

COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS
vs. : CHESTER COUNTY, PENNSYLVANIA
DANELO SOUZA CAVALCANTE : CRIMINAL ACTION -- LAW
: NO. 2951-2021

Gerald P. Morano, Esquire, Chief Deputy District Attorney for the Commonwealth
Maria Heller, Esquire, Attorney for Appellant

OPINION PURSUANT TO Pa.R.A.P. 1925

Appellant, Danelo Souza Cavalcante, has appealed from the judgment of sentence entered against him on August 22, 2023. This Opinion is filed pursuant to Pa.R.A.P. 1925(a).

The facts of this case are as follows: On April 18, 2021, at approximately 4:17 p.m., Schuylkill Police were dispatched to 337 Pawling Road Schuylkill Township, Chester County for a disturbance. When they arrived at the scene, they found Deborah Brandao laying in the driveway with numerous stab wounds to her chest. CPR and other life-saving measures were attempted, but Ms. Brandau was pronounced dead at 4:59 p.m. that day.

The victim's seven-year-old daughter was a witness to the stabbing. She was outside playing with her younger brother when she saw appellant, who was her mother's ex-boyfriend, come over and say he was "going to do something bad to their lives." He then pulled out two (2) knives from a black bag, pulled the victim's hair and dragged her to the ground. He climbed on top of her and said he was going to kill the victim. The victim yelled for help and her daughter went to a neighbor's house and told them to call 911. The daughter looked out of the window and saw appellant leave in a car. He fled the scene and disposed of his bloody clothing and the knife. He was caught by police in Virginia that same day. On April 19, 2021, appellant confessed to the murder to the police, as well as to several other witnesses. An autopsy performed on the victim showed she was stabbed 38 times.

Based on the above, appellant was charged with First Degree Murder and Possession of an Instrument of Crime (hereinafter "PIC"). (He was initially charged with additional crimes, but he only proceeded to trial on the Murder and PIC charges.) Following a three-day jury trial, he was convicted of both charges. On August 22, 2023, he was sentenced to life imprisonment for the First Degree Murder charge, and a consecutive two-and-a-half (2 ½) to five (5) year sentence on the PIC charge. He then filed post-sentence motions, which were denied by Order dated September 1, 2023. He thereafter appealed his judgment of sentence and he was ordered to file a Concise Statement of Matters Complained of on Appeal. His Concise Statement was received on January 30, 2024. In it, he raises the following issues:

1. The trial court abused its discretion in admitting evidence regarding alleged incident dated June 26, 2020;
2. The trial court abused its discretion in admitting evidence regarding alleged incident dated December 24, 2020;
3. The trial court abused its discretion at sentencing by improperly considering that Appellant exercised his right to a jury trial;
4. The trial court abused its discretion in imposing a sentence that exceeded the aggravated range with regard to the Possession of Instrument of Crime conviction without stating adequate reasons.

See Appellant's Concise Statement of Errors Complained of on Appeal.

The first two issues raised by appellant deal with the admissibility of prior incidents of violence by appellant toward the victim. Appellant claims that the probative value of this evidence did not outweigh its potential for unfair prejudice as required by Pa.R.Ev. 404(b)(2).

The Commonwealth wanted to introduce evidence of a June 26, 2020 incident and a December 24, 2020 incident in order to show motive, intent, malice or ill-will. It also wanted to show the chain of events occurring between the appellant and the victim, and wanted to tell the "complete story." To do so, the Commonwealth filed a Motion in Limine to Admit

Evidence of Other Crimes, Wrongs or Acts. A hearing on the Motion was held on July 25, 2023. On July 28, 2023, the court entered an Order granting the Commonwealth's Motion in part. See Order dated 7/28/23. Appellant claims that was in error.

