Sicairos had sex with an under-aged boy.\(^{110}\) At the trial, Billy W. testified he was sixteen-years-old in 1988 when he met Sicairos, who at that time was twenty.\(^{111}\) Although he “had learning disabilities, was shy and had few friends,” Sicairos made him “feel accepted.”\(^{112}\) Billy W.’s father gave Sicairos a job and allowed him to live with their family.\(^{113}\) However, when Billy W.’s

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100. Id.
101. Id.
102. Id.
103. Id.
104. Id.
105. Id.
106. Id.
107. Id.
108. Id. at *2.
109. Id. at *1.
110. See id. at **3-4.
111. Id. at *3.
112. Id.
113. Id.
mother caught Billy W. and Sicairos in bed, they forced Sicairos to leave and reported him to the police; they later decided not to press charges.\textsuperscript{114} Sicairos admitted to a consensual, sexual relationship with Billy W., but insisted he lost his interest in men after the experience.\textsuperscript{115} He also denied molesting Albert, Christopher, and Isaac.\textsuperscript{116} However, the jurors did not believe him, and they convicted Sicairos of multiple counts of lewd and forcible lewd acts on more than one child victim under fourteen years old, in addition to possessing child pornography.\textsuperscript{117} The court sentenced him to seventy-five years to life, consisting of five consecutive fifteen-years-to-life terms, in addition to a concurrent thirty-two-year term.\textsuperscript{118} The court rejected each of Sicairos's objections on appeal.\textsuperscript{119} First, the court concluded that Sicairos's prior act evidence regarding one sixteen-year-old (Billy W.) was "no more inflammatory than [Sicairos's] charged offenses" involving three pre-teen children.\textsuperscript{120} Second, the court found the jury instructions on prior act evidence were correct because the "preponderance of the evidence standard is the proper standard of proof for prior bad acts under California law and is consistent with federal constitutional standards."\textsuperscript{121} Third, the court considered the male pornographic videos relevant because they rebutted Sicairos's testimony that he lost interest in men after Billy W.\textsuperscript{122} Finally, the court held that Sicairos's sentence of five fifteen-years-to-life terms was in accord with the sentencing statute, as he was convicted of two of the statute's specified offenses, and the jury found he had multiple victims.\textsuperscript{123}

\textsuperscript{114} Id.
\textsuperscript{115} Id.
\textsuperscript{116} Id.
\textsuperscript{117} Id. at *1.
\textsuperscript{118} Id.
\textsuperscript{119} Id. at **4-8.
\textsuperscript{120} Id. at *4.
\textsuperscript{121} Id.
\textsuperscript{122} Id. at *5.
\textsuperscript{123} Id. at *6. The statute provides, "'[A] person who is convicted of an offense specified in subdivision (c) under one of the circumstances specified in subdivision (e) shall be punished by imprisonment in the state prison for life and shall not be eligible for release on parole for 15 years . . .'" (emphasis in original).
2. Rape

A lawsuit filed in 2011\textsuperscript{124} led three major dating websites to change their policies regarding criminal background checks.\textsuperscript{125} Carole Markin, a fifty-three-year-old freelance producer and writer,\textsuperscript{126} met Alan Wurtzel, sixty-seven years old, on Match.com.\textsuperscript{127} After their second date,\textsuperscript{128} he took her home and "forcibly raped her."\textsuperscript{129} "He jumped me. Then he overpowered me. He's a big guy. He's a foot taller than me and weighs a hundred pounds more than I do. I was afraid."\textsuperscript{130} Although he initially claimed Markin consented to the intercourse,\textsuperscript{131} Wurtzel eventually pled "no contest to sexual battery by restraint."\textsuperscript{132} The court sentenced him to one year in jail and probation for five years.\textsuperscript{133} In addition, he was required to register as a sex offender and complete a year of counseling.\textsuperscript{134}

With charges still pending, Markin went online and discovered that Wurtzel was "not a garden variety Match member."\textsuperscript{135} Rather, Markin found "he was a serial sexual predator, as cursory examination of public records would have disclosed."\textsuperscript{136} In fact, he had six recent separate sexual

\begin{footnotes}
\footnote{124. See generally Compl., Doe v. Match.com, 2011 WL 1452140 (Cal. Super. Apr. 12, 2011) (No. BC 458927) [hereinafter Doe v. Match.com Complaint]. The case was removed to federal court and then remanded as the plaintiff lacked standing to assert her claim in that forum. Doe v. Match.com, 789 F. Supp. 2d 1197, 1199 (C.D. Cal. 2011). "Doe" canceled her subscription after the incident and admitted she only rejoined because she was told she needed to so that she could file the action. \textit{Id}. But, the judge explained, "even if Plaintiff's own admissions suggesting that she plans to avoid Defendant's services are ignored, Plaintiff has not shown that she has a greater likelihood of injury than any of Defendant's other one million subscribers and millions of members nationwide." \textit{Id}. at 1201.}
\footnote{125. Robert Jablon, \textit{3 online date sites agree to screen for predators}, http://news.yahoo.com/3-online-date-sites-agree-screen-predators-202535756.html (Mar. 20, 2012) [hereinafter 3 online date sites].}
\footnote{127. Doe v. Match.com Complaint, supra n. 124, at ¶ 3.}
\footnote{128. Huffington Post, \textit{Alan Wurtzel, Man Acused of Sexual Assault In Match.com Lawsuit, Sentenced to One Year}, http://www.huffingtonpost.com/2011/09/19/alan-wurtzel-matchcom-lawsuit_n_970178.html (Sept. 19, 2011). One safety tip websites generally include on their web pages is to meet in public places and not have a date pick you up until you are completely comfortable with the other person. See eHarmony Australia, \textit{infra} n. 423.}
\footnote{129. Doe v. Match Complaint, supra n. 124, at ¶ 3.}
\footnote{130. Quigley, supra n. 126.}
\footnote{131. \textit{3 online date sites, supra} n. 125.}
\footnote{132. \textit{Id}.}
\footnote{133. \textit{Id.}; Huffington Post, supra n. 128.}
\footnote{134. Huffington Post, supra n. 128.}
\footnote{135. Doe v. Match Complaint, supra n. 124, at ¶ 3.}
\footnote{136. \textit{Id}.}
\end{footnotes}
battery convictions in Los Angeles County alone. Thus, she objected that rather than undertaking an “inexpensive basic screening process,” Match attempted to protect itself from liability by exculpatory language in its terms of use. As a result, Markin filed a class action suit under the name, “Jane Doe.” She claimed that “where Match.com has constructive notice of sexual crimes, as it did with Wurtzel before he raped Plaintiff, or actual knowledge of such crimes as it [did after her rape],” the website’s “one-sided exculpatory provision . . . should be invalidated.” Asserting that “there may be thousands of sexual predators using on-line dating services for criminal purposes,” instead of asking for damages, Markin only sought attorney’s fees and an injunction that would prohibit the defendant from signing new members until it implemented basic

137. Id.
138. Id. at ¶ 5.
139. Carol J. Williams, Match.com Agrees to Screen for Sex Offenders to Settle Lawsuit, http://articles.latimes.com/2011/aug/24/local/la-me-match-20110824 (Aug. 24, 2011). She said she later came forward “to put a human face on the victims of Internet predators.” Id. Of course, many people are reluctant to even report a rape. This problem is exacerbated in some places where the victim is blamed for the sexual assault. For example, in People v. Nakhei, 2011 WL 5419704 (Cal. App. 4 Dist. Nov. 9, 2011), Tooraj Aghmiyouni Nakhei and the victim met through a Persian Internet dating service after she immigrated to the United States from Iran. Id. at *1. Although she quickly realized she was not romantically interested in him, he continued to pursue her for a time. Id. Years later, she sent him a happy Persian New Year message. Id. He came to visit her again, but her feelings had not changed. Id. He induced her to return to his hotel room with him and sexually assaulted her. Id. Because, in her culture, “being raped was shameful, and victims of rape are looked down on,” she did not initially report the attack. Id. at *2. However, she did tell her sister. Id. When Nakhei continued to harass her, she called 911 and eventually told the police about the incident. Id. at *3. Following a jury trial, he was convicted of stalking, forcible rape, forcible oral copulation, dissuading a witness from reporting a crime, and disobeying a court order she had obtained to keep him away. Id. Nakhei was sentenced to a total term of fifteen years, eight months in state prison. Id. He appealed and argued, among other challenges, that the judge erred by failing to order a competency hearing. Id. The appellate court affirmed, because “although the court-appointed psychologist determined defendant was suffering from a delusional disorder, she did not render any opinion that defendant’s disorder rendered him incompetent to stand trial.” Id. at *7.
140. Doe v. Match Complaint, supra n. 124 at ¶ 4–5.
141. Id. at ¶ 21.
screening procedures. However, Markin settled the lawsuit when Match.com voluntarily implemented a background check policy.

