

IN THE SUPERIOR COURT OF PENNSYLVANIA
EASTERN DISTRICT

NO. 2531 EDA 2023

COMMONWEALTH OF PENNSYLVANIA,
Appellee

v.

DANELO CAVALCANTE,
Appellant

BRIEF FOR APPELLANT

APPEAL FROM JUDGMENT OF SENTENCE
ENTERED AUGUST 22, 2023
IN THE COURT OF COMMON PLEAS
OF CHESTER COUNTY, PENNSYLVANIA
ON CRIMINAL DOCKET NO. CP-15-CR-2951 -2021

Nathan M. Schenker
Public Defender of Chester County

Maria Heller
Assistant Public Defender

Chester County Public Defender's Office
201 West Market Street
P.O. Box 2746
West Chester, PA 19380-0989
(610) 344-6940
Attorney I.D. No. 79182
Attorney for Appellant

TABLE OF CONTENTS

	<u>Page</u>
Table of Citations.....	iii-v
Statement of Jurisdiction.....	1
Orders in Question	1
Scope and Standard of Review.....	1-3
Statement of Questions Involved	4
Statement of the Case.....	5-9
Statement of Reasons to Allow Appeal From Discretionary Aspects of Sentencing.....	10-12
Summary of Argument	13
Argument.....	14-46
Conclusion	47

Appendices:

Sentencing Sheet dated 8/22/23	APPENDIX A
Verdict Slip dated 8/16/23	APPENDIX B
Post-Sentence Motions	APPENDIX C
Order denying Post-Sentence Motions	APPENDIX D
Concise Statement of Errors	APPENDIX E
Opinion Pursuant to Pa.R.A.P. 1925	APPENDIX F
Commonwealth Motion in Limine	APPENDIX G

Appendices:

Defense Response to Commonwealth's Motion In Limine 7/11/23	APPENDIX H
Defense Response to Commonwealth's Motion In Limine 7/24/23	APPENDIX I
Trial Court Order 7/28/23	APPENDIX J
Photo of Incident	APPENDIX K
Officer Minnick's Police Report	APPENDIX L
Guideline Sentence Form	APPENDIX M

Certifications

Certification of Compliance Pursuant to Pa.R.A.P. 2135
Certification of Compliance Pursuant to Pa.R.A.P. 127
Proof of Service Pursuant to Pa.R.A.P. 121

TABLE OF CITATIONS

<u>CASES</u>	<u>Page</u>
<i>Commonwealth v. Belani</i> , 101 A.3d 1156 (Pa. Super. 2014).....	21
<i>Commonwealth v. Belknap</i> , 105 A.3d 7 (Pa. Super. 2014).....	2,27
<i>Commonwealth v. Bethea</i> , 379 A.2d 102 (Pa. 1977).....	3, 11, 29-32, 35
<i>Commonwealth v. Chase</i> , 530 A.2d 458 (Pa. Super. 1987), <i>appeal granted, case remanded</i> , 548 A.2d 1224 (Pa. 1988)...	36
<i>Commonwealth v. Drumheller</i> , 808 A.2d 893 (Pa. 2002).....	23
<i>Commonwealth v. Evans</i> , 901 A.2d 528 (Pa. Super. 2006).....	10
<i>Commonwealth v. Fullin</i> , 892 A.2d 843 (Pa. Super. 2006).....	28
<i>Commonwealth v. Gad</i> , 190 A.3d 600 (Pa. Super. 2018).....	24, 26
<i>Commonwealth v. Garcia-Rivera</i> , 983 A.2d 777 (Pa. Super. 2009).	12, 41
<i>Commonwealth v. Griffin</i> , 804 A.2d 1 (Pa. Super. 2002).....	28
<i>Commonwealth v. Jackson</i> , 900 A.2d 936 (Pa. Super. 2006).....	19, 23
<i>Commonwealth v. Leatherby</i> , 116 A.3d 73 (Pa. Super. 2015).....	28
<i>Commonwealth v. Lucky</i> , 229 A.3d 657 (Pa. Super. 2020).....	45
<i>Commonwealth v. Paddy</i> , 800 A.2d 294 (Pa. 2002).....	24
<i>Commonwealth v. Passmore</i> , 857 A.2d 697 (Pa. Super. 2004)...	19, 23
<i>Commonwealth v. Phillips</i> , 946 A.2d 103 (Pa. Super. 2008).....	2,3,40
<i>Commonwealth v. Rivera</i> , 828 A.2d 1094 (Pa. Super. 2003)....	19, 23, 25, 41
<i>Commonwealth v. Shugars</i> , 895 A.2d 1270 (Pa. Super. 2006)...	2, 3, 44
<i>Commonwealth v. Staley</i> , 324 A.2d 393 (Pa. Super. 1974).....	30, 31

<u>CASES</u>	<u>Page</u>
<i>Commonwealth v. Towles</i> , 106 A.3d 591 (Pa. 2014).....	20-21
<i>Commonwealth v. Williams</i> , 896 A.2d 523 (Pa. 2006).....	24

<u>STATUTES</u>	<u>Page</u>
18 Pa.C.S.A. § 301(c).....	29
18 Pa.C.S.A. §907 (a).....	5, 37
42 Pa.C.S.A. §742.....	1
42 Pa.C.S. §9721	28, 34, 41
204 Pa. Code §303.13 (c).....	41-42, 44

<u>PENNSYLVANIA RULES</u>	<u>Page</u>
Pa.R.A.P. 1925 (a).....	5, 33
Pa.R.A.P. 2119(f).....	10, 11
Pa.R.E. 401.....	21
Pa.R.E. 402.....	21
Pa.R.E. 403.....	21
Pa.R.E. 404.....	24, 26, 27

<u>CONSTITUTIONS</u>	
U.S. Const. amend. VI.....	29
Pa. Const. art. I § 9	29

STATEMENT OF JURISDICTION

Superior Court is vested with exclusive appellate jurisdiction to review final orders from Courts of Common Pleas by Section 742 of the Judicial Code. 42 Pa.C.S.A. §742.

ORDER IN QUESTION

The order in question relates to the judgment of sentence imposed by the Honorable Patrick Carmody on August 22, 2023 in Chester County criminal docket number CP-15-CR-2951-2021. (*See Appendix A – Sentencing Sheet*).

SCOPE AND STANDARD OF REVIEW

Issues I and II: Admissibility of Evidence

In reviewing a trial court's ruling on the admissibility of evidence, our standard of review is one of deference. Questions concerning the admissibility of evidence are “within the sound discretion of the trial court ... [and] we will not reverse a trial court's decision concerning admissibility of evidence absent an abuse of the trial court's discretion.” *Commonwealth v. Brown*, 617 Pa. 107, 52 A.3d 1139, 1197 (2012) (citation omitted). “An abuse of discretion is not merely an error of judgment, but is rather the overriding or misapplication of the law, or the exercise of judgment that is manifestly unreasonable, or the result of bias, prejudice, ill-will or partiality, as shown by the evidence of record.” *Commonwealth v. Mendez*, 74 A.3d 256, 260 (Pa.Super.2013) (citation omitted), *appeal denied*, — Pa. —, 87 A.3d 319 (2013). “[I]f in reaching a conclusion the trial court over-

rides [sic] or misapplies the law, discretion is then abused and it is the duty of the appellate court to correct the error.” *Commonwealth v. Weakley*, 972 A.2d 1182, 1188 (Pa.Super.2009) (citation omitted), *appeal denied*, 604 Pa. 696, 986 A.2d 150 (2009).

Commonwealth v. Belknap, 105 A.3d 7, 9–10 (Pa. Super. 2014).

Issue III: Sentencing - Improper Factor

With regard to the sentencing errors raised by Appellant, Superior Court’s review is composed of a determination first of whether Appellant’s claims raise a “substantial question” that the trial court contradicted a specific aspect of the Sentencing Code or acted contrary to the fundamental traditional norms which underlie the sentencing process. *Commonwealth v. Phillips*, 946 A.2d 103 (Pa.Super. 2008).

If a substantial question exists that such a deficiency in sentencing occurred, then Superior Court reviews the trial court’s discretion for abuse of that discretion exhibited by ignoring or misapplying the law, by judgment for reasons of partiality, prejudice, bias, ill will, or by a manifestly unreasonable decision. *Commonwealth v. Shugars*, 895 A.2d 1270 (Pa. Super. 2006).

In deciding whether a trial judge considered only permissible factors in sentencing a defendant, an appellate court must, of necessity, review all of the judge's comments. Moreover, in making this determination it is not necessary that an appellate court be convinced that the trial judge in fact relied upon an erroneous consideration; it is

sufficient to render a sentence invalid if it reasonably appears from the record that the trial court relied in whole or in part upon such a factor.

Commonwealth v. Bethea, 379 A.2d 102, 106–107 (Pa. 1977). If it reasonably appears from the record that the trial court imposed a harsher sentence because the defendant exercised his right to trial instead of pleading guilty, “it is sufficient to render a sentence invalid.” *Id.* at 107.

Issue #IV: Sentencing -Inadequate Reasons for Aggravated Sentence

With regard to the sentencing errors raised by Appellant, Superior Court’s review is composed of a determination first of whether Appellant’s claims raise a “substantial question” that the trial court contradicted a specific aspect of the Sentencing Code or acted contrary to the fundamental traditional norms which underlie the sentencing process. *Commonwealth v. Phillips*, 946 A.2d 103 (Pa.Super. 2008).

If a substantial question exists that such a deficiency in sentencing occurred, then Superior Court reviews the trial court’s discretion for abuse of that discretion exhibited by ignoring or misapplying the law, by judgment for reasons of partiality, prejudice, bias, ill will, or by a manifestly unreasonable decision. *Commonwealth v. Shugars*, 895 A.2d 1270 (Pa. Super. 2006).

STATEMENT OF QUESTIONS INVOLVED

- I. DID THE TRIAL COURT ABUSE ITS DISCRETION IN ADMITTING EVIDENCE REGARDING ALLEGED INCIDENT DATED JUNE 26, 2020?

- II. DID THE TRIAL COURT ABUSE ITS DISCRETION IN ADMITTING EVIDENCE REGARDING ALLEGED INCIDENT DATED DECEMBER 24, 2020?

- III. DID THE TRIAL COURT ABUSE ITS DISCRETION AT SENTENCING BY IMPROPERLY CONSIDERING APPELLANT EXERCISED HIS RIGHT TO A JURY TRIAL?

- IV. DID THE TRIAL COURT ABUSE ITS DISCRETION BY IMPOSING A SENTENCE EXCEEDING THE AGGRAVATED RANGE WITHOUT STATING ADEQUATE REASONS?

(Answered in the negative by the trial court.)

STATEMENT OF THE CASE

A. Form of Action

This is a criminal matter.

B. Procedural History of the Case

Following a jury trial with the Honorable Patrick Carmody presiding, Appellant was found guilty of: First-Degree Murder¹ and Possessing Instrument of Crime². (*See Appendix B- Jury Verdict*). On August 22, 2023, Judge Carmody sentenced Appellant to life imprisonment without parole and a two and a half (2 ½) to five (5) years consecutive incarceration. (*See Appendix A – Sentencing Sheet*).

Appellant filed post-sentence motions on September 1, 2023. (*See Appendix C*). The court denied these motions the same day without a hearing. (*See Appendix D- Order dated 9/1/23*).

Notice of Appeal was filed September 29, 2023. After extensions for transcript preparation and review, undersigned counsel filed a timely Concise Statement of Errors on January 30, 2024. (*See Appendix E*). The Honorable Patrick Carmody issued Opinion Pursuant to Pa.R.A.P. 1925 on February 21, 2024. (*See Appendix F*).

¹ 18 Pa.C.S. §1102 (a) (1)

² 18 Pa.C.S. §907 (a)

Two of the issues presented in this appeal center around “Commonwealth’s Motion in Limine to Admit Evidence of Other Crimes, Wrongs, or Acts Pursuant to Pennsylvania Rule of Evidence 404 (B)” filed June 12, 2023. (*See Appendix G*). The defense filed a response to the Commonwealth’s motion on July 11, 2023 and a supplemental response on July 24, 2023. (*See Appendices H and I*). After hearing held on July 25, 2023, the trial court, by order dated July 28, 2023, allowed the Commonwealth to introduce evidence of prior bad act incidents occurring on June 26, 2020 and December 24, 2020. (*See Appendix J*).

C. Prior Determinations in this Case

By order dated July 28, 2023, Judge Carmody admitted evidence of prior bad acts or wrongs. (*See Appendix J*). On August 22, 2023, Judge Carmody imposed judgment of sentence. (*See Appendix A – Sentencing Sheet*).

D. Name of Judge Whose Determinations are to be Reviewed

Trial and sentencing determinations were made by the Honorable Patrick Carmody.

E. Statement of the Facts

Testimony at trial supported the following facts as recited in trial court opinion:

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 Bradao laying in the driveway with numerous stab wounds to her chest. CPR and other life-saving measures were attempted, but Ms. Brandao was pronounced dead at 4:59 that day.

The victim's seven-year-old daughter, Yasmin, described Appellant pulling out two knives from a black bag, pulling victim's hair and dragging her to the ground. The 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 bloodied 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. The knife was recovered and DNA analysis was conducted on it linking it as the weapon used.

F. Statement of the Places Raising or Preserving the Issues

Issue #I- Admission of June 26, 2020 Incident

This claim was preserved on pages 1-2, paragraph 3 of "Defense Response to Commonwealth's Motion Seeking to Admit Out of Court Statements under Tender Years, 42 PA.C.S.A. §5985.1, and Prior Bad Acts, Pa.R.E. 404 (B)" filed July 11,

2023. (*Appendix H*). The claim was also preserved on pages 2-4, paragraph 2 of “Defense’s Additional Response to Commonwealth’s Motion Seeking to Admit Out of Court Statements Prior Bad Acts, Pa.R.E. 404 (B) and Motion In Limine to Permit the Admission and Publication of Text Messages and Other Communications” filed July 24, 2023. (*See Appendix I*).

In addition, this first claim was also preserved in paragraph #1 of Appellant’s Concise Statement of Errors Complained of on Appeal. (*Appendix E*).

Issue #II- Admission of December 24, 2020 Incident

Like the prior claim, this claim was preserved on pages 1-2, paragraph 3 of “Defense Response to Commonwealth’s Motion Seeking to Admit Out of Court Statements under Tender Years, 42 PA.C.S.A. §5985.1, and Prior Bad Acts, Pa.R.E. 404 (B)” filed July 11, 2023 and also preserved on pages 2-4, paragraph 2 of “Defense’s Additional Response to Commonwealth’s Motion Seeking to Admit Out of Court Statements Prior Bad Acts, Pa.R.E. 404 (B) and Motion In Limine to Permit the Admission and Publication of Text Messages and Other Communications” filed July 24, 2023. (*See Appendices H and I*).

This second claim also was preserved in paragraph #2 of Appellant’s Concise Statement of Errors Complained of on Appeal. (*Appendix E*).

Issue #III- Improper Consideration of Jury Trial Right

The improper consideration of Appellant's exercise of his right to a jury trial was preserved on page 2, paragraph #7 of Appellant's Post-Sentence Motions. (*Appendix C*). This claim was also preserved on page 2, paragraph #3 of Appellant's Concise Statement of Errors Complained of on Appeal. (*Appendix E*).

Issue #IV- Sentence Exceeded Aggravated Range without Adequate Reason

This sentencing claim was preserved in pages 1-2, paragraphs #4-6 of Appellant's Post-Sentence Motions. (*Appendix C*). This claim was also preserved on page 2, paragraph #4 of Appellant's Concise Statement of Errors Complained of on Appeal. (*Appendix E*).

***STATEMENT OF REASONS TO ALLOW AN APPEAL
FROM THE DISCRETIONARY ASPECTS OF SENTENCE***

An appellant challenging the discretionary aspects of his sentence must invoke this Court's jurisdiction by satisfying a four-part test:

[W]e conduct a four-part analysis to determine: (1) whether appellant has filed a timely notice of appeal, *see* Pa.R.A.P. 902 and 903; (2) whether the issue was properly preserved at sentencing or in a motion to reconsider and modify sentence, *see* Pa.R.Crim.P. [720]; (3) whether appellant's brief has a fatal defect, Pa.R.A.P. 2119(f); and (4) whether there is a substantial question that the sentence appealed from is not appropriate under the Sentencing Code, 42 Pa.C.S.A. § 9781(b). *Commonwealth v. Evans*, 901 A.2d 528, 533 (Pa.Super.2006), *appeal denied*, 589 Pa. 727, 909 A.2d 303 (2006) (internal citations omitted). Objections to the discretionary aspects of a sentence are generally waived if they are not raised at the sentencing hearing or in a motion to modify the sentence imposed. *Commonwealth v. Mann*, 820 A.2d 788, 794 (Pa.Super.2003), *appeal denied*, 574 Pa. 759, 831 A.2d 599 (2003).

Commonwealth v. Evans, 901 A.2d 528, 533 (Pa. Super. 2006). Appellant meets the requirements of the four-part jurisdictional test. First, Appellant filed a timely Notice of Appeal. The court denied post-sentence motions on September 1, 2023. Notice of Appeal was filed September 29, 2023.

Second, claims were raised in Appellant's Post-Sentence Motions filed on September 1, 2023. (*See Appendix C*). Issue #3, the improper consideration of Appellant's exercise of his right to a jury trial, was preserved on page 2, paragraph #7 of Appellant's Post-Sentence Motions. (*Appendix C*). Sentencing Issue #4 was

preserved on pages 1-2, paragraphs #4-6 of Appellant's Post-Sentence Motions. (*Appendix C*).

Third, this is Appellant's Pa.R.A.P. 2119(f) statement. Fourth, Issues III and IV constitute "substantial questions" that the trial court contradicted a specific aspect of the Sentencing Code or acted contrary to the fundamental traditional norms which underlie the sentencing process as indicated by cited authority below.

Issue #III: Sentencing - Improper Factor

A court's reliance on a defendant's decision to go to trial rather than accept a plea bargain constitutes an abuse of discretion and presents a substantial question. *See Commonwealth v. Bethea*, 379 A.2d 102, 104 (Pa. 1977) (noting "a practice which exacts a penalty for the exercise of the right [to a jury trial] is without justification and unconstitutional").

Issue #IV: Sentencing - Inadequate Reasons for Aggravated Sentence

Issue IV presents a "substantial question" and is properly considered for appellate review. This Honorable Court has found:

... that a claim the trial court failed to state its reasons for deviating from the guidelines presents a substantial question for review. *Hoch, supra; Commonwealth v. Wagner*, 702 A.2d 1084, 1086 (Pa.Super.1997) ("a claim that the sentencing court did not adequately explain its reasons for sentencing outside of the sentencing guidelines does raise a substantial question which may be reviewed on appeal"), citing *Commonwealth v. Impellizzeri*, 443 Pa.Super. 296, 661 A.2d

422 (1995), *appeal denied*, 543 Pa. 725, 673 A.2d 332 (1996).

Commonwealth v. Garcia-Rivera, 983 A.2d 777, 780 (Pa. Super. 2009).

SUMMARY OF ARGUMENTS

- I. The trial court abused its discretion in admitting evidence regarding alleged incident dated June 26, 2020. The probative value of the evidence did not outweigh its potential for unfair prejudice as required by Pa.R.E. 404 (b)(2).
- II. The trial court abused its discretion in admitting evidence regarding alleged incident dated December 24, 2020. The probative value of the evidence did not outweigh its potential for unfair prejudice as required by Pa.R.E. 404 (b)(2).
- III. The trial court abused its discretion at sentencing by improperly considering that Appellant exercised his right to a jury trial. A court's reliance on a defendant's decision to go to trial rather than accept a plea bargain constitutes an abuse of discretion and presents a substantial question. *Commonwealth v. Moury*, 992 A.2d 162, 170 (Pa. Super. 2010). The court at sentencing stated the following: "... if you were truly sorry, you would realize that the Commonwealth had about as strong a case as possibly could be presented of overwhelming evidence. And everyone has the right to have their day in court, but to choose to make [Y.B....] relive the murder of her own mother in court was a conscious decision by you. It was a selfish decision. It was the decision of a homem pequeno. That's Portuguese for a small man." [N.T. 8/22/23, pp. 12-13].
- IV. 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.

\\ARGUMENT

- I. THE TRIAL COURT ABUSED ITS DISCRETION IN ADMITTING EVIDENCE REGARDING ALLEGED INCIDENT DATED JUNE 26, 2020. THE PROBATIVE VALUE OF THE EVIDENCE DID NOT OUTWEIGH ITS POTENTIAL FOR UNFAIR PREJUDICE AS REQUIRED BY P.A.R.E. 404 (B)(2).**

- II. THE TRIAL COURT ABUSED ITS DISCRETION IN ADMITTING EVIDENCE REGARDING ALLEGED INCIDENT DATED DECEMBER 24, 2020. THE PROBATIVE VALUE OF THE EVIDENCE DID NOT OUTWEIGH ITS POTENTIAL FOR UNFAIR PREJUDICE AS REQUIRED BY P.A.R.E. 404 (B)(2).**

The issues before this Honorable Court are whether the trial court erred in admitting evidence of prior alleged incidents occurring on June 26, 2020 and December 24, 2020. The Commonwealth sought by way of a motion in limine filed June 12, 2023 to introduce prior incidents and statements to several family members and friends. After a hearing on July 25, 2023, the court, by order dated July 28, 2023, granted the Commonwealth's motion with respect to alleged incidents occurring on June 26, 2020 and December 24, 2020. (*See Appendix J*).

Facts Pertaining to these Issues:

Specifically, witnesses testified (to what they were told and what they saw) on June 26, 2020: Appellant was extremely drunk and cursing. Appellant and decedent had an argument. He pulled decedent's hair and she told the children to run. The children ran to a neighbor's house. Appellant bit her lip; she had blood on her dress and her body. Decedent called her sister and her sister and sister's boyfriend picked decedent and children up. Most of this narrative testimony came from Sarah Brandao, decedent's sister, who recounted what decedent told her.

A photograph of decedent's injury was admitted into evidence as Commonwealth Exhibit #12. Officer Mark Minnick of the Upper Providence Police Department investigated the incident. When Officer Minnick arrived, he met decedent's neighbor in the doorway of his apartment. The neighbor was holding a crowbar. Appellant was charged with Simple Assault and Terroristic Threats in connection with this incident. Officer Minnick's police report regarding this incident was admitted into evidence as Commonwealth Exhibit #13. The following witnesses testified to these events based on what they were told or what they saw. (Yasmin Brandao, N.T. 8/14/23, pp. 146-149; Sarah Brandao, N.T. 8/14/23, pp. ; Eleni Cavalcante, N.T. 8/15/23, pp. 8-9; Francisco Lima, N.T. 8/15/23, pp. 41-42; Mark Minnick, N.T. 8/16/23, pp. 40-48; See Appendix K -

Commonwealth Exhibit #12 (photo of decedent's injury); See Appendix L - Commonwealth Exhibit #13 (Officer Minnick's police report).

With regard to the December 24, 2020 alleged incident, witnesses testified (to what they were told and what they saw) as follows: the children were playing with their new toys; then, decedent put them to bed. Decedent and Appellant got into a big argument. Appellant had been looking through decedent's phone and saw an old message. He pushed her from a chair, he hit her, and he grabbed a knife and ran towards her. He dropped the knife and she was able to run out the door. After she ran outside, decedent helped her children exit through a window. They all went to a neighbor's house. Decedent called her sister stating, "come pick me up at neighbor's house because Danelo tried to kill me". Decedent's sister and sister's boyfriend picked them up from the neighbor's home. (Yasmin Brandao N.T. 8/14/23, pp. 144-145; Sarah Brandao, N.T. 8/14/23, pp. 167, 169-170; Francisco Lima, N.T. 8/15/23, p. 43).

With regard to the December alleged incident, Appellant's sister and Appellant's sister's boyfriend testified that Appellant told them decedent asked him for money and that he didn't have any money to give her. They got into an argument. Appellant was cutting meat on the table, he smacked the knife on the

table and she ran to the neighbors. (Eleni Cavalcante, N.T. 8/15/23, pp. 10-11; Francisco Lima N.T. 8/15/23, p. 43)

Trial Court's Reasoning

On July 25, 2023, a hearing was conducted on several pretrial matters. At several junctures during this hearing, the court spoke regarding the Rule 404 (b) issue. These statements are as follows:

I think clearly there's corroboration for the June, I think 26th, 2020 alleged assault that happened with the defendant and the victim. They filed charges and the victim asked to withdraw the charges. Then defendant, in his interview, allegedly admitted to that. Then you have a December 27, 2020 report that eventually wound up in the temporary PFA. That was dismissed March 12th, 2021. Again, the defendant admitted that act. A lot of the bad act witnesses dealt with that material. So I was comfortable. I will hear the argument, but on those two prior bad acts that there is corroboration for them, not only from witnesses photographs, but also from the defendant's own mouth, that those two bad acts seem to be clearly, that I can delineate them clearly. I get nervous when I hear other discussions, uncharged, you know, he did this, she did that, type of thing. So I may limit it somewhat on that. I'm also, as I said before in chambers, I'm a little concerned about the state of mind exceptions, a little bit about the victims because of the Chandler case and other Superior Court cases.... I'm Shepherdizing the case that I'm familiar with. It's all over the place legally on that, but the two areas of bad acts, the prior one that resulted in the charge, even though it's withdrawn and the one resulted in the PFA, even though it's withdrawn, both seem to be a pretty solid basis of corroboration that allowed them in with the defense drafting a cautionary instruction for me to use on those two bad acts.

....

So anything beyond that, I want to hear an offer of proof of what you want beyond those two incidents. The area becomes a concern if you have the witness come in and the victim told me he used to do this all the time or he did this and he did that. Then you have a situation where it becomes a state of mind of the victim and it becomes a complex legal issue, but when I have some clearly marked framework of that, that's issue one.

[N.T. 7/25/23, pp. 6-8].

I will hear you, but what I would like on this is I think we have two clearly marked prior bad acts before the murder that are corroborated by defendant's own statement and by, corroborated by police reports, films or whatever. So the June 2020 and Christmas Eve, December 24th, 2020, I would like any prior bad act witnesses to focus on those two. I can corroborate those. I don't want to have general discussions, the ups and downs of the relationship where victims (*sic.*) speaking through the grave through other people because they cannot be cross-examined, but we can corroborate what she says on those two incidents and established enough of the pattern.

[N.T. 7/25/23, pp. 108-109].

...[H]ere's where I'm at, guys, you have a non messy case, you really do. You have the cleanest homicide case. You really do. Why it happened is a bit of a mess, but what happened and what he did afterwards is pretty straightforward. So this takes me from an area where I'm going, okay, yeah for whatever reason, jealousy, money, lost it that day. You already have on the record. I'm allowing in he threatened to kill her and her kids twice before in June and December.

[N.T. 7/25/23, pp. 135-136].

We already have, even from Yasmin, that he said he's going to kill, in prior instances, he said he's going to kill mom and the kids in anger or whatever. Then we have other witnesses, too. That seems to be the case pretty thoroughly.

[N.T. 7/25/23, p. 152].

On my overall thing about the statement of mind exception is as long as we can keep it to the corroborative events of the June and December one, I feel comfortable with that, and even you have preserved your objection, but I feel comfortable about allowing those two incidents in.

[N.T. 7/25/23, p. 155].

In the court's pretrial order issued July 28, 2023, the court grants the Commonwealth's Motion In Limine to Admit Evidence of Other Crimes, Wrongs or Acts in part stating, "the Commonwealth is permitted to introduce evidence pertaining to the June 26, 2020 and December 24, 2020 incidents involving Defendant and the victim". (*See Appendix J*). In the order, the court included its reasoning in footnote #3 as follows:

... 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). 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.

(See Appendix J, p. 4).

Last, the court addressed this issue once again with the jury as follows:

so, ladies and gentlemen, two things.... Just to reinforce the idea here, you've heard about 3 different topics, other than the homicide. One is the June incident, one is the Christmas Day incident, and - -June and Christmas incident. The defendant is not charged with those cases today. You're not - - that's simply in here to show the nature of the relationship between the parties, possible motive in this case.

The outstanding warrant³ that was described, that's simply a conversation between the alleged victim and her sister brought up as a potential motive for the homicide, not to be considered as proof of facts, just to give you the background of the relationship of either parties. You cannot hold that against defendant in that regard. Everybody follow me on that? You're nodding your head.

[N.T. 8/14/23, pp. 179-180].

Authority

Pennsylvania law is well established in that “[t]he admissibility of evidence is a matter for the discretion of the trial court and a ruling thereon will be reversed on appeal only upon a showing that the trial court committed an abuse of discretion”. *Commonwealth v. Towles*, 106 A.3d 591, 603 (Pa. 2014) (citing *Commonwealth v. Johnson*, 42 A.3d 1017 (Pa. 2012); *Commonwealth v. Sherwood*, 982 A.2d 483, 495 (Pa. 2009)). “A trial court has broad discretion to determine whether evidence is admissible,” and a trial court’s ruling regarding the

³ The court refers to an outstanding warrant Appellant had from Brazil. The admission of the warrant was another issue in the case. The Commonwealth presented evidence that decedent was threatening Appellant with revealing the existence of the warrant to authorities.

admission of evidence will not be disturbed on appeal unless that ruling reflects manifest unreasonableness, or partiality, prejudice, bias, or ill-will, or such lack of support to be clearly erroneous”. *Commonwealth v. Belani*, 101 A.3d 1156, 1160 (Pa.Super. 2014), quoting *Commonwealth v. Huggins*, 68 A.3d 962, 966 (Pa.Super. 2013), *appeal denied*, 80 A.3d 775 (Pa. 2013); and *Commonwealth v. Minich*, 4 A.3d 1063 (Pa.Super. 2010).

“In deciding admissibility of other acts, ‘the trial court is obliged to balance the probative value of such evidence against its prejudicial impact.’” *Commonwealth v. Towles*, 106 A.3d 591, 603 (Pa. 2014). Pennsylvania Rule of Evidence 402 states “[a]ll relevant evidence is admissible, except as otherwise provided by law”.

Pa.R.E. 401 provides: [e]vidence is relevant if:

- (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) the fact is of consequence in determining the action.

Pa.R.E. 403 excludes relevant evidence for prejudice, confusion, waste of time, or other reasons. Specifically, Pa.R.E. 403 states:

[t]he court may exclude relevant evidence if its probative value is outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

Pennsylvania Rule of Evidence 404 discussing the use of character evidence also informs this discussion. Specifically, Pa.R.E. 404 (b)(1) entitled, “Crimes, Wrongs or Other Acts”, prohibits the use of a crime, wrong or bad act to show conformity with the charged conduct. It provides:

[e]vidence 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.

Pa.R.E. 404 (b)(2) states this evidence ***may be*** admissible if it fits an outlined exception:

[t]his evidence may be admissible for another purpose, such as proving motive opportunity, intent, preparation, plan, knowledge, identity, 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.

Analysis

The Commonwealth sought to admit evidence of prior bad acts concerning the following: (1) the defendant’s prior domestic violence physical assaults on the victim; (2) the defendant’s threats to kill the victim; (3) the injuries victim previously sustained from the defendant; (4) photographs of the victim’s injuries that occurred from the defendant’s assaults; (5) the victim’s PFA against the defendant; (6) the victim’s statements that she feared the defendant and wanted to end their relationship; (7) the defendant’s prior use of a knife to threaten the

victim; and (8) the victims statements that she would tell the police about the defendant and that he was wanted for murder in Brazil. (See Appendix G, pp. 11-12).

The court relied on *Commonwealth v. Jackson*, 900 A.2d 936 (Pa. Super. 2006); *Commonwealth v. Passmore*, 857 A.2d 697 (Pa. Super. 2004) ; and *Commonwealth v. Rivera*, 828 A.2d 1094 (Pa. Super. 2003) in granting Commonwealth's request to admit evidence of the alleged incidents occurring on June 26, 2020 and December 24, 2020.

As defense counsel argued in its response to the Commonwealth's motion in limine, *Commonwealth v. Jackson* "only included PFA orders and subsequent violations, as well as observations made by police". In *Commonwealth v. Passmore* at appellant's trial for kidnapping and murder, the trial court allowed evidence that appellant had pled guilty to two counts of simple assault from a previous attack on the victim and her male friend. In the instant case, the evidence of prior bad acts introduced at trial did not involve violations of a PFA order or any prior convictions.

With respect to prior bad acts, *Commonwealth v. Jackson* and *Commonwealth v. Drumheller*, 808 A.2d 893 (Pa. 2002), also allowed evidence of observations made by the police and observations made three witnesses of victim's

bruises. Although these cases allowed some evidence of first-hand observations, as defense argued in its response to the motion in limine:

[n]one of these cases ... explicitly allow[ed] for the admission of the type or scope of hearsay statements that the Commonwealth ... [under the premise]: “[e]vidence of prior abuse between a defendant and an abused victim is generally admissible to establish motive, intent, malice or ill-will.”

(See *Appendix I*, p. 3). It was error to admit the testimony of all witnesses who repeated decedent’s statements describing prior bad acts.

The Commonwealth and the trial court rely upon the *res gestae* exception stating that evidence of prior abuse is widely admissible. The Supreme Court of Pennsylvania has recognized the *res gestae* exception, permitting the admission of evidence of other crimes or bad acts to tell “the complete story”. *Commonwealth v. Williams*, 586 Pa. 553, 896 A.2d 523, 539 (2006); *Commonwealth v. Paddy*, 569 Pa. 47, 800 A.2d 294, 308 (2002).

Commonwealth v. Gad, 190 A.3d 600, 605 (Pa. Super. 2018), reminds us, however, that even if the evidence is admissible under one of the specific exceptions, this does not end the inquiry. “[It] is admissible only if the probative value of the evidence outweighs its potential for unfair prejudice.” Pa.R.E. 404(b)(2)”. *Gad* at 605. In *Gad*, the trial court held that “[w]hile Ms. Ezatt's testimony was prejudicial to [Appellant], it was not unduly so. Furthermore, **there**

was clearly a great need for the information she provided, and the probative value was high.” *Id.*

In *Commonwealth v. Rivera*, cited by the trial court in granting the motion, evidence of prior abuse by appellant against mother was allowed where daughter was kidnapped and murdered. The prior bad act evidence was used to show motive for the crime in a circumstantial case where daughter’s body was not recovered and appellant had stated he gave the child to someone. Clearly, in *Rivera*, there was a great need for the prior bad act evidence and the probative value of the evidence was high.

The case at hand was not a circumstantial case like *Rivera* where the jury would puzzle trying to fill in gaps. To quote the trial court, addressing the prosecutor at a pretrial hearing:

...you have a non messy case, you really do. You have the cleanest homicide case. You really do. Why it happened is a bit of a mess, but what happened and what he did afterwards is pretty straightforward. So this takes me from an area where I’m going, okay, yeah for whatever reason, jealousy, money, lost it that day. You already have on the record.