The court fully explained its reasons for allowing evidence pertaining to the June 26, 2020 and December 24, 2020 incidents to be admitted at trial in its Order dated July 28, 2023. In response to Pa.R.A.P. 1925(a), the trial court respectfully invites the Superior Court's attention to that Order, a copy of which is attached hereto, which includes the reasons for the court's decision in this matter.

Further, the court properly instructed the jury on the limited purpose for which this evidence was admitted. The court explained:

Thank you. Ladies and gentlemen, to give you couple of legal guidelines about some of the evidence you heard. You heard about a prior June 2020 assault that the victim went to the police, and you also heard about a PFA in December about a year before the murder in April 2021. Those cases, this June, didn't result in conviction, and the PFA didn't result in a final PFA. They're brought in for one reason only, not to say the defendant's a bad guy. They're brought in to show the nature of the relationship, the ill-will between the parties. Do you follow me on those two instances?

N.T. 8/14/23, p. 35. The jury was also told:

Yes. So, ladies and gentlemen, what I'm doing here, instead of having the entire narrative [for the PFA following the December 24, 2020 incident] written by Ms. Brandao, I'm just having them summarize it because, again, we can't - - she's not here to be questioned, so we're just keeping it she got a PFA, she alleged she was assaulted and chased with a knife. Everybody follow me on that?

Also, on the same point about that to reinforce the idea here, Mr. Cavalcante is not on trial for the incident that happened in June of 2020 that you just heard about from Officer Minnick. He's not on trial here for the December PFA that she got against him when she was allegedly chased by a knife. You heard from multiple witnesses about that. You can't hold that against the defendant in this trial. Those aren't separate charges.

The reason it's being brought in throughout this case is to show the relationship of the parties, the ill-will between the parties at times, and show a possible motive for this murder. Does everybody follow me on that? You don't conclude, oh, he might have done these things in the past, he did this crime that he's charged with in April of 2021. Does everybody follow me on that?

N.T. 8/16/23, pp. 64-65. Further, the jury was again instructed:

And also, similarly, I've said this multiple times throughout this case, but I'm reinforcing the idea again. You heard evidence about a June 26, 2020 arrest, and a December 25, 2020 PFA, and an outstanding warrant in Brazil. Those are brought up for limited reasons. Let me give you the instruction on it. This evidence is before you for a limited purpose of tending to show the relationship between Mr. Cavalcante and Ms. Brandao, the ill-will between them, and a possible motive for this crime, talking about the warrant. This evidence must not be considered by you in any way, other than that purpose. You must not regard this evidence as showing the defendant is person of bad character or criminal tendencies for which you may be inclined to infer guilt. And you heard, for example, the PFA was dismissed later. So, we don't hold that against him. It's brought in to give you the whole picture of what happened in this case in the relationship between these parties. You all follow me on that? Okay.

N.T. 8/16/23, p. 217.

The court's limiting instructions properly advised the jury that appellant was not on trial for any actions concerning the June 26, 2020 or December 24, 2020 incidents. The jury was told that this evidence was only brought in for the purpose of showing the ill-will between the parties, to give a possible motive, and to give a complete picture of the relationship between the parties, and that it should not be viewed as evidence of guilt of any crime.

The court finds that its cautionary instruction clearly informed the jury of the limited purpose for allowing this testimony to be introduced. The court further finds that any potential harm caused by the reference to the June 26, 2020 and December 24, 2020 incidents was cured by the cautionary instructions that were given in this case both during the trial when this evidence was introduced, and during the closing instructions to the jury. Based on the

circumstances of this matter, the jury was properly instructed on how to view this evidence. Accordingly, appellant is not entitled to any relief on this basis.

Appellant next claims that the trial court abused its discretion at sentencing by improperly considering that Appellant exercised his right to a jury trial. He also alleges that the trial court abused its discretion in imposing a sentence that exceeded the aggravated range with regard to the Possession of Instrument of Crime conviction without stating adequate reasons. Defendant previously raised these issues in Post-Sentence Motions. The court fully explained its reasons for sentencing appellant as it did in its Order denying appellant's Post-Sentence Motions dated September 1, 2023. In response to Pa.R.A.P. 1925(a), the trial court respectfully invites the Superior Court's attention to that Order, a copy of which is attached hereto, which includes the reasons for the court's decision in this matter.