Remarkably, Markin actually received more than she requested. In addition to Match.com, both eHarmony and Spark Networks agreed in principal to screen for sexual predators, identity theft, and financial scams, as well as to provide reports of suspected criminal activity to the Attorney General’s Office. These services also said they plan to cross-check applications with sex offender registries, as well as to make an effort to verify the accuracy of information contained in personal profiles. Further, the companies said they intended to create quickly accessible abuse reporting hotlines for clients who are targets of criminal behavior. According to the California Attorney General’s Office, there are no enforcement penal-

142. Id. at Prayer for Relief. As a side note, in January 2013, another woman sued Match.com after she met a man, Wade Ridley, on their website. Melanie Stetson Freeman, Woman Sues Match.com: Match Calls the $10M Suit “Absurd”, http://www.csmonitor.com/USA/Latest-News-Wires/2013/0124/Woman-sues-Match.com-Match-calls-the-10M-suit-absurd-video (Jan. 24, 2013). He hid in her garage and stabbed her ten times four months after she broke up with him. Id. Mary Kay Beckman accused Match.com of “failing to disclose the dangers of online dating.” Id. Unlike Markin, Beckman is seeking a monetary award. Id. In fact, she is asking for $10 million in damages. Id. The service called the litigation “absurd.” Id. Match said, “Beckman was a victim of a ‘sick, twisted’ man with no known criminal record.” Id. Ridley, who Beckman had briefly dated in September 2010, was later charged with murdering another woman in Phoenix. Id. Anne Simenson, sixty-two, was stabbed with both a butcher knife and a machete in her home in early February 2011. News 3, Coroner rules prison inmate’s death suicide by suffocation, http://www.mynews3.com/content/news/story/Coroner-rules-prison-inmates-death-suicide-by/StCi8N6_WOObnGJ2t4WgHA.cspx (May 31, 2012). A little more than two months later, fifty-four-year-old Ridley, having entered an Alford plea to attempted murder and armed robbery, and still facing murder charges for Simenson’s brutal death, apparently committed suicide by placing a plastic bag over his head while in prison. Id.

143. Lance Whitney, Woman Settles in Match.com Sexual Assault Lawsuit, http://news.cnet.com/8301-1023_3-20096546-93/woman-settles-in-match.com-sexual-assault-lawsuit (Aug. 24, 2011). Soon after the suit was filed, the dating service announced it would start checking members against a national sex offenders’ registry and now screens members against both state and federal sex offender databases. Id.

144. Robert Jablon, Online Date Sites to Screen for Predators, http://www.huffingtonpost.com/2012/03/20/online-dating-sites_n_1368270.html (accessed Mar. 22, 2012) [hereinafter Predators]. Spark Networks runs “more than 30 niche-focused online properties designed to build community, including more than 20 online personals sites such as JDate®, ChristianMingle®, SilverSingles® and BlackSingles.com®.” About Us, Spark Networks Igniting Relationships, http://www.spark.net/about-us/company-overview (accessed Feb. 2, 2013).

145. 3 online date sites, supra n. 125.


147. See 3 online date sites, supra n. 125.
ties, although the statement "does publicly hold dating sites to account for
their members' safety."\textsuperscript{148}

While Markin's case supports the notion that people need to keep
themselves safe from sexual predators who use dating websites to find new
prey, \textit{Gregg v. State}\textsuperscript{149} should provide a broader warning to all participants.
David Vincent Gregg ("Gregg") and S. met and corresponded through
LDSSinglesOnline.com (LDSSO).\textsuperscript{150} A few weeks later, they began com-
mu nicating on LDSSO shortly after midnight.\textsuperscript{151} Then, S. gave Gregg her
phone number, and they spoke for the first time.\textsuperscript{152} S. invited Gregg to her
apartment around 2:00 a.m.\textsuperscript{153} Before Gregg arrived, S. contacted her
friend Matt and asked him to call her in an hour because she had never
met Gregg and was concerned about his late-night visit.\textsuperscript{154}

When Gregg arrived at 2:20 a.m., they "talked and then engaged in
consensual kissing and sexual foreplay . . . [but] were interrupted when
Matt called at 3:20 a.m."\textsuperscript{155} S. answered the phone and pretended a girl-
friend was coming over.\textsuperscript{156} It is at this point where the stories conflict. S.
claimed that when she hung up she and Gregg continued kissing, but she
stopped and told him she was uncomfortable given that they had just
met.\textsuperscript{157} Gregg asked S. if they could resume sexual activity for five more
minutes and promised they would not have intercourse.\textsuperscript{158} S. testified that
"she told [him] 'no' several times before he suddenly grabbed her ankles
and began to rape her."\textsuperscript{159}

But, Gregg's account was different. He said they kissed again after S.
received the call, pausing only to discuss how far they wanted to go.\textsuperscript{160} He
said they would stop whenever she wanted and that she voluntarily
resumed sexual activity.\textsuperscript{161} He insisted she never said "no" or stopped

\textsuperscript{148.} \textit{Id.} Although not part of this agreement, Zoosk, another major service, is also
providing increased security. \textit{See Williams, supra n. 139.}

\textsuperscript{149.} 279 P.3d 396 (Utah 2012).

\textsuperscript{150.} \textit{Id.} at 399. "LDSSO® (which stands for LDS [Latter-Day Saints] Singles Online®)
was created in 1996 as a safe and fun way for LDS Singles to meet online and build great

\textsuperscript{151.} \textit{Gregg}, 279 P.3d at 399.

\textsuperscript{152.} \textit{Id.}

\textsuperscript{153.} \textit{Id.}

\textsuperscript{154.} \textit{Id.}

\textsuperscript{155.} \textit{Id.}

\textsuperscript{156.} \textit{Id.}

\textsuperscript{157.} \textit{Id.}

\textsuperscript{158.} \textit{Id.}

\textsuperscript{159.} \textit{Id.}

\textsuperscript{160.} \textit{Id.}

\textsuperscript{161.} \textit{Id.}
foreplay. Instead, she asked him to turn off the lights and helped him take off her pants before they had consensual sex.

Both agreed Matt's next call interrupted intercourse. S. answered Matt's call and asked him and his girlfriend to wait outside while she and Gregg dressed. Then, she invited them in, made introductions, walked Gregg out, and "hugged him, gave him a kiss, and said goodnight." But when she returned to her apartment, she began to cry and told Matt and Jess what happened. She initially resisted when they tried to convince her to go to the hospital or notify the police, insisting that she was alright and felt responsible for not stopping Gregg sooner. Matt called a rape crisis line; they told him that if S. would go to the hospital, they would file a report, but she would not have to press charges. Still reluctant, she called another friend she had met on LDSSO, and he persuaded her to go to the hospital to get the morning-after pill to prevent a possible pregnancy.

Although S. seemed uncertain and never mentioned rape, the nurse brought a sexual battery victim advocate and a detective to her room. They urged S. to tell them about her encounter, and eventually, she "finally acquiesced" and provided her version of the incident. S. decided to press charges after the detective and advocate responded to her account, stating "that they ha[d] never heard of someone that was more manipulative, and that what happened was a date rape."

Six months later, a jury convicted Gregg of one count of rape, which was a first-degree felony. Prior to sentencing, Gregg fired his attorney due to "serious errors" committed at trial and "filed a pro se motion to arrest the judgment," which the judge denied. The court sentenced Gregg to an indeterminate term of five years to life at the same hearing. However, after he had served almost nine years in state prison, the Utah

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162. Id.
163. Id.
164. Id.
165. Id.
166. Id.
167. Id.
168. Id.
169. Id. at 399-400.
170. Id. at 400.
171. Id. In fact, S. testified "that she 'didn't know — [there were] so many feelings going through my mind and I wanted to make sure what I was feeling was valid ... But I'm not sure, you know, if what I'm feeling is just my imagination.'" Id.
172. Id.
173. Id. (internal quotations omitted).
174. Id.
175. Id. (internal quotations omitted).
176. Id.
177. Id. at 398.
Supreme Court concluded that based on the test outlined in *Strickland v. Washington*, Gregg received ineffective assistance of appellate counsel for failure to articulate claims that would have undermined S.'s credibility at trial. For example, his attorney's failure to investigate the underlying facts of the case, including the "light-hearted" emails S. sent to four different men (who she had also met on LDSSO) just two days after she alleged Gregg raped her, constituted deficient performance under the first *Strickland* prong. The second prong was satisfied as well: these e-mails not only would have "severely undermined" S.'s credibility, they would also "have affected the entire evidentiary picture because her testimony was the only direct evidence of Mr. Gregg's guilt."

Moreover, the justices pointed out that in S.'s testimony, she claimed to only have gone to the website to help with the police investigation after the alleged rape. Obviously, the email messages, in which S. provided her private email address and encouraged the men to contact her, proved

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A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction or death sentence has two components. First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. Unless a defendant makes both showings, it cannot be said that the conviction or death sentence resulted from a breakdown in the adversary process that renders the result unreliable.

*Id.* at 687.