[N.T. 7/25/23, pp. 135-136]. And again, at sentencing, the court, addressing Appellant, indicating that he should have pled guilty to save Yasmin from testifying because, "you would realize that the Commonwealth had about as strong

a case as possibly could be presented of overwhelming evidence”. [N.T. 8/22/23, p. 12-13].

These quotes show that the trial court did not believe there was a great need of this this prior bad act evidence, regardless of how probative it was. Pa.R.E. 404 (b)(2) provides that evidence may be admissible if it fits an outlined exception “only if the probative value of the evidence outweighs its potential for unfair prejudice”. The probative value here, especially due to the strength of the Commonwealth’s case and the hearsay nature of much of the prior bad act evidence, was not outweighed by its potential for unfair prejudice.

Appellant acknowledges “[e]vidence will not be prohibited merely because it is harmful to the defendant. [E]xclusion is limited to evidence so prejudicial that it would inflame the jury to make a decision based on something other than the legal propositions relevant to the case.” *Gad* at 605 (citing *Commonwealth v. Talbert*, 129 A.3d 536, 539 (Pa.Super. 2015)). It is asserted that evidence allowed of prior alleged incidents of the family fleeing and mention of wielding a knife, was so prejudicial that it would inflame the jury.

Pa.R.E. 404 (b)(1) prohibits the use of a crime, wrong or bad act to show conformity with the charged conduct. It provides:

[e]vidence 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.

Clearly, the admission of this evidence would violate Pa.R.E. 404 (b)(1).

In reviewing a trial court's ruling on the admissibility of evidence, our standard of review is one of deference. Questions concerning the admissibility of evidence are “within the sound discretion of the trial court ... [and] we will not reverse a trial court's decision concerning admissibility of evidence absent an abuse of the trial court's discretion.” *Commonwealth v. Brown*, 617 Pa. 107, 52 A.3d 1139, 1197 (2012) (citation omitted). “An abuse of discretion is not merely an error of judgment, but is rather the overriding or misapplication of the law, or the exercise of judgment that is manifestly unreasonable, or the result of bias, prejudice, ill-will or partiality, as shown by the evidence of record.” *Commonwealth v. Mendez*, 74 A.3d 256, 260 (Pa.Super.2013) (citation omitted), *appeal denied*, — Pa. —, 87 A.3d 319 (2013). “[I]f in reaching a conclusion the trial court overrides [sic] or misapplies the law, discretion is then abused and it is the duty of the appellate court to correct the error.” *Commonwealth v. Weakley*, 972 A.2d 1182, 1188 (Pa.Super.2009) (citation omitted), *appeal denied*, 604 Pa. 696, 986 A.2d 150 (2009).

Commonwealth v. Belknap, 105 A.3d 7, 9–10 (Pa. Super. 2014).

The trial court's exercise of judgment in allowing evidence of the June 26, 2020 and December 24, 2020 alleged incidents was manifestly unreasonable due to the fact that the admission of this evidence was unfairly prejudicial.

III. THE TRIAL COURT ABUSED ITS DISCRETION AT SENTENCING BY IMPROPERLY CONSIDERING THAT APPELLANT EXERCISED HIS RIGHT TO A JURY TRIAL.

Challenges to the discretionary aspects of sentence are not appealable as of right. *Commonwealth v. Leatherby*, 116 A.3d 73, 83 (Pa. Super. 2015). Appellant has invoked this Court’s jurisdiction by meeting the four-part jurisdictional test as discussed above in the “Statement of Reasons to Allow an Appeal from the Discretionary Aspects of Sentence”.

When imposing a sentence, the sentencing court must consider the factors set out in 42 Pa.C.S. §9721 (b), that is, the protection of the public, gravity of offense in relation to impact on victim and community, and rehabilitative needs of the defendant... [A]nd, of course, the court must consider the sentencing guidelines. *Commonwealth v. Fullin*, 892 A.2d 843, 847-848 (Pa. Super. 2006). A court is required to consider the particular circumstances of the offense and the character of the defendant. *Commonwealth v. Griffin*, 804 A.2d 1, 10 (Pa. Super. 2002). In particular, the court should refer to the defendant’s prior criminal record, his age, personal characteristics, and his potential for rehabilitation. *Id.* “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.”

Commonwealth v. Hyland, 875 A.2d 1175, 1184.

“Sentencing is a matter vested in the sound discretion of the sentencing judge, and the sentence will not be disturbed on appeal absent a manifest abuse of discretion.” *Hyland* at 1184. (citation omitted).

In this context, an abuse of discretion is not shown merely by an error in judgment. Rather, the appellant must establish, by reference to the record, that the sentencing court ignored or misapplied the law, exercised its judgment for reasons of partiality, prejudice, bias or ill will, or arrived at a manifestly unreasonable decision.

Id. (citation omitted).

The Sixth Amendment to the United States Constitution guarantees the accused in all criminal prosecutions “the right to a speedy and public trial ... and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him...”. Article I Section 9 of the Pennsylvania’s Constitution further provides:

[i]n all criminal prosecutions the accused hath a right to ... demand the nature and cause of the accusation against him, to be confronted with the witnesses against him, a speedy public trial by an impartial jury of the vicinage.

A court's reliance on a defendant's decision to go to trial rather than accept a plea bargain constitutes an abuse of discretion and presents a substantial question. *See Commonwealth v. Bethea*, 379 A.2d 102, 104 (Pa. 1977) (noting “a

practice which exacts a penalty for the exercise of the right [to a jury trial] is without justification and unconstitutional”). If the defendant is penalized during sentencing for exercising his or her constitutional rights, that impermissible factor cannot be offset by also considering permissible factors. *Commonwealth v. Smith*, 673 A.2d 893, 896 (Pa. 1996).

The ... issue presented in this appeal is whether a trial court may properly consider a defendant's decision to stand trial as a factor justifying the imposition of a more severe sentence than would have been imposed had the defendant pleaded guilty. In *Commonwealth v. Staley*, 229 Pa.Super. 322, 324 A.2d 393 (1974), the Superior Court decided this question in the negative.

Bethea at 103.

In *Commonwealth v. Staley*, 324 A.2d 393, 395 (Pa. Super. 1974), the Superior Court vacated sentence and remanded for resentencing on the ground that the trial judge indicated he was going to impose a harsher penalty because the defendant had chosen to stand trial rather than plead guilty. The Court in *Staley* observed:

[a]n accused cannot be punished by a more severe sentence because he unsuccessfully exercised his constitutional right to stand trial rather than plead guilty.

Commonwealth v. Staley at 395. (citing *Baker v. United States*, 412 F.2d 1069, 1073 (5th Cir. 1969)).

... [A] plea of guilty may be a proper factor for a judge to consider in deciding whether to give a more lenient sentence. It does not follow that the converse is true. A plea of not guilty or a demand for a jury trial are not factors that a judge should consider in deciding whether to give a more severe sentence.

Staley at 395. The Supreme Court in *Bethea* reaffirmed this Honorable Court's holding in *Staley* finding it constitutionally impermissible for a trial court to impose a more severe sentence because a defendant has chosen to stand trial rather than plead guilty stating:

[w]e believe the *Staley* principle that a demand for a jury trial is not a factor which warrants escalating the severity of a sentence is sound. That principle is premised primarily upon the rationale that the right to a trial by jury is a fundamental one, constitutionally guaranteed to all criminal defendants, and that a practice which exacts a penalty for the exercise of the right is without justification and unconstitutional. The price exacted by imposing a harsher sentence on one who chooses to put the state to its proof by a jury trial rather than plead guilty is obvious. Not only is the individual defendant penalized for the present exercise of his constitutional right but, should the practice become sufficiently well known within a given jurisdiction, a substantial chilling effect on the exercise of the right would inevitably ensue.

Bethea at 104-105.

The Supreme Court in *Bethea* instructs:

[t]he correct inquiry in a case such as this is not whether the trial court considered legitimate factors in fixing sentence, but whether it considered only such factors. This is so because any increase in sentence which results from a defendant's decision to put the state to its proof puts a price upon the exercise of a fundamental constitutional right, and hence is unjustified. Thus, a sentence based in part on an impermissible consideration is not made proper simply because the

sentencing judge considers other permissible factors as well.

Bethea at 106. Further the Court stated:

[i]n deciding whether a trial judge considered only permissible factors in sentencing a defendant, an appellate court must, of necessity, review all of the judge's comments. Moreover, in making this determination it is not necessary that an appellate court be convinced that the trial judge in fact relied upon an erroneous consideration; it is sufficient to render a sentence invalid if it reasonably appears from the record that the trial court relied in whole or in part upon such a factor.

Bethea at 106-107.

After presentations from both the prosecutor and defense counsel, the trial court stated as follows:

[w]e get numb in the criminal justice system to violent acts, but this was a particularly horrific crime to kill someone in front of her children, ages seven and four at the time. To hear the testimony of a witness who is a good Samaritan who was present, and saw, and had to bring the 4-year-old son Yan away while watching his mother's dying breaths as she's locked eyes with him was chilling. And I want to commend Sarah Brandao and Yasmin for testifying. But that's what gets me here.

A crime like this can take a few- - a matter of minutes to do, a short time, but if you were truly sorry, you would realize that the Commonwealth had about as strong a case as possibly could be presented of overwhelming evidence. And everyone has the right to have their day in court, but to choose to make Yasmin relive the murder of her own mother in court was a conscious decision by you. It was a selfish decision. It was the decision of a homem pequeno. That's Portuguese for a small man.

Do you understand what I'm saying, sir?

THE DEFENDANT: Yes.

THE COURT: You thought of yourself and you did not think of those children. The sentence is life imprisonment for murder in the first degree and consecutive two-and-a-half to five years on possession of instrument of crime.

[N.T. 8/22/23, pp. 12-13].

Appellant respectfully asserts that the Court's comments indicate the Court imposed a more severe sentence on Appellant because Appellant forced Yasmin Brandao to testify by going to trial:

if you were truly sorry, you would realize that the Commonwealth had about as strong a case as possibly could be presented of overwhelming evidence. And everyone has the right to have their day in court, but to choose to make Yasmin relive the murder of her own mother in court was a conscious decision by you. It was a selfish decision. It was the decision of a homem pequeno. That's Portuguese for a small man.

[N.T. 8/22/23, pp. 12-13].

In addressing this error in its Rule 1925 (a) opinion, the trial court directed this Honorable Court's attention to the reasoning contained in its September 1, 2023 order denying the post-sentence motions. (*See Appendix D, p.5*). The trial court's reasoning, contained in the order's footnote, states as follows:

[t]his 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.

(See Appendix D, footnote 1).

It is true that 42 Pa.C.S.A. § 9721 authorizes the court to consider "the gravity of the offense as it relates to the impact on the life of the victim and on the community". Further, "victim impact" testimony is permissible and "victim impact" statements have been expressly upheld. Nevertheless, courts cannot constitutionally condone more severe sentences for those who choose to exercise their constitutional right to trial. Any case involving a child eyewitness will require the child to testify in order for the Commonwealth to meet its burden of proof. Imposing a more severe penalty for a child witness having to testify equates to a penalty for the accused exercising his or her constitutional right to trial.

The trial court’s explanation does not ameliorate the fact that while reviewing the sentencing factors, it considered Appellant’s exercise of his right to a jury trial as one of its reasons for imposing the sentence that it did. The court explicitly stated, “... everyone has the right to have their day in court, but to choose to make [Y.B....] relive the murder of her own mother in court was a conscious decision by you. It was a selfish decision. It was the decision of a homem pequeno. That’s Portuguese for a small man”. [N.T. 8/22/23, p. 13].

As in *Bethea*, Appellant argues that a:

fair reading of the trial court's remarks prior to the imposition of sentence, indicates that the judge *may have been influenced by the fact that appellant chose to stand trial rather than plead guilty, with a possible resultant augmentation of the sentences imposed.*

Accordingly, we conclude that appellant's sentences must be vacated and the cause remanded for resentencing.

Bethea at 106-107.

The court in the case at hand considered many permissible factors in imposing sentence, but “it must be reiterated that it is of no consequence that appellant's sentence may have also been based on legitimate considerations”. *See Commonwealth v. Bethea*, 379 A.2d 102 (1977)).

Consideration of an improper factor ... would render the sentence invalid and require that the sentence be vacated and the case remanded for resentencing.

Commonwealth v. Chase, 530 A.2d 458, 460 (Pa. Super. 1987), *appeal granted, case remanded*, 548 A.2d 1224 (Pa. 1988) (*citing Commonwealth v. Bethea*, 379 A.2d 102 (1977)). As precedential case law provides, reliance on an improper factor that affects a defendant's constitutional right cannot be offset by the court's consideration of permissible factors. *Bethea*, 379 A.2d at 107; *Smith*, 673 A.3d at 896. For these reasons, it is respectfully asserted that Appellant's judgment of sentence should be vacated and the case remanded for a new sentencing hearing.

IV. 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.

Facts Pertaining to This Issue

Appellant was convicted of Possessing Instrument of Crime, 18 Pa.C.S.A. §907 (a). Possessing Instrument of Crime was assigned an offense gravity score of three (3) by the applicable Pennsylvania Sentencing Guidelines. Appellant's prior record score was a zero (0) at the time of sentencing. The applicable sentencing guidelines were as follows: standard guideline range was restorative sanctions to one (1) month confinement. The aggravated range was over one (1) month confinement to four (4) months' confinement. The mitigated range, of course, was restorative sanctions. (*See Appendix M - Guideline Sentence Form*). On August 22, 2023, the court sentenced Appellant outside the guidelines to the statutory maximum of two and a half (2 ½) years to five (5) years' confinement for Possessing Instrument of Crime. (*See Appendix A*).

The entirety of the trial court's statements at sentencing are as follows:

Okay. This is Danelo Cavalcante, 2951 of 21. He's convicted of homicide of the first degree and PIC are the two crimes that don't merge. That was on August 16th. He's scheduled today, August 22nd,

for sentencing, primarily given the opportunity for the victim impact statement and for the defendant to make any statements he would like. With that being said, is the Commonwealth ready to proceed?

[N.T. 8/22/23, p.1]. At this point, the prosecutor called Sarah Brandao, the decedent's sister, and argued for a consecutive statutory maximum sentence on the Possessing Instrument of Crime conviction. At the conclusion of the presentation, the prosecutor stated, "Your Honor, *I have the sentencing guidelines for the Court's consideration* along with a request for a DNA order". [N.T. 8/22/23, p. 10]. The court stated, "I'll order DNA and the \$250 fine. *You can fill out the guidelines once I impose sentence*". [N.T. 8/22/23, p. 10]. The prosecutor outlined other amounts owed. The court responded, "I'll impose those, but it's like getting blood from a stone, but I will impose those various fines and costs". [N.T. 8/22/23, p. 10]. Once the prosecutor concluded her presentation, the court stated, "Okay. The defense submitted a mitigation report, which has been admitted as D-1. What would you like to say [defense counsel]?". [N.T. 8/22/23, p. 11]. At this point, defense counsel made his presentation and argued for a concurrent sentence on the Possessing Instrument of Crime. At the conclusion of defense counsel's presentation, the following exchange occurred:

THE COURT: Mr. Cavalcante... [w]hat would you like to say, sir?"

APPELLANT: No.

THE COURT: Do you understand this is your only chance to address Ms. Brandao's family?

APPELLANT: Yes.

THE COURT: And you choose not to do so?

APPELLANT: I want to say I'm sorry to them.

At this point, the court stated as follows:

[w]e get numb in the criminal justice system to violent acts, but this was a particularly horrific crime to kill someone in front of her children, ages seven and four at the time. To hear the testimony of a witness who is a good Samaritan who was present, and saw, and had to bring the 4-year-old son Yan away while watching his mother's dying breaths as she's locked eyes with him was chilling. And I want to commend Sarah Brandao and Yasmin for testifying. But that's what gets me here.

A crime like this can take a few- - a matter of minutes to do, a short time, but if you were truly sorry, you would realize that the Commonwealth had about as strong a case as possibly could be presented of overwhelming evidence. And everyone has the right to have their day in court, but to choose to make Yasmin relive the murder of her own mother in court was a conscious decision by you. It was a selfish decision. It was the decision of a homem pequeno. That's Portuguese for a small man.

Do you understand what I'm saying, sir?

APPELLANT: Yes.

THE COURT: You thought of yourself and you did not think of those children. The sentence is life imprisonment for murder in the first degree and consecutive two-and-a-half to five years on possession of instrument of crime.

If you wanted an appeal, you have 30 days to do so. If you cannot afford an attorney, one will be appointed for you. If you cannot afford court costs, you can ask for them to be waived.

Anything else that we need to address?

.....

Thank you. You may take the defendant away. Thank you, Ms. Brandao.

[N.T. 8/22/23, pp. 11-13].

Authority

As is required for challenges to a sentencing court's discretionary sentencing, Appellant has outlined his compliance with the four-part jurisdictional test in the above section of this brief entitled, "Statement of Reasons to Allow an Appeal from the Discretionary Aspects of Sentence".

With regard to the sentencing errors raised by Appellant, Superior Court's review is composed of a determination first of whether Appellant's claims raise a "substantial question" that the trial court contradicted a specific aspect of the Sentencing Code or acted contrary to the fundamental traditional norms which underlie the sentencing process. *Commonwealth v. Phillips*, 946 A.2d 103 (Pa.Super. 2008). This Honorable Court has found:

... that a claim the trial court failed to state its reasons for deviating from the guidelines presents a substantial question for review. *Hoch, supra; Commonwealth v. Wagner*, 702 A.2d 1084, 1086 (Pa.Super.1997) ("a claim that the sentencing court did not adequately explain its reasons for sentencing outside of the sentencing guidelines

does raise a substantial question which may be reviewed on appeal”), citing *Commonwealth v. Impellizzeri*, 443 Pa.Super. 296, 661 A.2d 422 (1995), *appeal denied*, 543 Pa. 725, 673 A.2d 332 (1996).

Commonwealth v. Garcia-Rivera, 983 A.2d 777, 780 (Pa. Super. 2009).

As this Court noted in *Garcia-Rivera* “[t]he sentencing court is permitted to deviate from the sentencing guidelines”:

...however, the court must place on the record its reasons for the deviation. 42 Pa.C.S.A. § 9721(b); *Commonwealth v. Byrd*, 441 Pa.Super. 351, 657 A.2d 961 (1995). In sentencing outside of the guidelines, the court must demonstrate that it understands the sentencing guidelines ranges. *Id.*; *Commonwealth v. Johnson*, 446 Pa.Super. 192, 666 A.2d 690 (1995); *Commonwealth v. Frazier*, 347 Pa.Super. 64, 500 A.2d 158 (1985); *Commonwealth v. Royer*, 328 Pa.Super. 60, 476 A.2d 453 (1984). ‘Where the trial judge deviates from the sentencing guidelines ... he must set forth on the record, at sentencing, in the defendant's presence, the permissible range of sentences under the guidelines and, at least in summary form, the factual basis and specific reasons which compelled the court to deviate from the sentencing range.’ *Commonwealth v. Royer*, 328 Pa.Super. at 70–71, 476 A.2d at 457.

Garcia-Rivera at 780-781 (citing *Commonwealth v. Wagner*, 702 A.2d 1084, 1086 (Pa. Super.1997); *see also Commonwealth v. Jones*, 640 A.2d 914, 917 n. 3 (Pa. Super. 1994); 204 Pa.Code § 303.13(c) (“When the court imposes an aggravated or mitigated sentence, it shall state the reasons on the record and on the Guideline Sentence Form...”).

204 Pa. Code §303.13 (c) of the Fifth Edition of the Pennsylvania

Sentencing Guidelines states:

[w]hen the court imposes an aggravated or mitigated sentence, it shall state the reasons on the record and on the Guideline Sentence Form, a copy of which is electronically transmitted to the Commission on Sentencing in the manner described in § 303.1(e).

Analysis

Although a court is permitted to sentence outside the guidelines, it must first show it understands the sentencing guidelines ranges. Based on the authority cited above **a court must do all of the following:**

- 1) in defendant's presence, set forth on the record the permissible range of sentence under the guidelines;
- 2) demonstrate that it understands the sentencing guidelines ranges;
- 3) set forth factual basis and specific reasons for deviating from the guidelines;
and
- 4) place its reasons on the record and on the Guideline Sentence Form.

In the instant case, the court stated to the prosecutor, "I'll order DNA and the \$250 fine. *You can fill out the guidelines once I impose sentence*". [N.T. 8/22/23, p. 10]. The court had not placed the permissible ranges on the record prior to this statement or after this statement. The statement indicates the sentence would be imposed first and then the guidelines would be completed.

Second, the court did not specify its reasons for deviating from the guidelines. The court's only commentary prior to imposing the statutory maximums consecutively was as follows:

... And I want to commend Sarah Brandao and Yasmin for testifying. But that's what gets me here.

A crime like this can take a few- - a matter of minutes to do, a short time, but if you were truly sorry, you would realize that the Commonwealth had about as strong a case as possibly could be presented of overwhelming evidence. And everyone has the right to have their day in court, but to choose to make Yasmin relive the murder of her own mother in court was a conscious decision by you. It was a selfish decision. It was the decision of a homem pequeno. That's Portuguese for a small man.

[N.T. 8/22/23, pp. 12-13].

As discussed above in the argument section of Issue #3, if the court's reason to deviate from the guidelines was Appellant's decision to go to trial in a case which would require the testimony of eyewitnesses, such as Sarah and Yasmin, it constituted the consideration of an improper sentencing factor. It would be improper for the court to hold a defendant's exercise of a constitutional right against him regardless of how overwhelming the evidence against the defendant might be. It should also be noted, as stated above in the Issue #3 discussion, that it does not matter whether the court also considered permissible factors.

Last, the court did not specify on the record that these reasons compelled it to sentence outside of the sentencing guidelines. On the Sentence Guideline Form, required by 204 Pa. Code §303.13 (c), under “reasons for sentence”, it states “see next page”. Oddly, on the next page of the Sentence Guideline Form under “additional reasons for sentence”, it states, “negotiated plea agreement”. (See *Appendix M*). It should be noted as well, on the left column of page 1 of the Sentence Guideline Form the form contains the query “negotiated plea as to sentence”, the preparer answered, “yes”. (See *Appendix M*).

Abuse of discretion

If a substantial question exists that such a deficiency in sentencing occurred, then Superior Court reviews the trial court’s discretion for abuse of that discretion exhibited by ignoring or misapplying the law, by judgment for reasons of partiality, prejudice, bias, ill will, or by a manifestly unreasonable decision. *Commonwealth v. Shugars*, 895 A.2d 1270 (Pa. Super. 2006).

In this case, the court was clearly frustrated with Appellant because it thought he acted selfishly and should have instead pled guilty to save the decedent’s family from testifying. In expressing this, the court stated:

but to choose to make Yasmin relive the murder of her own mother in court was a conscious decision by you. It was a selfish decision. It was the decision of a homem pequeno. That’s Portuguese for a small man.

[N.T. 8/22/23, p. 13].

The sentencing decision is of paramount importance in our criminal justice system, and must be adjudicated by a fair and unbiased judge. *Commonwealth v. Knighton*, 415 A.2d 9 ([Pa.] 1980). This means a jurist who “assesses the case in an impartial manner, free of personal bias or interest in the outcome.” *Commonwealth v. Abu-Jamal*, 720 A.2d 79, 89 (Pa. 1998). Because of the tremendous discretion a judge has when sentencing, “a defendant is entitled to sentencing by a judge whose impartiality cannot reasonably be questioned.” *Commonwealth v. Darush*, 459 A.2d 727, 732 (Pa.1983). “A tribunal is either fair or unfair. There is no need to find actual prejudice, but rather, the appearance of prejudice is sufficient to warrant the grant of new proceedings.” *In Interest of McFall*, 617 A.2d 707, 714 (Pa 1992). *Commonwealth v. Rhodes*, 990 A.2d 732, 748 (Pa. Super. 2009)], quoting *Commonwealth v. Druce*, 848 A.2d 104, 108 (Pa. 2004); *Commonwealth v. Bernal*, 200 A.3d 995, 999-1000 (Pa. Super. 2018); see also *Commonwealth v. McCauley*, 199 A.3d 947, 950 (Pa. Super. 2018) (“[T]he appearance of bias or prejudice can be as damaging to public confidence in the administration of justice as the actual presence of bias or prejudice.”)

Commonwealth v. Lucky, 229 A.3d 657, 665 (Pa. Super. 2020) (some brackets omitted).

Calling Appellant an “homem pequeno”, showed the court’s desire to disparage Appellant in his native language and translating the comment showed the court’s desire to shame Appellant in open court. Based on this comment, and the immediate imposition of consecutive statutory maximum sentences, suggested particular animus towards Appellant. As stated above, “[t]here is no need to find actual prejudice, but rather, the appearance of prejudice is sufficient to warrant the

grant of new proceedings”. It is asserted that this comment demonstrated an abuse of discretion and an appearance of prejudice sufficient to warrant new proceedings.

CONCLUSION

For the aforementioned reasons, Appellant respectfully requests this Honorable Court vacate the convictions and the imposed judgment of sentence.

Respectfully Submitted,



Maria Heller
Assistant Public Defender
Attorney ID # 79182
Chester County Public Defender's Office
201 W. Market Street, Suite 2325
P.O. Box 2746
West Chester, PA 19380
Attorney for Appellant

APPENDIX A

AMENDED Date: _____

SENTENCING SHEET

(Page 1 of 1)

CC:

Dkt. No.: CR: 2951-21 OTN: R-130178-6
Defendant: JANELO CAVALCANTE
Alias(es): _____

Date: 8.22.2023
Judge: CARMODY
DA: RYAN
Defense: VERDICT
Reporter: RODRIGUEZ
Clerk: KADISH

2-Sheriff
 1-APO
 1-BAIL
 CCP(fax)
Other: _____

P/A _____ O/G _____ Nolo _____ Alford Plea _____
Sentencing Re-Sentencing _____

COUNT: 1 CHARGE: FIRST DEGREE MURDER GRADING: HI
Committed: _____ yr _____ mo _____ days _____ hrs Time Served _____ TO _____ yr _____ mo _____ days
Probation: _____ yr _____ mo _____ days Consecutive to Parole
FINE: _____ Plus {COSTS} Serve at CCP _____ SCI _____ LIFE SENTENCE

RESTITUTION: _____
 CONCURRENT w/ _____ CONSECUTIVE to _____

Mandatory Sentence Megan's Law DNA Testing 250.00

COUNT: 6 CHARGE: POSSESSING INSTRUMENT OF CRIME GRADING: MI
Committed: 2.5 yr _____ mo _____ days _____ hrs Time Served _____ TO 5 yr _____ mo _____ days
Probation: _____ yr _____ mo _____ days Consecutive to Parole
FINE: _____ Plus {COSTS} Serve at CCP _____ SCI _____

RESTITUTION: _____
 CONCURRENT w/ _____ CONSECUTIVE to COUNT 1

Mandatory Sentence Megan's Law DNA Testing

COUNT: _____ CHARGE: _____ GRADING: _____
Committed: _____ yr _____ mo _____ days _____ hrs Time Served _____ TO _____ yr _____ mo _____ days
Probation: _____ yr _____ mo _____ days Consecutive to Parole
FINE: _____ Plus {COSTS} Serve at CCP _____ SCI _____

RESTITUTION: _____
 CONCURRENT w/ _____ CONSECUTIVE to _____

Mandatory Sentence Megan's Law DNA Testing

COUNT: _____ CHARGE: _____ GRADING: _____
Committed: _____ yr _____ mo _____ days _____ hrs Time Served _____ TO _____ yr _____ mo _____ days
Probation: _____ yr _____ mo _____ days Consecutive to Parole
FINE: _____ Plus {COSTS} Serve at CCP _____ SCI _____

RESTITUTION: _____
 CONCURRENT w/ _____ CONSECUTIVE to _____

Mandatory Sentence Megan's Law DNA Testing

Other Counts are W/D - Costs on Defendant BAC _____ Drug Type _____ Amt. _____

Sentence to Commence _____ CRN Evaluation A.H.S.S.

Credit-Time Served _____ Drug/Alcohol Evaluation & Recommended Treatment

Parole Order Signed Eligible for Parole _____ Lab Fees \$ _____ To: _____

Eligible for RRRRI- DOC shall calculate RRRRI minimum Mental Health Evaluation & Recommended Treatment

RRRRI Ineligibility Waived by DA Ineligible for RRRRI Mental Health Protocol Mental Health Court

Eligible for Re-entry Plan Ineligible for Re-entry Anger Management Domestic Violence Pgm

Work Release Eligible at Warden's Discretion WRAP Program Parenting Classes

No Contact w/ _____ Chronic Substance Abuse Program (CSAP)

No Criminal Contact w/ _____ Sex Offense Assessment and Recommended Treatment

Electronic Home Confinement (EHC) for _____ Cognitive Behavioral Training (T4C or Moving On)

Community Service Hours _____ State Drug Treatment Pgm Ineligible DA Opposition

Other: RESTITUTION: State Drug Treatment Pgm Ineligibility Waived by DA

7,145.00 Boot Camp Ineligible Ineligibility Waived by DA

2,234.00 Non-Reporting if in compliance

Abide by Rules & Conditions governing Prob, Parole & RPP Waiver of Supervision Fee

Pay Fines/Costs within _____

BY THE COURT: _____ CERTIFIED FROM THE RECORD

This 22 day of AUG 2023

Order-34 Revised 1/2023

APPENDIX B

COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS
vs. : CHESTER COUNTY, PENNSYLVANIA
DANELO SOUZA CAVALCANTE : CRIMINAL ACTION -- LAW
: NO. 2951-21

VERDICT SLIP

1. Do you find Defendant, Danelo Souza Cavalcante, guilty or not guilty of the offense of First Degree Murder?

Guilty _____ Not Guilty _____

If your answer to the above is Guilty, do not answer number 2 or 3; proceed to number 4.

If your answer to the above is Not Guilty, proceed to number 2.

2. Do you find Defendant, Danelo Souza Cavalcante, guilty or not guilty of the offense of Third Degree Murder?

Guilty _____ Not Guilty _____

If your answer to the above is Guilty, do not answer number 3; proceed to number 4.

If your answer to the above is Not Guilty, proceed to number 3.

RFoc 8.16.2023 JK

3. Do you find Defendant, Danelo Souza Cavalcante, guilty or not guilty of the offense of Voluntary Manslaughter?

Guilty _____

Not Guilty _____

4. Do you find Defendant, Danelo Souza Cavalcante, guilty or not guilty of the offense of Possessing Instrument of Crime?

Guilty _____

Not Guilty _____

WILLIAM BLOWN #1

Foreperson

Date: 8/16/23

w: CA,
(e-s)

APPENDIX C

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

POST-SENTENCE MOTIONS

TO THE HONORABLE, THE JUDGES OF THE SAID COURT:

Defendant, Danelo Cavalcante, by and through his counsel, Sameer M. Barkawi, Assistant Public Defender, hereby moves for the sentence to be vacated and/or the grant of a new trial and states as follows:

1. Petitioner was found guilty of Homicide, Murder in the First Degree, title 18 Pa.C.S.A. section 2502(a), and Possession of an Instrument of Crime ("PIC"), 18 Pa.C.S.A. section 907(a), pursuant to a jury trial held from August 14 through August 16, 2023.
2. A sentencing hearing was scheduled for August 22, 2023.
3. The mandatory sentence for a conviction of Murder in the First Degree is life.
4. The standard guideline range (SGR) based on the Petitioner's PRS and the OGS of PIC¹ was RS to 1, with +/- three months for aggravating or mitigating factors.
5. Petitioner was sentenced to a period of incarceration of life without parole on Murder in the First Degree, and a consecutive two and one half to five years on PIC, the statutory maximum.

¹ The OGS of PIC is "3" and the PRS of Petitioner is "0".

6. Petitioner is respectfully requesting that the Court modify and reduce its sentence with respect to the consecutive sentence imposed on the charge of PIC and avers the following in support thereof:

- a. The aggravated and mitigated range of the guidelines on PIC would call for RS up to four months of incarceration;
- b. The Court's sentence went substantially beyond even the aggravated range;
- c. The Court failed to record its reasons for deviating from the guideline range on the Guideline Sentence Form as required by statute.

7. Petitioner is respectfully requesting that the Court vacate its sentence and schedule a new sentencing hearing, and avers the following:


- a. The Petitioner has no obligation to plead guilty and has a right to request a jury trial;
- b. The Commonwealth bears the burden of proving beyond a reasonable doubt, all of the elements of the offenses of which the Petitioner is charged;
- c. The Petitioner has no hand in deciding how the Commonwealth prosecutes its case;
- d. The Court improperly considered that the Commonwealth elected to call Y.B. as a witness at trial and relied upon that fact in providing a basis for its sentence;
- e. The Court's reliance on this factor is inappropriate as it equates to a penalty for asserting Petitioner's right to trial.

8. Additionally, Petitioner alleges that the weight of the evidence was insufficient to sustain a conviction for Murder in the First Degree.

9. Lastly, Petitioner alleges that the Commonwealth presented insufficient evidence to sustain a conviction as to Murder in the First Degree.

WHEREFORE, Defendant respectfully requests that the Court reconsider and reduce the sentence, vacate the sentence and schedule subsequent sentencing hearing, or schedule a hearing to hear argument on the aforementioned factors.

Respectfully submitted,



Sameer M. Barkawi
Assistant Public Defender

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

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of September 2023, I served the foregoing Post-Sentence Motions upon the persons and in the manner indicated below:

Deborah Ryan, Esquire
Chester County District Attorney's Office
201 W. Market Street, Suite 4450
West Chester, PA 19380
By Hand Delivery

Honorable Patrick Carmody
201 W. Market Street, Judges' Chambers
West Chester, PA 19380
By Hand Delivery

RECEIVED
2023 SEP - 1 AM 11:25
CLERK OF COURT
CHESTER CO. PA.



Sameer M. Barkawi
Assistant Public Defender
Chester County Public Defender's Office
201 W. Market Street
West Chester, PA 19380
610-344-6940

APPENDIX D

COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS
vs. : CHESTER COUNTY, PENNSYLVANIA
DANELO SOUZA CAVALCANTE : CRIMINAL ACTION -- LAW
: NO. 2951-21

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.