In addition, 42 Pa.C.S.A. §9721 sets forth the types of sentences that can be imposed by a court in this Commonwealth. It also indicates the factors that should be taken into account when determining the appropriate punishment. The statute states in relevant part:

(a) General rule.--In determining the sentence to be imposed the court shall, except as provided in subsection (a.1), consider and select one or more of the following alternatives, and may impose them consecutively or concurrently:

- (1) An order of probation.
- (2) A determination of guilt without further penalty.
- (3) Partial confinement.
- (4) Total confinement.
- (5) A fine.
- (6) County intermediate punishment.
- (7) State intermediate punishment.

* * * * *

(b) General standards. – In selecting from the alternatives set forth in subsection (a) the court shall follow the general principle that the sentence imposed should call for confinement that is consistent with the protection of the public, the gravity of the offense as it relates to the impact on the life of the

victim and on the community, and the rehabilitative needs of the defendant. The court shall also consider any guidelines for sentencing adopted by the Pennsylvania Commission on Sentencing and effect pursuant to section 2155 (relating to publication of guidelines for sentencing). In every case in which the court imposes a sentence for a felony or misdemeanor, the court shall make as a part of the record, and disclose in open court at the time of sentencing, a statement of the reason or reasons for the sentence imposed. In every case where the court imposes a sentence outside the sentencing guidelines adopted by the Pennsylvania Commission on Sentencing pursuant to section 2154 (relating to adoption of guidelines for sentencing) and made effective pursuant to section 2155, the court shall provide a contemporaneous written statement of the reason or reasons for the deviation from the guidelines. Failure to comply shall be grounds for vacating the sentence and resentencing the defendant.

42 Pa.C.S.A. §9721. It should be noted that in this Commonwealth:

Sentencing is a matter vested in the sound discretion of the sentencing judge, and a sentence will not be disturbed on appeal absent a manifest abuse of that discretion. However, the sentencing court must state its reasons for the sentence on the record, which in turn aids in determining “whether the sentence imposed was based upon accurate, sufficient and proper information. . . .” When imposing sentence, a court is required to consider “the particular circumstances of the offense and the character of the defendant.” In considering these factors, the court should refer to the defendant’s prior criminal record, age, personal characteristics and potential for rehabilitation. “It must be demonstrated that the court considered the statutory factors enunciated for determination of sentencing alternatives, and the sentencing guidelines.” Additionally, the court must impose a sentence which is “consistent with the protection of the public, the gravity of the offense as it relates to the impact on the life of the victim and the community, and the rehabilitative needs of the defendant.” Where the sentencing judge had the benefit of a pre-sentence report, however, it will be presumed that he “was aware of relevant information regarding the defendant’s character and weighed those considerations along with mitigating statutory factors.”

Commonwealth v. Dotter, 589 A.2d 726, 730 (Pa. Super. 1991) (citations omitted). See also, Commonwealth v. Andrews, 720 A.2d 764 (Pa. Super. 1998) and Commonwealth v. Lawson, 650 A.2d 876 (Pa. Super. 1994).

In the instant case, the defendant was correctly sentenced in accordance with 42 Pa.C.S.A. §9721 and existing case law. The court took into account all relevant factors, including all the information provided in the Mitigation Report, and considered the protection

of the public, the gravity of the offense, and the rehabilitative needs of the defendant and determined that defendant should be sentenced to two-and-a-half to five years' incarceration for the PIC charge. After considering the seriousness of the crimes charged, the impact these crimes had on the victim, her family and the community, and all other factors, the court determined that a sentence of two-and-a-half to five years' incarceration was warranted. It should be noted that the sentence appellant received was well within the statutory limit for the crime for which he was sentenced. Accordingly, appellant's sentence is proper and should be upheld.