[Gregg] argued that he had received ineffective assistance of trial and appellate counsel through (1) the admission of improper prejudicial pseudo-expert hearsay testimony, (2) admission of improper bolstering hearsay testimony, (3) trial counsel's failure to object to this hearsay testimony, (4) appellate counsel's failure to raise trial counsel's ineffectiveness on this issue, (5) failure to object to the reckless mens rea jury instruction, (6) failure to object to the prosecutor's misstatements of evidence during closing, (7) failure to investigate and present evidence regarding Ms. S.'s LDSSO e-mails after the alleged rape, (8) failure to present evidence that there was a 47-minute period of consensual sexual activity immediately prior to intercourse, (9) failure to present evidence of the pretext calls that showed Ms. S.'s consent, (10) failure to present a key witness, and (11) appellate counsel's failure to marshal the evidence on appeal.

*Id.* at 400 n.3.

180. *Id.* at 402.

181. *Id.* at 403.

182. *Id.* at 402.
she lied. Further, the court noted the evidence of the forty-seven-minute window between Matt’s phone calls would have undermined S.’s credibility and the believability of her account, and it also would have corroborated Gregg’s contention that S. consented to intercourse after almost an hour of sexual foreplay.

After considering the evidence, the Utah Supreme Court found that Gregg’s appellate lawyer’s failure to argue the “ineffective assistance of trial counsel” claims, with respect to the LDSSO emails and the forty-seven-minute period, prejudiced Gregg’s direct appeal under the second Strickland prong. The Utah Court of Appeals affirmed Gregg’s conviction because there was sufficient evidence to support the verdict; however, that evidence was S.’s testimony. Had Gregg’s second lawyer presented these objections on appeal, this would have seriously subverted S.’s credibility, thus leading to a different outcome. As a result, the Utah Supreme Court vacated his conviction and remanded for a new trial.

D. Fraud

A variety of deceitful, illegal scams exist where swindlers attempt to obtain money or something else of value either from their potential romantic partner, or from someone else with that person’s knowing or

183. Id. at 403.
184. Id. at 406.
185. Id. at 408.
186. Id. at 409.
187. Id. at 409 (quoting Gregg, 2005 WL 1314900 at ¶ 4).
188. Id.
189. Id.
190. Cupid Media, Dating Tips, Dating Advice and Dating Help for Online Dating: Top 10 Scams, http://www.onlinedatingsafetytips.com/DatingServiceTips.cfm (accessed Feb. 23, 2013) (listing the following common scams: the Nigerian/Ghana Emergency; plane ticket & Visa; medical emergency; Nigerian 419 (originating out of Nigeria, eventually requests advance money to be sent); fake police; cashing money order; lottery; phony inheritance; disaster relief; business investment; and job, online classified, and phishing scams (where fraudsters usually lure the web surfer to a website that seems legitimate but is actually established to steal personal information, passwords, etc.).
unwitting help.\textsuperscript{191} The Internet Crime Complaint Center ("IC3")\textsuperscript{192}

\textsuperscript{191} Of course, fraud is also a tort, and daters who have been cheated or mislead sometimes bring a civil lawsuit. In an extremely elaborate scheme, Paula Bonhomme met someone she thought was a man named "Jesse" in an Internet chat room. \textit{Bonhomme v. St. James}, 970 N.E.2d 1, 3 (Ill. 2012). They began an online romantic relationship that lasted for about a year. \textit{Id.} In addition to emails, Bonhomme and "Jesse," whose real name was Janna St. James, exchanged personal photos, handwritten letters, and gifts. \textit{Id.} They also spoke regularly on the telephone; however, St. James used voice-altering equipment to disguise her voice. \textit{Id.} She met and maintained a relationship under her own name with Bonhomme, but also "created a universe of approximately 20 fictional online characters either related to or involved with Jesse, including an ex-wife, a son, various family members, a therapist, and friends living both in the United States and abroad." \textit{Id.} These persons used separate and distinct email accounts to communicate with Bonhomme, and sent "photos, handwritten mail, and packages from different states and foreign countries." \textit{Id.} In return, Bonhomme sent gifts totaling more than $10,000 to St. James, "Jesse," and a number of the other fictional people. \textit{Id.}

Sadly, the plaintiff ignored many suspicious red flags. For example, although she bought round-trip airline tickets from California to Colorado to meet "Jesse" in person, he cancelled the plans and St. James told her that he had attempted suicide. \textit{Id.} This news caused plaintiff "great emotional distress," and she began seeing a therapist, costing her more than $5,000. \textit{Id.}

Nevertheless, she continued their relationship, and in April 2006, she decided to live with "Jesse" in his Colorado home. \textit{Id.} Bonhomme spent approximately $700 preparing for the move, but before she relocated, "Jesse's" sister, "Alice," told Bonhomme "Jesse" had died of liver cancer. \textit{Id.} In fact, St. James sent plaintiff letters of condolence. \textit{Id.} Bonhomme became seriously depressed and experienced headaches, exhaustion, and an inability to sleep or focus on her job. \textit{Id.} She also contracted a recurring infection because of a weakened immune system. \textit{Id.}

Even after "Jesse's" death, defendant communicated with plaintiff every day for seven more months, and traveled to some of "Jesse's" favorite sites. \textit{Id.} During that trip, the defendant gave plaintiff a letter from "Jesse" in which he professed his love and included his "dying wishes." \textit{Id.}

But the deception did not end there. When St. James visited Bonhomme in California months after "Jesse" died, plaintiff spent $1,000 preparing her home. \textit{Id.} It was during this trip that some of plaintiff's friends discovered the scam and confronted defendant. \textit{Id.} St. James admitted on videotape that she had put the plaintiff through an "'emotional ringer' . . . 'for maybe a year and a half.'" \textit{Id.} at **3-4. Meanwhile, Bonhomme continued to see a counselor regarding her mental instability, which caused her therapy bills to grow and increased her lost wages. \textit{Id.} at *4. When Bonhomme finally discovered the truth, she sued. \textit{Id.} Almost seven years after the hoax began, the Illinois Supreme Court reiterated that state law does not permit fraudulent misrepresentation in "'purely personal' setting[s]." \textit{Id.} at *11.

When all is said and done, what lies beneath this case is two private persons engaged in a long-distance personal relationship. To be sure, it was a personal relationship built wholly on one party's relentless deceit, but it was a purely personal relationship nonetheless. Indeed, all of the hallmarks of ordinary human relationship are present: correspondence, conversation, intimacy, trust, mutual beneficence, emotional support, affection, disappointment, and even grief. . . . Consequently, as regrettable as the alleged facts are, we hold that they are not the types of facts upon which a claim for fraudulent misrepresentation may be pled. \textit{Id.}
received more than 5,600 romance scam filings in 2011. In fact, scam-

Nevertheless, the justices left the door open, stating:

In reaching this result, we reiterate . . . that "if the tort of fraudulent misrepresentation is not recognized for a certain fact pattern, this does not necessarily mean that a plaintiff is left without a remedy for his or her injuries, as other tort actions may be available." . . . [A]lthough not every misrepresentation gives rise to a cause of action for fraudulent misrepresentation, misrepresentations themselves often play a large role in a variety of other torts." *Id.* at *11 n. 2.

Famous people also are sometimes the target of such a scam. Deadspin.com, a website that bills itself as "Sports News Without Access, Favor, or Discretion" recently revealed that 2012 Heisman Trophy runner-up Manti Te’o’s allegedly deceased online girlfriend never existed. Timothy Burke & Jack Dickey, *Manti Te’o’s Girlfriend, The Most Heartbreaking and Inspirational Story of a College Football Season is a Hoax*, http://deadspin.com/manti-teos-dead-girlfriend-the-most-heartbreaking-an-5976517 (Jan. 16, 2013). The outstanding Notre Dame linebacker had become an instant favorite among football fans all across the country when the story broke that, within six hours, Te’o learned he lost his maternal grandmother to an extended illness, and “his longtime girlfriend” Lennay Kekua, to leukemia. Gene Wojciechowski, *Manti Te’o Finds Home with Irish*, http://espn.go.com/college-football/story/_/page/BMOC-100912/the-bmoc-surveys-manti-teo-season-trends-gene-chizik-heisman-race-more (Oct. 9, 2012). At the game following the deaths, “almost the entire stadium was filled with people wearing leis in honor of Te’o, his grandmother and his girlfriend.” *Id.* However, just two months later, he became the subject of cruel jokes when the story broke that Kekua did not exist; the picture was of a woman who did not even know Te’o, and an acquaintance had created the whole story. Jim McBride, *Girlfriend of Notre Dame’s Manti Te’o was a hoax*, http://www.boston globe.com/sports/2013/01/17/report-manti-teo-girlfriend-was-hoax/94N3xe5E9Kezmv 61nYLSM/story.html (Jan. 17, 2013). Te’o insists he is the victim of an elaborate trick, and telephone records that document 1,000 calls lend support to his denials. *Id.* He does admit misleading people into believing the couple had actually met but steadfastly claims he was never part of the scam. Associated Press, “What would you do” Te’o tells Couric, (Jan. 23, 2013) (available at http://www.boston.com/sports/colleges/football/2013/01/23/what-would-you-tells-couric/OhUTU6NFWROhe4PNPzawJF/story.html). The point, of course, is that, just as it happened to Bonhomme, it is possible for people to con others into believing things most others would realize are clearly not true.