APPENDIX E

COMMONWEALTH OF PENNSYLVANIA **:IN THE COURT OF
COMMON PLEAS**

v. **:CHESTER COUNTY,
PENNSYLVANIA**

:CRIMINAL

DANELO CAVALCANTE **:NO. CP-15-CR-2951-2021**

**CONCISE STATEMENT OF
ERRORS COMPLAINED OF ON APPEAL**

Appellant, Danelo Cavalcante, by his counsel, Maria Heller, Esq., of the Chester County Public Defender's Office, in response to this Honorable Court's order dated September 29, 2023 and extension granted October 4, 2023, respectfully submits that:

1. The trial court abused its discretion in admitting evidence regarding alleged incident dated June 26, 2020. The probative value of the evidence did not outweigh its potential for unfair prejudice as required by Pa.R.E. 404 (b)(2).
2. The trial court abused its discretion in admitting evidence regarding alleged incident dated December 24, 2020. The court found that it was more comfortable admitting this incident as it was admitted by Appellant, but in Commonwealth Exhibits #28 and #29 Appellant did not admit coming at decedent with a knife. (See N.T. 7/25/23, p. 7, lns. 8-11, lns. 13-17; Commonwealth Exhibit #28, Counter 062867-063229; and Commonwealth Exhibit #29, pp. 51-52). The video interview is very unclear with regard to what Appellant admits with respect to the allegations of December 24, 2020. The probative value of the evidence did not outweigh its potential for unfair prejudice as required by Pa.R.E. 404 (b)(2).

3. The trial court abused its discretion at sentencing by improperly considering that Appellant exercised his right to a jury trial. A court's reliance on a defendant's decision to go to trial rather than accept a plea bargain constitutes an abuse of discretion and presents a substantial question. *Commonwealth v. Moury*, 992 A.2d 162, 170 (Pa. Super. 2010). The court at sentencing stated the following: "... if you were truly sorry, you would realize that the Commonwealth had about as strong a case as possibly could be presented of overwhelming evidence. And everyone has the right to have their day in court, but to choose to make [Y.B....] relive the murder of her own mother in court was a conscious decision by you. It was a selfish decision. It was the decision of a homem pequeno. That's Portuguese for a small man." [N.T. 8/22/23, pp. 12-13].
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.

Respectfully submitted,



Maria Heller
Attorney ID #79182
Assistant Public Defender
201 W. Market St., Suite 2325
West Chester, PA 19380
(610) 344-6940

Date: 1/30/24

COMMONWEALTH OF PENNSYLVANIA :**IN THE COURT OF**
COMMON PLEAS

v. :**CHESTER COUNTY,**
PENNSYLVANIA

:CRIMINAL

DANELO CAVALCANTE :**NO. CP-15-CR-2951-2021**

CERTIFICATION OF COMPLIANCE PURSUANT TO PA.R.A.P. 127

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Date: 1/30/24



Maria Heller
Assistant Public Defender
Attorney ID # 79182
Chester County Public Defender's Office
201 W. Market Street, Suite 2325
West Chester, PA 19380

COMMONWEALTH OF PENNSYLVANIA

**:IN THE COURT OF
COMMON PLEAS**

v.

**:CHESTER COUNTY,
PENNSYLVANIA**

:CRIMINAL

DANELO CAVALCANTE

:NO. CP-15-CR-2951-2021

PROOF OF SERVICE

I hereby certify that I am on this 30th day of January 2024 serving Concise Statement of Errors in the above captioned manner upon the persons indicated below which satisfies the requirements of Pa.R.A.P. 121.

Service by Email:

Email addresses confidential at recipients' request, with agreement of:
The Honorable Patrick Carmody
Judicial Chambers
201 W. Market St.
West Chester, PA 19380

Gerald P. Morano, Esq.
Chief Deputy District Attorney
201 W. Market St.
West Chester, PA 19380
Attorney for Appellee

Service by First Class Mail:

Mr. Danelo Cavalcante



Maria Heller
Attorney ID #79182
Assistant Public Defender
201 W. Market St., Suite 2325
West Chester, PA 19380
(610) 344-6940

APPENDIX F

COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS
 : CHESTER COUNTY, PENNSYLVANIA
vs. : CRIMINAL ACTION -- LAW
DANELO SOUZA CAVALCANTE : 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
vs. : CHESTER COUNTY, PENNSYLVANIA
DANELO SOUZA CAVALCANTE : CRIMINAL ACTION -- LAW
: NO. 2951-21

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.

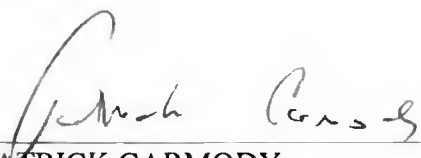
COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS
vs. : CHESTER COUNTY, PENNSYLVANIA
: CRIMINAL ACTION -- LAW
DANELO SOUZA CAVALCANTE : NO. 2951-21

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.

APPENDIX G

IN THE COURT OF COMMON PLEAS OF CHESTER COUNTY, PENNSYLVANIA
Criminal Division

COMMONWEALTH OF PENNSYLVANIA	:	
	:	
v.	:	No: CP-51-CR-0002951-2021
	:	
DANELO SOUZA CAVALCANTE	:	
	:	

**COMMONWEALTH’S MOTION *IN LIMINE* TO ADMIT
EVIDENCE OF OTHER CRIMES, WRONGS, OR ACTS PURSUANT TO
PENNSYLVANIA RULE OF EVIDENCE 404(B).**

AND NOW, COMES the Commonwealth of Pennsylvania, by and through District Attorney Deborah S. Ryan, and respectfully requests this Honorable Court grant this *motion in limine* permitting the admission of evidence regarding the defendant’s prior abuse of the victim and other acts pursuant to Pennsylvania Rules of Evidence 404(b).

FACTUAL BACKGROUND

On April 18, 2021, at approximately 4:17 p.m., Schuylkill Police were dispatched for the report of a disturbance at 337 Pawling Road in Schuylkill Township, Chester County, Pennsylvania. Upon arrival, police officers found 33-year-old Deborah Brandao (hereinafter “victim”) laying in the driveway with numerous stab wounds to her chest. A police officer and a neighbor attempted CPR until Emergency Medical Services arrived. EMS attempted life-saving measures and transported her to Paoli Hospital, but she was pronounced deceased at 4:59 p.m.

The victim’s seven-year-old daughter, Y.B. (hereinafter “Y.B.”), told police that the defendant Danelo Cavalcante, the victim’s ex-boyfriend, came over to their house, argued with her mother about money, and pulled two knives from a backpack. Next, outside in broad daylight and in front of the victim’s two young children, Y.B., and son Y.B. age 4, the defendant pulled the victim’s hair and dragged her to the ground. The defendant then got on top of the victim, told her

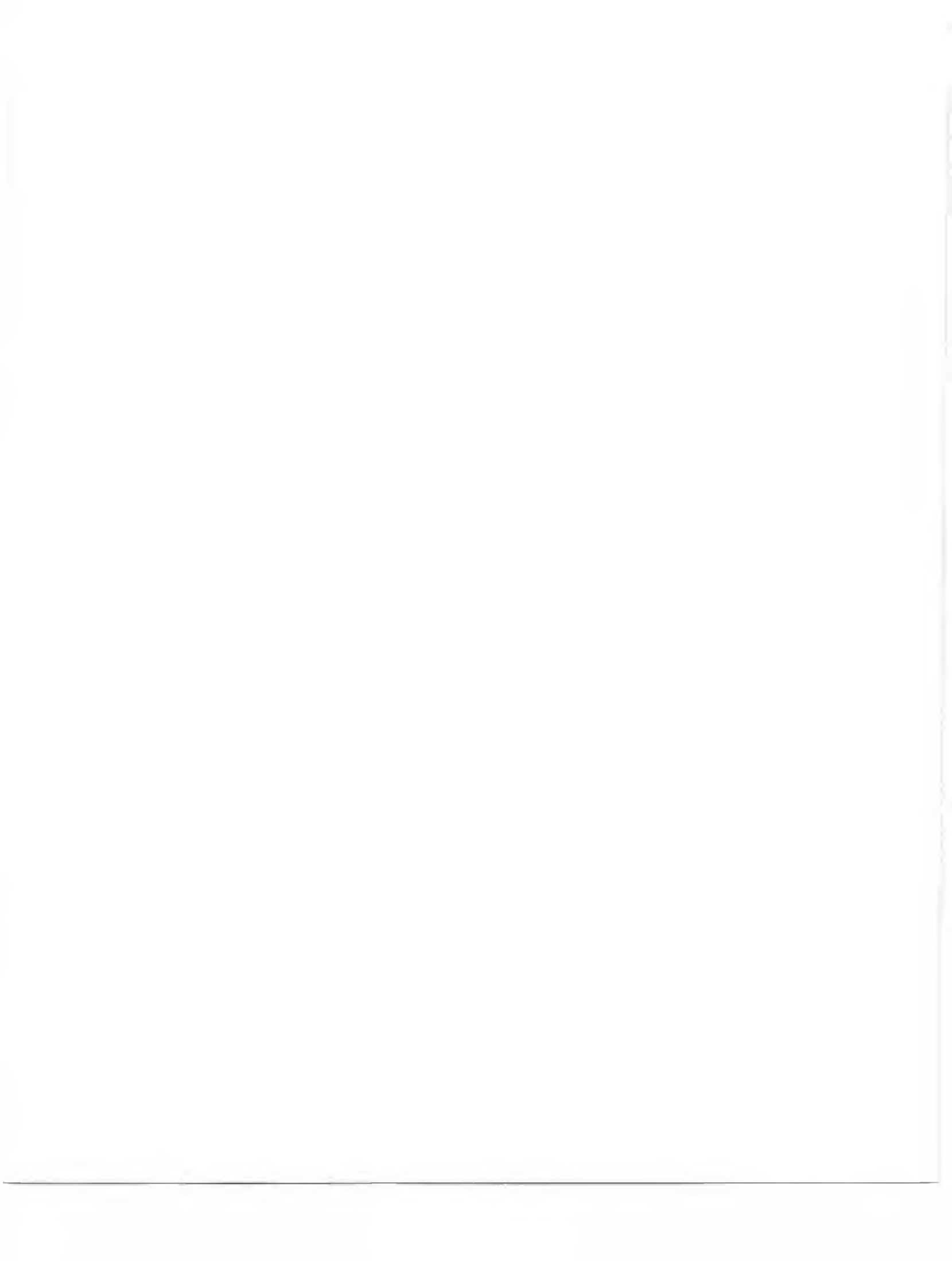
he was going to kill her, and stabbed her repeatedly with a knife. The victim screamed for help, Y.B. ran to a neighbor's home, and a neighbor called 911.

The victim suffered 38 sharp force injuries throughout her body. The coroner concluded that the manner of death was homicide.

The defendant fled from the scene in the car he arrived in and contacted multiple people after the murder including his mother, sister, brother-in-law, and friends. He admitted to them that he stabbed the victim. Friends and relatives helped him escape. They helped him clean up his cut hands, removed blood from inside his car, and they supplied him with different clothes, fake identification, and food.

The state police captured him in Virginia within hours the same day. The murder weapon was recovered near the crime scene the next day and the defendant's DNA was found on the knife handle. In a *Mirandized* interview with Chester County Detectives on April 19, 2021, he stated that before the incident, he and the victim were arguing in text messages back and forth on WhatsApp and she said she was going to the police to report him. He told the detectives that the relationship "ended badly," and admitted that he stabbed the victim. He informed police that he got rid of the bloody clothes he wore and threw the knife out the window of his car while he drove away. He also confessed to other assaults against the victim including an incident in June 2020 where he bit her and he acknowledged that they fought another time in December. In addition, he wrote an apology letter to her children.

During this investigation detectives learned that there was another active arrest warrant for the defendant issued for murder in Brazil in 2017. The allegations include fatally shooting someone who owed him money. The defendant came to this country after the alleged murder there.



The victim and defendant began their romantic relationship around August 2019. Although they are both originally from Brazil, they did not meet until January 2019 in Phoenixville, Chester County. After dating for a few months, they moved into an apartment together in Montgomery County around November 2019, along with the victim's two children.

Friends and relatives described their relationship as volatile. Over the course of their year and a half long relationship the defendant punched, kicked, strangled, bit, and threatened her with a knife. He threatened to kill her multiple times, suspected she was cheating on him, and broke her phone on numerous occasions. She reported a few of the incidents to police. The victim told a few close friends and family that he was jealous, controlling, and she was scared of him. Despite the domestic abuse, she continued their relationship. She relied on him for help with rent, food, and other necessities, but also told friends that she loved him. Her friends and family did not support the relationship and she hid it from many.

After one of the assaults committed by the defendant in December 2020 where he kicked her and threatened her with a knife, she told the defendant and his sister that she knew about his arrest warrant for murder in Brazil and that if the defendant tried to approach her she would tell the police about him. She also obtained a Protection from Abuse order in Montgomery County that month. The defendant moved out of the apartment and they never lived together after. She and the kids eventually moved into a new apartment on Pawling Street in Schuylkill Township in early April 2021.

They still saw each other at times over the next few months. The defendant lent her money and she was making efforts to pay him back.

Dozens of text messages sent between the defendant and victim were recovered the day before and the day of the murder. The defendant repeatedly called her a liar and believed that she



was cheating on him. The defendant also made reference to the money the victim owed him and he stated that he wanted it immediately. She texted him that their relationship was over and accused him of hacking into her social media account. She texted him that she was going to the police to report him that day. She was killed hours later.

After the murder, the defendant sent and received multiple text messages and phone calls to family and friends including his mother Iracoma Souza Dos Santos, sister Eleni Cavalcante, brother-in-law Francisco Lima, roommate Leandro Cardoza-Patricio, and friends Lazero Souza Caldeira, Henrique Reis Ottoni, and others. All of these individuals were interviewed by Chester County Detectives and they admitted that he contacted them either by text message or phone call after the murder.

The defendant called his mother right after the murder. She told detectives that the defendant said, "The worst happened. [Deborah] was dead and she made [him] do it." When his mother asked why he would kill Deborah the defendant responded, "she was threatening to report that he had killed someone in Brazil." The defendant said that the victim researched information about the murder in Brazil and the victim also advised Eleni about it. The defendant's mother informed detectives that she knew about the murder in Brazil and told them that the defendant fatally shot a man who owed him money.

I. PRIOR BAD ACTS REPORTED TO POLICE

The first reported incident of abuse occurred on June 26, 2020, at approximately 10:00 p.m., at their residence on 600 2nd Avenue, Apartment A-2, Upper Providence Township, Montgomery County, PA. Police were dispatched to a different apartment in that complex for the report of a domestic assault on that date. *See Exhibit A.* Officers spoke to the victim's neighbors,

Yair Ibarra and Emily Lima in apartment B-3. Ibarra reported that the victim's two kids, ages 3 and 6, banged on their door and ran into the apartment crying because someone was chasing them. Y.B. told them that someone was trying to kill her mom. She also told them that the defendant bit her mom's lip, broke her mom's phone, and broke a glass. Y.B. said that this was not the first time the defendant got physical with her mother. The victim appeared at their apartment shortly after and was observed with a "busted lip," blood all over her dress, and bruises on her arm. The victim told them not to call the police, that the defendant was a good man, and he was drunk.

Soon after, the defendant attempted to get into the apartment by pushing into the front door. Ibarra got a tire-iron for self-defense. The defendant next tried to gain entrance by banging on a side window, but was unsuccessful. The defendant fled before the police arrived and broken glass was found outside of the apartment.

The victim told Lima, Ibarra, and the police that the defendant was angry because she left their apartment earlier with her kids, he didn't know where she went, and she returned home late. They argued and the defendant reached out to her with the appearance that he was going to kiss her, but instead bit her bottom lip so hard it bled and became swollen. The defendant then threatened to kill the victim, and he chased her and her two children out of the apartment.

Police photographed the victim's injured lip and dried blood on her dress. Y.B. also told police that the defendant was "going to kill [her] my mother."

Police completed a Lethality Assessment Protocol (LAP) with the victim that day. The defendant's sister, Eleni Cavalcante, helped the victim collect her items and made arrangements for them to stay at her sister Sarah's house in Phoenixville. The victim told police that she feared for her and her children's safety. She stated that she did not want to stay in the apartment in case the defendant returned.

Police filed a criminal complaint on June 27, 2020, charging the defendant with simple assault, harassment, and terroristic threats. Police attempted numerous times to serve the warrant but they could not locate him.

On July 1, 2020, the victim and a friend went to the Upper Providence Township Police Department to request that the charges against the defendant be dropped, but the police declined. The victim and defendant reconciled after and moved to a new apartment. The warrant for the defendant's arrest was still active at the time of the murder.

On December 27, 2020, the victim reported another incident of domestic abuse to the Upper Merion Township Police Department in Montgomery County. The victim reported that on December 24, 2020, the defendant squeezed her arm and showed the officer an older-looking bruise on her left arm. The victim said that she and her kids lived with the defendant at 548 Powderhorn Road and she felt her safety was at risk. She stated that the defendant was extremely rude, yells at her, and has pushed her in the past. The victim informed the officer that she would obtain a PFA on Monday morning. *See Exhibit B.*

On December 29, 2020, the victim filed and obtained a temporary PFA against the defendant in Montgomery County. *See Exhibit C.* The victim indicated that the most recent incident of abuse was on December 24, 2020. The victim specified that:

After dinner, plaintiff [Brandao] put kids in bed, got back to kitchen, defendant was on plaintiff's cell phone. Defendant started saying plaintiff was a bad person, pushed her from chair, threw all six plates on floor, kicked plaintiff twice. Plaintiff got up and started going towards door, defendant grabbed a knife and ran towards plaintiff who ran out the door and started screaming for neighbors help. Defendant ran a little after but went back home. Plaintiff went back to the back of the house and pulled children from the window. After almost one hour, plaintiff called her sister who came to pick her and children up, around 11:30 p.m. Plaintiff filed report on 12-27-20.

When asked if the defendant has committed prior acts of abuse against the victim, she indicated, "around May, after drinking, defendant pushed plaintiff, pulled her hair, bit her lip. Early

December he tried to strangle by holding her from back.” When asked if the defendant has used or threatened to use weapons against her, the victim indicated, “grabbed knife on 12-24-20.”

On December 30, 2020, the victim arrived at the Upper Merion Township Police Department in order to serve the defendant with a PFA. *See* Exhibit D. Upper Merion Police attempted to serve the PFA at the residence, but the defendant was not home. Police faxed the PFA to Phoenixville Police to try to serve the defendant at his sister’s home, but the defendant was not there. On December 31, 2020, both Upper Merion and Phoenixville Police attempted to serve the PFA several times but were unsuccessful.

On January 20, 2021, the victim called the Upper Merion Police Department to report that when she returned to her residence at 548 Powderhorn Road in Montgomery County that evening she found her front door unlocked and open. *See* Exhibit E. Police searched her home and found that everything appeared to be in order, nothing was missing, and that there were no signs of forced entry. The victim told police that she had an active PFA against the defendant and believed that he may have a key to the residence. Later that evening, the victim emailed the police to report that someone had changed the batteries in her security alarm.

On January 21, 2021, a police officer emailed and left a voicemail for the victim suggesting that her landlord change the locks to her apartment and to install a surveillance camera. *See* Exhibit E. The victim explained that her landlord was unwilling to change the locks for her. Police suggested that they could temporarily install a hidden surveillance camera inside her home to face the front door. She told them that she would be moving at the end of March and the cameras would not be necessary.

The temporary PFA filed against the defendant was dismissed on March 12, 2021, after the victim failed to appear for a hearing.

II. PRIOR BAD ACTS DISCLOSED TO FAMILY AND FRIENDS

Throughout her relationship with the defendant the victim told her sister, Sarah Brandao, her friends, Griselda Gallego, Saida Perez, Elaine Garcia-Ribero, and the defendant's sister, Eleni Cavalcante, and her husband, Francisco Lima about some of the abuse. In addition, the defendant admitted to his mother, Eleni, and Lima that he killed someone in Brazil.

A. Sarah Brandao

After the first fight in June 2020, the victim called Sarah Brandao and asked her to pick her up because the two fought and the police were called. She told Sarah that if "I didn't run he would have killed me." Sarah also saw the injury to the victim's mouth. The victim and her kids stayed with Sarah and her fiancé over a week after that incident.

The victim told Sarah that after their fights the defendant often told her he was sorry, that he was drunk, and would never drink again. He gave her money and a phone after the incident in June. Sarah told her not to go back to him but the victim and the defendant resumed their relationship sometime in October.

Later, the victim told Sarah that their relationship was good until Christmas in 2020. On December 24, 2020, the victim called Sarah and told her that the defendant went through her cellphone, found an old message from a man she met on a dating app, and that she was scared. She asked Sarah to pick her up. The victim told Sarah that the defendant "is crazy" and he wanted to kill her. She said that he "dropped her from the chair and kicked her, grabbed a knife, and she ran out for help." Sarah called the victim back and the defendant answered her phone.

He stated that the victim was “being dramatic,” but he sounded angry. The victim told Sarah that she got a PFA and said she was going to use the PFA to keep the house and get him out.

Sarah was not aware that she and the defendant continued to date after that.

B. Griselda Gallego

The victim told Griselda Gallego about the argument on December 24, 2020, and explained that the defendant kicked her, punched her, and ran after her with a knife. The victim said that she ran out wearing pajamas without any shoes to get away from him. She also sent Gallego pictures of her injuries including a mark on her forehead and bruises on her arms. Gallego accompanied the victim to the police department to get a PFA. While they were there the defendant texted the victim to tell her that he knew she was there. They suspected that he had a tracker on her phone or he was following her.

At one point, the victim told Gallego that there was an arrest warrant for the defendant for allegedly shooting someone to death in Brazil. The victim said that she told the defendant if he keeps pushing her, coming after her, and “does not let her live her life,” she was going to report him to immigration. Gallego suggested that she buy a gun for her own safety.

Gallego told police that the victim was planning to leave the defendant and that during their relationship he hurt her a few times. She stated that the victim told her that the kids slept with their doors locked because she was scared of the defendant.

C. Saida Perez

Saida Perez was another friend who was aware of their relationship. The victim told her that on December 24, 2020, the defendant chased her with a knife after he found a message from

an old boyfriend on her phone. She said that the victim was scared of him but he wanted to get back together. The victim told her that she failed to go to her court hearing because the defendant advised her not to go and then he dropped off food and money at her door. Perez knew that the victim and the defendant continued to meet in secret. The victim also told her that the defendant attempted to strangle her in the past but she stayed with him because she was worried about the rent and bills.

D. Elaine Garcia-Ribero

The victim also told Elaine Garcia-Ribero that the defendant was in love with her but was a very jealous man who constantly checked on her. She said he would check her phone all the time and broke it at least three or four times after he checked her text messages. The victim also told her that the defendant would use the victim's phone and pretend to communicate as the victim to some of the men via text message. The victim stated that he gave her money, an apartment, a car, and things for the kids. She told Garcia-Ribero that the defendant tried to choke her once when the kids were in the house and she contacted the police after to get a PFA. The victim said that she feared the defendant would kill her after the first fight they had in June 2020. She stated that the defendant wanted full control but could not control her. In another incident she told Garcia-Ribero that the defendant locked her in a room and threatened to kill her if she called the police or told anyone.

E. Eleni Cavalcante

Eleni Cavalcante, the defendant's sister, was also aware of the abusive relationship between the two. Eleni knew about the assault in June 2020, and she picked up the victim from the neighbor's apartment after he bit her and chased her out. Eleni was also aware of the incident



involving a knife on December 24, 2020. Eleni told police that the defendant admitted to her that they argued about money. The defendant complained to her that he pays all the bills and rent and she wanted shoes, but he didn't have the money so he took the knife from the table. The victim later sent Eleni a copy of the PFA because no one could find the defendant. Eleni told police that she printed it out and gave it to the defendant. The defendant told Eleni that he would stay away from her.

Eleni also informed the police that she and the victim were aware of the allegations of the defendant murdering another person in Brazil in 2017 because he owed the defendant money.

F. Francisco Lima

Lima was aware of the past domestic abuse between the victim and defendant. He knew about the incidents in June and December 2020. He and Eleni assisted the victim after the victim texted him that she needed help and the defendant "was acting crazy," after the incident in June 2020. He heard her say that the defendant bit her and the defendant admitted that to him. They took the defendant to their home after. After the incident in December the defendant stayed at their home as well and knew the police were looking for him. Lima knew there was a PFA for the defendant.

The defendant also admitted to Lima that he killed a man in Brazil over money. He stated that a guy took and destroyed his boss's car and didn't pay him so he shot him.

III. ARGUMENT

The Commonwealth seeks to admit the defendant's prior "bad acts" concerning the following instances: (1) the defendant's prior domestic violence and physical assaults on the victim; (2) the defendant's threats to kill the victim; (3) the injuries victim previously sustained from the defendant; (4) photographs of the victim's injuries that occurred from the defendant's



assaults; (5) the victim's PFA against the defendant; (6) the victim's statements that she feared the defendant and wanted to end their relationship; (7) the defendant's prior use of a knife to threaten the victim; and (8) the victim's statements that she would tell the police about the defendant and that he was wanted for murder in Brazil. As discussed below, this evidence is relevant and admissible to establish motive, intent, malice, or ill-will, and *res gestae* also known as "chain of events" and "complete story" evidence.

The admissibility of evidence is within the sound discretion of the trial court. *Commonwealth v. Flor*, 998 A.2d 606, 623 (Pa. 2010)(citations omitted). A trial court's decision concerning the admissibility of evidence will not be disturbed on appeal absent an abuse of the trial court's discretion. *Commonwealth v. Chamberlain*, 30 A.3d 381, 420 (Pa. 2011)(citations omitted). "An abuse of discretion is not merely an error of judgment but is rather the overriding or misapplication of the law, or the exercise of judgment that is manifestly unreasonable, or the result of bias, prejudice, ill-will or partiality, as shown by the evidence of record." *Commonwealth v. Tyson*, 119 A.3d 353, 357–58 (Pa. Super. 2015)(quoting *Commonwealth v. Harris*, 884 A.2d 920, 924 (Pa. Super. 2005)).

Relevance is the threshold for admissibility of evidence. *Commonwealth v. Semenza*, 127 A.3d 1, 7 (Pa. Super. 2015)(citing *Commonwealth v. Cook*, 952 A.2d 594, 612 (Pa. 2008)). "Evidence is relevant if it logically tends to establish a material fact in the case, tends to make a fact at issue more or less probable, or supports a reasonable inference or presumption regarding a material fact." *Commonwealth v. Stallworth*, 781 A.2d 110, 117–18 (Pa. 2001)(citing *Commonwealth v. Crews*, 640 A.2d 395 (Pa. 1994)); *see also* Pa.R.E. 401. "Evidence that is not relevant is not admissible." Pa.R.E. 402. In addition, "[t]he court may exclude relevant evidence if its probative value is outweighed by a danger of one or more of the following: unfair prejudice,

confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.” Pa.R.E. 403.

In Pennsylvania, the general rule is that bad acts, both charged and uncharged, are inadmissible to prove a defendant's propensity to commit crime. *Commonwealth v. Kinard*, 95 A.3d 279, 284 (Pa. Super. 2014). However, under Pennsylvania Rule of Evidence 404(b), evidence of other crimes or bad acts is admissible if it “may be introduced for other limited purposes, including, but not limited to, establishing motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident, common scheme or design, *modus operandi*, and the natural history of the case.” *Id.* at 284. *See also Commonwealth v. Odum*, 584 A.2d 953 (Pa. Super. 1990); *Commonwealth v. Ulatoski*, 371 A.2d 186 (Pa. 1977). Evidence of other crimes or bad acts is admissible if it is relevant for one of these other purposes and “the probative value of the evidence outweighs its potential for unfair prejudice.” *Kinard*, 95 A.3d at 284.

However, “evidence will not be prohibited merely because it is harmful to the defendant.” *Commonwealth v. Dillon*, 925 A.2d 131, 141 (Pa. 2007). Indeed, “all evidence of prior bad acts typically is prejudicial.” *Commonwealth v. Ivy*, 146 A.3d 241, 252 (Pa. Super. 2016). As our Supreme Court has reiterated, the trial court is not “required to sanitize the trial to eliminate all unpleasant facts from the jury's consideration where those facts are relevant to the issues at hand and form part of the history and natural development of the events and offenses for which the defendant is charged.” *Commonwealth v. Hairston*, 84 A.3d 657, 666 (Pa. 2014)(citation omitted). Rather, “[e]xclusion is limited to evidence so prejudicial that it would inflame the jury to make a decision based on something other than the legal propositions relevant to the case.”

Commonwealth v. Gad, 190 A.3d 600, 605 (Pa. Super. 2018)(quoting *Commonwealth v. Talbert*, 129 A.3d 536, 539 (Pa. Super. 2015)).

In cases involving a pattern of domestic violence, the courts of this Commonwealth have held that “[e]vidence of prior abuse between a defendant and an abused victim is generally admissible to establish motive, intent, malice, or ill-will.” *Ivy*, 146 A.3d at 252 (citing *Commonwealth v. Jackson*, 900 A.2d 936, 940 (Pa. Super. 2006)). In *Jackson*, the PA Superior Court found that evidence of the defendant and victim’s lengthy domestic abuse that lasted over ten years, even though the defendant admitted to killing the victim, was admissible to demonstrate the escalating abuse that ultimately led to the victim’s death. *Id.*

Furthermore, “evidence of prior abuse between a defendant and a homicide victim tending to establish motive, intent, malice or ill will is generally admissible. *Commonwealth v. Passmore*, 857 A.2d 697 (Pa. Super. 2004). The Pennsylvania Supreme Court has recognized that evidence of prior bad acts is admissible where the distinct crime or bad act “was part of a chain or sequence of events which formed the history of the case and was part of its natural development.” *Commonwealth v. Drumheller*, 808 A.2d 893, 905 (Pa. 2002)(citations omitted).

In *Drumheller*, evidence of the defendant’s prior incidents of domestic violence, which included protection from abuse petitions and orders, was admitted at trial. *Id.* at 903-04. Evidence revealed that the defendant repeatedly assaulted the victim for three years preceding the homicide where the defendant ultimately stabbed her to death. *Id.* at 905. Our PA Supreme Court stated that the evidence of prior violence revealed “the chain or sequence of events that formed the history of the case, is part of the natural development of the case, and demonstrates [the defendant’s] motive, malice, intent, and ill-will toward [the victim].” *Id.* Moreover, “this attack was part of the sequence

of events illustrating the deteriorating nature of Appellant's relationship with the victim prior." See *Passmore supra*.

Additionally, *res gestae* evidence, also known as "chain of events" and "complete story" evidence, is admissible to "complete the story of the crime on trial by proving its immediate context of happenings near in time and place." *Lark, 543 A.2d at 497*.

In *Commonwealth v. Clemons*, 200 A.3d 441 (Pa. 2019), the homicide victim had previously obtained a protection from abuse order against the defendant. *Id.* at 447. At trial, the Commonwealth introduced photographs of the victim's injuries depicting scratches, redness, and bruising on the victim's face from the prior domestic abuse incident that led to the protection from abuse order against the defendant. *Id.* at 475. The Court found that, like a protection from abuse petition, photographic evidence can demonstrate "the continual and escalating nature of [the] abuse ... [and it] shows the chain or sequence of events that formed the history of the case, is part of the natural development of the case, and demonstrates. . . motive, malice, intent, and ill-will ..." *Id.* (citation omitted). The Court further determined that the probative value of the photographs outweighed their prejudicial effect. *Id.* at 475-76. Therefore, the Court concluded that the trial court's evidentiary ruling was not an abuse of discretion. *Id.* at 476.

In addition, a murder victim's statements about her abuse can be admissible as statements of her then-existing state of mind. *Commonwealth v. Chandler*, 721 A.2d 1040 (Pa. 1998). In *Chandler*, the defendant was convicted of two counts of first-degree murder for fatally stabbing his wife and her sister. The only eyewitness was a 7-year-old child. After he was *Mirandized*, he confessed to both murders. At trial, the court permitted testimony from family and co-workers who observed other signs of abuse including black eyes, swollen lips, and bruises on the victim's body after she had arguments with the defendant. In addition, statements made by the murder victim to

others about her negative feelings about the defendant and her relationship with him were admitted under the “state of mind” exception to the hearsay rule. Pa.R.E. 803(3). On appeal, our Supreme Court held that those observations were not hearsay, and the statements made by the victim were admissible pursuant to Pa.R.E. 803(3) “because her opinion of the appellant and her marriage to him went to the presence of ill will, malice, or motive for the killing.” *Id. See also, Commonwealth v. Sneeringer*, 668 A.2d 1167 (Pa.Super. 1995)(murder victim’s statements concerning the breakdown of her relationship with defendant and that she was going to end it were relevant as to motive and admissible under “state of mind” exception.).

Finally, evidence of motive is admissible. *Commonwealth v. Boyle*, 470 Pa. 343, 368 A.2d 661, 669 (1977). To establish motive, the evidence “must give sufficient ground to believe that the crime currently being considered grew out of or was in any way caused by the prior set of facts and circumstances.” *Commonwealth v. Schwartz*, 285 A.2d 154, 158 (Pa. 1971). *Commonwealth v. Drumheller*, 570 Pa. 117, 808 A.2d 893, 906 (2002) (“... to be admissible ..., evidence of a distinct crime, even if relevant to motive, ‘must give sufficient ground to believe that the crime currently being considered grew out of or was in any way caused by the prior set of facts and circumstances.’ ”) (internal citations omitted).

In a similar case, the Pennsylvania Supreme Court held that evidence that the defendant was involved in another murder before committing the murder for which he was on trial was permitted because it fits within the motive exception and the evidence allowed the jury to infer that the defendant had a motive to kill the decedent. *Commonwealth v. Spotz*, 756 A.2d 1139 (Pa. 2000). The *Spotz* Court found that there was no abuse of discretion when the trial court permitted other crimes evidence to show motive, intent, and identity. *Id.* The Court also explained that

because the evidence was part of the chain or sequence of events which became part of the natural development of the facts it was admissible. *Id.*

Although proof of motive is not necessary to establish the specific intent to kill essential to a finding of murder of the first degree, it is probative evidence of such intent. See *Commonwealth v. Robinson*, 364 A.2d 665 (Pa. 1976); *Commonwealth v. Boyle*, 368 A.2d 661 (Pa. 1977). Motive is not a part of the definition of specific intent under first degree murder. The Commonwealth is not required to prove a motive for the commission of the crime charged. See Pa. SSJI (Crim) 3.13. However, Pennsylvania Standard Jury Instructions recognizes the probative value of motive in establishing the defendant's guilt.

That instruction provides that the jury:

should consider the evidence of motive or lack of motive. Knowledge of human nature tells us that an ordinary person is more likely to commit a crime if he or she has a motive than if he or she has none. You should weigh and consider the evidence tending to show [motive] [absence of motive] along with all the other evidence in deciding whether the defendant is guilty or not guilty. It is entirely up to you to determine what weight should be given the evidence concerning motive.

Pa. SSJI (Crim) 3.13

Here, similar to *Ivy*, the prior acts committed by the defendant during an 11-month period outline an escalating pattern of domestic abuse which ultimately culminated in her murder. On June 26, 2020, the victim first reported domestic violence perpetrated by the defendant to the police after he became angry at her for leaving with her own kids for dinner, coming home late, and not telling him. She told police that during the argument it appeared that he was going to kiss her but instead bit her so hard on her lower lip that he drew blood. He also threatened to kill her and chased

the victim and her two young children out of the house where they fled to a neighbor's apartment. The defendant was charged with simple assault, harassment, and terroristic threats for those acts, but never served with the warrant because the police could not locate him. The defendant admitted to this incident during his *Mirandized* statement to detectives after the murder.