The court acknowledges that the sentence appellant received for the PIC charge was above the aggravated range, but still within the statutory maximum of the sentence that he could have received. The court felt that there were several aggravating factors that mandated this kind of sentence. Specifically, the court considered the effect these crimes had on the victim, her family, and on the community. Appellant's lack of remorse also played a major role in the court's decision making when determining what appellant's sentence should be. In addition, this was a horrific crime where the victim was stabbed 38 times in front of her young children. The way defendant butchered the victim justifies an aggravated sentence in this case.

As stated above, 42 Pa.C.S.A. §9721 states in relevant part, "the court shall follow the general principle that the sentence imposed should call for confinement that is consistent with the protection of the public, the gravity of the offense as it relates to the impact on the life of the victim and on the community, and the rehabilitative needs of the defendant." 42 Pa.C.S.A. §9721(B). Pursuant to the statute, "the court should consider the information set forth by the victim concerning the sentencing, the impact of the crime on himself or his family, and finally the impact the offense had on the community." Commonwealth v. King, 182 A.3d 449, 455

(Pa. Super. 2018). At the sentencing hearing, the victim's sister testified to the impact these crimes had on her personally, on her family, and on Ms. Brandao's children, whom she was now raising. This evidence was properly considered by the court as an aggravating factor pursuant to 42 Pa.C.S.A. §9721, Commonwealth v. King, 182 A.3d 449, 455 (Pa. Super. 2018), Commonwealth v. Penrod, 578 A.2d 486 Pa. Super. 1990), Commonwealth v. Bromley, 862 A.2d 598, 605 (Pa. Super. 2004), Commonwealth v. Butler, 512 A.2d 667 (Pa. Super. 1986), Commonwealth v. Ward, 534 A.2d 1095 (Pa. Super. 1987), and Commonwealth v. Dickter, 465 A.2d 1 (Pa. Super. 1983). Moreover, appellant's lack of remorse displayed during sentencing was palpable. The court properly took into account all relevant factors and explained its reasoning during the sentencing hearing. See N.T. 8/22/23, pp. 12-13. Based on the totality of the circumstances and after applying all relevant factors, the court properly sentenced appellant in this matter.

Based on the foregoing, the court finds that each of appellant's alleged assignments of error are without merit.

BY THE COURT:

2/21/24
DATE

Patrick Carmody
PATRICK CARMODY J.

COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS
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Deborah S. Ryan, Esquire, District Attorney for the Commonwealth
Nellie Verduci, Esquire, Attorney for the Defendant

ORDER

AND NOW, this 28th day of July, 2023, upon consideration of the Commonwealth's Motions in limine, Defendant's Motion for Change of Venue, the evidence introduced at a hearing on July 25, 2023, and the arguments of counsel, it is hereby ORDERED and DECREED as follows:

1. The Commonwealth's proposed jury questionnaire is APPROVED;
2. Defendant's Motion for Change of Venue is DENIED;¹
3. The Commonwealth's Motion for Special Procedures During the Presentation of the Testimony of Child Witness is GRANTED;
4. The Commonwealth's Motion Seeking to Admit Out of Court Statements Under Tender Years and Prior Bad Acts is GRANTED IN PART;²
 - a. Renee Thomas's testimony is admissible under not only the tender years doctrine, but also under the present sense impression and excited utterance exceptions to the hearsay rule;
 - b. Robert Gilmore's testimony is admissible under both the tender years doctrine and the excited utterance exception to the hearsay rule;