The IC3’s mission is to serve as a vehicle to receive, develop, and refer criminal complaints regarding the rapidly expanding arena of cyber crime. The IC3 gives the victims of cyber crime a convenient and easy-to-use reporting mechanism that alerts authorities of suspected criminal or civil violations. For law enforcement and regulatory agencies at the federal, state, local, and international level, the IC3 provides a central referral mechanism for complaints involving Internet related crimes.


mers search chat rooms, dating sites, and social networking sites looking for vulnerable people who hope to find companionship or love online.\textsuperscript{194} Although the risk involves everyone, people who are over forty years old and divorced, widowed, disabled, or elderly are the "principal group of victims."\textsuperscript{195}

The problem appears to be getting worse: in 2011, victims of various romance scams reported monetary losses totaling $50.4 million.\textsuperscript{196} Fifteen complaints were received each day, which amounted to approximately $138,000 in losses, or more than $5,700 every hour.\textsuperscript{197} Individual victims claimed an average loss of $8,900.\textsuperscript{198}

1. Identity Theft

Stealing personal information and using it for an imposter's personal gain is one of the fastest growing crimes in the United States.\textsuperscript{199} Generally, criminals target the dater; however, he may be an innocent dupe used to scam third parties and/or actually become an accomplice.\textsuperscript{200}

In \textit{Commonwealth v. Newton},\textsuperscript{201} Joyce Lillian Newton ("Newton") met her "boyfriend" through an online dating service.\textsuperscript{202} This fifty-seven-year-old, born-again Christian said the man she knew as Omega "promised her 'the world,' and told her that he would love her and treat her right."\textsuperscript{203} Newton said that "she had hoped for a 'godly, Christian life' in marriage with him."\textsuperscript{204} Thus, when he asked her to re-ship computers and other items to South Africa under a false name, she did so.\textsuperscript{205} At the time, she lived on disability and "had been 'alone' for 10 years."\textsuperscript{206} Newton had a low IQ, had previously been married, and raised three adult children "basically by [herself]."\textsuperscript{207} When approached by a detective regarding the shipments, Newton cooperated with the police and consented to a search of her house.\textsuperscript{208} She insisted she had done nothing wrong and that she was

\begin{footnotes}
\item 194. See generally \textit{id}.
\item 196. \textit{Internet Crime Report, supra} n. 193, at 12.
\item 197. \textit{Id}.
\item 198. \textit{Id}.
\item 202. \textit{Id} at 1130.
\item 203. \textit{Id} at n. 4.
\item 204. \textit{Id}.
\item 205. \textit{Id} at 1130.
\item 206. \textit{Id} at n. 4.
\item 207. \textit{Id} (internal quotations omitted).
\item 208. \textit{Id} at 1129-30.
\end{footnotes}
unaware that some of the names were fake. Nevertheless, the Superior Court of Pennsylvania convicted Newton of “receiving stolen property, identity theft, and conspiracy to commit identity theft.”

Sentenced to six years probation, plus restitution, fines, and costs, Newton appealed. Although she “demonstrated no overt guilty knowledge,” grounds existed for a reasonable jury to convict. For example, Newton used different names rather than her own “during the prolonged scheme.” In addition, Omega let Newton keep “some of the smaller items” and paid for her Internet. These gestures could have constituted compensation for Newton’s help in the ruse and a jury could disregard her exculpatory testimony as simply not credible.

Thus, while a “close case,” the evidence was sufficient to support the stolen property claim. However, the other two charges failed. Although identity theft does not require that the defendant actually steal something, one element of the crime is that the information be that of a real person. Based on this standard, the state did not prove that the name Newton used to receive and ship the merchandise belonged to a live human being. Instead, the name appeared “merely fictitious.”

Moreover, because Newton was not guilty of identity theft, she also could not be convicted of conspiracy as to the non-existent person.

The record also did not support conspiracy as to the other names. Even assuming Omega did steal the identities of real people, and that Newton agreed to ship computers using those individuals’ stolen credit card information, no evidence showed she knew of the theft, “let alone [had] a shared intent to facilitate that crime.”

2. Reshipping Scam

While Newton focused on identity theft, the underlying fraud in that case, as well as in United States v. Aghodjan, is apparently a common con
that involves joining an Internet dating service to find an intermediary to help with the rip-off. The perpetrator steals credit card information, buys goods online, and sends them to the usually innocent dater, who then forwards them to another location.

In Agbodjan, Secret Service Agent John Szydlik was familiar with this pattern when the United Parcel Service (UPS) alerted him that within one month, seventy-two deliveries had been made to a particular Syracuse address, and nineteen of them were then sent on to Canada. Figuring it was a "reshipping scam," Szydlik found and interviewed the resident, Tempest Saldivar ("Saldivar"). She explained that "Ed Mund," a man she met through a dating website who she believed was her boyfriend, had been sending her packages and receipts that she printed and affixed to the boxes to reship to him.

Saldivar consented to a search of her apartment during which Szydlik discovered "packages, shipping labels, and a shipping invoice for a single Rimowa suitcase." She also showed him pictures of Ed Mund. A subsequent examination of Saldivar's email and chat messages exposed details of the scheme, including her "romantic attachment" to Mund, as well as his assurances of the activity's legality.

A few weeks later, when Mund showed up unexpectedly, Saldivar called Szydlik and told him where her boyfriend was staying and that he claimed to have "firearms and a bomb." After tricking Mund into leaving his motel room, Szydlik and other police officers confronted Agbodjan (the "real" Ed Mund) who, following a struggle, they restrained in the hallway. Agbodjan admitted opening his door, but insisted the arrest occurred before he stepped out of the room. This disparity in the facts is important because, although they did not have an arrest warrant, Szydlik and the officers performed a "protective sweep" and seized electronic equipment and other items. Agbodjan sought suppression of the seized evidence, in addition to other relief, because the police did not have an

225. See generally Newton, 994 A.2d 1127; see also Agbodjan, 871 F. Supp. 2d 95.
226. Agbodjan, 871 F. Supp. 2d at 98-99. This activity is commonly referred to as a "reshipping scam." Id.
227. Id. at 98.
228. Id. at 98-99.
229. Id. at 99.
230. Id.
231. Id.
232. Id.
233. Id.
234. Id.
235. Id.
236. Id.
arrest warrant, and a search warrant was not issued until twelve days after the arrest.\footnote{237}

The federal district judge held that probable cause existed for the warrantless arrest.\footnote{238} Further, because the motel room door was not closed, the judge ruled that Agbodjan "was exposed to the public view and [could] not claim a protected privacy interest under the Fourth Amendment."\footnote{239} Thus, the police properly executed the protective sweep because they had reason to believe an accomplice, guns, or a bomb might have been inside.\footnote{240} Finally, the police properly confiscated incriminating electronic objects that were "in plain-view."\footnote{241}

3. Bank

Although criminals usually perpetrate these stings against another dater, sometimes an innocent person is persuaded to become part of the scam. In United States v. Battles,\footnote{242} Jonathan Battles met Angelique Torres through a dating website.\footnote{243} Torres, who worked as a payroll processor for the City of Arlington, Texas, testified during Battles’ conspiracy and bank fraud trial.\footnote{244} She said Battles wanted to start a business but did not have the necessary capital.\footnote{245} He began asking about her job, her level of access to checks, and her willingness to steal checks for him.\footnote{246} She admitted she finally relented after repeated requests and stole five payroll checks.\footnote{247}

When police approached her at work and asked her to accompany them to the station for questioning, Torres called Battles.\footnote{248} She initially followed his instructions and lied; however, during subsequent interrogations, she told conflicting stories.\footnote{249} Torres finally revealed Battles’ real name, her relationship to him, and her part in stealing the theft of the checks.\footnote{250} She pled guilty to bank fraud and testified pursuant to a cooperation plea agreement, hoping to receive a lighter sentence.\footnote{251} Battles sought relief from his convictions claiming that because Torres served as

\footnotesize

\footnote{237. Id.}
\footnote{238. Id. at 100.}
\footnote{239. Id.}
\footnote{240. Id.}
\footnote{241. Id. at 103.}
\footnote{243. Id. at *3.}
\footnote{244. Id.}
\footnote{245. Id.}
\footnote{246. Id.}
\footnote{247. Id.}
\footnote{248. Id.}
\footnote{249. Id.}
\footnote{250. Id.}
\footnote{251. Id.}
the Government's principal witness, withholding DVD recordings of her interviews was a *Brady* violation.\(^{252}\)

Ironically, Diane Misciagna, who also testified against Battles and Torres, met him on the same dating website.\(^{253}\) Misciagna confirmed that Battles said he wanted to start an adult entertainment business and that, during her involvement with Battles, he told her he was friends with Torres.\(^{254}\) Sharon Warnke, another witness, "had a long-term relationship with Battles."\(^{255}\) She discovered an online chat between Battles and "Angie35" (Torres's online chat name) and gave it to detectives when she realized a news article mentioned the two parties.\(^{256}\)

After reviewing trial transcripts, written submissions, and the DVDs, as well as holding evidentiary hearings, the district judge determined that, although it was "regrettable" the defense did not receive all of the witness interview recordings, "Battles has not established that the outcome of the trial probably would have been different" if they had been.\(^{257}\) As a result, no Brady violation occurred.\(^{258}\)

4. "Loans"

In the early days, Internet scammers were mostly male and victims were primarily female.\(^{259}\) However, those numbers may be shifting. For example, in *United States v. Fayne*,\(^{260}\) Venester Fayne proved the "fair sex" could be just as deceitful as men.\(^{261}\) In fact, an agent involved in the probe against her said she was "'one of the most dangerous women I have ever investigated.'"\(^{262}\) The court agreed, concluding that incarceration was the only way to stop her from "committing future frauds," because imprisonment had not "deterred her from operating as a 'con artist and a flimflam operator'" from the time she was seventeen years old.\(^{263}\)

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252. Id. at *1. See *Brady v. Maryland*, 373 U.S. 83, 87 (1963) (holding that "suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution").