Next, on December 27, 2020, the victim went to the police to find out how to obtain a PFA against the defendant because she "felt her safety was at risk." She told police that he yelled at her, and pushed and squeezed her hard enough to bruise her arm. When she filed the PFA, she also included that on December 24, 2020, the defendant pushed her off a chair, threw plates on the ground, and kicked her. The defendant then grabbed a knife and ran towards her causing the victim and her two children to flee from the property. She also included in the PFA petition that "around May, after drinking, the defendant pushed the plaintiff, pulled her hair, bit her lip. Early December he tried to strangle by holding her from [the] back." In his statement to detectives on April 19, 2021, the defendant acknowledged that they had a fight on December 24, 2020, as well.

On January 20, 2021, the victim contacted police another time after she found her front door open and believed that he had tampered with her security alarm.

In addition to the reports she made to police and her friends about the above-mentioned domestic abuse, the victim disclosed to friends and her sister that the defendant was a jealous and controlling person. He constantly checked her phone and reacted with anger, and sometimes violence, when he found messages from other men. He purported to be her and responded to some of these men while using her phone. He also broke her phone multiple times. The victim stated that after their arguments he would buy her a new phone and give her money. She was with a friend when she went to obtain the PFA in December and her friend saw him text her that he knew

she was at the police department. Without either following her or tracking her somehow there was no other way he would know this.

The victim confided in her friends that he bit her, kicked her, punched her, strangled her, brandished a knife, and threatened to kill her multiple times. Some of them saw the injuries. On another occasion he locked her in a room and threatened to kill her if she called the police or told anyone. He engaged in some of this abuse in front of her children causing them to fear for their safety as well as their mother's.

She told others that she stayed with him because she needed money and he helped pay the bills, pay rent, and got her a car. However, she told others that she intended to end their relationship.

After the incidents in January, it appears that even though the two communicated with each other and met on occasion during that time, the victim did not want a relationship with him. She clearly explained that their relationship was over in an array of text messages leading up to her murder. He expressed anger and called her a liar. He demanded the money that she owed him. He also knew that she could get him into a lot of trouble if she went to the police, not only for potentially hacking into her social media but more importantly, because he was wanted for murder in Brazil. Telling him that she was going to the police was the final straw.

The next act would be the last after the defendant fatally stabbed her with a knife 38 times. Similar to *Passmore*, the pattern of abuse ended in the victim's death. Similar to *Drumheller*, the victim received a PFA against the defendant prior to him murdering her. Similar to *Clemons*, police documented the escalating injuries including photographing them.

Therefore, the evidence of prior violence and other bad acts is critical to demonstrate the chain or sequence of events that formed the history of the case because it is part of the natural

development of what occurred, and demonstrates the defendant's motive, malice, intent, and ill-will toward the victim. The jury cannot hear this case in a vacuum. Without context, the act of fatally stabbing the victim does not make sense. The final fatal attack was part of the sequence of events that clearly indicates the deteriorating nature of the relationship. Further, the defendant threatened the victim previously with a knife-the same type of weapon he eventually used to kill her.

Additionally, the Commonwealth is required to prove beyond a reasonable doubt that the defendant had the specific intent to kill. As is often the case with *mens rea*, the Commonwealth must prove this circumstantially. One of the ways we intend to do this is to highlight the escalation of abuse that ultimately led to her murder. It is relevant for the jury to hear all the injuries and threats he inflicted upon her in the past. These acts provide the jury with a look into the defendant's state of mind giving them evidence of his intent. Lastly, the jury can reason that from the victim's efforts to protect herself from the defendant she herself was concerned that he intended to kill her.

The text messages between the victim and defendant clearly show that she wanted to permanently end their relationship. The defendant expressed his anger, called her names, and demanded the money that she owed him. Most importantly, however, she texted him that she was going to report him to the police. He killed her that same day after he confirmed that she was home.

Here, the defendant is charged with first degree murder; therefore, evidence of the defendant's motive for killing the victim is probative evidence of his specific intent to commit this crime. Accordingly, evidence that the victim ended their relationship, owed him money, knew about his alleged murder in Brazil, and was going to the police that day is relevant to establish the defendant's motive for killing her.

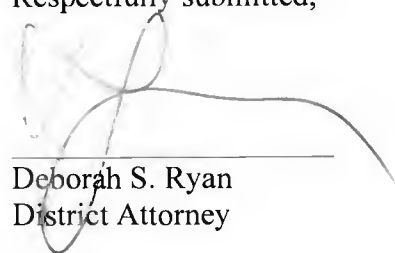
Like the *Spotz* case, the victim had knowledge that the defendant was wanted for murder in Brazil. The victim told the defendant that she was going to the police and this provides the jury with the motive for the defendant fatally stabbing her. Although she had threatened to go to the police if he came after her again back in December 2020, she texted him that she was going to the police the same day he killed her on April 18, 2021.

Finally, the probative value of the evidence of prior bad acts, as outlined above, far outweighs any potential prejudice. A limiting instruction by this Honorable Court explaining that the evidence is admissible only for a limited purpose will explain how the jury may consider the other acts of violence in this case. *Commonwealth v. Billa*, 555 A.2d 835 (Pa. 1989). This will minimize the likelihood that the evidence of prior bad acts will inflame the jury or to convict defendant on an improper basis. *Hairston*, 84 A.3d at 666 (citations omitted).

CONCLUSION

WHEREFORE, it is therefore respectfully requested that this Court rule *in limine* that the statements and actions referenced above, and any additional testimony and evidence that falls within the fair scope of these statement and actions, be deemed admissible at the murder trial of defendant Daniel Souza Cavalcante. Based upon the foregoing reasons, the Commonwealth respectfully requests that this Honorable Court allow the admission of the defendant's prior bad acts to establish motive, intent, malice, or ill-will, and as *res gestae* evidence.

Respectfully submitted,



Deborah S. Ryan
District Attorney

**IN THE COURT OF COMMON PLEAS OF CHESTER COUNTY, PENNSYLVANIA
Criminal Division**

COMMONWEALTH OF PENNSYLVANIA :
 :
 v. : **No: CP-51-CR-0002951-2021**
 :
 DANELO SOUZA CAVALCANTE :
 :
 :


I hereby certify that on this day, I have caused to be served a copy of the foregoing upon the following and in the manner described below:

Service by E-File:

Nellie Verduci, Esq.
201 West Market Street
West Chester, Pennsylvania 19382
(Counsel for Defendant)

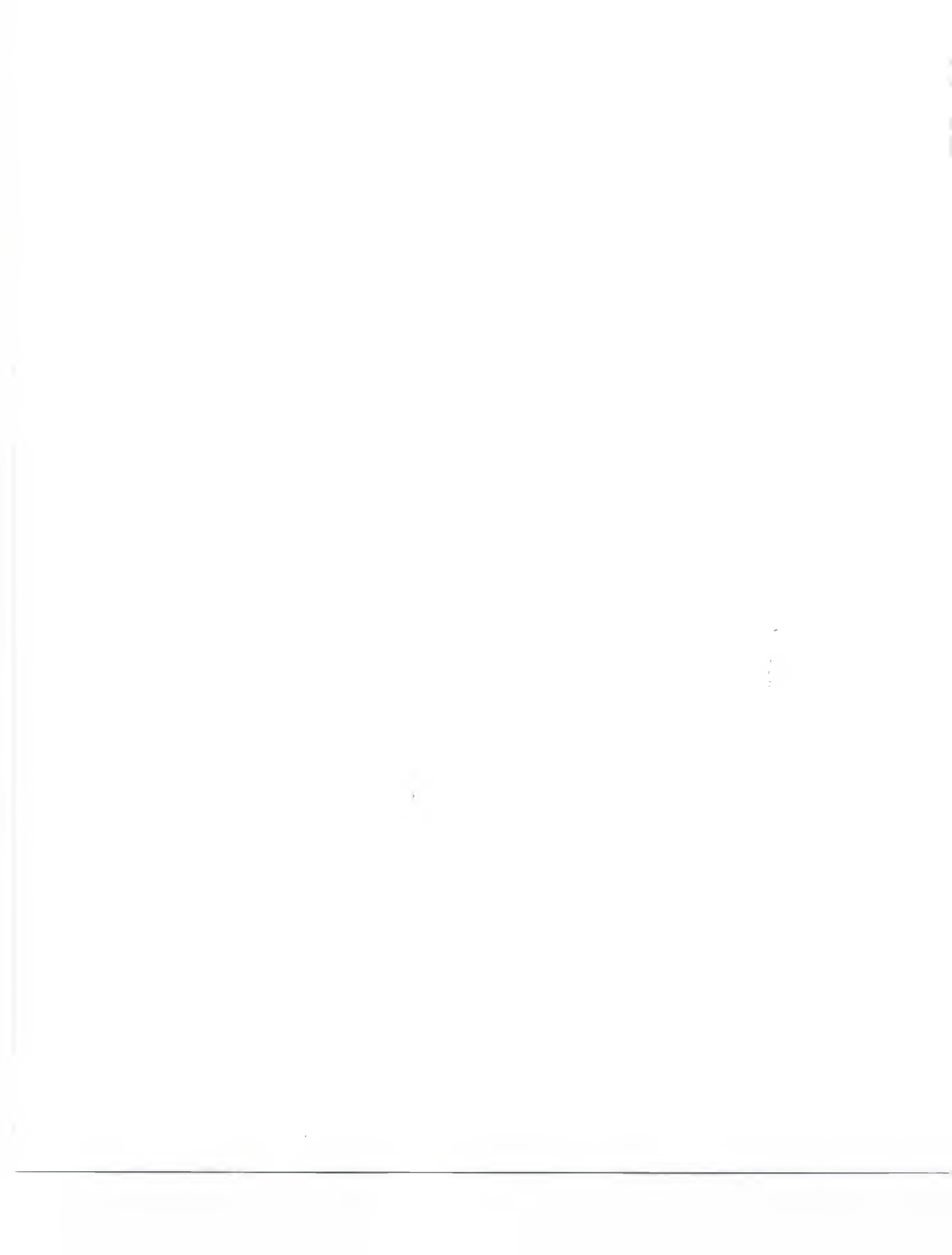
Chester County Clerk of Courts
201 West Market Street
West Chester, Pennsylvania 19830

Date: 6/9/23



Deborah S. Ryan
District Attorney
Chester County District Attorney's Office
201 West Market Street, Suite 4450
West Chester, Pennsylvania 19830

CHESTER COUNTY
JUN 15 2023



IN THE COURT OF COMMON PLEAS OF CHESTER COUNTY, PENNSYLVANIA
Criminal Division

COMMONWEALTH OF PENNSYLVANIA :
 :
 v. : No: CP-51-CR-0002951-2021
 :
 DANELO SOUZA CAVALCANTE :
 :
 :

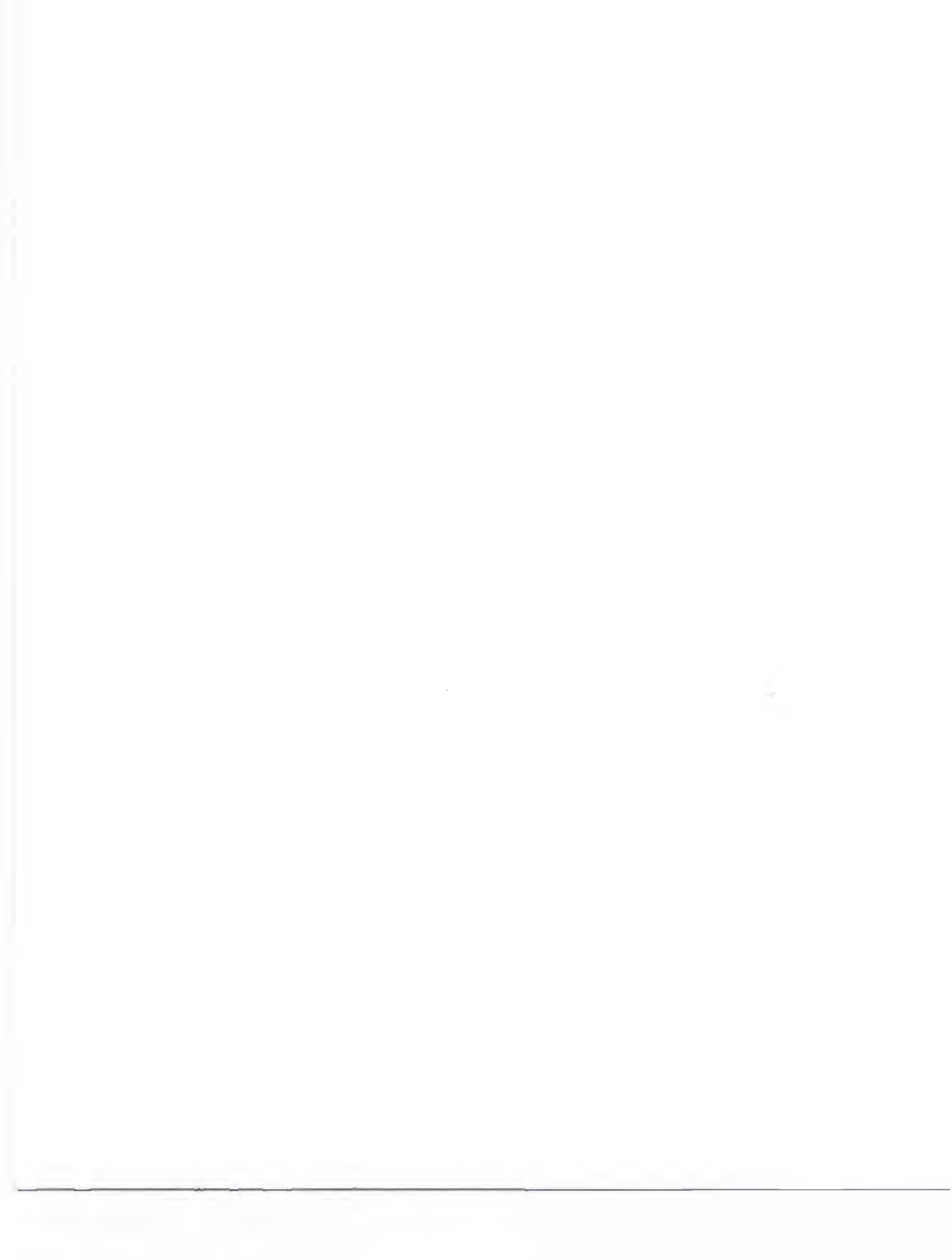
CERTIFICATE OF COMPLIANCE

I hereby certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that requires filing confidential information and documents differently than non-confidential information and documents.

Date: 6/9/23



Deborah S. Ryan
District Attorney
Chester County District Attorney's Office
201 West Market Street, Suite 4450
West Chester, Pennsylvania 19380



IN THE COURT OF COMMON PLEAS OF CHESTER COUNTY, PENNSYLVANIA
Criminal Division

COMMONWEALTH OF PENNSYLVANIA :
 :
 v. : No: CP-51-CR-0002951-2021
 :
 DANELO SOUZA CAVALCANTE :
 :
 :

ORDER

AND NOW, this ____ day of _____, 2023, upon consideration of the Commonwealth's *Motion in limine* to admit evidence of other crimes, wrongs or acts pursuant to Pennsylvania Rule of Evidence 404(b) is _____.

BY THE COURT:

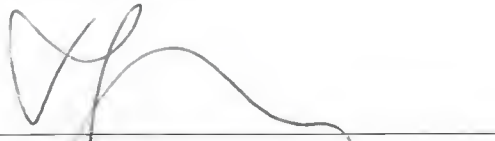
J.

VERIFICATION

I, Deborah Ryan, District Attorney, verify that the facts set forth in this document are true and correct to the best of my information, knowledge and belief. I understand that the facts verified are subject to the penalties and unsworn falsification to authorities under Crimes Code 4904 (18 Pa.C.S. 4904).

Date: _____

10/12/23



Deborah Ryan
District Attorney
Chester County District Attorney's Office
201 West Market Street
West Chester, PA 19380
(610) 344-6801

EXHIBIT A

Upper Providence Township Police

Incident Report Form

68-20-03382

06/26/2020

SIMPLE ASSAULT/PHYSICAL

Primary Officer: **MARK MINNICK - 019MIN**

<input type="checkbox"/> Juvenile Involved	<input checked="" type="checkbox"/> Investigation	<input checked="" type="checkbox"/> Video Available	<input type="checkbox"/> Gang Related	<input type="checkbox"/> Paperless
<input checked="" type="checkbox"/> Domestic Related	<input checked="" type="checkbox"/> Suspects	<input type="checkbox"/> Bias Crime	<input type="checkbox"/> Accident	<input type="checkbox"/> Administrative
<input type="checkbox"/> Alcohol Involved	<input checked="" type="checkbox"/> Arrests Made	<input type="checkbox"/> Drugs Involved	<input type="checkbox"/> Ready for DA / Prosecutor	<input type="checkbox"/> Alarm Activated

Log Number 68-20-03382	Incident Number P20304682	File Number	Case Number	UCR 04E
Incident Type SIMPLE ASSAULT/PHYSICAL				UCR ASSAULT-OTHER-SIMPLE

Dispatcher	Source 911	District Z2	Status READY
------------	----------------------	-----------------------	------------------------

Incident Date / Times Incident Occurred At or Between

Date Received 06/26/2020	Day Rec'd Friday	Rcvd 2201	Disp 2201	Arrv 2210	CIRD 2324	Earliest Date and Time	Latest Date and Time
------------------------------------	----------------------------	---------------------	---------------------	---------------------	---------------------	------------------------	----------------------

Disposition CA	Cleared by Exception	<input type="checkbox"/> Suspended
CLEAR BY ARREST		

UCR Clearance ARREST	UCR Occur Date 06/26/2020	UCR Clear Date 06/26/2020	UCR Count 1	UCR Human Traffic Code	UCR HT Count 0
--------------------------------	-------------------------------------	-------------------------------------	-----------------------	------------------------	--------------------------

Location Intersection

600 2ND AVENUE APARTMENT A-2	Cross Street
ROYERSFORD PA 19468	GPS Loc X
Municipality:	GPS Loc Y

Business Name	Premise Code HOME	Arson Value
	RESIDENCE	

Gang	Weather CLOUDY
------	--------------------------

Modus Operandi Coding	Victim:
Entry:	Property:
Exit:	Area:
Method:	Time of Day:

WEAPON USED:

Caller / Complainant Type Normal Anonymous Hangup Refused

INVOLVED PERSONS

Name Last, First, Middle - Address CALVALCANTE, DANILO 600 2ND AVENUE APARTMENT A-1 ROYERSFORD PA 19468	Juvenile <input type="checkbox"/>	Date of Birth 06/10/1989	Age	Race W	Sex M	Ethnic	Social Security Number	
		Weight	Height	Hair	Eyes	Phone Number (489) 940-8735		
		Driver License Number		State	Class	Expiration Date		
		ID Provided		ID Detail				
	Link Comments							

68-20-03382

06/26/2020

APPROVED BY: **MATTHEW TOBIN**
APPROVED ON: **06/28/2020**

PAGE 1

IRF 1.8

Print Date/Time 04/18/2021 18:47:34



Upper Providence Township Police Incident Report Form

68-20-03382
06/26/2020
SIMPLE ASSAULT/PHYSICAL

INVOLVED PERSONS

Name (Last, First, Middle) - Address	Juvenile	Date of Birth	Age	Race	Sex	Ethnic	Social Security Number
CALVALCANTE, DANILO 600 2ND AVENUE APARTMENT A-1 ROYERSFORD PA 19468	<input type="checkbox"/>	06/10/1989		W	M		
	Weight	Height	Hair	Eyes	Phone Number (489) 940-8735		
	Driver License Number			State	Class	Expiration Date	
	ID Provided			ID Detail			

Link Comments

Name (Last, First, Middle) - Address	Juvenile	Date of Birth	Age	Race	Sex	Ethnic	Social Security Number
CAVALCANTE, ELENI 318 WALNUT STREET PHOENIXVILLE PA 19460	<input type="checkbox"/>	03/17/1985		W	F		
	Weight	Height	Hair	Eyes	Phone Number (267) 563-0496		
	Driver License Number			State	Class	Expiration Date	
	ID Provided			ID Detail			

Link Comments

Name (Last, First, Middle) - Address	Juvenile	Date of Birth	Age	Race	Sex	Ethnic	Social Security Number
LIMA, EMILY [REDACTED]	<input type="checkbox"/>	02/06/2002		W	F		
	Weight	Height	Hair	Eyes	Phone Number [REDACTED]		
	Driver License Number			State	Class	Expiration Date	
	ID Provided			ID Detail			

Link Comments

Name (Last, First, Middle) - Address	Juvenile	Date of Birth	Age	Race	Sex	Ethnic	Social Security Number
BRANDAO, DEBORAH EVANGELISTA 600 2ND AVENUE ROYERSFORD PA 19468	<input type="checkbox"/>	10/20/1987		W	F		
	Weight	Height	Hair	Eyes	Phone Number (484) 714-4096		
	Driver License Number			State	Class	Expiration Date	
	ID Provided			ID Detail			

Link Comments

Name (Last, First, Middle) - Address	Juvenile	Date of Birth	Age	Race	Sex	Ethnic	Social Security Number
IBARRA, YAIR JULIAN [REDACTED]	<input type="checkbox"/>	03/20/2000		W	M		
	Weight	Height	Hair	Eyes	Phone Number [REDACTED]		
	Driver License Number			State	Class	Expiration Date	
	ID Provided			ID Detail			

Link Comments

Upper Providence Township Police Incident Report Form

68-20-03382
06/26/2020
SIMPLE ASSAULT/PHYSICAL

INVOLVED PERSONS

Name (Last, First, Middle) - Address BRANDAO, DEBORAH EVANGELISTA 600 2ND AVENUE ROYERSFORD PA 19468		Juvenile <input type="checkbox"/>	Date of Birth 10/20/1987	Age	Race W	Sex F	Ethnic	Social Security Number
		Weight	Height	Hair	Eyes	Phone Number (484) 714-4096		
		Driver License Number			State	Class	Expiration Date	
		ID Provided		ID Detail				

Link Comments

PROPERTY / EVIDENCE

Property Type EVIDENCE <input checked="" type="checkbox"/> REPORTED STOLEN <input type="checkbox"/> RECOVERED <input type="checkbox"/> FOUND <input type="checkbox"/> REGISTERED <input type="checkbox"/> PAWNED <input type="checkbox"/>							
Owned By (Person)				Owned By (Business)			
How Seized				HAZMAT Type			
Submitted By ID 014HIL	UCR Code	Property Code	Date / Time Logged 07/07/2020 15:59	Brand / Make ZIP FILE	Model	Serial / ID Number	Estimated Value
Collected By ID (Agency)	Collection Date	Collected By Other					
Collection Location							
Description ZIP FILE OF WATCHGUARD VIDEO							

Property Type EVIDENCE <input checked="" type="checkbox"/> REPORTED STOLEN <input type="checkbox"/> RECOVERED <input type="checkbox"/> FOUND <input type="checkbox"/> REGISTERED <input type="checkbox"/> PAWNED <input type="checkbox"/>							
Owned By (Person)				Owned By (Business)			
How Seized				HAZMAT Type			
Submitted By ID 019MIN	UCR Code	Property Code	Date / Time Logged 06/27/2020 05:07	Brand / Make PICTURES	Model	Serial / ID Number	Estimated Value
Collected By ID (Agency)	Collection Date	Collected By Other					
Collection Location							
Description PICTURES OF INJURY AND DRIED BLOOD							

Total Damage Value: \$0.00

Total Property Value: \$0.00

ARREST INFORMATION

Arrest Type ARREST WARRANT		IN		Ticket / Complaint Number			
Primary Charge 2701(a)(1)	Primary Charge Description SIMPLE ASSAULT			Charge Type	Charge Class	Count(s) 1	
Arrest Disposition ARRR	Bail	UCR Code 04E	Arrestment Date	Miranda by ID	Docket Number	Blood / Alcohol	Arrest <input checked="" type="checkbox"/> Summons <input type="checkbox"/>
Arresting Officer 1 019MIN MARK MINNICK			Arresting Officer 2				
Charge 2709(a)(1)	Description HARASSMENT PHYS/CONTACT			Charge Type	Charge Class	Count(s) 1	

68-20-03382
IRF 1.6

06/26/2020

APPROVED BY: MATTHEW TOBIN
APPROVED ON: 06/28/2020

PAGE 3

Print Date/Time 04/18/2021 18:47:34

Upper Providence Township Police

Incident Report Form

68-20-03382

06/26/2020

SIMPLE ASSAULT/PHYSICAL

RESPONDING / INVOLVED UNITS, OFFICERS, TIMES

Division PATR	Supervisor / IC MATTHEW TOBIN	016TOB	
Unit Number	Officer / ID (Ofcr1 / Ofcr2)	Officer / ID (Ofcr3 / Ofcr4)	
6814	MARK MINNICK	019MIN	
6803	SCOTT REYNOLDS	025REY	

REVIEWS / REFERRALS

Date Entered	Sent by ID / Name	Sent To ID	Sent Date / Time	Acknowledged	Acknowledged Date / Time
	010FRE ULYSSES MARK FREEMAN	019MIN	06/29/2020 15:56	<input checked="" type="checkbox"/>	07/07/2020 10:33
Acknowledged By Name / ID		Disposition			
MARK MINNICK		019MIN			
Review Comments Please let me know when this warrant is served. I'm using it as a proof. Thanks.					
Date Entered	Sent by ID / Name	Sent To ID	Sent Date / Time	Acknowledged	Acknowledged Date / Time
	010FRE ULYSSES MARK FREEMAN	016TOB	06/29/2020 15:57	<input checked="" type="checkbox"/>	06/30/2020 1:11
Acknowledged By Name / ID		Disposition			
MATTHEW TOBIN		016TOB			
Review Comments					

COMMENTS / NARRATIVES

Title INCIDENT REPORT	
Narrative Created By / Creation Date MARK MINNICK	06/27/2020
Narrative Updated By / Update On MARK MINNICK	06/28/2020
Narrative Approved By / Approved Date MATTHEW TOBIN	06/28/2020

Incident report by Officer Minnick:

Cpl. Reynolds and I responded to 600 Second Avenue apartment B-3 for a domestic assault which occurred in apartment A-2. The investigation revealed Danilo Cavalcante was the aggressor and an arrest warrant was filed for him because he left the scene prior to our arrival.

See investigative report.

COMMENTS / NARRATIVES

Title INVESTIGATIVE REPORT	
Narrative Created By / Creation Date MARK MINNICK	06/27/2020
Narrative Updated By / Update On MATTHEW TOBIN	06/28/2020
Narrative Approved By / Approved Date MATTHEW TOBIN	06/28/2020

Investigative report by Officer Minnick:

Cpl. Reynolds and I responded to a report of suspicious activity of a child running into apartment B-3 from an unknown apartment. The child reported her dad was going to kill her mom. The mother spoke to county radio and reported it was a misunderstanding. She didn't want the police to respond and she wouldn't provide county radio with any additional information.

On location, I met with Yair Ibarra and Emily Lima at apartment B-3. He was standing in the doorway holding a tire iron. He thought Danilo Cavalcante was trying to get into his apartment. Ibarra explained Brandao and her two children just came running into his apartment. They were running away from Cavalcante who was chasing them from building A. Yasim told him Cavalcante was going to kill her mom, Brandao. He said Brandao was in the back room of his apartment and she was injured by Cavalcante. Cavalcante was trying to get into the apartment by the front door but it was locked and then he tried pulling the side window but he didn't get into the apartment. Ibarra didn't know which apartment they came from. He put the tire iron down

Upper Providence Township Police Incident Report Form

68-20-03382

06/26/2020

SIMPLE ASSAULT/PHYSICAL

and he allowed me to enter his apartment to speak to Brandao.

Brandao didn't speak English, she only spoke Portuguese. Emily Lima translated my question to Brandao. I saw Brandao had dried blood on her dress and her lower lip was swollen and bleeding. I asked her what had happened to her lip. She said her boyfriend Danilo Cavalcante bit her bottom lip while trying to kiss her. They had been arguing in apartment A-2 and he was drunk. He chased her and her two kids Yan(2 years old) and Yasmin(6 years old) out of the apartment after he threatened to kill her. They ran to B-3 to get away from Cavalcante. She didn't know where he went but his vehicle was still parked in the parking lot. I had her stay in apartment B-3 with her children while Cpl. Reynolds and I checked apartment A-2 for Danilo Cavalcante.

At 2221 hours, I got the keys for the locked apartment door from Brandao so Cpl. Reynolds and I could search the upstairs apartment, A-1. I unlocked the front door with keys and I called out "police show yourself" before making entry to the second floor apartment. No one responded so we continued to walk up the stairs I had my duty weapon in low ready position as we went room to room looking for Cavalcante. I continued to yell Danilo's name and "police show yourself" as we moved slowly through the apartment and then into the attic. Cavalcante wasn't inside or outside the apartment building. I did see an empty bottle of vodka on the kitchen table in the apartment. We left the apartment and I re locked the door. I gave the keys to the apartment back to Brandao.

Brandao called Eleni Cavalcante, Danilo Cavalcante's sister, to the apartment. Eleni Cavalcante translated for me to Brandao. Brandao gathered some things out of the apartment and she made arrangements for her and her children to stay at her sister's house in Phoenixville for the night. Brandao feared for her safety and her children's safety and she didn't want to stay in the apartment in case Cavalcante returned home. I took pictures of her injured lip and the dried blood on her dress. I had her sign a victims right form and explained PFA information to her. She answered the lethality assessment questions. I gave her my business card and I told her I would be arresting Danilo Cavalcante for assaulting her. I told Eleni Cavalcante to have her brother call me if she spoke to him.

This investigation was recorded on my body camera. I attached the pictures to this report along with the victim's rights form and lethality assessment.

I filed a criminal charges against Danilo Cavalcante for Simple Assault, Terroristic Threats and Harassment. I filed for an arrest warrant for Cavalcante because he left the scene prior to our arrival and no on view arrest could be made. Sgt Tobin checked and approved the criminal complaint. I gave the criminal complaint to day shift to get the warrant signed by the on call judge.

COMMENTS / NARRATIVES

Title

SUPPLEMENTAL

Narrative Created By / Creation Date

MARK MINNICK

06/27/2020

Narrative Updated By / Update On

MARK MINNICK

06/28/2020

Narrative Approved By / Approved Date

MATTHEW TOBIN

06/28/2020

Supplemental Report by Officer Minnick:

On 6/27/2020, I made contact with DJ Berhardt the on call judge. I requested an arrest warrant for Danilo Cavalcante. I swore to the warrant over the phone. I then emailed the criminal complaint to the judge for the warrant. I recieved the arrest warrant for Danilo Cavalcante from DJ Berhardt by email. I will be serving the warrant on 6/28/2020.

68-20-03382

06/26/2020



APPROVED BY: **MATTHEW TOBIN**

APPROVED ON: **06/28/2020**

PAGE 5

IRF 1.6

Print Date/Time 04/18/2021 18:47:34

Upper Providence Township Police

Incident Report Form

68-20-03382

06/26/2020

SIMPLE ASSAULT/PHYSICAL

COMMENTS / NARRATIVES

Title

SUPPLEMENTALNarrative Created By / Creation Date
MARK MINNICK

06/28/2020

Narrative Updated By / Update On
MARK MINNICK

06/28/2020

Narrative Approved By / Approved Date
MATTHEW TOBIN

06/29/2020

On 6/28/2020, I called and spoke to Eleni Cavalcante about this investigation. I asked her if she heard from Deborah Brandao or her brother, Danilo Cavalcante, since Friday night. She had spoken to Brandao and she was back in the apartment but she didn't hear from her brother. Brandao told her, he hasn't returned to the apartment. Cavalcante confirmed Brandao and her brother only speak and understand Portuguese. I told her to have her brother call me when she makes contact with him.

Sgt. Tobin and I went to 600 2nd Ave to serve the arrest warrant on Danilo Cavalcante. He wasn't at the apartment and had not returned after the incident. His work van was no longer parked in the parking lot. I returned to the station and entered Cavalcante into NCIC but he was already enter by DC 38-1-13, DJ Berhardt. I entered Cavalcante into the NCIC log and I attached his arrest warrant to this report. I placed the original criminal complaint in court folder 38-1-19. I placed the case folder containing the arrest warrant in the active warrant drawer.

COMMENTS / NARRATIVES

Title

SUPPLEMENTALNarrative Created By / Creation Date
MATTHEW TOBIN

06/29/2020

Narrative Updated By / Update On
MATTHEW TOBIN

06/29/2020

Narrative Approved By / Approved Date
MATTHEW TOBIN

06/29/2020

On June 28, 2020 on or about 1830 hours I responded to 600 2nd Avenue to look for the suspect. On location I found Brandao outside removing her son from her car. With broken Spanish I asked her if she has seen Calvalcante. She said no. I asked her if he was in the house and she said no. I asked her if her lip was ok and she said yes. I asked her if she obtained a PFA but she said she doesn't understand English. With nothing to suggest the suspect was on location, I cleared after advising Officer Minnick.

COMMENTS / NARRATIVES

Title

SUPPLEMENTALNarrative Created By / Creation Date
MICHAEL SHEEHAN

07/02/2020

Narrative Updated By / Update On
MICHAEL SHEEHAN

07/02/2020

Narrative Approved By / Approved Date

Supplemental by Ofc. M Sheehan:

On Wednesday, July 1, I received a walk in request at the station. Deborah Brandao and Rejane Scott were on location wanting information about the domestic assault at Deborah's residence on Friday June 26. Deborah does not speak English and Scott was there to translate for her. They wanted to know how Deborah could drop the charges against her boyfriend for simple assault. I explained that Danilo Calvalcante had an arrest warrant issued for him and that the best thing he could do, is to turn himself in at District Court 38-1-19 or at our Police Station on Monday. I explained that Deborah would have to speak with Ofc. Minnick, who is the arresting officer, regarding the case.

COMMENTS / NARRATIVES

Title

68-20-03382

06/26/2020

APPROVED BY: **MATTHEW TOBIN**

PAGE 6

IRF 1.6

APPROVED ON: 06/28/2020

Print Date/Time 04/18/2021 18:47:34

Upper Providence Township Police Incident Report Form

68-20-03382

06/26/2020

SIMPLE ASSAULT/PHYSICAL

SUPPLEMENTAL

Narrative Created By / Creation Date

SCOTT REYNOLDS

07/02/2020

Narrative Updated By / Update On

SCOTT REYNOLDS

07/02/2020

Narrative Approved By / Approved Date

On June 26th 2020, I assisted Officer Minnick with a domestic at 600 2nd Ave.

During the course of the investigation, it was determined that Danilo had bitten Brandao on the lip causing injury and fear.