- c. Officer Christopher Aquilante's body camera interview of YB is admissible, but the Commonwealth is precluded from showing the victim's half naked, dead body because the prejudicial effect outweighs its probative value;
 - d. The testimony of the victim's sister, Sarah Brandao, regarding YB's statements to her is admissible, but it should be very brief; and
 - e. Detective Christine Bleiler's video of YB's interview may be shown to the jury after YB testifies;
5. The Commonwealth's Motion in limine to Admit Evidence of Other Crimes, Wrongs or Acts is GRANTED IN PART:³
- a. The Commonwealth is permitted to introduce evidence pertaining to the June 26, 2020 and December 24, 2020 incidents involving Defendant and the victim;
 - b. The Commonwealth is permitted to introduce evidence that defendant has outstanding charges in Brazil;
6. The Commonwealth's Motion in limine to Permit the Admission and Publication of Text Messages and Other Communications will be decided at a later time.⁴

BY THE COURT:

Patrick Carmody

PATRICK CARMODY

J.

cc: (e-s),
CA

¹ There has not been much pretrial publicity in this case at all. The use of a jury questionnaire and voir dire should identify whether any jurors have read about this case and if they can be fair jurors.

² The Commonwealth seeks to introduce statements made by the victim's minor daughter, YB, to Renee Thomas, Robert Gilmore, Officer Christopher Aquilante, Sarah Brandao, and Detective Christine Bleiler. The defendant opposes the introduction of these statements. 42 Pa.C.S.A. §5985.1 provides in relevant part:

(1) An out-of-court statement made by a child victim or witness, who at the time the statement was made was 16 years of age or younger, describing any of the offenses enumerated in paragraph (2), not otherwise admissible by statute or rule of evidence, is admissible in evidence in any criminal or civil proceeding if:

(i) the court finds, in an in camera hearing, that the evidence is relevant and that the time, content and circumstances of the statement provide sufficient indicia of reliability; and

(ii) the child either:

- (A) testifies at the proceeding; or
- (B) is unavailable as a witness.

(2) The following offenses under 18 Pa.C.S. (relating to crimes and offenses) shall apply to paragraph (1):

Chapter 25 (relating to criminal homicide).

42 Pa.C.S.A. §5985.1. The Pennsylvania Superior Court has stated that, "[w]ith regard to the first prong, relevance and reliability, we begin with the language of the statute. Section 5985.1 directs the court to consider the relevance of the statement along with the time, content and circumstances in which it was made. Fidler v. Cunningham-Small, 871 A.2d 231, 235 (Pa.Super. 2005). Further, "[t]here are several factors a court may consider in determining reliability under §5985.1, including, but not limited to, "the spontaneity and consistent repetition of the statement(s); the mental state of the declarant; the use of terminology unexpected of a child of similar age; and the lack of a motive to fabricate." Id.

After hearing and reviewing the testimony of each of the individuals identified above, the court finds that their testimony is relevant to the instant matter. Further, during the hearing, the court conducted an in camera review of a DVD recording of Officer Aquilante's conversation with YB, which was recorded by the Officer's body camera, as well as the DVD recording of Detective Bleiler's interview with YB. Based on a review of the testimony given by all of the witnesses, as well as a review of both of the DVD recordings, the court finds that the statements made by YB are relevant and provide sufficient indicia of reliability. The statements made to each of the witnesses were consistent with prior statements, there is no evidence that challenges YB's mental state, and there is no evidence of any motive on YB's

part for her to lie. Further, YB's manner and speech were appropriate, given her age and the surrounding circumstances. She was straightforward in her responses and she did not appear to exaggerate or embellish her account of what allegedly occurred. If she disagreed with something she was asked, she stated so.

Based on the foregoing, since YB is available to testify at trial and the circumstances surrounding her statements provide sufficient indicia of reliability, the court finds that statements made to Renee Thomas, Robert Gilmore, Officer Christopher Aquilante, Sarah Brandao, and Detective Christine Bleiler are admissible under the Tender Years Doctrine.

³ Pa. Rule of Evidence 404(b) provides in relevant part:

(b) Other crimes, wrongs, or acts

(1) *Prohibited Uses.* Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

(2) *Permitted Uses.* This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake, or lack of accident. In a criminal case this evidence is admissible only if the probative value of the evidence outweighs its potential for unfair prejudice.