254. Id. at *4. Battles had a second co-conspirator, Tamika Booker. Id. at *1. Like Torres, Booker pled guilty rather than face trial. Id.

255. Id. at *3.

256. Id. at *3 n. 40

257. Id. at *6.

258. Id.


260. 163 Fed. Appx. 785 (11th Cir. 2005).

261. See id.

262. Id. at 787.

263. Id.
Fayne admitted to violating the conditions of her supervised release, including that she used computers and the Internet to obtain money and contact people. One victim, who the court found “credible,” testified he had responded to Fayne through an online dating service and had given her “approximately $230,000 in what he thought were loans.” But, he said she “lied about why she needed the money and did not repay him.” Thus, in deciding the propriety of revoking Fayne’s supervised release, the Eleventh Circuit acknowledged that under federal sentencing guidelines, she would have received “a substantially less sentence of 7 to 13 months.” Instead, the court sentenced her to two years for conspiracy, another two for credit card fraud, and three years for bank fraud, for a total of eighty-four months. As the trial judge provided specific reasons for the more substantial punishment, “including Fayne’s criminal history and her threat to the public,” and because the sentences fell within the statutory maximums, her sentences were “reasonable in the light of the evidence of Fayne’s conduct while on supervised release.”

5. Theft

Similar to those who seek “loans” they never plan to repay, some con artists use online dating services to target vulnerable, lonely people and convince them to invest in a venture that promises big returns, as well as love and marriage. Of course, no business really exists, and once the

264. Id. Fayne had a revocation hearing in 2003 after a minister accused her of defrauding him of $20,000. Id. Her supervised release was not revoked then because the cleric changed his story and said he voluntarily gave her the money. Id. at 788 n. 2.
265. Id. at 787.
266. Id.
267. Id.
268. Id. at 786.
269. Id. at 787.
270. This problem did not begin with Internet dating. In a very similar case, from 1979 to 1990, Jack Mandel bilked twenty people out of between $10,000 and more than $200,000 in return for guarantees of “huge returns.” United States v. Mandel, 991 F.2d 55, 56 (2nd Cir. 1993). He found most of his victims, all of whom were older than sixty, through dating services and personal ads before these were online. Id. According to Mandel’s presentence report, his victims lost a total of $1,536,000 (which the court recalculated to be $1,358,600). Id. He was convicted of two counts of mail fraud based on his guilty plea, but denied wrongdoing in any of the other cases that he argued were loans rather than investments. Id. He also disputed those amounts. Id. “Although the irony seemed to escape him, Mandel professed that he was unable to repay the ‘loans’ because his girlfriend had absconded with his money.” Id. at 57. Notably, however, he admitted on cross that he stopped payment to eight victims even before she left. Id. The court vacated and remanded because the psychological injuries to which his two victims testified were not enough to justify the upward departure in his sentence. Id. at 58-59.
271. See Turford v. State, 1998 WL 161735, *1 (Tex. App. Hous. 14th Dist. 1998). In one case, the business that did not exist was actually the dating service itself (it was a telephone service rather than online). Id. Rose Marie Turford screened the calls trying to discover
swindler has the cash, he disappears. For example, James Bruce Rice, fifty-two years old, apparently cheated at least eight women from California, New York, Alabama, and Alaska.272 Acting as a diamond broker, he drove expensive vehicles, lived in high-priced hotels, and said he traveled as part of his business.273

In addition to the $300,000 he tricked these women into giving him;274 he also stole a car and sold it.275 In September, 2012, after previously serving thirteen years in an Arizona prison for fraud, Rice pleaded no contest to grand theft of personal property, and the court sentenced him to sixteen months jail time.276 Meanwhile, as Rice faces a tax fraud investigation, police continue to seek other victims.277

6. Immigration

In 2009, 227,000 foreign nationals obtained permanent resident status in this country by marrying American citizens.278 Since so many people want to immigrate, and some lie to do so, sham marriages carry harsh criminal penalties. For instance, those who knowingly participate in marriages for the purpose of illegally entering or staying in the United States

from questions that were designed to look as if she were setting up a date whether to pursue the potential victim. Id. If so, she and a female accomplice would go to his house and rob him. Id. In the case under review, Turford canceled her “date” with the victim, and the women arrived at his home claiming to be police officers investigating a kidnapping. Id. Turford put a semi-automatic pistol to his neck and threatened to kill him if he did not do as they said. Id. They handcuffed his hands behind his head and told him to lie down on the carpet. Id. They took personal property worth about $14,000, including cameras, jewelry, and guns. Id. After the pair was apprehended, police obtained a search warrant and discovered items belonging to the victim. Id. They “also seized a large quantity of correspondence detailing a fantasy involving imaginary characters, sexual domination, and criminal violence.” Id. Turford alleged, unsuccessfully, that she “committed the crime under threats of violence to family members by a person named ‘Avery,’ whom she knew only through the correspondence” she received from her partner. Id.


273. Id.

274. Id.


276. Altman, supra n. 272.

277. Id.

278. Devin Dwyer, Immigrant Couples Face Scrutiny In Bid to Root Out Sham Marriages, http://abcnews.go.com/Politics/immigration-green-card-marriage-young-couple-faces-feds/story?id=10738962. The largest category of applicants who obtain a green card do so by marrying a citizen. Id. The numbers are growing: 2009 experienced a fifty-six percent increase over three years earlier. Id.
may face up to five years in prison, fines not to exceed $250,000, or both. 279

Many non-resident aliens who want to come to or remain in this country search for their prospective spouse online. For example, Ngwando Zele Nyonzele, a Zairian air force pilot, came to America to receive technical training provided to foreign military personnel. 280 When ordered to return home, he disobeyed and eventually moved to Sioux City, Iowa. 281 He and Betty King ("King") began communicating through an online dating service. 282 After four visits, she moved from Galesburg, Illinois to stay with him. 283 They married approximately four months after they met. Based on the marriage, Nyonzele attained conditional permanent resident status around five months later. 284

The law at the time required couples to file a joint petition with the Immigration and Naturalization Service (INS) and interview with the agency two years after obtaining conditional residency. 285 Unfortunately, Nyonzele testified that as soon as he and his wife returned from the initial conference with INS, "she became hostile toward him and began to change from a 'nice lady' into a drug user who wanted to kill him." 286 He

279. 8 USC § 1325(c) (LEXIS current through Dec. 20, 2013) (stating "any individual who knowingly enters into a marriage for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than 5 years, or fined not more than $250,000, or both"). Of course, many of the immigration cases, rather than criminal prosecutions, are civil actions where one spouse is seeking dissolution or annulment because he believes the other deceived him by pretending to be in love, when the goal was a green card. See e.g. In re Marriage of Maiers, 163 Wash. App. Div. 2 1015, 1015 (2011) (discussing that the husband petitioned to invalidate marriage, alleging wife fraudulently induced him to marry her).

280. Nyonzele v. INS, 83 F.3d 975, 978 (8th Cir. 1996). The opinion says the parties met through a "dating service" but does not provide more information about how they were actually matched. Id. Based on the timing, however, it was not online. Id. Nevertheless, the case provides an important example and one that is perhaps even more likely to recur, because while no one knows for sure, experts suspect at least one reason the number of requests for spouse visas has risen dramatically is "the Internet — with its online dating sites, instant messaging and Web cams — has fueled transnational relationships." See Karin Brulliard, Love Must Wait, http://www.washingtonpost.com/wp-dyn/content/article/2007/10/28/AR2007102801706.html (Oct. 29, 2007).

281. Nyonzele, 83 F.3d 975 at 978.

282. Id.

283. Id. at 980.

284. Id.

285. Id. 979. Current law requires the United States Attorney General to terminate the alien's conditional permanent status if any of the following criteria exists: 1) The qualifying marriage was entered into for the purpose of attaining the alien's admission to the United States as an immigrant, or has been annulled or terminated for reasons other than death of a spouse; or 2) a fee or other consideration was given for the purpose of petitioning for residency, other than attorney fees for preparing the petition documents. 8 U.S.C. § 1186(a)(b)(1) (2006).