Officer Minnick and I checked the area outside the apartments and inside the apartment buildings but did not locate Danilo.

At the conclusion of Officer Minnick's investigation, I asked Brandao the questions as they appear on the lethality assessment form. The answer's did not trigger a response.

COMMENTS / NARRATIVES

Title

SUPPLEMENTAL

Narrative Created By / Creation Date

MARK MINNICK

07/07/2020

Narrative Updated By / Update On

MARK MINNICK

09/09/2020

Narrative Approved By / Approved Date

Supplemental report by Officer Minnick:

I received an email from ADA Lauren Marvel about this case and she requested a phone call. I called and spoke to her about this case. Marvel requested I attempt to have Yasmin interview at Mission Kids as a witness in this case. She also requested a copy of the Watch Guard recording for this case. I told her I would have the video sent to her but I didn't think Deborah Brandao would cooperate with an interview because she already wanted to withdraw the charges against Cavalcante.

I spoke to Det Franchini about setting up an appointment with Mission Kids. I called Rejane Scott, the interpreter, and made arrangements for Danilo Cavalcante to turn himself in on 7/15/2020 because he never showed up at the station on 7/6/2020. Scott wasn't aware that he didn't show up at the station. I asked her to also contact Barndao and get permission for an interview with Yasmin. Scott said she would be glad to help me and would call me back with Brandao's response. I spoke to Sgt Hilt about sending the Watch Guard video to ADA Marvel.

As of 9/9/2020, I haven't heard back from Scott and Danilo Cavalcante hasn't turned himself in on the arrest warrant. On 9/9/2020, At 1258 hors, I went to 600 2nd Avenue, apartment A-2 to sever the arrest warrant on Danilo Cavalcante. On location, I didn't see Cavalcante white van or Brandao's vehicles parked in the parking lot. I went to their apartment door and knocked on the door two different times. I didn't hear any noise from inside the apartment. I waited at the door and no one answered the door. I left my business card in the door jam of the apartment door for someone to call me back.

68-20-03382

06/26/2020



APPROVED BY: MATTHEW TOBIN

APPROVED ON: 06/28/2020

PAGE 7

IRF 1.8

Print Date/Time 04/18/2021 18:47:34

COMMONWEALTH OF PENNSYLVANIA
 COUNTY OF
 Magisterial District Number: 38-1-19
 MDJ: Hon. RICHARD WELSH
 497 W RIDGE PK
 Address: LIMERICK, PA 19468
 Telephone: (610)495-8440



POLICE CRIMINAL COMPLAINT
COMMONWEALTH OF PENNSYLVANIA
vs.

DEFENDANT: (NAME and ADDRESS):
DANILO CAVALCANTE
 First Name Middle Name Last Name Gen
600 2ND AVENUE APARTMENT A-1
ROYERSFORD PA 19468

- 1-Felony Full
- 2-Felony Ltd.
- 3-Felony Surrounding States
- 4-Felony No Ext
- 5 Felony Pend.
- 6-Felony Pend. Extradition Determ.
- A-Misdemeanor Full
- B-Misdemeanor Limited
- C-Misdemeanor Surrounding States
- D-Misdemeanor No Extradition
- E-Misdemeanor Pending
- F-Misdemeanor Pending Extradition Determ.
- Distance:

Docket Number: 06/27/20 Date Filed: 06/27/20 OTC/LV Scan Number: 68-20-03382 Complaint/Incident Number: 68-20-03382

GENDER: Male Female
 DOB: 06/10/1989 POB: BRAZIL Add'l DOB: Co-Defendant(s):
 AKA: First Name Middle Name Last Name Gen.

RACE: White Asian Black Native American Unknown
 ETHNICITY: Hispanic Non-Hispanic Unknown

HAIR COLOR: GRY (Gray) RED (Red/Aubn.) SDY (Sandy) BLU (Blue) PLE (Purple) BRO (Brown)
 BLK (Black) ONG (Orange) WHI (White) XXX (Unk/Bald) GRN (Green) PNK (Pink)
 BLN (Blonde / Strawberry)

EYE COLOR: BLK (Black) BLU (Blue) BRO (Brown) GRN (Green) GRY (Gray)
 HAZ (Hazel) MAR (Maroon) PNK (Pink) MUL (Multicolored) XXX (Unknown)

YES NO DNA Location: 170
 YES NO
 5 9

Plate # State Hazmat Reg. Sticker (MM/YY) Comm'l Veh. Ind. School Veh. Oth. Veh. Code Reg. same as Def.
 VIN Year Make Model Style Color

Office of the attorney for the Commonwealth Approved Disapproved Because: _____

(The attorney for the Commonwealth may require that the complaint, arrest warrant affidavit, or both be approved by the attorney for the Commonwealth Prior to filing. See Pa.R.Crim.P. 507).

(Name of the attorney for the Commonwealth) _____ (Signature of the attorney for the Commonwealth) _____ (Date) _____

I, **MARK MINNICK** (Name of the Affiant) **25161 19** (PSP/MPOETC -Assigned Affiant ID Number and Badge #)
 of **UPPER PROVIDENCE TOWNSHIP PD** (Identify Department or Agency Represented and Political Subdivision) **PA0463800** (Police Agency ORI Number)
 do hereby state: (check appropriate box)
 1. I accuse the above named defendant who lives at the address set forth above
 I accuse the defendant whose name is unknown to me but who is described as _____
 I accuse the defendant whose name and popular designation or nickname are unknown to me and whom I have therefore designated as John Doe or Jane Doe
 with violating the penal laws of the Commonwealth of Pennsylvania at **[222] UPPER PROVIDENCE TWP** (Subdivision Code) (Place-Political Subdivision)
600 2ND AVENUE APARTMENT A-2 ROYERSFORD SECTION OF UPPER PROVIDENCE TWP
 in **MONTGOMERY** County [**MONTG**] on or about **6/26/2020 AT 2201 HOURS** (County Code) (Offense Date)



POLICE CRIMINAL COMPLAINT

Docket Number:	Date Filed: 06/27/2020	OTN/LiveScan Number	Complaint/Incident Number: 68-20-03382
	First: DANILO	Middle:	Last: CAVALCANTE

- I ask that a warrant of arrest or a summons be issued and that the defendant be required to answer the charges I have made.
- I verify that the facts set forth in this complaint are true and correct to the best of my knowledge or information and belief. This verification is made subject to the penalties of Section 4904 of the Crimes Code (18 Pa.C.S. § 4904) relating to unsworn falsification to authorities.
- This complaint consists of the preceding page(s) numbered _____ through _____.
- I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

The acts committed by the accused, as listed and hereafter, were against the peace and dignity of the Commonwealth of Pennsylvania and were contrary to the Act(s) of the Assembly, or in violation of the statutes cited.

(Before a warrant of arrest can be issued, an affidavit of probable cause must be completed, sworn to before the issuing authority, and attached.)

MARK MINNICK

(Date)

(Signature of Affiant)

AND NOW, on this date _____ I certify that the complaint has been properly completed and verified.

An affidavit of probable cause must be completed before a warrant can be issued.

38-1-19

(Magisterial District Court Number)

(Issuing Authority)

SEAL



POLICE CRIMINAL COMPLAINT

Docket Number:	Date Filed: 06/27/2020	OTN/LiveScan Number	Complaint/Incident Number: 68-20-03382
First: DANILO		Middle:	Last: CAVALCANTE

The acts committed by the accused are described below with each Act of Assembly or statute allegedly violated, if appropriate. When there is more than one offense, each offense should be numbered chronologically.

(Set forth a brief summary of the facts sufficient to advise the defendant of the nature of the offense(s) charged. A citation to the statute(s) allegedly violated, without more, is not sufficient. In a summary case, you must cite the specific section(s) and subsection(s) of the statute(s) or ordinance(s) allegedly violated.

<input type="checkbox"/> Attempt 18 901 A	<input type="checkbox"/> Solicitation 18 902 A	<input type="checkbox"/> Conspiracy 18 903	Number of Victims Age 60 or Older _____
--	---	---	---

<input checked="" type="checkbox"/>	1	2701	(a)(1)	of the	PA Crimes Code	1	M2	1313	13B
Lead?	Offense #	Section	Subsection		PA Statute (Title)	Counts	Grade	NCIC Code	UCR/NIBRS Code

<input type="checkbox"/> Interstate	<input type="checkbox"/> Safety Zone	<input type="checkbox"/> Work Zone
-------------------------------------	--------------------------------------	------------------------------------

Statute Description (Include the name of the statute or ordinance):

SIMPLE ASSAULT

Acts of the accused associated with this Offense:

PACC 2701(a)1 Simple Assault M2

IN THAT, on or about said date, THE DEFENDANT did attempt to cause or did Intentionally, knowingly or recklessly cause bodily Injury to Deborah Evangellsta Brandao, that is to say THE DEFENDANT did bite the victim on the bottom lip causing swelling and bleeding, in violation of section 2701(a)(1) of the PA Crimes Code. (18 P.S. 2701 (a)(1)-Misd.-grading)

<input type="checkbox"/> Attempt 18 901 A	<input type="checkbox"/> Solicitation 18 902 A	<input type="checkbox"/> Conspiracy 18 903	Number of Victims Age 60 or Older _____
--	---	---	---

<input type="checkbox"/>	2	2709	(a)(1)	of the	PA Crimes Code	1	S		
Lead?	Offense #	Section	Subsection		PA Statute (Title)	Counts	Grade	NCIC Code	UCR/NIBRS Code

<input type="checkbox"/> Interstate	<input type="checkbox"/> Safety Zone	<input type="checkbox"/> Work Zone
-------------------------------------	--------------------------------------	------------------------------------

Statute Description (Include the name of the statute or ordinance):

HARASSMENT PHYS/CONTACT

Acts of the accused associated with this Offense:

PACC 2709(a)1 Harassment - Summary

IN THAT, on or about said date, THE DEFENDANT, with Intent to harass, annoy or alarm another person, namely, Deborah Brandao, did strike, shove, kick or otherwise subject such other person to physical contact, or did attempt or threaten to do the same, namely, bit the victim of the bottom lip and caused swelling and bleeding, in violation of Section 2709(1) of the PA Crimes Code.



POLICE CRIMINAL COMPLAINT

Docket Number:	Date Filed: 06/27/2020	OTN/LiveScan Number	Complaint/Incident Number: 68-20-03382
	First: DANILO	Middle:	Last: CAVALCANTE

The acts committed by the accused are described below with each Act of Assembly or statute allegedly violated, if appropriate. When there is more than one offense, each offense should be numbered chronologically.

(Set forth a *brief* summary of the facts sufficient to advise the defendant of the nature of the offense(s) charged. A citation to the statute(s) allegedly violated, without more, is not sufficient. In a summary case, you must cite the specific section(s) and subsection(s) of the statute(s) or ordinance(s) allegedly violated.

<input type="checkbox"/> Attempt 18 901 A	<input type="checkbox"/> Solicitation 18 902 A	<input type="checkbox"/> Conspiracy 18 903	Number of Victims Age 60 or Older _____					
<input type="checkbox"/>	2706	A1	of the	PA Crimes Code	1	M1		
Lead?	Offense #	Section	Subsection	PA Statute (Title)	Counts	Grade	NCIC Code	UCR/NIBRS Code
			<input type="checkbox"/> Interstate	<input type="checkbox"/> Safety Zone	<input type="checkbox"/> Work Zone			

Statute Description (Include the name of the statute or ordinance):

TERRORISTIC THREATS

Acts of the accused associated with this Offense:

PACC 2706 Terroristic Threats M1

IN THAT, on or about said date, THE DEFENDANT, with intent to terrorize Deborah Evangelista Brandao, did threaten to commit the violent crime of threaten to kill the viticm chasing her out of the apartment and into a neighbor's apartment, in violation of Section 2706 of the PA Crimes Code. (18 P.S.2706-Misd. Isto)

CONFIDENTIAL



**Confidential Information Form
Criminal Complaint**

Complete the defendant's SSN Information if known. If this form is submitted as part of a Police Criminal Complaint, the NCIC Cautions/Medical Conditions and Scars/Marks/Tattoos should also be completed if known.

Docket Number:	Date Filed: 06/27/2020	OTN/LiveScan Number	Complaint/Incident Number: 68-20-03382
First: DANILO	Middle:	Last: CAVALCANTE	
<input type="checkbox"/> 00 <input type="checkbox"/> 20 <input type="checkbox"/> 50 <input type="checkbox"/> 70 <input type="checkbox"/> 01 <input type="checkbox"/> 05 <input type="checkbox"/> 25 <input type="checkbox"/> 55 <input type="checkbox"/> 80 <input type="checkbox"/> 10 <input type="checkbox"/> 30 <input type="checkbox"/> 60 <input type="checkbox"/> 85 <input type="checkbox"/> 15 <input type="checkbox"/> 40 <input type="checkbox"/> 65 <input type="checkbox"/> 90			
Scars, Marks, Tattoos NCIC Codes			

Pursuant to the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania*, the Confidential Information Form shall accompany a filing where confidential information is required by law, ordered by the court, or otherwise necessary to effect the disposition of a matter. This form, and any additional pages, shall remain confidential, except that it shall be available to the parties, counsel of record, the court, and the custodian. This form, and any additional pages, must be served on all unrepresented parties and counsel of record.

This Information Pertains To:	Confidential Information:	Reference in Filing:
DANILO CAVALCANTE (full name of adult) OR This information pertains to a minor with the initials of _____ and the full name of _____ (full name of minor) and date of birth of: _____	Social Security Number (SSN): _____ Financial Account Number (FAN): _____ Driver's License Number (DLN): _____ State of Issuance (DLN): _____ Expires (DLN): _____ State Identification Number (SID): _____	Alternative Reference: SSN1 SSN1A Alternative Reference: FAN1 Alternative Reference: DLN1 Alternative Reference: SID1

Additional page(s) attached. _____ total pages are attached to this filing.

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

Signature of Attorney or Affiant _____
Name: **MARK MINNICK**
Address: **UPPER PROVIDENCE TOWNSHIP PD**

Date _____
Attorney Number: (if applicable) _____
Telephone: _____
Email: _____

CONFIDENTIAL



Please provide the following information for each co-defendant



Co-Defendant Data Sheet

Docket Number:	Date Filed: 06/27/2020	OTN/LiveScan Number	Complaint/Incident Number: 68-20-03382
	First: DANILO	Middle:	Last: CAVALCANTE

	Co-Defendant # <u>1</u>
<hr/>	
(Name)	
<hr/>	
(Home Street Address)	
<hr/>	
(City, State & ZIP Code)	(Telephone #)





POLICE CRIMINAL COMPLAINT

Docket Number:	Date Filed: 06/27/2020	OTN/LiveScan Number	Complaint/Incident Number 68-20-03382
	First: DANILO	Middle:	Last: CAVALCANTE

AFFIDAVIT OF PROBABLE CAUSE

Your affiant, Officer Mark Minnick, is employed by The Supervisors of Upper Providence Township in Montgomery County Pennsylvania as a Police Officer. On 6/26/2020 at 2201 hours, I was working my assigned shift operating a marked police vehicle and wearing my full police Uniform. I responded to 600 2nd Ave, apartment B-3 for a domestic assault which occurred in apartment A-2 in the Royersford section of Upper Providence Township.

On location, I spoke to Deborah Evangelista Brandao(victim) about a fight she had with her boyfriend, Danilo Cavalcante. Brandao didn't speak English, she only spoke Portuguese. I spoke to her with help from her friend who translated for me. Brandao said she came home with her children two young children to the apartment (A-2). Cavalcante had been at the apartment drinking alcohol and was drunk. He became angry with Brandao for leaving with the kids and they started to argue with each other. Cavalcante went to kiss Brandao and he bit her on the bottom lip. Brandao was bleeding from her bottom lip and it was swollen from the bite. Cavalcante threatened to kill Brandao and chased Brandao and her two young children (ages 2 and 6) out of the upstairs apartment. Brandao and her children ran from the apartment and went to a neighbor's apartment (B-3) in the next building to get away from Cavalcante. Cavalcante chased after them but the neighbor didn't let him into the apartment. The neighbor called 911 and Cavalcante left the area prior to the police arrival. I took pictures of Brandao's injured bottom lip and the dried blood on her dress from her lip.

Based on the information received and investigation conducted, I respectfully request an arrest warrant be issued for Danilo Cavalcante for Simple Assault, Harassment and Terroristic Threats.

I, **MARK MINNICK**, BEING DULY SWORN ACCORDING TO THE LAW, DEPOSE AND SAY THAT THE FACTS SET FORTH IN THE FOREGOING AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

I CERTIFY THAT THIS FILING COMPLIES WITH THE PROVISIONS OF THE CASE RECORDS PUBLIC ACCESS POLICY OF THE UNIFIED JUDICIAL SYSTEM OF PENNSYLVANIA THAT REQUIRE FILING CONFIDENTIAL INFORMATION AND DOCUMENTS DIFFERENTLY THAN NON-CONFIDENTIAL INFORMATION AND DOCUMENTS.

(Signature of Affiant)

Sworn to me and subscribed before me this _____ day of _____,

_____ Date _____, Magisterial District Judge

My commission expires first Monday of January,







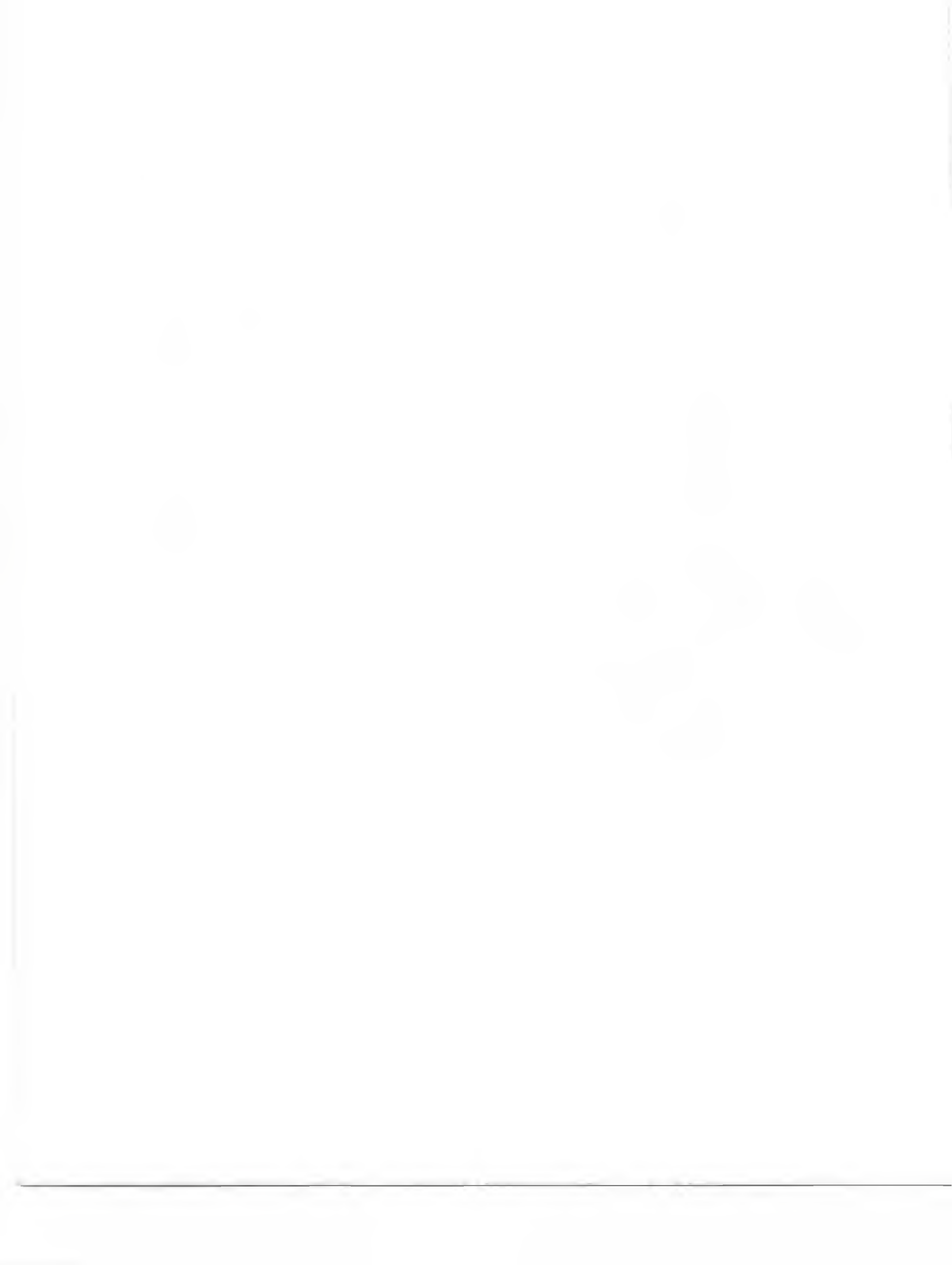


EXHIBIT B

UPPER MERION TOWNSHIP POLICE

20-26318

12/27/2020

Incident Report Form

DOMESTIC REPORT

Primary Officer: **DYLAN KULL - 2720**

<input type="checkbox"/> Juvenile Involved	<input type="checkbox"/> Investigation	<input type="checkbox"/> Video Available	<input type="checkbox"/> Gang Related	<input type="checkbox"/> Paperless
<input checked="" type="checkbox"/> Domestic Related	<input type="checkbox"/> Suspects	<input type="checkbox"/> Bias Crime	<input type="checkbox"/> Accident	<input type="checkbox"/> Administrative
<input type="checkbox"/> Alcohol Involved	<input type="checkbox"/> Arrests Made	<input type="checkbox"/> Drugs Involved	<input type="checkbox"/> Ready for DA / Prosecutor	<input type="checkbox"/> Alarm Activated

Log Number 20-26318	Incident Number	File Number	Case Number	UCR
Incident Type DOMR	Dispatcher boegly		Source WALK	District 04
DOMESTIC REPORT			Status LL	

Incident Date / Times						Incident Occurred At or Between					
Date Received 12/27/2020	Day Rec'd Sunday	Rcvd 1109	Disp 1124	Arrv 0000	Clrd 1200	Earliest Date and Time 12/27/2020 1109 (Sunday)			Latest Date and Time 12/27/2020 (Sunday)		

Disposition CFS	Cleared by Exception				<input type="checkbox"/> Suspended
CALL FOR SERVICE REPORT (OLD F)					
UCR Clearance	UCR Occur Date	UCR Clear Date	UCR Count	UCR Human Traffic Code	UCR HT Count 0

Location		<input type="checkbox"/> Intersection			
548 POWDERHORN RD KING OF PRUSSIA PA 19406		Cross Street			
Municipality: Upper Merion Township		GPS Loc X 0	GPS Loc Y 0		
Business Name	Premise Code HOME	PRIVATE RESIDENCE		Arson Value	

Gang	Weather
------	---------

Modus Operandi Coding	Victim:
Entry:	Property: SINGLE HOME SING
Exit:	Area: DISTRICT 4 RESIDENTIAL 4R
Method:	Time of Day: AFTERNOON (NOON TO 5 PM) ANOON

WEAPON USED:

Caller / Complainant Type Normal Anonymous Hangup Refused

INVOLVED PERSONS

Name (Last, First, Middle) - Address BRANDAO, DEBORAH 548 POWDERHORN RD KING OF PRUSSIA PA 19406	<input type="checkbox"/>	Date of Birth	Age	Race W	Sex F	Ethnic H	Social Security Number	
		Weight	Height	Hair	Eyes	Phone Number (484) 949-3735		
		Driver License Number		State	Class	Expiration Date		
		ID Provided		ID Detail				
	Link Comments							

UPPER MERION TOWNSHIP POLICE

20-26318

12/27/2020

Incident Report Form

DOMESTIC REPORT

INVOLVED PERSONS

DOMESTIC PARTNER

Name (Last, First, Middle) - Address

CAVALCANTE, DANILO SOUZA
 548 POWDERHORN RD
 KING OF PRUSSIA PA 19406

Juvenile

Date of Birth

Age

Race

Sex

Ethnic

Security Number

W

M

H

Weight

Height

Hair

Eyes

Phone Number

Driver License Number

State

Class

Expiration Date

ID Provided

ID Detail

Link Comments

RESPONDING / INVOLVED UNITS, OFFICERS, TIMES

Division

Supervisor / ID

Agency Numbers

UM

UM-20-25417

Units & Times

406

DISP

11:24:39

CLRD

12:00:03

COMMENTS / NARRATIVES

Title

Police Dispatch

Narrative Created By / Creation Date

SCOTT M BOEGLY

12/27/2020

Narrative Updated By / Update On

Narrative Approved By / Approved Date

Input: boegly 12/27/2020 11:10:33 Edited: boegly 12/27/2020 11:10:33

LANGUAGE BARRIER

Input: boegly 12/27/2020 11:16:06 Edited: boegly 12/27/2020 11:16:06

FEMALE SPEAKS PORTUGUESE AND WILL NEED A LANGUAGE LINE

Input: boegly 12/27/2020 11:16:29 Edited: boegly 12/27/2020 11:16:29

A FRIEND CALLED ON HER BEHALF YESTERDAY REPORTING SHE WILL BE IN FOR A DOMESTIC REPORT/INCIDENT

Input: boegly 12/27/2020 11:16:47 Edited: boegly 12/27/2020 11:16:47

FRIEND WAS UNABLE TO COME WITH HER DUR TO BEING OUT OF STATE

Input: boegly 12/27/2020 11:27:36 Edited: boegly 12/27/2020 11:27:36

LANGUAGE LINE WILL BE UTILIZED FOR REPORT

COMMENTS / NARRATIVES

Title

INITIAL REPORT

Narrative Created By / Creation Date

DYLAN KULL

12/27/2020

Narrative Updated By / Update On

COLLEEN BALE

12/29/2020

Narrative Approved By / Approved Date

On December 27, 2020 at 1109 hours, Deborah Brandao appeared on station to seek information on how to obtain a PFA Order against her boyfriend, Danilo Souza Cavalcante. Brandao spoke Portuguese and Language Line was used to communicate (Ani, ID #317696) with her.

20-26318

12/27/2020



APPROVED BY: JOHN KREUER

PAGE 2

IRF 1.6

APPROVED ON: 12/27/2020

Print Date/Time 04/18/2021 19:41:47

UPPER MERION TOWNSHIP POLICE

20-26318

12/27/2020

Incident Report Form

DOMESTIC REPORT

Brandao advised that she lives with Cavalcante at 548 Powderhorn Road and they are both on the rental agreement. She stated that she was seeking information on how to obtain a PFA Order against Cavalcante. I asked Brandao why she felt that her safety was at risk and what occurred that makes believe a PFA Order is required. She advised that Cavalcante is extremely rude, yells at her, and has pushed her in the past. She also advised that on 12/24/20, Cavalcante squeezed her arm. She showed me a older looking small bruise on her left arm, but the cause of it could not be determined at this time.

She explained that she is currently staying at her slster's residence and would be responding out to the Montgomery County Courthouse on Monday morning to obtain a PFA Order. She did not provide her sisters address at this time.

She stated that she was satisfied with the information I provided on how to obtain a PFA Order and did not require any further assistance from the Police Department at this time. She stated that she felt safe and comfortable staying with her sister until the PFA could be obtained.

20-26318

12/27/2020



APPROVED BY: JOHN KREUER

PAGE 3

IRF 1.6

APPROVED ON: 12/27/2020

Print Date/Time 04/18/2021 19:41:47

UPPER MERION TOWNSHIP POLICE
INCIDENT REPORT CONTACT SHEET

20-26318
12/27/2020

DOMESTIC REPORT

(Most Current Address / Phone Data)

1 **Name:** **BRANDAO, DEBORAH EVANGELISTA**
 Address:548 POWDERHORN RD
 KING OF PRUSSIA PA 19406
 Phones: **(484) 949-3735**

 Driver Lic: **D/L State: PA D/L Class: <DRLIC_CLASS> D/L Expires:**
 Marital Status: **Email Address:**
 Deceased ?: **Date of Death: Name Record Last Updated: 01/21/2021 09:03:09**

2 **Name:** **CAVALCANTE, DANILO SOUZA**
 Address:548 POWDERHORN RD
 KING OF PRUSSIA PA 19406
 Phones:

 Driver Lic: **D/L State: PA D/L Class: <DRLIC_CLASS> D/L Expires:**
 Marital Status: **Email Address:**
 Deceased ?: **Date of Death: Name Record Last Updated: 01/21/2021 09:03:13**

EXHIBIT C



TEMPORARY PROTECTION FROM ABUSE ORDER <input type="checkbox"/> Amended Order <input type="checkbox"/> Continued Order	IN THE COURT OF COMMON PLEAS OF _____ COUNTY, PENNSYLVANIA NO. _____
---	--

PLAINTIFF

<u>Deborah</u>	<u>Evangelista</u>	<u>Brandão</u>	<u>10/20/1989</u>
First	Middle	Last	Plaintiff's DOB

Name(s) of all protected persons, including minor child/ren and DOB: _____

v.

DEFENDANT

<u>Danilo</u>	<u>Souza</u>	<u>Cavalcante</u>	
First	Middle	Last	Suffix

Defendant's Address:
598 Powderhorn Rd
King of Prussia, PA

DEFENDANT IDENTIFIERS			
DOB	<u>07-03-89</u>	HEIGHT	<u>5'2"</u>
SEX	<u>male</u>	WEIGHT	<u>120</u>
RACE	<u>white</u>	EYES	<u>brown</u>
HAIR	<u>brown</u>		
SSN			
DRIVERS LICENSE #			
EXP DATE		STATE	

CAUTION:

- Weapon Involved
- Weapon Present on the Property
- Weapon Ordered Relinquished

The Court Hereby Finds:

That it has jurisdiction over the parties and subject matter, and Defendant will be provided with reasonable notice and opportunity to be heard.

The Court Hereby Orders:

Defendant shall not abuse, harass, stalk, threaten, or attempt or threaten to use physical force against any of the above persons in any place where they might be found.

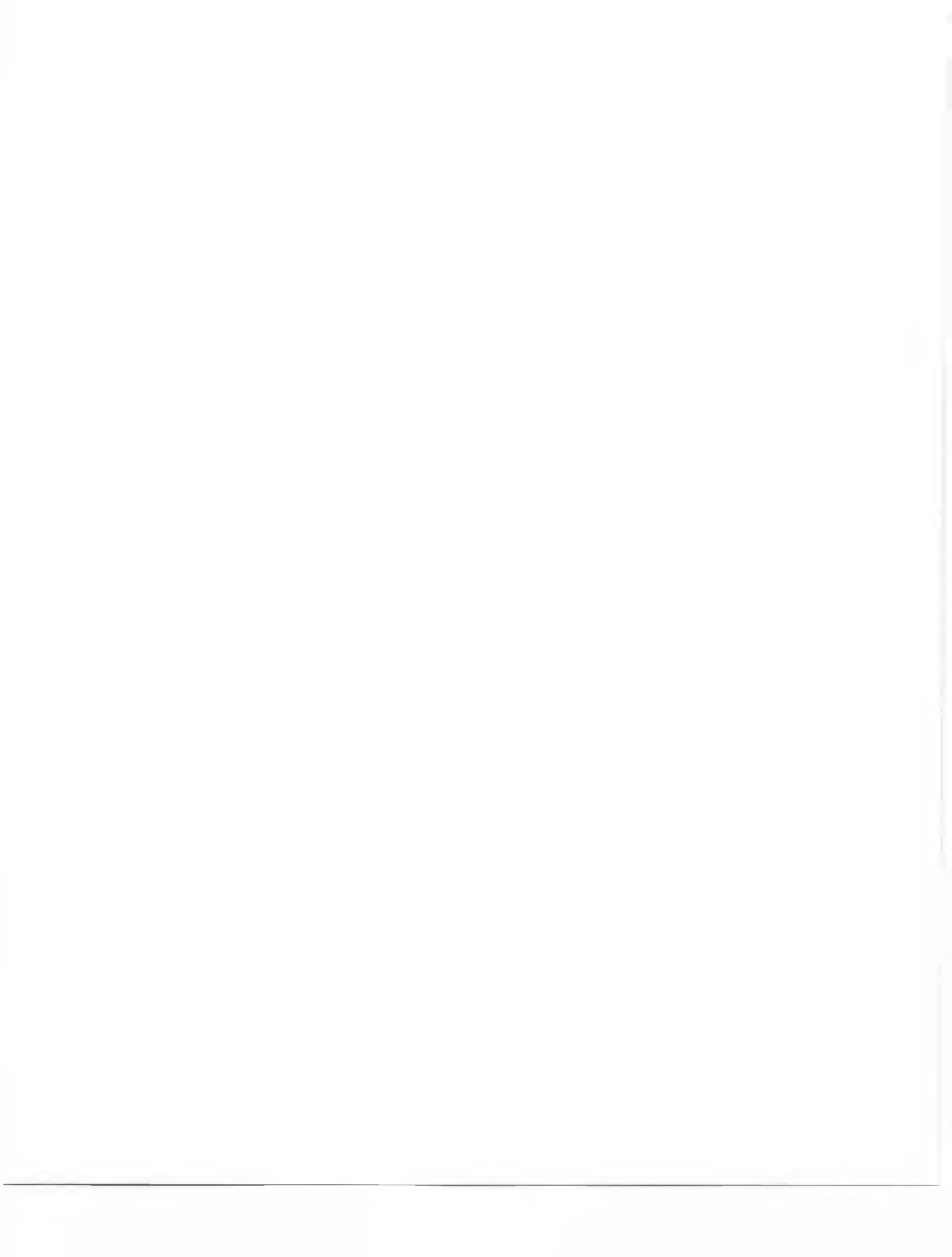
Except for such contact with the minor child/ren as may be permitted under Paragraph 5 of this order, Defendant shall not contact Plaintiff, or any other person protected under this order, by telephone or by any other means, including through third persons.

Additional findings of this order are set forth below.

Order Effective Date 12/29/20 Order Expiration Date 12/29/2023

NOTICE TO DEFENDANT

Defendant is hereby notified that failure to obey this order may result in arrest as set forth in 23 Pa.C.S. § 6113 and that violation of the order may result in a charge of indirect criminal contempt, as set forth in 23 Pa.C.S. § 6114. Consent of Plaintiff to Defendant's return to the residence shall not invalidate this order, which can only be changed or modified through the filing of appropriate court papers for that purpose. 23 Pa.C.S. § 6108(g). If Defendant is required to relinquish any firearms, other weapons, ammunition, or any firearm license, those items must be relinquished to the sheriff or the appropriate law enforcement agency within 24 hours of the service of this order. As an alternative, Defendant may relinquish any firearm, other weapon, or ammunition listed herein to a third party provided Defendant and the third party first comply with all requirements to obtain a safekeeping permit. If, due to their current location, firearms, other weapons, or ammunition cannot reasonably be retrieved within the time for relinquishment, Defendant shall provide an affidavit to the sheriff or the appropriate law enforcement agency listing the firearms, other weapons, or ammunition and their current location no later than 24 hours after the service of this order. Defendant is further notified that violation of this order may subject him/her to state charges and penalties under the Pennsylvania Crimes Code under 18 Pa.C.S. § 6105 and to federal criminal charges and penalties under 18 U.S.C. § 922(g)(8) and the Violence Against Women Act, 18 U.S.C. §§ 2261-2262.