Pa.R.Ev. 404(b). In the instant case, the Commonwealth wants to introduce evidence pertaining to prior incidents of abuse between defendant and the victim. This evidence is not being admitted to prove the defendant's character in order to show conformity therewith. It is being admitted in order to show motive, intent, identity, and/or absence of mistake or accident as permitted by Pa.R.Ev. 404(b)(2). In addition, the prior incidents help form the history of the case. See, e.g., Commonwealth v. Jackson, 900 A.2d 936 (pa. Super. 2006); Commonwealth v. Passmore, 857 A.2d 697 (Pa. Super. 2004); Commonwealth v. Rivera, 828 A.2d 1094 (Pa. Super. 2003). The court finds that the probative value of the evidence relating to the prior incidents outweighs any prejudice to the defendant. Thus, evidence of the prior incidents of abuse are admissible pursuant to Pa.R.Ev. 404(b). The court, however, is limiting this evidence to include only the occurrences of June 26, 2020 and December 24, 2020, as the court finds that the probative value of this information is outweighed by its prejudicial effect. In addition, they are corroborated by physical evidence and defendant's own statements.

The Commonwealth also made proffers that Sarah Brandao and two other witnesses expected to be called at trial (defendant's sister, Eleni Souza Cavalcante, and his mother Iracoma Souza Dos Santos) will testify that one of the reasons the victim was killed was because she threatened to go to the police and inform them that defendant had an outstanding charge for homicide in Brazil. While this evidence is relevant, it needs to be sanitized so that its prejudicial effect will not outweigh its probative value. The court has asked the parties to agree to some language, such as the victim told defendant that she was going to tell the police about outstanding criminal charges defendant has in Brazil.

⁴ With regard to the admissibility of text messages between defendant and the victim the day before and the day of the murder, the Commonwealth will review and present a truncated version of those messages to the court so it can be determined whether they are admissible. The court is holding its decision in abeyance until it hears further from each party on this issue.

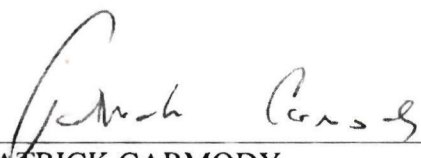
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Deborah S. Ryan, Esquire, District Attorney for the Commonwealth
Nellie Verduci, Esquire, Attorney for the Defendant

ORDER

AND NOW, this 1 day of September, 2023, upon consideration of Defendant's Post-Sentence Motions, it is hereby ORDERED and DECREED that said Motions are DENIED.¹

BY THE COURT:


PATRICK CARMODY J.

¹ This is one of the most horrific homicides the court has witnessed in its 40-year career. A sentence of life for First Degree Murder plus 2 ½ to 5 years for Possession of an Instrument of Crime is totally appropriate under the circumstances. Defendant killed the victim by stabbing her 38 times in front of her two children, ages seven and four years old. The evidence in this case was overwhelming and defendant deserved the maximum sentence based on all of the circumstances.

Furthermore, the court did not punish defendant for electing to go to trial. The court simply mentioned to defendant that in a case with overwhelming evidence that included eyewitness testimony, DNA evidence, a confession, etc., he chose to make a now nine-year-old girl relive her mother's murder by testifying. That showed a lack of remorse for the crime, as did defendant's demeanor at trial and at sentencing. At sentencing, defendant first declined to say anything but then only upon the court's prodding did he say he was sorry. The court can consider the lack of remorse of a defendant as an aggravating factor. See Commonwealth v. Lewis, 911 A.2d 558, 567 (Pa. Super. 2000) (Trial court considered defendant's lack of remorse and failure to take responsibility as making him a poor candidate for rehabilitation and justifying a sentence outside the guidelines).

For the reasons stated above defendant's motions are denied.