286. Nyonzele, 83 F.3d at 980.
provided the court with a partially completed letter in which King expressed her intent to poison him.\textsuperscript{287} He also testified that she threatened him with a knife and put bleach on his toothbrush.\textsuperscript{288} In addition, he claimed she resisted his attempts to convince her to consult a psychiatrist.\textsuperscript{289} He contended that even after he left their home and petitioned for divorce, she continued to harass him by leaving menacing messages on his answering machine.\textsuperscript{290}

Although Nyonzele testified that he and his wife shared a bank account and living expenses, and bought household items together, the Board of Immigration Appeals (BIA) noted the scarcity of evidence of a "shared life."\textsuperscript{291} Further, the agency found it "significant" that his wife began demonstrating "hostile behavior on the very day Nyonzele obtained conditional permanent resident status and that he filed for divorce . . . only two weeks after obtaining this immigration benefit."\textsuperscript{292} Thus, the BIA denied his petition for permanent status and rejected his application for discretionary relief from deportation.\textsuperscript{293}

In concluding the relationship was a sham, the BIA gave great weight to Nyonzele's statement concerning his intent.\textsuperscript{294} During the interview regarding his waiver application, where counsel represented him and indicated he understood and could speak English, Nyonzele stated that he married King to stay in the United States.\textsuperscript{295} However, he later argued that he also planned to spend his life with his wife.\textsuperscript{296} The BIA also considered the level of commitment to the marriage, noting the courtship, marriage, and divorce lasted under a year.\textsuperscript{297} The agency maintained it did not, as Nyonzele claimed, abuse its discretion in considering "'private' marital matters such as the difference in age and socioeconomic backgrounds."\textsuperscript{298} Finding no merit in his argument, the Eighth Circuit agreed with the BIA and explained that the law provides for "consideration of any credible
evidence relevant to the application." The appellate court cannot dictate the weight to be given the evidence.

E. Domestic Violence

A serious problem arises with abuse between family members or even people just dating. People who meet online are no exception. In People v. Rucker, Carole Ann Rucker and Hubert Watson met on a website and remained together for close to a year, at which time he stopped calling. Rucker began tracking him and was "stunned" when she saw him with another woman. She told one of his friends that she was so distraught that she considered killing herself. The friend immediately called Watson to warn him. After speaking with Rucker, Watson arranged for her to come to his home that night to pick up a pair of shoes.

After she arrived, she had several glasses of wine, and they had sex. While in bed, Watson said something to Rucker she did not like and Rucker began to cry; she later claimed Watson had raped her. This baffled Watson because, up to that point, she appeared pleased with the situation. Nevertheless, he stopped immediately.

299. Id. (citing 8 U.S.C. § 1186a(c)(4)).
300. Id. at 981. The Eighth Circuit also rejected Nyonzele's two additional claims. Id. at 984. It decided he did not qualify for asylum because he did not prove his fear of punishment for desertion was [D]isproportionately severe and [was] based upon the alien's religious or political beliefs . . . Such proof is lacking. After carefully reviewing the record, we conclude that Nyonzele has not demonstrated that the evidence is "so compelling that no reasonable fact-finder could fail to find the requisite fear of persecution." . . . While Nyonzele's fear may be subjectively genuine, it is not objectively reasonable.

301. See e.g. Patricia Tjaden & Nancy Thoennes, Extent, Nature, and Consequences of Intimate Partner Violence: Findings from the National Violence Against Women Survey iii, http://www.ncjrs.gov/pdffiles1/nij/181867.pdf (July 2000) (noting that "[n]early 25 percent of surveyed women and 7.6 percent of surveyed men said they were raped and/or physically assaulted by a current or former spouse, cohabiting partner, or date at some time in their lifetime" and concluding "intimate partner violence is a serious criminal justice and public health concern.").
303. Id. at 64-65.
304. Id. at 65 (internal quotations omitted).
305. Id.
306. Id.
307. Id.
308. Id. at 65-66.
309. Id. at 66-67.
310. Id. at 66.
Rucker dressed, retrieved her gun from her purse, shot Watson once, and when he collapsed, she fired at him again.\textsuperscript{312} She tried to shoot herself, but realized she had no bullets.\textsuperscript{313} On her way home to get more ammunition, the police followed and surrounded her with their weapons drawn.\textsuperscript{314} When she aimed at a policeman, he shot her several times.\textsuperscript{315} At trial, Rucker denied trying to kill Watson.\textsuperscript{316}

In California, where the incidents occurred, evidence of other acts of domestic violence is admissible when a person is charged with this offense.\textsuperscript{317} Even so, Rucker objected to testimony about an incident with a previous boyfriend, David Yu, in which she had also pulled a firearm.\textsuperscript{318} Despite her puzzling argument to the contrary, the state appellate court declared the evidence showing Rucker and Watson’s “frequent, intimate associations” and their reciprocal “expectation of affection and sexual involvement” sufficient to establish a “dating relationship” within the statute’s definition.\textsuperscript{319} Further, Rucker’s relationship with Yu significantly paralleled her relationship with Watson: 1) Rucker dated both victims for a period of time, 2) she responded to termination of the relationships by threatening the victims with a gun at their homes, 3) she seemed to want to harm or kill them, and 4) she stalked them.\textsuperscript{320}

There were also some differences but the court determined they were not decisive. For example, Rucker followed and harassed Yu for more than two years,\textsuperscript{321} and only stopped after she told him that if she could not

\textsuperscript{311. Id.} \textsuperscript{312. Id.} \textsuperscript{313. Id.} \textsuperscript{314. Id.} \textsuperscript{315. Id.} \textsuperscript{316. Id. at 67. Although Rucker denied she attempted to murder him, Watson had three bullets in his body at the time of trial and said he was “lucky to be alive.” Id. at 66. Rucker’s expert testified that she: 1) had a blood-alcohol level of .11 percent about an hour and a half following the shooting (an amount he said could cause loss of critical judgment), 2) suffered from a “borderline personality disorder, which could involve the ‘capacity to regress emotionally very quickly and very dramatically,’” 3) experienced depression, 4) was in a “‘dissociative [sic] state' triggered by the rape when she shot Watson,” and 5) “‘seemed remarkably unangry' toward Watson.” Id. at 67.} \textsuperscript{317. Id. The trial court does have “discretion to exclude evidence if its probative value is outweighed by a danger of undue prejudice or confusing the jury, or would result in an undue consumption of time.” Id. at 67-68.} \textsuperscript{318. Id. at 66, 70.} \textsuperscript{319. Id. at 70. See generally Shannon M. v. Michael C., 948 N.Y.S.2d 831, 838-39 (Fam. Ct. Kings Cty. 2012) (rejecting request in family court for order of protection because despite the fact the parties met online when they were initially “prospecting for an intimate relationship,” he realized relatively quickly that he was not romantically interested, so they never went beyond casual conversation before they turned to a business purpose).} \textsuperscript{320. Rucker, 25 Cal. Rptr. 3d at 72.} \textsuperscript{321. Id. at 66. Rucker apparently became suspicious when Yu did not invite her to a Christmas party, claiming he was going to be out of town. Id. at 66.}
have him, no one else could, causing him to obtain a restraining order. By contrast, she only tracked Watson immediately prior to the shooting. Further, Rucker did not actually shoot Yu. But this did not necessarily mean she did not intend to hurt him. Instead, she might not have shot him simply because he "pacified" her better than Watson. The court considered it immaterial that Watson did not know about the gun before the shooting; the Yu incident was relevant because Rucker "reacted violently" to both break-ups, which undermined her argument that she became violent because Watson raped her.

The California court also rejected her argument that the incident with Yu exhibited no domestic violence because "[t]here is no question that her act in pointing the gun at Yu when he refused to talk to her constituted a violent act." Finally, evidence of the Yu confrontation was not unduly prejudicial. "Rucker confronted Yu with the gun in December 1998 and continued to harass and threaten him until July 2000." She apparently had no other significant relationship until about a year later when she began dating Watson. The Yu incident was "essentially undisputed" and "not inflammatory compared to the charged party, saw Yu was there with his friends and became 'distraught, sick to [her] stomach, [and] traumatized.'" However, because she was drunk and asked for a ride, Yu drove her home in her car; shortly thereafter, they had sex. The next morning, when Yu told her that he no longer wanted to see her, Rucker drove him home. She called him that afternoon and said she wanted to talk, but Yu repeated that he did not want to see her and hung up. Close to an hour later, Rucker showed up at his apartment. When he tried to leave, she took out a handgun and said, "Please let me in. You know I know how to use this." Yu allowed her in and, after he calmed her down, Rucker handed him the loaded gun. He returned the weapon to her before she left. One of Rucker's former coworkers testified that Rucker said she was "very upset and hurt' by the way Yu had treated her and had wanted to kill him when she pulled out the gun." The story did not end there. Rucker harassed Yu for two years, doing such things as putting paint on his car, super-gluing his car door locks, stealing a windshield wiper, and writing an obscenity on the sidewalk of a friend's home where Yu was attending a social gathering. For example, Rucker, at high speed on the freeway, chased Yu and a woman he was dating. Because Yu thought it was dangerous to try to evade her, he pulled into a parking lot and warned her to leave him alone. However, she insisted she was not following him. 