ORDEM DE RESTRIÇÃO TEMPORÁRIA CONTRA ABUSO <input type="checkbox"/> Ordem modificada <input type="checkbox"/> Continuação de uma Ordem	JUIZO DE PRIMEIRA INSTÂNCIA DO CONDADO _____, PENSILVÂNIA N.º
--	---

1. REQUERENTE

<u>Deborah</u>	<u>Evangelista</u>	<u>Bramdão</u>	<u>10-20-1987</u>
Nome	Nome do meio	Sobrenome	Data de nascimento do (a) Requerente

Nome(s) de todas as pessoas protegidas, incluindo menor (es) e datas de nascimento: Yasmin Bramdão
Yan Bramdão

RÉU (RÉ)

<u>Danilo</u>	<u>Souza</u>	<u>Cavalcante</u>	
Nome	Nome do meio	Sobrenome	Complemento final do sobrenome

Endereço do (a) Réu (Ré):
548 Powderhorn Rd
King of Prussia

IDENTIFICAÇÃO DO (A) RÉU (RÉ)			
DATA DE NASCIMENTO	<u>07-03-89</u>	ALTURA	<u>5,21"</u>
SEXO	<u>masculino</u>	PESO	<u>65</u>
COR	<u>branco</u>	OLHOS	<u>castanho</u>
COR DO CABELO	<u>castanho</u>		
N.º DE SEGURO SOCIAL			
N.º DA CARTEIRA DE MOTORISTA			
DATA DE VENCIMENTO		ESTADO	

CUIDADO:

- Envolvimento de armas
- Armas presentes na propriedade
- Pedido de entrega de armas

O Tribunal declara por meio deste que:
 Tem jurisdição e competência sobre as partes e que o (a) Réu (Ré) terá uma notificação razoável e oportunidade de ser ouvido (a).

O Tribunal determina por meio deste que:

O (a) Réu (Ré) não abusará, acoressará, perseguirá, ameaçará ou tentará usar força física contra quaisquer pessoas acima, em quaisquer lugares onde elas possam ser encontradas.

Exceto onde tal contato com o(s) menor(es) possam ser permitidos sob o parágrafo 5 desta Ordem. O Réu não entrará em contato com o (a) Autor (a), ou qualquer outra pessoa protegida por esta Ordem, por telefone ou por quaisquer outros meios, inclusive terceiros.

Vereditos adicionais a esta ordem são definidos abaixo.

Data na qual a Decisão Judicial entra em vigor 12/29/20 Data de Vencimento da Ordem 12/29/2023

AVISO DO RÉU

O (a) Réu (Ré) é notificado (a) por meio desta de que a falha em cumprir esta decisão judicial poderá resultar em prisão como definido em 23 Pa.C.S. § 6113 e que a violação da decisão pode resultar em cobrança de desacato criminal indireto à autoridade de acordo com 23 Pa.C.S. § 6114. O consentimento do (a) Requerente para que o (a) Réu (Ré) retorne à residência não invalidará esta Ordem, que só poderá ser modificada ou alterada pelo Tribunal, mediante apresentação de documentos apropriados para tal propósito. 23 Pa.C.S. § 6108(g). Se for exigido que o (a) Réu (Ré) entregue quaisquer armas de fogo, outras armas ou munições ou qualquer licença de armas de fogo, estes itens devem ser entregues ao à polícia ou autoridade adequada do cumprimento da lei dentro de 24 horas da entrega da citação. Como alternativa, o (a) Réu (Ré) poderá transferir quaisquer armas de fogo, outras armas ou munições listadas neste a um terceiro, contanto que o (a) Réu (Ré) e o terceiro obedeam primeiro a todos os requisitos para obter uma permissão de posse de armas. Se as armas de fogo, outras armas ou munições não puderem ser razoavelmente recuperadas dentro do tempo para a entrega das mesmas, por causa do seu local atual, o (a) Réu (Ré) entregará uma declaração à polícia ou autoridade adequada de cumprimento da lei enumerando as armas de fogo, outras armas e munições e o seu local atual, não mais tardar do que 24 horas após ter sido intimado. O (a) Réu (Ré) é ainda notificado que uma infração desta Ordem poderá sujeitá-lo (a) a acusações estatais e penalidades de acordo com o Código Criminal do Estado da Pensilvânia sob 18 Pa.C.S. § 6105 e acusações criminais federais e penalidades de acordo com 18 U.S.C. § 922(g)(8) e Lei de Violência Contra a Mulher, no. 18 U.S.C §§2261-2262.

AND NOW, this 29TH day of DEC, 2020
upon consideration of the attached Petition for Protection from Abuse, the court hereby enters the following Temporary Order:

- Plaintiff's request for a Temporary Protection Order is denied.
- Plaintiff's request for a Temporary Protection Order is granted.

1. Defendant shall not abuse, harass, stalk, threaten, or attempt or threaten to use physical force against any of the above persons in any place where they might be found.

2. Defendant is evicted and excluded from the residence at:

or any other permanent or temporary residence where Plaintiff or any other person protected under this order may live. Plaintiff is granted exclusive possession of the residence. Defendant shall have no right or privilege to enter or be present on the premises of Plaintiff or any other person protected under this order.

3. Except for such contact with the minor child/ren as may be permitted under Paragraph 5 of this order, Defendant is prohibited from having ANY CONTACT with plaintiff, or any other person protected under this order, either directly or indirectly, at any location, including but not limited to any contact at plaintiff's school, business, or place of employment. Defendant is specifically ordered to stay away from the following locations for the duration of this order:

4. Except for such contact with the minor child/ren as may be permitted under Paragraph 5 of this order, Defendant shall not contact plaintiff, or any other person protected under this order, by telephone or by any other means, including through third persons.

5. CUSTODY

There is a current custody order as to the child/ren of the parties: _____

(County Court and docket number)

THIS ORDER SHALL NOT SUPERSEDE THE CURRENT CUSTODY ORDER.

THIS ORDER SUPERSEDES ANY PRIOR ORDER RELATING TO CHILD CUSTODY.

E POR MEIO DESTES, no dia 29TH de DEC, 2020 em consideração à Petição de Restrição contra Abuso, a Vara dá entrada à seguinte Medida Cautelar:

- O pedido do (a) Autor (a) de uma Medida Cautelar Temporária foi negado.
- O pedido do (a) Autor (a) de uma Medida Cautelar Temporária foi deferido.

1. O (a) Réu (Ré) não deverá abusar, acossar, perseguir, ameaçar ou tentar usar força física contra quaisquer das pessoas acima em qualquer lugar em que elas possam ser encontradas.

2. O (a) Réu (Ré) foi despejado (a) e excluído (a) da residência no seguinte endereço:

ou qualquer outra residência, permanente ou temporária, onde o (a) Requerente ou qualquer outra pessoa, incluída nesta Cautelar, more. Concede-se ao (a) Requerente a posse exclusiva da residência. O (a) Réu (Ré) não terá direitos ou privilégios de entrar ou estar presente nas dependências do (a) Requerente sob a proteção desta Liminar.

3. Exceto por tal contato com o (s) menor (s), como pode ser permitido pelo Parágrafo 5 desta Liminar, o (a) Réu (Ré) fica proibido de ter QUALQUER CONTATO com o (a) Requerente (es) ou qualquer outra pessoa protegida nesta Cautelar, quer seja direta ou indiretamente, em qualquer local, incluindo, mas não se limitando a qualquer contato com a escola, negócios ou local de trabalho do autor. Ordena-se que o (a) (Réu) (Ré) fique especificamente fora dos seguintes locais pela duração desta decisão judicial:

4. Exceto onde tal contato com o (s) menor (es) possa ser permitido sob o Parágrafo 5 desta decisão judicial, o (a) Réu (Ré) não entrará em contato com o (a) Requerente, ou qualquer outra pessoa protegida por esta ordem, por telefone ou por quaisquer outros meios, inclusive terceiros.

5. GUARDA

Há uma ordem de guarda do (s) menor (es) das partes: _____

(Tribunal Municipal e n.º. do processo)

ESTA ORDEM NÃO SUBSTITUI A PRESENTE ORDEM DE GUARDA.

ESTA DECISÃO SUBSTITUI QUALQUER DECISÃO JUDICIAL PRÉVIA DE GUARDA.

Until the final hearing, all contact between Defendant and the child(ren) shall be limited to the following: _____

Pending the outcome of the final hearing in this matter, Plaintiff is awarded temporary custody of the following minor child/ren:

The local law enforcement agency in the jurisdiction where the child/ren are located shall ensure that the child/ren are placed in the care and control of the Plaintiff in accordance with the terms of this order.

6. FIREARMS, OTHER WEAPONS, OR AMMUNITION RESTRICTIONS

Check all that apply:

Defendant is prohibited from possessing or acquiring any firearms for the duration of this order.

Defendant shall relinquish to the sheriff or the appropriate law enforcement agency the following firearm licenses owned or possessed by Defendant.

Defendant is directed to relinquish to the sheriff or the appropriate law enforcement agency any firearm, other weapon, or ammunition listed in Attachment A to Temporary Order, which is incorporated herein by reference, under Defendant's control or in Defendant's possession

Defendant may relinquish any firearms, other weapons, or ammunition to the sheriff or the appropriate law enforcement agency. As an alternative, Defendant may relinquish firearms, other weapons, or ammunition to a third party provided Defendant and the third party first comply with all the requirements to obtain a safekeeping permit. Defendant must relinquish any firearm, other weapon, ammunition, or firearm license ordered to be relinquished no later than 24 hours after service of this order. If, due to their current location, firearms, other weapons, or ammunition cannot reasonably be retrieved within the time for relinquishment, Defendant shall provide to the sheriff or the appropriate law enforcement agency an affidavit listing the firearms, other weapons, or ammunition and their current location no later than 24 hours after the service of this order. Failure to timely relinquish any firearm, other weapon, ammunition, or any firearm license shall result in a violation of this order and may result in criminal conviction under the Uniform Firearms Act, 18 Pa.C.S. §6105.

Até a audiência final, todo o contato entre o (a) Réu (Ré) e o (s) menor (es) deverá ser limitado ao seguinte: _____

Até que o resultado da audiência final seja decidido sobre esta questão, concede-se a guarda temporária do (s) menor (es):

As autoridades locais, da jurisdição onde o(s) menor(es) se encontram, deverão assegurar que o(s) menor(es) sejam colocados aos cuidados e controle do(a) Requerente, de acordo com os termos desta Ordem.

6. RESTRIÇÕES DE ARMAS DE FOGO, OUTRAS ARMAS, OU MUNIÇÃO

Marque todas as que se aplicarem:

O (a) Réu (Ré) fica proibido (a) de possuir ou adquirir quaisquer armas de fogo pela duração desta Ordem.

O (a) Réu (Ré) deverá entregar à polícia ou autoridade adequada de cumprimento da lei as seguintes licenças de armas de fogo de propriedade ou posse do (a) Réu (Ré)

Ordena-se que o (a) Réu (Ré) entregue à polícia ou autoridade adequada de cumprimento da lei todas as armas de fogo ou munições listadas no Anexo A da Cautelar Temporária que será aqui considerado como referência, sob controle ou posse do Réu

O (a) Requerente deverá entregar quaisquer armas de fogo, outras armas, ou munições à polícia ou autoridade adequada de cumprimento da lei. Como alternativa, o (a) Réu (Ré) poderá entregar quaisquer armas de fogo, outras armas, ou munições a um terceiro contanto que o Réu e o terceiro obedeçam primeiramente todos os requisitos para obter posse de armas. O (a) Réu (Ré) deverá entregar quaisquer armas de fogo, outras armas, e munições ou licenças de armas de fogo cuja entrega tenha sido solicitada, em até 24 horas após a intimação desta Cautelar. Se as armas de fogo, outras armas, ou munições não puderem ser razoavelmente recuperadas dentro do tempo para o abandono das mesmas, por causa do seu local atual, o (a) Réu (Ré) entregará uma declaração à polícia ou autoridade adequada de cumprimento da lei, enumerando as armas de fogo, outras armas, e munições e seu local atual, em até 24 horas após ter sido intimado. O não-cumprimento em tempo hábil de entregar qualquer arma de fogo, outras armas, munições, ou outras licenças de armas de fogo resultará em uma infração desta decisão judicial e poderá acarretar acusações criminais de acordo com a Lei Uniforme de Armas de Fogo, Pa.C.S. §6105.

7: The following additional relief is granted:

Defendant is prohibited from stalking, as defined in 18 Pa.C.S. §2709.1, or harassing, as defined in 18 Pa.C.S. §2709, the following family and household members of Plaintiff.

7. A seguinte reparação adicional é concedida:

O (a) Réu (Ré) fica proibido (a) de perseguir, conforme definido em 18 Pa.C.S. §2709.1, ou assediar, como definido em 18 Pa.C.S. §2709, a seguinte família e membros da casa do (a) Requerente.

Name / Nome	Address (optional) / Endereço (opcional)	Relationship to Plaintiff / Parentesco com o (a) Requerente

Other relief: _____

Outros pedidos: _____

8. The Pennsylvania State Police, the municipal police, or the sheriff shall accompany Plaintiff to his or her residence to retrieve personal belongings or accompany Plaintiff while the petition or order is served on Defendant.

8. A Polícia Estadual da Pensilvânia, a polícia municipal ou delegado deverão acompanhar o Requerente à sua residência para coletar seus pertences pessoais ou acompanhar o Requerente enquanto a petição ou ordem for executada sobre ele.

9. A certified copy of this order shall be provided to the sheriff or police department where plaintiff resides and any other agency specified hereafter: (insert name of agency)

9. Uma cópia certificada desta Ordem deverá ser apresentada à polícia onde o (a) Requerente mora e quaisquer outras autoridades aqui especificadas: (insira o nome da agência)

10. THIS ORDER SUPERSEDES ANY PRIOR PROTECTION FROM ABUSE ORDER OBTAINED BY THE SAME PLAINTIFF AGAINST THE SAME DEFENDANT.

10. ESTA ORDEM SUBSTITUI QUALQUER PRÉVIA RESTRIÇÃO CONTRA ABUSO OBTIDA CONTRA O MESMO AUTOR.

11. THIS ORDER APPLIES IMMEDIATELY TO DEFENDANT AND SHALL REMAIN IN EFFECT UNTIL _____ OR UNTIL OTHERWISE MODIFIED OR TERMINATED BY THIS COURT AFTER NOTICE AND HEARING.

11. ESTA ORDEM SE APLICA IMEDIATAMENTE AO (À) RÉU (RÉ) E DEVERÁ PERMANECER EM VIGOR ATÉ _____ OU ATÉ TER SIDO MODIFICADA OU TERMINADA POR ESTE TRIBUNAL APÓS CITAÇÃO E AUDIÊNCIA.

NOTICE TO DEFENDANT

Defendant is hereby notified that failure to obey this order may result in arrest as set forth in 23 Pa.C.S. § 6113 and that violation of the order may result in a charge of indirect criminal contempt as set forth in 23 Pa.C.S. §6114. Consent of Plaintiff to Defendant's return to the residence shall not invalidate this order, which can only be changed or modified through the filing of appropriate court papers for that purpose. 23 Pa.C.S. §6108(g).

If Defendant is required to relinquish any firearms, other weapons, ammunition, or any firearm license, those items must be relinquished to the sheriff or the appropriate law enforcement agency within 24 hours of the service of this order. As an alternative, Defendant may relinquish any firearm, other weapon, or ammunition listed herein to a third party provided Defendant and the third party first comply with all requirements to obtain a safekeeping permit. If, due to their current location, firearms, other weapons, or ammunition cannot reasonably be retrieved within the time for relinquishment, Defendant shall provide an affidavit to the sheriff or the appropriate law enforcement agency listing the firearms, other weapons, or ammunition and their current location no later than 24 hours after service of this order. Defendant is further notified that violation of this order may subject him/her to state charges and penalties under the Pennsylvania Crimes Code under 18 Pa.C.S. § 6105 and to federal criminal charges and penalties under 18 U.S.C. § 922(g)(8) and the Violence Against Women Act, 18 U.S.C. §§2261-2262.

CITACÃO DO RÉU

A falha em obedecer a esta decisão judicial poderá resultar em prisão como definido em 23 Pa.C.S. § 6113 e que a violação da ordem pode resultar em cobrança de desacato criminal indireto, como definido em 23 Pa C.S. § 6114. O consentimento do (a) Requerente de entrar em contato com o (a) Réu (Ré) não anulará esta decisão judicial, que só poderá ser modificada pela apresentação de documentos jurídicos apropriados para este propósito e para decisões adicionais do tribunal. 23 Pa. C.S. §6108 (g).

Se for exigido que o (a) Réu (Ré) entregue quaisquer armas de fogo, outras armas, ou munições ou qualquer licença de armas de fogo, estes itens deverão ser entregues à polícia ou agência adequada de cumprimento da lei em até 24 horas da entrega da citação. Como alternativa, o (a) Réu (Ré) poderá entregar quaisquer armas de fogo, outras armas, ou munições aqui listadas a terceiro, contanto que o (a) Réu (Ré) e terceiro obedecem primeiro a todos os requisitos para obter permissão de guarda de armas. Se as armas de fogo, outras armas, ou munições não puderem ser razoavelmente recuperadas dentro do tempo para a entrega das mesmas, por causa do seu local atual, o Réu (Ré) entregará uma declaração à polícia agência adequada de cumprimento da lei, enumerando as armas de fogo, outras armas, e munições e o seu local atual, em até 24 horas após ter sido intimado. O (a) Réu (Ré) fica ainda notificado (a) de que uma infração desta Ordem poderá sujeitá-lo (a) a acusações estatais e penalidades de acordo com o Código Criminal do Estado da Pensilvânia sob 10 Pa.C.S. § 6105e crimes federais e penalidades de acordo com 18 U.S.C. § 922(g)(8) e a Lei de Violência Contra a Mulher, 18 U.S.C §2261-2262.

NOTICE TO SHERIFF, POLICE AND LAW ENFORCEMENT OFFICIALS

This order shall be enforced by the police department or sheriff who has jurisdiction over Plaintiff's residence OR any location where a violation of this order occurs OR where Defendant may be located. If Defendant violates Paragraphs 1 through 6 of this order, Defendant shall be arrested on the charge of indirect criminal contempt. An arrest for violation of this order may be made without warrant, based solely on probable cause, whether or not the violation is committed in the presence of a police officer or sheriff.

Subsequent to an arrest, the law enforcement officer or sheriff shall seize all firearms, other weapons, or ammunition in Defendant's possession which were used or threatened to be used during the violation of the protection order or during prior incidents of abuse and any other firearms in Defendant's possession. Any firearm, other weapon, ammunition, or any firearm license must be delivered to the sheriff or the appropriate law enforcement agency, which sheriff or agency shall maintain possession of the firearms, other weapons, or ammunition until further order of this court, unless the weapon(s) are evidence of a crime, in which case, they shall remain with the law enforcement agency whose officer or sheriff made the arrest.

NOTIFICAÇÃO À POLÍCIA E OFICIAIS DO CUMPRIMENTO DA LEI

Esta Ordem deverá ser executada pelo departamento de polícia que tiver jurisdição sobre a residência do (a) Requerente OU qualquer local onde uma infração desta Cautelar ocorrer OU onde o (a) Requerente possa estar localizado(a). Se o (a) Réu (Ré) infringir os Parágrafos 1 ao 6 desta Ordem, o (a) Réu (Ré) será preso com acusação de Desacato Criminal Indireto. Uma prisão por infração desta Ordem poderá ser feita sem mandado de busca, baseada exclusivamente em causa provável, quer a infração tenha sido ou não cometida na presença de um policial ou delegado de polícia.

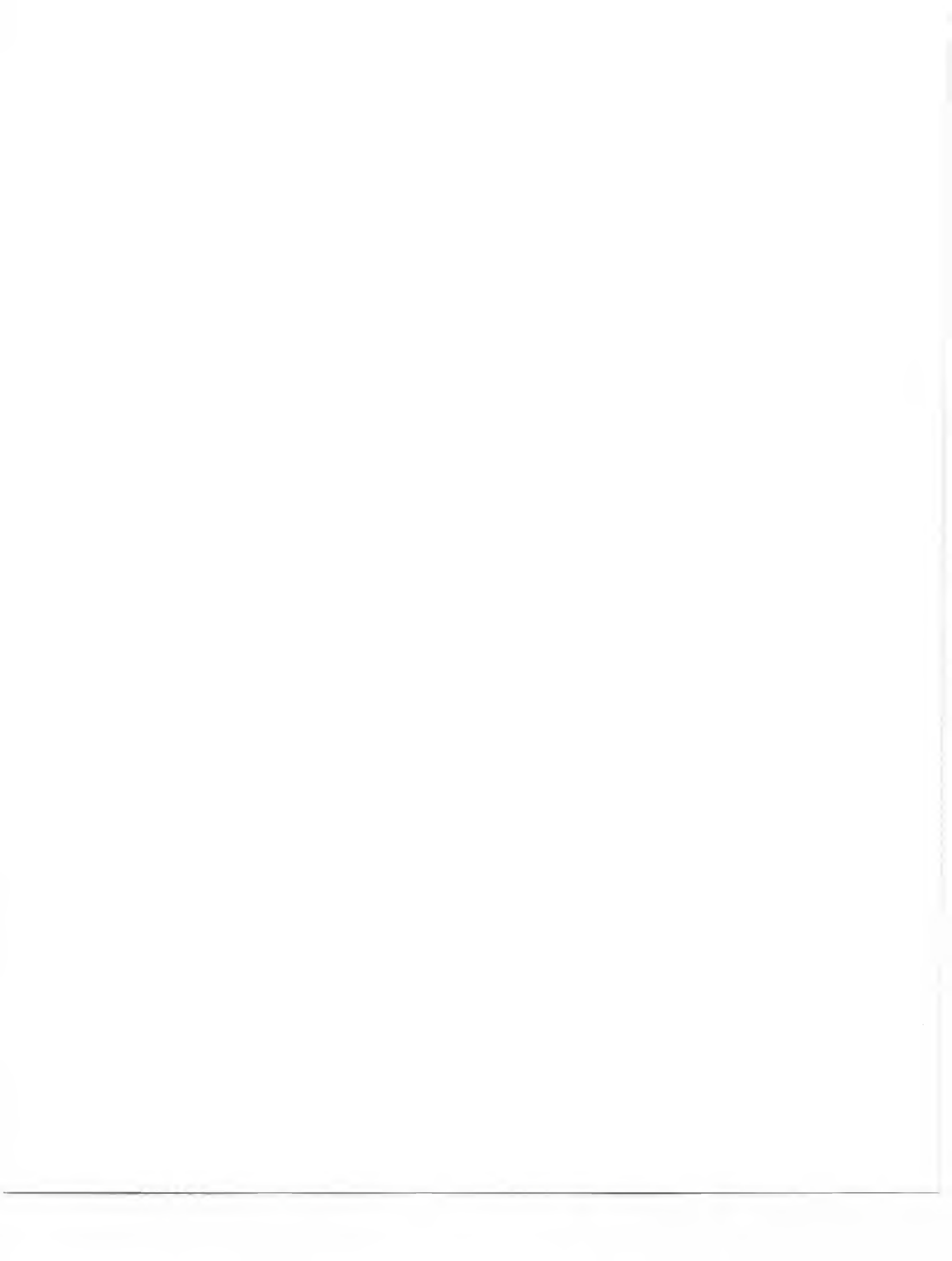
Após uma prisão, o policial deverá confiscar todas as armas de fogo, outras armas e munições em posse do (a) Réu (Ré) que tiverem sido usadas ou ameaçadas de serem usadas durante a infração da Ordem de Restrição contra Abuso ou durante incidentes de abuso anteriores e quaisquer outras armas de fogo em posse do (a) Réu (Ré). Quaisquer armas de fogo, outra arma, munições ou licença de porte de armas deverão ser entregues ao delegado ou autoridade adequada de cumprimento da lei, a qual deverá manter a custódia das armas de fogo, outras armas e munições até notificação posterior deste Tribunal, a menos que as armas sejam evidência de um crime; e neste caso, elas deverão permanecer com a agência de aplicação da lei cujo policial efetuou a prisão.

BY THE COURT / EXPEDIDO POR:

Judge / Juiz

12/09/2020

Date / Data



PETITION FOR PROTECTION FROM ABUSE	IN THE COURT OF COMMON PLEAS OF Montgomery COUNTY, PENNSYLVANIA NO. 2020-21415
---	--

1. PLAINTIFF

DEBORAH	EVANGELISTA	BRANDAO	October 20, 1987
First	Middle	Last	Suffix Plaintiff DOB

Plaintiff's Address:

Plaintiff's address is confidential or Plaintiff's address is:
 548 POWDERHORN RD , KING OF PRUSSIA , Pennsylvania 19406

V.

2. DEFENDANT

DANILO	SOUZA	CAVALCANTE	
First	Middle	Last	Suffix

Defendant's Address:

548 POWDERHORN RD
 KING OF PRUSSIA Pennsylvania 19406

DEFENDANT IDENTIFIERS			
DOB	7/3/1989	HEIGHT	5 ft. 2 in.
SEX	Male	WEIGHT	120
RACE	White	EYES	Brown
HAIR	Brown		
SSN			
DRIVERS LICENSE #			
EXP DATE		STATE	

CAUTION:

- Weapon Involved
- Weapon Present on the Property
- Weapon Ordered Relinquished

Defendant's place of employment is: **SELF EMPLOYED**

- Check here if you have reason to believe that Defendant is a licensed firearms dealer, employed by a licensed firearms dealer or manufacturer; employed as a writer, researcher, or technician in the firearms or hunting industry, or is required to carry a firearm as a condition of employment.

3. I am filing this Petition on behalf of: Myself or Another Person

If you checked "myself", please answer all questions referring to yourself as "Plaintiff". If you ONLY checked "another person", please answer all questions referring to that person as the "Plaintiff", and provide your name and address here, as filer, unless confidential.

Filer's Name:

First	Middle	Last	Suffix

Filer's address is confidential or Filer's address is:

If you checked "Another Person", indicate your relationship with Plaintiff:

- Parent of Minor Plaintiff(s)
- Applicant for appointment as guardian ad litem of minor Plaintiff(s)
- Adult household member with minor Plaintiff(s)
- Court-appointed guardian of incompetent Plaintiff(s)

4. Name(s) of all persons, including minor child/ren, who seek protection from abuse.

DEBORAH EVANGELISTA BRANDAO



2020-21415-0000 12/29/2020 11:07 AM # 12969832
 Ropt#Z3963841 Fee:\$0.00 Petition for Protection from Abu
 Main (Public)
 MontCo Prothonotary



5. Indicate the relationship between Plaintiff and Defendant:

Current or Former Sexual or Intimate Partner with Defendant

Defendant is an adult.

- 6. Defendant has not been involved in a criminal court action.
- Defendant has been determined to not be a perpetrator.

7. The following other minor child/ren presently live with Plaintiff:

- a. **YASMIN BRANDAO**
Age: 7
The Plaintiff's relationship to this child is:
MOTHER
- b. **YAN BRANDAO**
Age: 4
The Plaintiff's relationship to this child is:
MOTHER

8. The facts of the most recent incident of abuse are as follows:
SEE ATTACHED

9. Prior incidents of abuse that Defendant has committed against Plaintiff or the minor child/ren, (including any threats, injuries, or incidents of stalking) are as follows:

SEE ATTACHED

10. (a) Has Defendant used or threatened to use any firearms or other weapons against Plaintiff or the minor child/ren?

YES If so, please describe the use or threatened use below and list on Attachment A to Petition, which is incorporated by reference into this petition, any firearms, other weapons, or ammunition Defendant used or threatened to use against Plaintiff or the minor children:

GRABBED KNIFE ON 12/24/20

(b) Other than the firearms, other weapons, or ammunition Defendant used or threatened to use against Plaintiff or the minor child/ren, does Defendant, to the best of your knowledge or belief, own or possess any additional firearm, other weapon, ammunition, or any firearm license?

NO

(c) If the answer to (b) above is "Yes", list any additional firearm, other weapon, or ammunition owned by or in the possession of Defendant on Attachment A to Petition, which is incorporated by reference into this petition.

(d) Plaintiff **DOES NOT** request that the court order Defendant to relinquish firearms, other weapons, or ammunition listed on Attachment A to Petition.

11. The sheriff, police department, or law enforcement agency that should be provided with a copy of the protection order are:
UPPER MERION PD

12. There is an immediate and present danger of further abuse from Defendant.

13. Plaintiff is asking the court to evict and exclude Defendant from the following residence:

Plaintiff is asking the court to evict and exclude Defendant from the following residence:
548 POWDERHORN RD, KING OF PRUSSIA, PA 19406

Rented By:
DEBORAH BRANDAO & DANILO CAVALCANTE

14. Plaintiff has suffered out-of-pocket financial losses as a result of the abuse described above. Those losses are:
HOUSEHOLD ITEMS, WORK DAYS

15. FOR THE REASONS SET FORTH ABOVE, I REQUEST THAT THE COURT ENTER A TEMPORARY ORDER, and AFTER HEARING, A FINAL ORDER THAT WOULD DO THE FOLLOWING:



- a. Restrain Defendant from abusing, harassing, stalking, threatening, or attempting or threatening to use physical force against Plaintiff or the minor child/ren in any place where Plaintiff or the child/ren may be found.
- b. Evict/exclude Defendant from Plaintiff's residence and prohibit Defendant from attempting to enter any temporary or permanent residence of Plaintiff.
- c. Prohibit Defendant from having any contact with Plaintiff or the minor child/ren, in person, by telephone, or in writing, personally or through third persons, including but not limited to any contact at Plaintiff's school, business, or place of employment, except as the court may find necessary with respect to partial custody with the minor child/ren.
- d. Prohibit Defendant from acquiring or possessing firearms for the duration of the order.
- e. Order Defendant to pay temporary support for Plaintiff or the minor child/ren, including medical support.
- f. Order Defendant to pay the costs of this action, including filing and service fees.
- g. Order the following additional relief, not listed above:
HE PAY 1 MONTH RENT
- h. Grant such other relief as Plaintiff requests or the court deems appropriate.
- i. Order the police, sheriff, or other law enforcement agency to serve Defendant with a copy of this petition, any order issued, and the order for hearing. Plaintiff will inform the designated authority of any addresses, other than Defendant's residence, where Defendant can be served.

VERIFICATION

I verify that I am the petitioner as designated in the present action and that the facts and statements contained in the above petition are true and correct to the best of my knowledge. I understand that any false statements are made subject to the Penalties of 18 Pa. C.S. § 4904, relating to unsworn falsification to authorities

Nelora Brando
Signature

12/29/20
Date

PFAD Number: VA008219098E

(b) List any other persons who are known to have or claim a right to custody of each child listed above.

(b) Informe o nome de outras pessoas que se saiba ter direito de guarda ou que reivindicuem direito à guarda de cada menor descrito acima.

Name / Nome	Address / Endereço	Basis of claim / Base da alegação

10. The following other minor child/ren presently live with Plaintiff:

10. O(s) outro(s) menor(es) a seguir atualmente moram com o(a) Requerente:

Name(s) / Nome(s)	Age(s) / Idade(s)	Plaintiff's Relationship to Child/ren / Relação/Parentesco. (a) Requerente com os Menores
Yasmin Brandao	7	daughter
Yam Brandao	4	son
YAN		

11. The facts of the most recent incident of abuse are as follows:

11. Os fatos do incidente de abuso mais recente são como se segue:

Approximate date: 12-24-20
 Approximate time: 9h30pm
 Place: 548 Powderhorn Rd, K of P
 Describe in detail what happened, including any physical or sexual abuse, threats, injury, incidents of stalking, medical treatment sought, or calls to law enforcement (attach additional sheets of paper if necessary): plaintiff
After dinner, I put kids in bed, got back to kitchen, saw that on plaintiff's cell phone. Defendant started saying plaintiff was a bad person, pushed her from chair, threw all 6 plates on floor, kicked plaintiff twice, plaintiff got up and started going towards door, defendant grabbed a knife and ran towards plaintiff, who ran out the door
 →

Data aproximada: 12/24/20
 Hora aproximada: 9:30
 Local: 548 Powderhorn; K. of P.
 Descreva em detalhes o que aconteceu, incluindo quaisquer abusos físicos ou sexuais, ameaças, ferimentos, incidentes de perseguição, tratamento médico obtido ou ligações para autoridades policiais (anexe folhas adicionais de papel, se necessário):
Após jantar, requerente colocou as crianças para dormir, seu estava na cozinha mexendo no celular da requerente. Ele começou a dizer que requerente não prestava, e a deturbação da cadeira, quebrou os 6 pratos que estavam na mesa, chutou a requerente 2 vezes enquanto ela ainda estava no chão. Requerente

12. If Defendant has committed prior acts of abuse against Plaintiff or the minor child/ren, describe these prior incidents, including any threats, injuries, or incidents of stalking, and indicate approximately when such acts of abuse occurred (attach additional sheets of paper if necessary):

12. Se o (a) Réu (Ré) cometeu atos anteriores de abuso contra o (a) Requerente ou contra o (s) menor (es), descreva estes incidentes anteriores, incluindo quaisquer ameaças, ferimentos, incidentes de perseguição, e indique aproximadamente quando tais atos de abuso ocorreram (anexe folhas adicionais de papel, se necessário):

Around may, after drinking, defendant pushed and plaintiff, pulled her hair, bit her lip. Early December he tried to strangle by holding her from back

Em maio, depois de beber, seu empurrou requerente, puxou cabelo e mordeu labio. Em Dezembro tentou estrangular por segurando por tras.

13. (a) Has Defendant used or threatened to use any firearms or other weapons against Plaintiff or the minor child/ren? If so, please describe the use or threatened use below and list on Attachment A to Petition, which is incorporated by reference into this petition, any firearms, other weapons, or ammunition Defendant used or threatened to use against Plaintiff or the minor child/ren:

13. (a) O (a) Réu (Ré) usou ou ameaçou usar quaisquer armas de fogo ou outros tipos de armas contra o (a) Requerente ou o (s) menor (es)? Se sim, descreva abaixo o uso ou ameaça de uso de armas de fogo e outros tipos de armas, ou munição que o (a) Réu (Ré) usou ou ameaçou usar contra o (a) Requerente ou o (s) menor (es) e inclua no Anexo A da Petição, que será considerado como referência nesta Petição:

and started screaming
for neighbors help.

Defendant ran
a little after but went
back home. Plaintiff went
back to the back of the
house and pulled children
from the window.

After almost one hour,
Plaintiff called her sister
who came to pick her and
children up, around

11:30 pm. Plaintiff
filled report on 12-27-20

levantou e começou a andar
para a porta. Foi pegar

uma faca e começou a
ir em direção a Requerente,
que conseguiu sair da
casa e correr gritando
por ajuda. Vizinhos não
ofereceram ajuda. Reu

voltou para casa e
Requerente voltou por
trás da casa para tirar
as crianças pela janela.

Reu ligou para irmã
e cunhada que foram
busca-la e Reu registrou
ocorrência em 12-27-20

PETITION FOR PROTECTION FROM ABUSE	IN THE COURT OF COMMON PLEAS OF COUNTY, PENNSYLVANIA NO.
---------------------------------------	--

1. PLAINTIFF

Deborah	Evangelista	Brandão	10-20-87
First	Middle	Last	Plaintiff's DOB

Plaintiff's Address:
 Plaintiff's address is confidential or Plaintiff's address is: 548 Powderhorn Rd,
King of Prussia, PA

v.

2. DEFENDANT

Danilo	Souza	Cavalcante	
First	Middle	Last	Suffix

Defendant's Address:
548 Powderhorn Rd, King of Prussia

DEFENDANT IDENTIFIERS			
DOB	07-03-89	HEIGHT	5'2" <i>him</i>
SEX	male	WEIGHT	120
RACE	white	EYES	brown
HAIR	brown		
SSN			
DRIVERS LICENSE #			
EXP. DATE		STATE	

- CAUTION:**
- Weapon Involved
 - Weapon Present on the Property
 - Weapon Requested Relinquished

PETIÇÃO DE RESTRIÇÃO CONTRA ABUSO	JUÍZO DE PRIMEIRA INSTÂNCIA DO CONDADO DE _____, PENSILVÂNIA N.º _____
--------------------------------------	--

1. REQUERENTE

Deborah	Evangelista	Brandão	10-20-1987
Nome	Nome do meio	Sobrenome	Data de nascimento do (a) Requerente

Endereço do (a) Requerente:
 Endereço do (a) Requerente é confidencial ou Endereço do (a) requerente é: 548 Powderhorn Rd
King of Prussia, PA

v.

2. RÉU (RÉ)

Danilo	Souza	Cavalcante	
Nome	Nome do meio	Sobrenome	Complemento final do sobrenome

Endereço do (a) Réu (Ré):
548 Powderhorn Rd, King of Prussia

- ATENÇÃO**
- Armas envolvidas
 - Armas presentes na propriedade
 - Pedido de entrega voluntária de armas

IDENTIFICAÇÃO DO (A) RÉU (RÉ)			
DATA DE NASCIMENTO	07-03-89	ALTURA	1,62m
SEXO	masculino	PESO	60,1kg
COR	branco	OLHOS	castanho
COR DO CABELO	castanho		
N.º. SEGURO SOCIAL			
N.º. CARTEIRA DE MOTORISTA			
DATA DE VENCIMENTO		ESTADO	



Defendant's place of employment is: Self employed - Aborn
 Check here if you have reason to believe that Defendant is a licensed firearms dealer, employed by a licensed firearms dealer or manufacturer; employed as a writer, researcher, or technician in the firearms or hunting industry, or is required to carry a firearm as a condition of employment.

Local de trabalho do (a) réu (ré): Autônomo - Diso
 Marque aqui se possuiu razões para acreditar que o (a) Réu (Ré) é um (a) comerciante de armas licenciado (a); empregado (a) por um comerciante de armas licenciado (a) ou fabricante; é empregado (a) como escritor (a), pesquisador (a) ou técnico (a) na indústria de armas de fogo ou caça; ou deve portar armas de fogo como condição empregatícia.

3. I am filing this petition on behalf of

Myself or Another person.

If you checked "myself", please answer all questions referring to yourself as "Plaintiff". If you ONLY checked "another person", please answer all questions referring to that person as the "Plaintiff", and provide your name and address here, as filer, unless confidential.

3. Estou dando entrada nesta Petição em nome

Próprio ou De outra pessoa.

Se você marcou "nome próprio", responda a todas as perguntas que se referem a você como "Requerente". Se você SÓ marcou "de outra pessoa", responda a todas as perguntas se referindo àquela pessoa como "Requerente" e informe aqui seu nome e endereço, como requerente, a menos que seja confidencial.

Filer's Name / Nome do(a) Requerente

First / Nome	Middle / Nome do meio	Last / Sobrenome	Suffix / Complemento

Filer's address is confidential or
 Filer's address is:

Endereço do (a) informante é confidencial ou
 Endereço do (a) informante é:

If you checked "Another Person", indicate your relationship with Plaintiff:

- parent of minor Plaintiff(s)
 applicant for appointment as guardian *ad litem* of minor Plaintiff(s)
 adult household member with minor Plaintiff(s)
 court appointed guardian of incompetent Plaintiff(s)

Se você marcou "Outra Pessoa", informe a relação com o (a) Requerente:

- pai de Requerente menor
 solicitante designado como tutor/curador *ad litem* de Requerente menor
 membro adulto da casa do (a) Requerente menor (es)
 tutor (a)/curador (a) judicial de Requerente (s) incompetente (s)

4. Name (s) of all persons, including minor child(ren), who seek protection from abuse:

4. Nome (s) de todas as pessoas, incluindo menor (es) que buscam proteção contra abuso:

5. Indicate the relationship between Plaintiff and Defendant:

CHECK ALL THAT APPLY:

- spouse or former spouse of Defendant
 parent of a child with Defendant
 current or former sexual or intimate partner with Defendant
 child of Plaintiff
 child of Defendant
 family member related by blood (consanguinity) to Defendant
 family member related by marriage or affinity to Defendant
 sibling (person who shares parenthood) of Defendant
 Check here if Defendant is 17 years old or younger.

5. Indique a relação entre Requerente e Réu:

MARQUE TODAS AS QUE SE APLICAREM

- cônjuge ou ex-cônjuge do (a) Réu (Ré)
 pai/mãe de menor com o (a) Réu (Ré)
 parceiro (a) sexual ou íntimo atual ou prévio do (a) Réu (Ré)
 filho (a) do (a) Requerente
 filho (a) do (a) Réu (Ré)
 membro da família por parentesco (consanguinidade) com o (a) Réu (Ré)
 membro da família por casamento ou afinidade do (a) Réu (Ré)
 irmão (ã) (pessoa que tem o mesmo pai ou mãe) que o (a) Réu (Ré)
 Marque aqui se o Réu (a Ré) tem 17 anos ou é menor de 17 anos.

6. Have Plaintiff and Defendant been involved in any of the following court actions?

- Divorce
- Custody
- Support
- Protection from Abuse

The above referenced actions were filed:

If you checked any of the above, briefly indicate when and where the case was filed and the court number, if known:

7. Has Defendant been involved in any criminal court action?

no

If you answered Yes, is Defendant currently on probation?

Has Defendant been determined to be a perpetrator in a founded or indicated report under the Child Protective Services Law, 23 Pa.C.S. §§ 6301 - 6386? no

If you answered Yes, what county's court or child protective services agency issued the founded or indicated report?

8. Plaintiff and Defendant are the parents of the following minor child/ren:

6. Requerente e Réu (Ré) estão envolvidos nas seguintes ações judiciais?

- Divórcio
- Guarda
- Pensão Alimentícia
- Restrição contra Abuso

As ações mencionadas acima foram registradas:

Se você marcou alguma das opções acima, indique brevemente quando e onde o caso foi submetido e o número da vara, se souber:

7. O (a) Réu esteve envolvido (a) em qualquer ação criminal?

NÃO

Se a resposta for sim, o Réu atualmente está em liberdade condicional?

O Réu foi considerado causador em denúncia justificada ou indicada sob a Lei de Serviços de Proteção à Criança, 23 Pa.C.S. §§ 6301 - 6386? no

Se a resposta for sim, em qual vara ou serviços de proteção à criança a denúncia foi submetida ou indicada?

8. O (a) Requerente e o (a) Réu (Ré) são os pais do (s) seguinte (s) menor (es):

Name(s) / Nome(s)	Age(s) / Idade(s)	Who reside at (list address unless confidential) / Os quais residem no seguinte endereço (informe o endereço a menos que seja confidencial)
 	 	
 	 	
 	 	
 	 	

9. If Plaintiff and Defendant are parents of any minor child/ren together, is there an existing court order regarding their custody?

- YES
- NO

If you answered "Yes," describe the terms of the order (e.g., primary, shared, legal or physical custody):

If you answered "Yes," in what county and state was the order issued?

If you are now seeking an order of child custody as part of this petition, list the following information:

(a) Where has each child resided during the past five years?

9. Se o (a) Requerente e o (a) Réu (Ré) forem pais de menor (es), há alguma decisão judicial em relação à guarda?

- SIM
- NÃO

Se você respondeu "Sim", descreva os termos da ordem (ex., custódia primária, compartilhada, legal ou física):

Se você respondeu "Sim", descreva em qual condado e estado a ordem foi emitida?

Se você estiver requerendo uma ordem de guarda de menor como parte desta Petição, dê as seguintes informações:

(a) Onde cada menor residiu durante os últimos cinco anos?

Child's Name / Nome do menor	Person(s) child lived with / Pessoa com a qual o menor morou	Address, unless confidential / Endereço, a menos que seja confidencial	When? / Quando?
 	 	 	
 	 	 	
 	 	 	
 	 	 	

(b) List any other persons who are known to have or claim a right to custody of each child listed above.

(b) Informe o nome de outras pessoas que se saiba ter direito de guarda ou que reivindicam direito à guarda de cada menor descrito acima.

Name / Nome	Address / Endereço	Basis of claim / Base da alegação

10. The following other minor child/ren presently live with Plaintiff:

10. O(s) outro(s) menor(es) a seguir atualmente moram com o(a) Requerente:

Name(s) / Nome(s)	Age(s) / Idade(s)	Plaintiff's Relationship to Child/ren / Relação/Parentesco. (a) Requerente com os Menores
Yasmin Brandao	7	daughter
Yam Brandao	4	son
TAN		

11. The facts of the most recent incident of abuse are as follows:

11. Os fatos do incidente de abuso mais recente são como se segue:

Approximate date: 12-24-20
 Approximate time: 9:30pm
 Place: 548 Powderhorn Rd, K of P
 Describe in detail what happened, including any physical or sexual abuse, threats, injury, incidents of stalking, medical treatment sought, or calls to law enforcement (attach additional sheets of paper if necessary):
After dinner, I put kids in bed, got back to kitchen, defendant started saying plaintiff was a bad person, pushed her from chair, threw all 6 plates on floor, kicked plaintiff twice, plaintiff got up and started going towards door, defendant grabbed a knife and ran towards plaintiff, who ran out the door
 →

Data aproximada: 12/24/20
 Hora aproximada: 9:30
 Local: 548 Powderhorn, K. of P.
 Descreva em detalhes o que aconteceu, incluindo quaisquer abusos físicos ou sexuais, ameaças, ferimentos, incidentes de perseguição, tratamento médico obtido ou ligações para autoridades policiais (anexe folhas adicionais de papel, se necessário):

Após jantar, requerente colocou as crianças para dormir, seu estava na cozinha mexendo no celular da requerente. Seu começou a dizer que requerente não prestava, e a destrubou da cadeira, quebrou os 6 pratos que estavam na mesa. Chutou a requerente 2 vezes e requerente ela ainda estava no chão. Requerente

12. If Defendant has committed prior acts of abuse against Plaintiff or the minor child/ren, describe these prior incidents, including any threats, injuries, or incidents of stalking, and indicate approximately when such acts of abuse occurred (attach additional sheets of paper if necessary):

Around may, after drinking, defendant pushed and plaintiff, pulled her hair, bit her lip. Early December he tried to strangle by holding her from back

12. Se o (a) Réu (Ré) cometeu atos anteriores de abuso contra o (a) Requerente ou contra o (s) menor (es), descreva estes incidentes anteriores, incluindo quaisquer ameaças, ferimentos, incidentes de perseguição, e indique aproximadamente quando tais atos de abuso ocorreram (anexe folhas adicionais de papel, se necessário):

Em maio, depois de beber, seu impurrou requerente, puxou cabelo e mordida labial. Em Dezembro tentou estrangular por segurando por tras.

13. (a) Has Defendant used or threatened to use any firearms or other weapons against Plaintiff or the minor child/ren? If so, please describe the use or threatened use below and list on Attachment A to Petition, which is incorporated by reference into this petition, any firearms, other weapons, or ammunition Defendant used or threatened to use against Plaintiff or the minor child/ren:

13. (a) O (a) Réu (Ré) usou ou ameaçou usar quaisquer armas de fogo ou outros tipos de armas contra o (a) Requerente ou o (s) menor (es)? Se sim, descreva abaixo o uso ou ameaça de uso de armas de fogo e outros tipos de armas, ou munição que o (a) Réu (Ré) usou ou ameaçou usar contra o (a) Requerente ou o (s) menor (es) e inclua no Anexo A da Petição, que será considerado como referência nesta Petição:

and started screaming
for neighbors help.

~~Plaintiff~~ Defendant ran
a little after but went
back home. Plaintiff went
back to the back of the
house and pulled children
from the window.

After almost one hour,
Plaintiff called her sister
who came to pick her and
children up, around

11:30 pm. Plaintiff
filled report on 12-27-20

levantou e começou a andar
para a porta. Foi pegar

uma faca e começou a
ir em direção a requerente,
que conseguiu sair da
casa e correr gritando
por ajuda, vizinhos não
ofereceram ajuda. Reu

voltou para casa e
requerente voltou por
trás da casa para tirar
as crianças pela janela.

Reu ligou para irmã
e avisado que foram
busca-la e Reu registrou
ocorrência em 12-27-20

Grabbed knife on 12-24-20

pegou uma faca em 12-24-20

(b) Other than the firearms, other weapons, or ammunition Defendant used or threatened to use against Plaintiff or the minor child/ren, does Defendant, to the best of your knowledge or belief, own or possess any additional firearm, other weapon, ammunition, or any firearm license?

Yes No

(b) Além de armas de fogo, outras armas, ou munição que o (a) Réu (Ré) usou ou ameaçou usar contra o (a) Requerente ou o (s) menor (es), o (a) Réu (Ré), salvo melhor crença e juízo, possui armas de fogo adicionais, outras armas, munição ou qualquer licença de armas de fogo?

Sim Não

(c) If the answer to (b) above is "yes," list any additional firearm, other weapon, or ammunition owned by or in the possession of Defendant on Attachment A to Petition, which is incorporated by reference into this petition.

(c) Se a resposta à (b) acima for "Sim", inclua armas de fogo, outras armas ou munição adicionais, de propriedade do (a) Réu (Ré) no Anexo A da Petição, que será considerado como referência nesta Petição.

(d) Plaintiff (Check one) DOES / DOES NOT request that the court order Defendant to relinquish firearms, other weapons, or ammunition listed on Attachment A to Petition. If Plaintiff does seek relinquishment, identify on Attachment A to Petition the firearms, other weapons, or ammunition Plaintiff requests the court to order Defendant to relinquish.

(e) O (a) Requerente (verifique um) REQUER / NÃO REQUER que o tribunal determine que o (a) Réu (Ré) abdique das armas de fogo, outras armas, ou munições informadas no Anexo A desta Petição. Se o (a) Requerente solicitar tal cessão, identifique no Anexo A da Petição de armas de fogo, outras armas ou munição que o (a) Requerente solicita que o tribunal determine que o (a) Réu (Ré) as entregue.

14. Identify the sheriff, police department, or law enforcement agency in the area in which Plaintiff lives that should be provided with a copy of the protection order: Upper merion pd

14. Identifique o delegado, departamento de polícia ou agência de cumprimento da lei na área onde o Requerente vive que devem receber uma cópia da ordem de restrição: Upper merion pd

15. There is an immediate and present danger of further abuse from Defendant. Yes

15. Há um perigo imediato e presente de mais abuso do(a) Réu (Ré). Sim

CHECK THE FOLLOWING BOXES ONLY IF THEY APPLY TO YOUR CASE AND PROVIDE THE REQUESTED INFORMATION:

MARQUE OS ESPAÇOS A SEGUIR SOMENTE SE ELES SE APLICAREM AO SEU CASO E DÊ AS INFORMAÇÕES SOLICITADAS:

Plaintiff is asking the Court to evict and exclude Defendant from the following residence: 548 Powderhorn Rd
 OWNED by (list owners, if known) King of Prussia

O (a) Requerente solicita que o tribunal despeje e exclua o (a) Réu (Ré) da seguinte residência: 548 Powderhorn Rd
 PRÓPRIA (listar proprietários, se conhecidos) King of Prussia

RENTED by (list all names, if known) Deborah Brandão + Danilo Cavalcante

ALUGADA (listar todos os nomes, se conhecidos) Deborah Brandão e Danilo Cavalcante

Defendant owes a duty of support to Plaintiff or the minor child/ren.

O (a) Réu (Ré) tem o dever sustentar o (a) Requerente ou o (s) menor (es).

Plaintiff has suffered out-of-pocket financial losses as a result of the abuse described above.

O (a) Requerente sofreu perdas financeiras não reembolsáveis como resultado do abuso descrito acima.

Those losses are: household items, work days

Estas perdas são: household items, work days, itens da casa, dias de trabalho

FOR THE REASONS SET FORTH ABOVE, I REQUEST THAT THE COURT ENTER A TEMPORARY ORDER, AND AFTER A HEARING, A FINAL ORDER THAT WOULD DO THE FOLLOWING (CHECK ALL FORMS OF RELIEF REQUESTED):

PELAS RAZÕES DEFINIDAS ACIMA, VENHO SOLICITAR A ESTE TRIBUNAL UMA ORDEM JUDICIAL TEMPORÁRIA E QUE DEPOIS DA AUDIÊNCIA, UMA ORDEM JUDICIAL PERMANENTE A FIM DE REQUERER O SEQUINTE (MARQUE TODAS AS FORMAS DE REPARAÇÃO SOLICITADAS):

GRANTED

A. Restrain the Defendant from abusing, harassing, stalking, threatening, or attempting or threatening to use physical force against Plaintiff or the minor child/ren in any place where Plaintiff or the child/ren may be found.

A. Impedir o (a) Réu (Ré) de abusar, assediar, perseguir, ameaçar ou tentar usar força física contra o Requerente ou menor em qualquer lugar em que o Requerente ou menor possam ser encontrados.

B. Evict/exclude the Defendant from Plaintiff's residence and prohibit Defendant from attempting to enter any temporary or permanent residence of Plaintiff.

B. Despejar/excluir o (a) Réu (Ré) da residência do (a) Requerente e proibir o (a) Réu (Ré) de tentar entrar em qualquer residência temporária ou permanente do (a) Requerente.

C. Require Defendant to provide Plaintiff or the minor child/ren with other suitable housing.

C. Exigir que o (a) Réu (Ré) providencie ao (à) Requerente ou ao (s) menor (es) moradia adequada.

D. Award Plaintiff temporary custody of the minor child/ren and place the following restrictions on contact between Defendant and the child/ren:

D. Conceder ao (à) Requerente a guarda temporária do (s) menor (es) e colocar as seguintes restrições de contato entre o (a) Réu (Ré) e o (s) menor (es).

E. Prohibit Defendant from having any contact with Plaintiff or the minor child/ren, in person, by telephone, or in writing, personally or through third persons, including but not limited to any contact at Plaintiff's school, business, or place of employment, except as the court may find necessary with respect to partial custody with the minor child/ren.

E. Proibir o (a) Réu (Ré) de ter qualquer contato com o (a) Requerente ou o (s) menor (es), em pessoa, por telefone, por escrito, pessoalmente ou por meio de terceiros, incluindo, mas não se limitando a qualquer contato com a escola, negócio ou local de trabalho do (a) Requerente, exceto conforme o tribunal determinar necessário com respeito à guarda parcial do (s) menor (es).

F. Prohibit Defendant from having any contact with Plaintiff's relatives and Plaintiff's child/ren listed in this Petition, except as the court may find necessary with respect to partial custody with the minor child/ren. The following persons are Plaintiff's relatives or family and household members that Plaintiff believes require protection from stalking and harassment by Defendant.

F. Proibir o (a) Réu (Ré) de ter qualquer contato com parentes do (a) Requerente e os filhos do (a) Requerente descritos (a)s nesta Petição, exceto com os quais a vara determinar necessário com respeito à guarda parcial de menor (es). As seguintes pessoas são parentes ou familiares do (a) Requerente e membros da casa os quais o (a) Requerente acredita precisarem de proteção contra perseguição e assédio por parte do (a) Réu (Ré).

Name / Nome	Address / Endereço	Relationship to Plaintiff / Parentesco com o (a) Requerente

G. Order Defendant to temporarily relinquish the firearms, other weapons, or ammunition listed on Attachment A to Petition under Defendant's control, or in Defendant's possession, or any firearm license to the sheriff or the appropriate law enforcement agency.

G. Exigir que o (a) Réu (Ré) temporariamente entregue as suas armas de fogo, outras armas e/ou munição descritas no Anexo A sob controle do Réu, ou posse do Réu, ou qualquer licença de porte de arma de fogo ao delegado ou agência adequada de cumprimento da lei.

H. Prohibit Defendant from acquiring or possessing firearms for the duration of the order.

H. Proibir o Réu de adquirir ou ter posse de armas de fogo pela duração da ordem.

I. Order Defendant to pay temporary support for Plaintiff or the minor child/ren, including medical support and payment of the rent or mortgage on the residence.

I. Exigir que o (a) Réu (Ré) pague pensão temporária ao (à) Requerente ou a (os) menor (es), inclusive assistência médica e pagamento de financiamento ou aluguel da residência.

J. Direct Defendant to pay Plaintiff for the reasonable financial losses suffered as the result of the abuse, to be determined at the hearing.

J. Supervisionar que o (a) Réu (Ré) pague ao (à) Requerente os prejuízos financeiros sofridos como resultado de abuso, a ser determinado na audiência.

K. Order Defendant to pay the costs of this action, including filing and service fees.

L. Order Defendant to pay Plaintiff's reasonable attorney's fees.

M. Order the following additional relief, not listed above:

HE PAY 1 MONTH RENT

N. Grant such other relief as Plaintiff requests or the court deems appropriate.

O. Order the police, sheriff, or other law enforcement agency to serve Defendant with a copy of this petition, any order issued, and the order for hearing. Plaintiff will inform the designated authority of any addresses, other than Defendant's residence, where Defendant can be served.

P. Direct the Pennsylvania State Police, the municipal police, or the sheriff to accompany Plaintiff to his or her residence to retrieve personal belongings or accompany Plaintiff while the petition or order is served on Defendant, if Plaintiff has reason to believe his or her safety is at risk.

VERIFICATION

I verify that I am the petitioner as designated in the present action and that the facts and statements contained in the above Petition are true and correct to the best of my knowledge.

I understand that any false statements are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

12/29/20

Date / Data

K. Exigir que o (a) Réu (Ré) pague as custas processuais desta ação, incluindo taxas de registro e serviços.

L. Exigir que o (a) Réu (Ré) pague honorários razoáveis aos advogados do (a) Requerente.

M. Exigir as seguintes reparações adicionais não descritas acima:

Ele pague 1 mês de aluguel

N. Conceder demais reparações conforme solicitação do (a) Requerente e/ou o tribunal determinar apropriado.

O. Exigir que a polícia, ou outra autoridade de aplicação da lei apresente uma intimação ao (a) Réu (Ré), com cópia desta Petição e quaisquer ordens judiciais e Intimação de Audiência. O (a) Requerente informará às autoridades competentes designadas qualquer endereço, além da residência do (a) Requerente, onde o (a) Réu (Ré) possa ser intimado.

P. Direcionar a Polícia Estadual de Pensilvânia, a polícia municipal ou delegado para acompanhar o Requerente à sua residência para coletar seus pertences pessoais ou acompanhar o Requerente enquanto a petição ou ordem estiverem sendo executadas a ele, ou se o Requerente tiver motivos para acreditar que sua segurança está em risco.

VERIFICAÇÃO

Declaro ser o (a) Requerente conforme designado na atual ação judicial e que os fatos e declarações contidos na Petição acima são verdadeiros e corretos pelo que seja do meu conhecimento.

Entendo que quaisquer declarações falsas feitas às autoridades estarão sujeitas às penalidades da Lei 18 Pa.C.S. §4904, no que diz respeito à falsificação não-juramentada.

Deborah Brandão

Signature / Assinatura

EXHIBIT D



UPPER MERION TOWNSHIP POLICE

20-26552

12/30/2020

Incident Report Form

PROTECTION FROM ABUSE ORDER RE

Primary Officer: **ANDREW KOHLER - 2738**

- | | | | | |
|--|--|--|--|--|
| <input type="checkbox"/> Juvenile Involved | <input type="checkbox"/> Investigation | <input type="checkbox"/> Video Available | <input type="checkbox"/> Gang Related | <input type="checkbox"/> Paperless |
| <input type="checkbox"/> Domestic Related | <input type="checkbox"/> Suspects | <input type="checkbox"/> Bias Crime | <input type="checkbox"/> Accident | <input type="checkbox"/> Administrative |
| <input type="checkbox"/> Alcohol Involved | <input type="checkbox"/> Arrests Made | <input type="checkbox"/> Drugs Involved | <input type="checkbox"/> Ready for DA / Prosecutor | <input type="checkbox"/> Alarm Activated |

Log Number 20-26552	Incident Number	File Number	Case Number	UCR
-------------------------------	-----------------	-------------	-------------	-----

Incident Type PFA	Dispatcher kontra	Source WALK	District 04	Status RPTCOM
-----------------------------	-----------------------------	-----------------------	-----------------------	-------------------------

Incident Date / Times Incident Occurred At or Between

Date Received 12/30/2020	Day Rec'd Wednesday	Rcvd 1834	Disp 1912	Arrv 1912	Cird 1938	Earliest Date and Time 12/30/2020 1843 (Wednesday)	Latest Date and Time
------------------------------------	-------------------------------	---------------------	---------------------	---------------------	---------------------	--	----------------------

Disposition CFS	Cleared by Exception	<input type="checkbox"/> Suspended
---------------------------	----------------------	------------------------------------

UCR Clearance	UCR Occur Date	UCR Clear Date	UCR Count	UCR Human Traffic Code	UCR HT Count 0
---------------	----------------	----------------	-----------	------------------------	--------------------------

Location Intersection

548 POWDERHORN RD KING OF PRUSSIA PA 19406	Cross Street	
Municipality: Upper Merion Township	GPS Loc X 0	GPS Loc Y 0

Business Name	Premise Code HOME	Arson Value
	PRIVATE RESIDENCE	

Gang	Weather
------	---------

Modus Operandi Coding	Victim:
Entry:	Property:
Exit:	Area: DISTRICT 4 RESIDENTIAL 4R
Method:	Time of Day: EVENING (5 PM TO 9 PM) EVE

WEAPON USED:

Caller / Complainant Type Normal Anonymous Hangup Refused

INVOLVED PERSONS

PFA DEFENDANT Name (Last, First, Middle): Address: CAVALCANTE, DANILU SOUZA 548 POWDERHORN RD KING OF PRUSSIA PA 19406	Juven <input type="checkbox"/>	Date of Birth	Age	Race W	Sex M	Ethnic H	State Security Number
	Weight	Height	Hair	Eyes	Phone Number		
	Driver License Number		State	Class	Expiration Date		
	ID Provided		ID Detail				
	Link Comments						

UPPER MERION TOWNSHIP POLICE

20-26552
12/30/2020

Incident Report Form

PROTECTION FROM ABUSE ORDER RE

INVOLVED PERSONS

Name (Last, First, Middle) - Address BRANDAO, DEBORAH EVANGELISTA 548 POWDERHORN RD KING OF PRUSSIA PA 19406	Juvs	Date of Birth	Age	Race	Sex	Ethnic	Social Security Number
	<input type="checkbox"/>			W	F	H	
	Weight	Height	Hair	Eyes	Phone Number		
					(484) 949-3735		
	Driver License Number	State	Class	Expiration Date			
ID Provided	ID Detail						

Link Comments

RESPONDING / INVOLVED UNITS, OFFICERS, TIMES

Division Supervisor / ID

Agency Numbers	Units & Times
UM UM-20-25645	506 DISP 19:12:06 ARRV 19:12:07 CLRD 19:38:50
	410 DISP 19:32:47 ARRV 19:32:48 CLRD 19:38:49

COMMENTS / NARRATIVES

Title Police Dispatch	
Narrative Created By / Creation Date KEVIN BEHRENS	12/30/2020 Narrative Updated By / Update On
Narrative Approved By / Approved Date	

Input: kontra 12/30/2020 18:42:56 Edited: kontra 12/30/2020 18:42:56
PFA RECEIVED FROM PLTF - DEBORAH EVANGELISTA BRANDAO VS DEFT DANILO SOUZA CAVALCANTE

Input: kontra 12/30/2020 18:43:18 Edited: kontra 12/30/2020 18:43:18
FEMALE STATING MALE HALF IS STILL AT THE RESIDENCE - HE HAS NOT BEEN SERVED YET

COMMENTS / NARRATIVES

Title INITIAL REPORT	
Narrative Created By / Creation Date ANDREW KOHLER	12/31/2020 Narrative Updated By / Update On COLLEEN BALE
Narrative Approved By / Approved Date 01/04/2021	

On 12/30/20 at 1900 hours I spoke with Deborah Brandao through the use of translator at UM Station. She had just obtained a PFA and needed it served to her boyfriend, Danilo Cavalcante, at their residence at 548 Powderhorn Rd, King of Prussia, PA, 19406. I attempted to serve the PFA at the residence but he was not home. She believed he could be at his sister's house at 1107 Lane Ave, Pheonixville so I faxed the PFA to Pheonixville PD and spoke with Officer Clemens who stated they would attempt service at the residence. He called UM Station later in the evening to report that he was not at the residence.

No further police action.

COMMENTS / NARRATIVES

20-26552
IRF 1.6

12/30/2020



APPROVED BY: JONATHAN JIMENEZ
APPROVED ON: 12/31/2020

PAGE 2

Print Date/Time 04/18/2021 18:40:54

UPPER MERION TOWNSHIP POLICE

20-26552

Incident Report Form

12/30/2020

PROTECTION FROM ABUSE ORDER RE

COMMENTS / NARRATIVES

Title

SUPPLEMENTAL

Narrative Created By / Creation Date

12/31/2020

Narrative Updated By / Update On

01/04/2021

CONNOR WALSH

COLLEEN BALE

Narrative Approved By / Approved Date

On Thursday December 31, 2020 at 1910 hours I spoke to Montgomery County Dispatcher 627 regarding the PFA for Danilo Cavalcante. I advised the dispatcher that UMPD and Phoenixville PD had made several attempts to serve the PFA but were unsuccessful. Dispatcher 627 advised that the information would be passed along to the Montco Sheriff's Office. A copy of the PFA was submitted to records.

COMMENTS / NARRATIVES

Title

SUPPLEMENTAL

Narrative Created By / Creation Date

01/04/2021

Narrative Updated By / Update On

01/04/2021

COLLEEN BALE

COLLEEN BALE

Narrative Approved By / Approved Date

TEMP. PROTECTION FROM ABUSE ORDER #2020-21415

Temporary Protection from Abuse Order for **DEBORAH EVANGELISTA BRANDAO** against **DANILO SOUZA CAVALCANTE**.

Order effective date: **12/29/2020**, Order expiration date: **12/29/2023**.

Hearing date scheduled for: **02/01/2021**.