322. Id. at 66-67.
323. Id. at 72.
324. Id.
325. Id.
326. Id.
327. Id.
328. Id. at 71.
329. Id. at 72.
330. Id.
331. Id.
But here, distinctions did make a difference to the judges. Unlike the charged offense, Rucker never fired at Yu or made any attempts to kill him. Thus, there was “no reasonable probability the jury might confuse the two incidents.”

F. Stalking

As Rucker demonstrates, some people become obsessed with individuals they meet online. In response to these fixations, all fifty states and the federal government have outlawed “the willful, malicious, and repeated following and harassing of another person that threatens his or her safety.”

One bizarre situation involving New York fertility physician, Khaled M. Zeitoun, provides an illustration. Zeitoun claimed he was single in his Yahoo! Personals profile, although he actually had a wife and three children. Believing he was not married, Tiffany Wang responded to his post. After he replied with interest in “a romantic relationship,” they met, and he told her they had been married to each other in a previous life. He claimed that he had searched for her because he had mistreated her and wanted to correct his earlier mistakes.

He almost immediately said he was “crazily in love” with her and convinced her to sign an agreement saying she would pay him $1 million if she left him. They saw each other frequently over the next two and half years. He proposed, but later said he only did so “to see the look of joy on her face.” A few months later, he told her that fourteen years earlier, he had been forced to make a deal with the devil that he would never get

332. Id.
333. Id.
334. Id. Also, because Supreme Court precedent was binding, the court easily rejected Rucker’s claim that use of prior uncharged acts as propensity evidence violated her due process rights. Id.
335. See generally 25 Cal. Rptr. 3d 62.
336. Mindy Mechanic, Fact Sheet on Stalking, http://www.musc.edu/vawprevention/research/stalking.shtml (2000). Although the language varies, this definition is fairly typical. Id. Examples of acts that constitute stalking include harassing phone calls, following the victim, sending unwanted gifts, and other, similarly intrusive behavior. Id.
338. Id. at ¶ 11.
339. Id. at ¶¶ 8-9, 11.
340. Id. at ¶¶ 10, 16.
341. Id. at ¶ 16.
342. Id. at ¶¶ 18, 20 (internal quotations omitted).
343. Id. at ¶ 25.
344. Id. at ¶ 30.
married. Otherwise, he claimed the world would collapse and he would be forced to return to hell.

When Zeitoun asked Wang to participate in a threesome with one of his ex-girlfriends, she became very upset and began to cry. He grabbed her and threw her to the floor. He professed his love, but she began to suspect he had been unfaithful. After she caught him in a lie and realized he continued to cheat on her, she ended their relationship. She subsequently discovered his marriage and at least five other women who had experiences similar to hers.

One of these women was Jing Huang. Like Wang, she believed Zeitoun was single and that they had an “exclusive romantic relationship” that would lead to marriage. Huang confronted him when she learned he was not single. He responded that he planned to divorce his wife and wanted to take Huang to Europe. After she told him not to call again, he made threats against her and even followed her.

Ironically, despite his repeated adulterous, deceitful behavior, as well as threats and abuse toward both women, the only one to have legal problems was Wang. Around the time of the break-up, Wang allegedly (1) forged Zeitoun’s identity to open three credit cards; (2) made hundreds of phone calls to his office, home, and cell phone; (3) warned him she would ruin his career; and (4) threatened to commit suicide. Although police arrested her, they dismissed or reduced most of the charges. She ultimately pled guilty to disorderly conduct in exchange for a conditional discharge. The judge also issued an order prohibiting her from contacting Zeitoun. Meanwhile, Zeitoun appears to be doing well: in 2009, he

345. Id. at ¶ 31.
346. Id.
347. Id. at ¶ 32.
348. Id.
349. Id. at ¶¶ 33, 35.
350. Id. at ¶¶ 34-36.
351. Id. at ¶¶ 44-45.
353. Id. at ¶ 24.
354. Id. at ¶ 25.
355. Id. at ¶¶ 27-31. Like Wang, Huang sued. The women had the same lawyer who filed virtually identical complaints for them. Id. at ¶ 2. But Huang did not stalk Zeitoun, and there were no allegations that she participated in any illegal conduct.
357. Id.
358. Id.
359. Id.
purchased a condominium in Times Square for $1.6 million, and in 2013, he listed eleven different office locations.

G. Burglary

Not surprisingly, certain people use dating websites to find people from whom they can easily steal valuable items. For example, in *Henning v. Adams*, Ronnie Martin Henning did this at least twice with women he met through an online dating service.

Henning and Rachel Daniels agreed to meet in February 2005. When Henning went to her apartment, she said he commented on the laptop sitting on her couch. After Daniels dropped him off, she said she was uncomfortable being alone, so she locked up and went to a friend's place. The next morning, her landlord called and informed her that her outside door was broken. When Daniels returned, she discovered her computer, modem, and phone cord missing, but everything else remained as she had left it. Police located her computer at a pawnshop a few weeks later. Reliable evidence linked Henning to it, including the fact that a man displaying Henning's driver's license pawned it, the thumbprint matched his, and the administrator’s name on the machine had been changed to his user name.

Meanwhile, Alicia Clark, who met Henning in 2004, testified at his trial about prior uncharged conduct, which the trial court admitted as a

362. Sometimes, however, the burglary is merely an adjunct to another crime. See e.g. *State v. Minor*, 2012 WL 1123532 (N.J. Super. A.D. 2012) (affirming conviction for second-degree burglary and “sentence of incarceration for three years, subject to an eighty-five percent period of parole ineligibility, plus three years of parole supervision” because James E. Minor broke in and “assaulted” a girlfriend he met online after she turned him in to police for violating a protective order obtained due to three earlier incidents of domestic violence against her).
364. See also id. at *5.
365. Id. at *3.
366. Id.
367. Because he said his car had broken down, Daniels had picked him up earlier in the evening. Id. at *3.
368. Id.
369. Id.
370. Id.
371. Id.
372. Id.
“common plan, scheme or design.”373 She said she had planned to move to Los Angeles.374 Henning found an apartment for her but said he needed a $1,400 deposit.375 After Clark wired the money, Henning told her he rented the place; however, the following day, he confessed he had actually lost her money while drinking.376

Nevertheless, Clark moved to L.A., and while they searched for housing, they stayed together in a hotel.377 When Henning asked to borrow Clark’s car, she refused.378 However, she later gave him the key because he said he needed something from the vehicle.379 When he returned, she fell asleep, and he left.380 When she woke up, she saw that Henning and her car were gone and called the police.381

Henning called a few hours later and said he had been gambling and run out of money.382 He also told her he had given “them” her car as collateral and “they” would hurt him unless she paid them $500.383 Clark told the man who had Henning that she had reported her car stolen, and the police were looking for him and the automobile.384 The man told her the vehicle’s location; when she arrived, the keys were not in it.385

Although Henning admitted he met both Daniels and Clark on the same dating website, he maintained he did not steal anything.386 He testified Daniels had two computers and gave him the older one.387 But, he said when Daniels realized he had a live-in girlfriend, she became very angry and told him to return her laptop.388 He refused.389 Acknowledging that he pawned it, he said he would never have taken illegally obtained property to the shop because he was aware the owner cooperated with the police.390

As for Clark’s accusations, Henning said she just wired him money without him requesting it and that she let him borrow her car.391 He said
he had asked her to lend him money to pay his gambling debt, but when she turned him down, his sister paid it. He claims he gave Clark’s car key and phone number to his friend and asked him to make sure she got the vehicle and key. Henning said he later apologized to Clark, she ultimately forgave him, and they became friends again.

The court rejected Henning’s pro se habeas petition. Explaining the deferential nature of the Strickland test for ineffective assistance of counsel, the judge said there was no need to even discuss the first prong — “whether Petitioner’s appellate counsel performed deficiently” — because it “necessarily fail[ed] due to Petitioner’s failure to satisfy the second prong of the test — prejudice.” Henning “actually received that to which he was constitutionally entitled,” as three state courts had considered and denied his claims on the merits. As they all determined nothing in the record warranted reversing his conviction, Henning did not meet his burden of “showing there was no reasonable basis for the state court to deny relief.”

III. State Statutes

Only a handful of jurisdictions regulate online dating sites. Most of these laws focus on issues such as unfair contracts and procedures rather than safety. What litigation there has been also has concentrated on allegedly fraudulent business practices. However, in 2008, the New

392. Id.
393. Id.
394. Id.
395. Id. at *10.
396. See Strickland, 466 U.S. at 687.
398. Id.
399. Id. (quoting Harrington v. Richter, 131 S. Ct. 770, 784 (2011) (internal quotations omitted)).
400. See Coleman, supra n. 6 at 144-57 (discussing state statutes).
401. See e.g. Robinson v. Match.com, 2012 WL 5007777, *1 (N.D. Tex. Oct. 17, 2012) (holding plaintiffs failed to state a claim upon which relief can be granted under the Deceptive Trade Practices Act and dismissing the case with prejudice); Gamayo v. Match.com LLC, 2011 WL 3739542, *1 (N.D. Cal. Aug. 24, 2011) (explaining the “crux” of plaintiff’s ten claims and those of others who filed similar actions is that “Match.com represents that subscribers will meet other single adults but yet fails to adequately monitor and vet user profiles to ensure that they contain accurate and current information”); Brodsky v. Match.com LLC, 2009 WL 3490277, *1 (S.D.N.Y. Oct. 28, 2009) (alleging Match’s failure to reveal that “users,” unlike “subscribers,” cannot communicate through the website constitutes “causes of action under RICO, New York’s deceptive practices and false advertising statutes, and common law claims for breach of the covenant of good faith and fair dealing, fraud, fraudulent inducement, negligent misrepresentation, and breach of contract”); Anthony v. Yahoo!, Inc., 421 F. Supp. 2d 1257, 1259-60 (N.D. Cal. 2006) (claiming Yahoo! “deliberately and intentionally’’ creates fake profiles to deceive people to join or renew their membership when their subscriptions are about to expire, sends a
Jersey legislature became the first to address concerns about protecting innocent, unsuspecting daters from financial and emotional predators they might encounter while looking for love on the Internet. Illinois, New York, and Texas enacted similar laws. Rather than require background checks, these statutes mandate notification of whether the service screens participants and, if so, what it searches for and how they use the information. For example, in Texas, a covered provider who fails to properly inform participants whether it conducts background checks is subject to fines of up to $250 for each registered member in the state, as well as injunctive relief. Companies that do investigate criminal records must include on their websites the effect of conviction for certain crimes, the time frame, and an explanation of the limitations of criminal background checks. The law also explicitly says it does not provide a private cause of action.

These statutes appear facially sufficient at first, but some experts warn "the most controversial subject in the online dating industry right now is
In fact, while it seems obvious that dating services should investigate applicants and reject criminals, opponents raise several legitimate concerns causing the majority of the industry to oppose these searches. Probably the primary fear, and one that is even raised in some of the laws, is that, for a number of reasons, participants may be lulled into a "false sense of security." A wide disparity exists among the states in allowing these inquiries in the type of data that providers can


411. Id. The one notable exception is True.com's founder, Herb Vest, who has been in the forefront of the movement to require background checks. The website's home page explicitly cautions: "Warning: Married People and Criminals Will Be Prosecuted." True Beginnings, True Love & Romance are Just A Click Away!, http://www.true.com/default.htm (accessed Feb. 12, 2013). True.com offers the following explanation:

If you are married and representing yourself as single, or if you are a convicted criminal, be aware that you could be guilty of fraud and subject to civil and criminal penalties under U.S. federal and state law. For example, Title 18, Section 1343 of the U.S. Code authorizes fines of up to $250,000 and jail sentences of up to five years for each offense. TRUE reserves the right to report violators to appropriate law enforcement authorities and seek prosecution or civil redress to the fullest extent of the law. If you are married or a convicted criminal, please close your browser.

Id. Some experts question Vest's motivation as well as his actual commitment to safety. For example, Joe Tracy, publisher of Online Dating Magazine, argues that Vest is not really concerned with daters' safety but, rather, based on his own words, it is clear that the "apparent real reason True has pushed for background checks" is "to gain company recognition. His attempt to launch an offensive that keeps other dating services on the defense has been virtually flawless through these online dating background check initiative pushes." Joe Tracy, Online Dating Background Checks Controversy, http://www.online datingmagazine.com/columns/industry/03-onlinedatingbackgroundchecks.html (accessed Feb. 19, 2013) (emphasis in original). On the other hand, Ruben Buell, president of True.com, said thousands of people a day join the site, but the company rejects between two and three percent, a number that is consistent with national statistics, indicating about two percent of the population are convicted felons. Kimae Heussner, Should Online Dating Sites Do Background Checks?, http://abcnews.go.com/Technology/online-dating-sites-background-checks/story?id=11063166 (July 1, 2010). He insists that not performing background checks because they are not "bullet-proof . . . is like a police department deciding not to pursue murderers because they won't be able to catch everyone." Id. Of course, if the idea is good, it should not really matter if Vest's website is benefitting. True has struggled, and in 2012, both the website and Vest declared bankruptcy. Jeff Bounds, Herb Vest, True Beginnings Seek Chapter 11 Bankruptcy Protection, Dallas Bus. J. (Aug. 3, 2012) (available at http://www.bizjournals.com/dallas/news/2012/08/03/herb-vest-true-beginnings-seek.html).

412. Diane C. Lade, The Sweetheart Swindle: State Bill Would Prevent Con Artists from Targeting Online Daters, Sun-Sentinel (Fort Lauderdale, Fla.) (Mar. 31, 2008). The Texas Safety Act, for example, provides that among the statutorily mandated disclosures is a statement that "criminal background checks may give members a false sense of security." V.T.C.A., Bus. & C. § 106.005(b)(3B).
legally obtain. Further, felony and sex offender databases often contain inaccurate and incomplete information. In addition, many criminals and sexual predators do not have records. Therefore, the searches result in incomplete and sometimes incorrect information that puts subscribers at more risk. This is because they are less likely to check for accuracy themselves if they believe the service has already done so.

Another issue is that background checks can be expensive. This is especially an obstacle for free and small niche sites that cannot afford extra costs. The price for large companies, like eHarmony “[w]ith over 20 million registered users,” could be enormous. Obviously, companies will pass these costs along to the consumer, potentially making it impossible for some people to join. This concern has caused some to argue that sites should provide an option to search. In other words, although this suggestion does not address the specific predicament of free and niche sites, similar to other choices, a subscriber could choose to pay a fee to have the company perform a background check.

Despite these reservations, some major sites have agreed to screen for sexual predators and make more of an effort to verify profile information, as well as prevent identity theft and financial scams. But there might be a better alternative — one that is already available (and free) on most major sites — and required by the legislation that does exist. Online dating services provide extensive and detailed safety tips that really all translate to “use common sense when meeting new people.” For example, eHarmony states that “your sound judgment and instincts are necessary to protect yourself. There is no substitution (sic) for acting with caution when communicating with someone you are just getting to know.” Further, before taking the next step and getting together in person, daters should perform their own investigation. They should do this as if their life

413. Heussner, supra n. 411.
414. See Lade, supra n. 412.
415. Id.
416. Tracy, supra n. 411 and accompanying text.
418. Heussner, supra n. 411.
419. For example, eHarmony “offers a special service called ‘TotalConnect.’ It includes a ‘Premium Personality Profile’ which has additional questions to the standard test and would cost $19.99 if purchased separately.” Fran Ralston, eHarmony Review, http://www.cupidslibrary.com/sites/eharmony (last visited Feb. 12, 2014).
420. See 3 online date sites, supra n. 125 and accompanying text.
421. It is important to note that although there are some special challenges for those who get acquainted online, these general safety precautions should be followed by anyone who is meeting someone for the first time. For example, the Match.com general manager stated, “regardless of where singles meet [—] be it in a bar, at a nightclub or at the grocery store [—] they should be cautious as they get to know strangers.” Heussner, supra n. 411.
422. eHarmony, supra n. 417.
depends on it because it may (at least their emotional and/or financial lives). If followed, this advice should keep a subscriber safe. Naturally, if a crime occurs, the victim should immediately inform the police, as well as the dating service.\textsuperscript{423}

IV. Conclusion

Steps can, and should, be taken to minimize risks associated with online dating. A small number of states have enacted legislation that regulates providers, but most laws only prohibit fraudulent practices. The handful of jurisdictions that attempt to protect subscribers from each other focus on notifying participants as to whether the company performs background checks and, if so, a variety of details about the search. In addition, several large dating sites recently and voluntarily said they would investigate potential members.\textsuperscript{424} Nevertheless, serious concerns about the efficacy of these inquiries have been raised.

As a result, participants should follow simple safety precautions posted on dating websites. Most importantly, subscribers should exercise good judgment and common sense with respect to physical, emotional, and financial well-being. No activity is absolutely safe. Daters need to recognize that in “affairs of the heart,” sometimes disappointment and even psychological and economic pain are necessary to separate the princes (and princesses) from the “frogs.”

\textsuperscript{423} The following is a list of common safety tips provided by eHarmony.com: 1) Always use your best judgment (include common “red flags”); 2) Always meet in a public place. Provide your own transportation, tell someone the details of where you are going, and bring a mobile phone; 3) Never share financial information or certain personal information (provide examples and warning to stop communicating with anyone who tries to obtain this type of information); 4) Be cautious when sharing personal information revealing your identity (use secure sites to communicate until completely comfortable with the other person); 5) Perform your own background checks (criminal records, marital status); 6) Go slow (caution that people whose relationships begin online typically feel connected much quicker than in other situations, but it is still necessary to take time to know the other person); 7) Report concerns to the service immediately (allowing them to investigate and, if appropriate, remove the offender from the site) and file a police report if necessary. eHarmony, \textit{supra} n. 417.

\textsuperscript{424} Carol J. Williams, \textit{3 online dating services agree to screen prospective clients}, http://articles.latimes.com/2012/mar/21/local/la-me-0321-online-dating-20120321 (Mar. 21, 2012).