A copy of this order can be found under the Attachment Tab of the Master Name File for the Plaintiff and the Defendant and under the assigned Incident Number, **20-26552** (cab 01/04/2021)



UPPER MERION TOWNSHIP POLICE
INCIDENT REPORT CONTACT SHEET

20-26552
12/30/2020

(Most Current Address / Phone Data)

PROTECTION FROM ABUSE ORDER RE

1 **Name: BRANDAO, DEBORAH EVANGELISTA**
Address: **548 POWDERHORN RD**
 KING OF PRUSSIA PA 19406
Phones: **(484) 949-3735**

Driver Lic: D/L State: **PA** D/L Class: **<DRLIC_CLASS>** D/L Expires:
Marital Status: Email Address:
Deceased?: Date of Death: Name Record Last Updated: **01/21/2021 09:03:09**

2 **Name: CAVALCANTE, DANILO SOUZA**
Address: **548 POWDERHORN RD**
 KING OF PRUSSIA PA 19406
Phones:

Driver Lic: D/L State: **PA** D/L Class: **<DRLIC_CLASS>** D/L Expires:
Marital Status: Email Address:
Deceased?: Date of Death: Name Record Last Updated: **01/21/2021 09:03:13**

EXHIBIT E

UPPER MERION TOWNSHIP POLICE

21-01216

01/20/2021

Incident Report Form

SUSPICIOUS ACTIVITY

Primary Officer: JAMIE WEST - 1983

- | | | | | |
|--|--|--|--|--|
| <input type="checkbox"/> Juvenile Involved | <input type="checkbox"/> Investigation | <input type="checkbox"/> Video Available | <input type="checkbox"/> Gang Related | <input type="checkbox"/> Paperless |
| <input type="checkbox"/> Domestic Related | <input type="checkbox"/> Suspects | <input type="checkbox"/> Bias Crime | <input type="checkbox"/> Accident | <input type="checkbox"/> Administrative |
| <input type="checkbox"/> Alcohol Involved | <input type="checkbox"/> Arrests Made | <input type="checkbox"/> Drugs Involved | <input type="checkbox"/> Ready for DA / Prosecutor | <input type="checkbox"/> Alarm Activated |

Log Number 21-01216	Incident Number	File Number	Case Number	UCR
------------------------	-----------------	-------------	-------------	-----

Incident Type SUSPICIOUS ACTIVITY	Dispatcher gwynn	Source PHN	District 04	Status RPTCOM
--------------------------------------	---------------------	---------------	----------------	------------------

Incident Date / Times Incident Occurred At or Between

Date Received 01/20/2021	Day Rec'd Wednesday	Rcvd 1928	Disp 1932	Arrv 1935	Clrd 2016	Earliest Date and Time	Latest Date and Time
-----------------------------	------------------------	--------------	--------------	--------------	--------------	------------------------	----------------------

Disposition CLOSE CASE CLOSED / INACTIVE	Cleared by Exception	<input type="checkbox"/> Suspended
--	----------------------	------------------------------------

UCR Clearance	UCR Occur Date	UCR Clear Date	UCR Count	UCR Human Traffic Code	UCR HT Count 0
---------------	----------------	----------------	-----------	------------------------	-------------------

Location Intersection

548 POWDERHORN RD KING OF PRUSSIA PA 19406	Cross Street
---	--------------

Municipality: Upper Merion Township	GPS Loc X 0	GPS Loc Y 0
-------------------------------------	----------------	----------------

Business Name	Premise Code HOME PRIVATE RESIDENCE	Arson Value
---------------	---	-------------

Gang	Weather
------	---------

Modus Operandi Coding	Victim:
Entry:	Property:
Exit:	Area:
Method:	Time of Day:

WEAPON USED:

Caller / Complainant Type Normal Anonymous Hangup Refused

INVOLVED PERSONS

COMPLAINANT		Juvenile <input type="checkbox"/>		Date of Birth		Age	Race	Sex	Ethnic	Social Security Number
Name (Last, First, Middle) Address		Weight	Height	Hair	Eyes	Phone Number				
BRANDAO, DEBORAH EVANGELISTA						(484) 949-3735				
548 POWDERHORN RD		Driver License Number		State	Class	Expiration Date				
KING OF PRUSSIA PA 19406		ID Provided		ID Detail						

Link Comments

UPPER MERION TOWNSHIP POLICE

Incident Report Form

21-01216
01/20/2021
SUSPICIOUS ACTIVITY

INVOLVED PERSONS

SUSPECT Name (Last, First, Middle) - Address CAVALCANTE, DANILO SOUZA 548 POWDERHORN RD KING OF PRUSSIA PA 19406	Juvenile	Date of Birth	Age	Race	Sex	Ethnic	Social Security Number	
	<input type="checkbox"/>			W	M	H		
	Weight	Height	Hair	Eyes	Phone Number			
	Driver License Number				State	Class	Expiration Date	
	ID Provided				ID Detail			

Link Comments

RESPONDING / INVOLVED UNITS, OFFICERS, TIMES

Divisio Supervisor / ID

Agency Numbers	Units & Times
UM UM-21-01150	307 DISP 19:32:42 ARRV 19:35:24 CLRD 19:39:20
	305 DISP 19:32:48 CLRD 19:33:02
	308 DISP 19:32:48 ARRV 19:35:10 CLRD 19:44:06
	306 DISP 19:32:48 CLRD 20:00:54
	303 DISP 19:36:13 CLRD 20:08:35

COMMENTS / NARRATIVES

Title Police Dispatch	
Narrative Created By / Creation Date MICHAEL GWYNN	01/20/2021 Narrative Updated By / Update On
Narrative Approved By / Approved Date	

Input: gwynn 01/20/2021 19:36:19 Edited: gwynn 01/20/2021 19:36:19
NO ENGLISH

Input: gwynn 01/20/2021 19:36:42 Edited: gwynn 01/20/2021 19:36:42
ALL WE COULD GET FROM YOUNG CHILD IS THAT THEY NEED POLICE IMMED

Input: gwynn 01/20/2021 19:48:07 Edited: gwynn 01/20/2021 19:48:07
307 OPEN DOORS

COMMENTS / NARRATIVES

Title INITIAL REPORT	
Narrative Created By / Creation Date JAMES H SIEGFRIED	01/20/2021 Narrative Updated By / Update On COLLEEN BALE
Narrative Approved By / Approved Date	

On Wednesday, January 20, 2021, at 1936 Hours, UMPD responded to reports of Suspicious Activity at

UPPER MERION TOWNSHIP POLICE

21-01216

01/20/2021

Incident Report Form

SUSPICIOUS ACTIVITY

548 Powderhorn Rd, in the Valley Forge Homes section of Upper Merion Township.

Upon arrival, we spoke with the resident, Complainant/Brandao. Complainant stated that she left the residence at approximately 0600 Hours, with her two children. Complainant returned at approximately 1930 Hours and found the front door, unlocked and open. UMPD searched the interior of the home and all appeared in order. The door lock appeared to function properly and there was no evidence of forced entry. Complainant stated that nothing was missing or out of place.

Complainant advised that the residence is a rental property. Complainant also advised that she has a PFA issued against her boyfriend, Suspect/Cavalcante. Complainant advised that Cavalcante might have a key to the residence. There was no evidence to suggest that Cavalcante had entered the property today. I urged Complainant to contact her Landlord and request that the locks be changed. Complainant is Portuguese and speaks little English. Communication was possible thru her daughter and a Translation Phone App.

At approximately 2200 Hours, I received a email from Complainant. Complainant advised that there appeared to be some type of issue regarding the batteries in the Security Panel.

Deborah Brandao <deborahbrandao859@gmail.com>

Good night, you came here at my house tonight at 548 powderhorn Rd, and that now when I went to activate the alarm, he has the batteries changed, someone changed the batteries, I always disable when I wake up and leave, now I went to activate and I wasn't calling, and when I saw it, the battery was changed, you saw that my children are small and they can't reach it, and not to mention that we arrived together, it wasn't my children or me.

A note was placed on the daily Log requesting extra patrols.

COMMENTS NARRATIVES

Title

SUPPLEMENTAL

Narrative Created By / Creation Date

ELBERT V LEE

01/21/2021

Narrative Updated By / Update On

ELBERT V LEE

03/04/2021

Narrative Approved By / Approved Date

On January 21, 2021 I sent an email and a voice mail to Brandao in Portuguese suggesting that she contact her landlord and request having the locks changed. I also suggested that she look into installing some type of surveillance camera on the interior or exterior of her home. I later spoke with Brandao through her grade school daughter who translated. Brandao said that she had spoken to her landlord who was not willing to change the locks for her. In a subsequent communication I informed Brandao that UMPD could temporarily install a hidden surveillance camera inside her home that would solely be focused on the front door. Brandao said that she would be interested in that install.

After our initial conversation I made additional attempts to speak with Brandao by telephone and also visiting her residence in regards to setting up a date for the camera install. Brandao did not answer any of my phone calls or respond to any of my emails. I eventually was able to speak with Brandao who said that since the PFA was filed against Danilo Calvalcante there have been no violations of the order. Brandao also stated there have been no additional suspicious incidents that have occurred at her home or elsewhere. Brandao informed me that she will be moving out of her residence at the end of March. As a result of these factors no surveillance camera will be set up in Brandao's home and she will notify UMPD if any additional problems arise.

21-01216

01/20/2021



APPROVED BY: JARED REINER

APPROVED ON: 01/21/2021

PAGE 3

IRF 1.6

Print Date/Time 04/18/2021 19:38:22

UPPER MERION TOWNSHIP POLICE

21-01216

Incident Report Form

01/20/2021

SUSPICIOUS ACTIVITY

CASE CLOSED/INACTIVE

21-01216

01/20/2021



APPROVED BY: JARED REINER

PAGE 4

IRF 1.8

APPROVED ON: 01/21/2021

Print Date/Time 04/18/2021 19:38:22

**UPPER MERION TOWNSHIP POLICE
INCIDENT REPORT CONTACT SHEET**

21-01216

01/20/2021

SUSPICIOUS ACTIVITY

(Most Current Address / Phone Data)

1 **Name: BRANDAO, DEBORAH EVANGELISTA**
Address: **548 POWDERHORN RD**
 KING OF PRUSSIA PA 19406
Phones: **(484) 949-3735**

Driver Lic: D/L State: **PA** D/L Class: **<DRLIC_CLASS>** D/L Expires:
Marital Status: Email Address:
Deceased?: Date of Death: Name Record Last Updated: **01/21/2021 09:03:09**

2 **Name: CAVALCANTE, DANILO SOUZA**
Address: **548 POWDERHORN RD**
 KING OF PRUSSIA PA 19406
Phones:

Driver Lic: D/L State: **PA** D/L Class: **<DRLIC_CLASS>** D/L Expires:
Marital Status: Email Address:
Deceased?: Date of Death: Name Record Last Updated: **01/21/2021 09:03:13**

APPENDIX H

COMMONWEALTH OF PENNSYLVANIA

IN THE COURT OF COMMON PLEAS

CHESTER COUNTY,
PENNSYLVANIA

vs.

CRIMINAL

DANELO CAVALCANTE

NO. CR-2951-2021

**DEFENSE RESPONSE TO COMMONWEALTH'S MOTION SEEKING TO ADMIT
OUT OF COURT STATEMENTS UNDER TENDER YEARS, 42 PA.C.S.A §5985.1,
AND PRIOR BAD ACTS, PA.R.E. 404(B)**

The Defendant, by and through his attorneys, Nellie Verduci and Sameer Barkawi, Assistant Public Defenders of Chester County, respectfully represents the following:

1. On June 12, 2023, the Commonwealth filed a Motion, seeking to provide notice of its intent to introduce evidence under both the Tender Years Exception, as well as specific prior bad acts under Pa.R.E. 404(b).
2. The Defense objects to the Commonwealth being permitted to admit statements under the Tender Years Exception on the following grounds:
 - (a) The Defense seeks clarification and confirmation that the Commonwealth is only seeking to admit statements by “daughter Y.B.” as opposed to “son Y.B.;
 - (b) Some of the statements sought to be introduced will also fall under prior bad acts evidence, subject to 404(b)(1), that the Defense objects to on the grounds stated below;
 - (c) Neither child has been ruled competent, or incompetent, to testify, and as such, the determination as to their availability or unavailability as witnesses is as of yet unknown¹.
3. The Defense objects to the Commonwealth being permitted to introduce evidence of prior bad acts under Pa.R.E. 404(b) on the following grounds:
 - (a) Pa.R.E. 404(b)(1) prohibits the use of evidence of other crimes, wrongs, or acts to prove a person's character;

¹ This determination, while not dispositive as to determination of reliability and admissibility, is also a factor to be considered when determining the reliability of the out of court statements sought to be introduced.

- (b) The Commonwealth failed to state with any particularity the specific exception or purpose for admission of any of the purported prior bad acts²;
 - (c) The prior bad acts the Commonwealth seeks to introduce are highly prejudicial, outweighing any relevance they may have in relation to the case at bar³;
4. Defense counsel also seeks to reserve the ability to amend or include oral objections at or before the currently scheduled pretrial hearing, should more information become available.

WHEREFORE, the Defendant respectfully requests this Honorable Court to bar the Commonwealth from admitting statements under either the Tender Years Exception or evidence of prior bad acts under Pa.R.E. 404(b).

Respectfully submitted,

BY: 

Nellie Verduci
Assistant Public Defender

BY: 

Sameer M. Barkawi
Assistant Public Defender

² Pa.R.E. 404(b)(2), contains a non-exhaustive list of purposes, other than proving character, for which a person's other crimes, wrongs, or acts may be admissible.

³ Pa.R.E. 404(b)(2) requires the probative value of the evidence to outweigh its potential for prejudice. When weighing the potential for prejudice of evidence of other crimes, wrongs, or acts, the trial court may consider whether and how much such potential for prejudice can be reduced by cautionary instructions. See Commonwealth v. LaCava, 666 A.2d 221 (Pa. 1995). When evidence is admitted for this purpose, the party against whom it is offered is entitled, upon request, to a limiting instruction. See Commonwealth v. Hutchinson, 811 A.2d 556 (Pa. 2002).

COMMONWEALTH OF PENNSYLVANIA

IN THE COURT OF COMMON PLEAS

CHESTER COUNTY,
PENNSYLVANIA

vs.

CRIMINAL

DANELO CAVALCANTE

NO. CR-2951-2021

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of July, 2023, I served the foregoing Defense Response to Commonwealth's Motion Seeking to Admit Out of Court Statements Under Tender Years, 42 Pa.C.S.A §5985.1, and Prior Bad Acts, Pa.R.E. 404(b):

Deborah S. Ryan, Esq.
District Attorney
Chester County District Attorney's Office
201 W. Market Street, Suite 4450
West Chester, PA 19380-0991
By Hand Delivery

The Honorable Patrick Carmody
Judge's Chambers
201 W. Market Street, Suite 4450
West Chester, PA 19380-0991
By Hand Delivery

cc: Zachary Yurick, Esq.
Monica Szyszkiewicz, Esq.

RECEIVED
JUL 11 PM 3:04
CLERK OF COURT'S
CHESTER CO. PA.



Sameer M. Barkawi
Assistant Public Defender
Chester County Public Defender's Office
201 W. Market Street
West Chester, PA 19380
610-344-6940

APPENDIX I

COMMONWEALTH OF PENNSYLVANIA

IN THE COURT OF COMMON PLEAS

CHESTER COUNTY,
PENNSYLVANIA

vs.

CRIMINAL

DANELO CAVALCANTE

NO. CR-2951-2021

**DEFENSE'S ADDITIONAL RESPONSE TO COMMONWEALTH'S MOTION
SEEKING TO ADMIT OUT OF COURT STATEMENTS PRIOR BAD ACTS, P.A.R.E.
404(B) AND MOTION IN LIMINE TO PERMIT THE ADMISSION AND
PUBLICATINO OF TEXT MESSAGES AND OTHER COMMUNICATIONS**

AND NOW, COMES the Defendant, by and through his attorneys, Nellie Verduci and Sameer Barkawi, Assistant Public Defenders of Chester County, objects to portions of the Commonwealth's motions seeking the admission of particular evidence and avers as follows:

I. COMMONWEALTH'S REQUEST

The Commonwealth filed multiple motions seeking the admission of evidence, pursuant to providing notice to Defense Counsel of its intent to do so. Specifically, the Commonwealth filed the following motions: *Motion in Limine* to Permit the Admission and Publication of Text Messages and Other Communications (herein referred to as and *Motion in Limine* to Admit Evidence of Other Crimes, Wrongs, or acts Pursuant to Pennsylvania Rule of Evidence 404(b)).¹

II. DEFENSE ARGUMENT

1. *Motion in Limine* to Permit the Admission and Publication of Text Messages and Other Communications

In its motion, the Commonwealth points to four (4) specific communications it is seeking to admit, and provides context necessary to authenticate the messages. These categories are

¹ The Commonwealth filed two additional motions, however, the Defense is not briefing its objections in this response pursuant to general objections contained in a previous motion, and the scheduled hearing on July 25, 2023, on the pending motions.

represented as “prior abuse,” cheating allegations,” “owing the defendant money,” and “notifying the police and the PFA.”

Any authenticated text messages or communications from the Defendant would fall under the exception cited, a statement by a party opponent, namely the Defendant. However, the Commonwealth relies on a single case to justify the admission of the texts and communications purported to be that of the victim, as an exception to the rule against hearsay, in Commonwealth v. Williams, 241 A.3d 1094, 1104 (Pa.Super. 2020). The Court in Williams, found that the texts from victim in the offered exchanges were not being offered for the truth of the matter, but rather to “put [Appellant’s] text messages in context and to show his responses toward the victim.” The main focus of the Court, and purported basis for the admissibility of the victim’s messages was to show the Appellant’s response, rather than any substantive content.

In the Commonwealth’s motion, they specifically cite to texts that are only of that from the victim, and have no responses from the Defendant. While it is conceded that the proffered exchanges are examples only, it is crucial to the Court’s decision that the Commonwealth provides some other offered purpose for the texts from the victim other than to prove the matter asserted in the message actually occurred.

2. Motion in Limine to Admit Evidence of Other Crimes, Wrongs, or acts Pursuant to Pennsylvania Rule of Evidence 404(b)

The Commonwealth’s motion specifically points to eight (8) prior instances that it seeks to admit at trial. Specifically, “(1) the defendant's prior domestic violence and physical assaults on the victim; (2) the defendant's threats to kill the victim; (3) the injuries victim previously sustained from the defendant; (4) photographs of the victim's injuries that occurred from the defendant's assaults; (5) the victim's PFA against the defendant; (6) the victim's statements that she feared the defendant and wanted to end their relationship; (7) the defendant's prior use of a knife to threaten the victim; and (8) the victim's statements that she would tell the police about the defendant and that he was wanted for murder in Brazil.” Additionally, the Commonwealth has provided notice it seeks to introduce an additional prior bad act in the form of the Defendant’s status as an undocumented person. The Commonwealth cites to several cases that it suggests stand for the proposition that would provide this court large latitude in the admissibility of the prior bad acts it seeks to admit.

In Commonwealth v. Jackson, 900 A.2d 936 (Pa.Super. 2006), the evidence at issue only included PFA orders and subsequent violations, as well as observations made by police. The police were able to testify to specific instances when they were present at the home of the Appellant and victim in the case, and could testify to first-hand accounts and in-person observations. Additionally, the Commonwealth cites Commonwealth v. Drumheller, 808 A.2d 893 (Pa. 2002), for further support. In Drumheller the evidence at issue was four PFA petitions, as well as physical observations by witnesses of bruising that appeared on the victim in the case. Commonwealth v. Passmore, 857 A.2d 697 (Pa.Super. 2004), similar to the above cases, allowed for the admission of Appellant's prior conviction for simple assault of the victim, as well as emails sent by the Appellant to the victim. None of these cases cited explicitly allow for the admission of the type or scope of hearsay statements that the Commonwealth intends to offer for their cited basis: "[e]vidence of prior abuse between a defendant and an abused victim is generally admissible to establish motive, intent, malice, or ill-will."

The Commonwealth seeks to admit hearsay under the exception of the victim's then-existing state of mind, and cites to Commonwealth v. Chandler, 721 A.2d 1040 (Pa. 1998) and Commonwealth v. Sneeringer, 668 A.2d 1167 (Pa.Super. 1995) for support. The cases and proffered evidence are distinguishable from the instant case, specifically as it relates to the nature of the hearsay statements made by decedent. In Chandler, the victims statements were limited to her negative feelings about the Appellant and her marriage to him. Similarly, the context of Sneeringer was the victim's state of mind on the status of the marriage. The Commonwealth is seeking to admit the out-of-court statements of alleged abuse, and calling it evidence of state of mind.

The Commonwealth intends to argue that the victim's state of mind is relevant as a motive. Defense argues that the state of mind of the victim is not relevant to any of the proposed charges. The Commonwealth has contended that there are several "Where, however, the declarant's state of mind is not a factor at issue in the case, the declarant's statement is immaterial and irrelevant to the prosecution's case. Commonwealth v. Thornton, 431 A.2d 248 (Pa. 1981)." The Court went further in its analysis of the state of mind exception:

It is true that the declaration perhaps tends to establish that the [declarant-victim] was fearful of the Thorntons. However, the [declarant-victim's] state of mind was not a matter in issue in this case. It was appellant's state of mind, not that of the

victim, which was material to establish the degree of guilt, if any, on the charge of criminal homicide.

Only when the declaration is considered for the truth of the matter asserted, that appellant and his brother “were after” the [declarant-victim], does the declaration become relevant, that is, both material to and probative of appellant's intent to kill. However, when considered for its substantive truth, the declaration, although relevant, is incompetent and hence inadmissible because it is hearsay not within any exception. Thus, appellant's objection to admission of the declaration should have been sustained and the testimony excluded.

Id. At 251.

See also Commonwealth v. Levanduski, 907 A.2d 3 (Pa. Super. Ct. 2006) (finding that a letter written by a homicide victim was not admissible because it was not relevant under the state of mind exception, and therefore would only be relevant if offered for the truth of the matter asserted, and the Commonwealth failed to identify any other exceptions to its inadmissibility, however, ultimately deciding the admission was harmless error due to the amount of other evidence admitted during trial).

The Commonwealth has taken a broad approach to its theory and has suggested multiple motives in an effort to make otherwise irrelevant and inadmissible evidence more relevant and admissible. The Commonwealth contends all of the following motives: (1) the breakup and status of the relationship, (2) the assertion that the victim was going to turn Defendant into the police for a murder allegation from Brazil, (3) the assertion that the victim was going to turn her phone over to the police for Defendant's alleged stalking or phone tampering, (4) that the victim owed money to the Defendant or (5) the assertion that the victim was going to turn the Defendant over to immigration authorities.

Lastly, the Commonwealth's request is cumulative and serves no other purpose than to provide an excess of evidence of the alleged prior bad acts. It so cumulative that the prejudice substantially outweighs any relevance the evidence could hold.²

² There are numerous statements made by Defendant in his *Mirandized* interview, as well as statements allegedly made by the Defendant to others that are exceptions to the rule against hearsay and will be admissible at trial.

III. CONCLUSION

WHEREFORE, the Defendant respectfully requests this Honorable Court to bar the Commonwealth from admitting hearsay statements that under the under Pa.R.E. 404(b).

Respectfully submitted,

BY: 

Sameer M. Barkawi
Assistant Public Defender

COMMONWEALTH OF PENNSYLVANIA

IN THE COURT OF COMMON PLEAS

CHESTER COUNTY,
PENNSYLVANIA

vs.

CRIMINAL

DANELO CAVALCANTE

NO. CR-2951-2021

CERTIFICATE OF SERVICE


I hereby certify that on this 24th day of July, 2023, I served the foregoing Defense

Response to Commonwealth's Motions:

Deborah S. Ryan, Esq.
District Attorney
Chester County District Attorney's Office
201 W. Market Street, Suite 4450
West Chester, PA 19380-0991
By Hand Delivery

The Honorable Patrick Carmody
Judge's Chambers
201 W. Market Street, Suite 4450
West Chester, PA 19380-0991
By Hand Delivery

cc: Zachary Yurick, Esq.
Monica Szyszkiewicz, Esq.


Sameer M. Barkawi
Assistant Public Defender
Chester County Public Defender's Office
201 W. Market Street
West Chester, PA 19380
610-344-6940

APPENDIX J

COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS
vs. : CHESTER COUNTY, PENNSYLVANIA
: CRIMINAL ACTION -- LAW
DANELO SOUZA CAVALCANTE : NO. 2951-21

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.

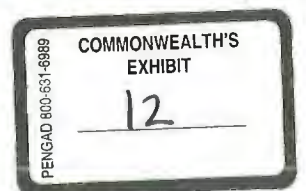
⁴ With regard to the admissibility of text messages between defendant and the victim the day before and the day of the murder, the Commonwealth will review and present a truncated version of those messages to the court so it can be determined whether they are admissible. The court is holding its decision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

APPENDIX K



CLERK OF COURTS

Exhibit KWR Admitted as Evidence
Dc No(s) CR: 2591-21
Date Adm. 8.16.2023



APPENDIX L

Upper Providence Township Police

Incident Report Form

68-20-03382

06/26/2020

SIMPLE ASSAULT/PHYSICAL

Primary Officer: **MARK MINNICK - 019MIN**

<input type="checkbox"/> Juvenile Involved	<input checked="" type="checkbox"/> Investigation	<input checked="" type="checkbox"/> Video Available	<input type="checkbox"/> Gang Related	<input type="checkbox"/> Paperless
<input checked="" type="checkbox"/> Domestic Related	<input checked="" type="checkbox"/> Suspects	<input type="checkbox"/> Bias Crime	<input type="checkbox"/> Accident	<input type="checkbox"/> Administrative
<input type="checkbox"/> Alcohol Involved	<input checked="" type="checkbox"/> Arrests Made	<input type="checkbox"/> Drugs Involved	<input type="checkbox"/> Ready for DA / Prosecutor	<input type="checkbox"/> Alarm Activated

Log Number 68-20-03382	Incident Number P20304682	File Number	Case Number	UCR 04E
ASSAULT-OTHER-SIMPLE				

Incident Type SIMPP	Dispatcher	Source 911	District Z2	Status READY
SIMPLE ASSAULT/PHYSICAL				

Incident Date / Times Incident Occurred At or Between

Date Received 06/26/2020	Day Rec'd Friday	Rcvd 2201	Disp 2201	Arrv 2210	Cld 2324	Earliest Date and Time	Latest Date and Time
------------------------------------	----------------------------	---------------------	---------------------	---------------------	--------------------	------------------------	----------------------

Disposition CA	Cleared by Exception	<input type="checkbox"/> Suspended
CLEAR BY ARREST		

UCR Clearance ARREST	UCR Occur Date 06/26/2020	UCR Clear Date 06/26/2020	UCR Count 1	UCR Human Traffic Code	UCR HT Count 0
--------------------------------	-------------------------------------	-------------------------------------	-----------------------	------------------------	--------------------------

Location Intersection

600 2ND AVENUE APARTMENT A-2	Cross Street
ROYERSFORD PA 19468	

Municipality:	GPS Loc X	GPS Loc Y
---------------	-----------	-----------

Business Name	Premise Code HOME	Arson Value
	RESIDENCE	

Gang	Weather CLOUDY	CLDY
------	--------------------------	------

Modus Operandi Coding Victim:

Entry: Property:

Exit: Area:

Method: Time of Day:

WEAPON USED:

Caller / Complainant Type	Normal <input checked="" type="checkbox"/>	Anonymous <input type="checkbox"/>	Hangup: <input type="checkbox"/>	Refused <input type="checkbox"/>
---------------------------	--	------------------------------------	----------------------------------	----------------------------------

INVOLVED PERSONS

ACTOR		CODE		ACT	
Name (Last, First, Middle) - Address	Juvenile <input type="checkbox"/>	Date of Birth	Age	Race	Sex
CALVALCANTE, DANILO		06/10/1989		W	M
600 2ND AVENUE APARTMENT A-1		Weight	Height	Hair	Eyes
ROYERSFORD PA 19468					Phone Number
					(489) 940-8735
		Driver License Number	State	Class	Expiration Date
		ID Provided	ID Detail		

Link Comments

CLERK OF COURTS

Exhibit CW13 Admitted as Evidence
 Dc No(s) CR: 2591-21
 Date Adm. 8.16.2023

PENGAD 800-631-6969	COMMONWEALTH'S EXHIBIT
	<u>13</u>

Upper Providence Township Police

Incident Report Form

68-20-03382

06/26/2020

SIMPLE ASSAULT/PHYSICAL

INVOLVED PERSONS

ARREST

CODE: ARR

Name (Last, First, Middle) - Address CALVALCANTE, DANILO 600 2ND AVENUE APARTMENT A-1 ROYERSFORD PA 19468	Juvenile	<input type="checkbox"/>	Date of Birth	Age	Race	Sex	Ethnic	Social Security Number
			06/10/1989		W	M		
	Weight	Height	Hair	Eyes	Phone Number			
					(489) 940-8735			
	Driver License Number	State	Class	Expiration Date				
ID Provided	ID Detail							

Link Comments

COMPLAINANT

CODE: COM

Name (Last, First, Middle) - Address CAVALCANTE, ELENI 318 WALNUT STREET PHOENIXVILLE PA 19460	Juvenile	<input type="checkbox"/>	Date of Birth	Age	Race	Sex	Ethnic	Social Security Number
			03/17/1985		W	F		
	Weight	Height	Hair	Eyes	Phone Number			
					(267) 563-0496			
	Driver License Number	State	Class	Expiration Date				
ID Provided	ID Detail							

Link Comments

COMPLAINANT

CODE: COMP

Name (Last, First, Middle) - Address LIMA, EMILY [REDACTED]	Juvenile	<input type="checkbox"/>	Date of Birth	Age	Race	Sex	Ethnic	Social Security Number
			02/06/2002		W	F		
	Weight	Height	Hair	Eyes	Phone Number			
					[REDACTED]			
	Driver License Number	State	Class	Expiration Date				
ID Provided	ID Detail							

Link Comments

COMPLAINANT

CODE: COMP

Name (Last, First, Middle) - Address BRANDAO, DEBORAH EVANGELISTA 600 2ND AVENUE ROYERSFORD PA 19468	Juvenile	<input type="checkbox"/>	Date of Birth	Age	Race	Sex	Ethnic	Social Security Number
			10/20/1987		W	F		
	Weight	Height	Hair	Eyes	Phone Number			
					(484) 714-4096			
	Driver License Number	State	Class	Expiration Date				
ID Provided	ID Detail							

Link Comments

COMPLAINANT

CODE: COMP

Name (Last, First, Middle) - Address IBARRA, YAIR JULIAN [REDACTED]	Juvenile	<input type="checkbox"/>	Date of Birth	Age	Race	Sex	Ethnic	Social Security Number
			03/20/2000		W	M		
	Weight	Height	Hair	Eyes	Phone Number			
					[REDACTED]			
	Driver License Number	State	Class	Expiration Date				
ID Provided	ID Detail							

Link Comments

68-20-03382

06/26/2020



APPROVED BY: MATTHEW TOBIN

PAGE 2

IRF 1.6

APPROVED ON: 06/28/2020

Print Date/Time 04/19/2021 18:47:34

Upper Providence Township Police

Incident Report Form

68-20-03382
06/26/2020
SIMPLE ASSAULT/PHYSICAL

INVOLVED PERSONS

VIC: M Name (Last, First, Middle) Address BRANDAO, DEBORAH EVANGELISTA 600 2ND AVENUE ROYERSFORD PA 19468		Juvenile <input type="checkbox"/>	Date of Birth 10/20/1987	Age	Race W	Sex F	Ethnic	Social Security Number
			Weight	Height	Hair	Eyes	Phone Number (484) 714-4096	
			Driver License Number		State	Class	Expiration Date	
			ID Provided		ID Detail			

Link Comments

PROPERTY / EVIDENCE

Item Number: 024664		Item Number (REC)					
Property Type EVIDENCE <input checked="" type="checkbox"/> REPORTED STOLEN <input type="checkbox"/> RECOVERED <input type="checkbox"/> FOUND <input type="checkbox"/> REGISTERED <input type="checkbox"/> PAWNED <input type="checkbox"/>							
Owned By (Person)		Owned By (Business)					
How Seized		HAZMAT Type					
Submitted By ID 014HIL	UCR Code	Property Code	Date / Time Logged 07/07/2020 15:59	Brand / Make ZIP FILE	Model	Serial / ID Number	Estimated Value
Collected By ID (Agency)	Collection Date	Collected By Other					

Collection Location

Description
ZIP FILE OF WATCHGUARD VIDEO

Item Number: 024623		Item Number (REC)					
Property Type EVIDENCE <input checked="" type="checkbox"/> REPORTED STOLEN <input type="checkbox"/> RECOVERED <input type="checkbox"/> FOUND <input type="checkbox"/> REGISTERED <input type="checkbox"/> PAWNED <input type="checkbox"/>							
Owned By (Person)		Owned By (Business)					
How Seized		HAZMAT Type					
Submitted By ID 019MIN	UCR Code	Property Code	Date / Time Logged 06/27/2020 05:07	Brand / Make PICTURES	Model	Serial / ID Number	Estimated Value
Collected By ID (Agency)	Collection Date	Collected By Other					

Collection Location

Description
PICTURES OF INJURY AND DRIED BLOOD

Total Damage Value: \$0.00

Total Property Value: \$0.00

ARREST INFORMATION

Arrest Date 06/26/2020	Arrest Location (City/Township) CAVALCANTE	Arresting Agency DANILO						
Arrest Type ARREST WARRANT		OTN	Ticket / Complaint Number					
Primary Charge 2701(a)(1)	Primary Charge Description SIMPLE ASSAULT		Charge Type	Charge Class	Count(s) 1			
Arrest Disposition ARRR	Bail	UCR Code 04E	Arraignment Date	Miranda by ID	Docket Number	Blood / Alcohol	Arrest <input checked="" type="checkbox"/>	Summons <input type="checkbox"/>
Arresting Officer 1 019MIN MARK MINNICK			Arresting Officer 2					

Charge 2709(a)(1)	Description HARASSMENT PHYS/CONTACT	Charge Type	Charge Class	Count(s) 1
-----------------------------	---	-------------	--------------	----------------------

Upper Providence Township Police

Incident Report Form

68-20-03382

06/26/2020

SIMPLE ASSAULT/PHYSICAL

RESPONDING / INVOLVED UNITS, OFFICERS, TIMES

Division	Supervisor / ID	016TOB	
PATR	MATTHEW TOBIN		
Unit Number	Officer / ID (Ofcr1 / Ofcr2)	Officer / ID (Ofcr3 / Ofcr4)	
6814	MARK MINNICK	019MIN	
6803	SCOTT REYNOLDS	026REY	

REVIEWS / REFERRALS

Date Entered	Sent by ID / Name	Sent To ID	Sent Date / Time	Acknowledged	Acknowledged Date / Time
	010FRE ULYSSES MARK FREEMAN	019MIN	06/29/2020 15:56	<input checked="" type="checkbox"/>	07/07/2020 10:33
Acknowledged By Name / ID		Disposition			
MARK MINNICK		019MIN			
Review Comments: Please let me know when this warrant is served. I'm using it as a proof. Thanks.					
Date Entered	Sent by ID / Name	Sent To ID	Sent Date / Time	Acknowledged	Acknowledged Date / Time
	010FRE ULYSSES MARK FREEMAN	016TOB	06/29/2020 15:57	<input checked="" type="checkbox"/>	06/30/2020 1:11
Acknowledged By Name / ID		Disposition			
MATTHEW TOBIN		016TOB			
Review Comments:					

COMMENTS / NARRATIVES

Title		INCIDENT REPORT	
Narrative Created By / Creation Date	06/27/2020	Narrative Updated By / Update On	06/28/2020
MARK MINNICK		MARK MINNICK	
Narrative Approved By / Approved Date	06/28/2020		
MATTHEW TOBIN			

Incident report by Officer Minnick:

Cpl. Reynolds and I responded to 600 Second Avenue apartment B-3 for a domestic assault which occurred in apartment A-2. The investigation revealed Danilo Cavalcante was the aggressor and an arrest warrant was filed for him because he left the scene prior to our arrival.

See investigative report.

COMMENTS / NARRATIVES

Title		INVESTIGATIVE REPORT	
Narrative Created By / Creation Date	06/27/2020	Narrative Updated By / Update On	06/28/2020
MARK MINNICK		MATTHEW TOBIN	
Narrative Approved By / Approved Date	06/28/2020		
MATTHEW TOBIN			

Investigative report by Officer Minnick:

Cpl. Reynolds and I responded to a report of suspicious activity of a child running into apartment B-3 from an unknown apartment. The child reported her dad was going to kill her mom. The mother spoke to county radio and reported it was a misunderstanding. She didn't want the police to respond and she wouldn't provide county radio with any additional information.

On location, I met with Yair Ibarra and Emily Lima at apartment B-3. He was standing in the doorway holding a tire iron. He thought Danilo Cavalcante was trying to get into his apartment. Ibarra explained Brandao and her two children just came running into his apartment. They were running away from Cavalcante who was chasing them from building A. Yasim told him Cavalcante was going to kill her mom, Brandao. He said Brandao was in the back room of his apartment and she was injured by Cavalcante. Cavalcante was trying to get into the apartment by the front door but it was locked and then he tried pulling the side window but he didn't get into the apartment. Ibarra didn't know which apartment they came from. He put the tire iron down



Upper Providence Township Police

Incident Report Form

68-20-03382

06/26/2020

SIMPLE ASSAULT/PHYSICAL

and he allowed me to enter his apartment to speak to Brandao.

Brandao didn't speak English, she only spoke Portuguese. Emily Lima translated my question to Brandao. I saw Brandao had dried blood on her dress and her lower lip was swollen and bleeding. I asked her what had happened to her lip. She said her boyfriend Danilo Cavalcante bit her bottom lip while trying to kiss her. They had been arguing in apartment A-2 and he was drunk. He chased her and her two kids Yan(2 years old) and Yasmin(6 years old) out of the apartment after he threatened to kill her. They ran to B-3 to get away from Cavalcante. She didn't know where he went but his vehicle was still parked in the parking lot. I had her stay in apartment B-3 with her children while Cpl. Reynolds and I checked apartment A-2 for Danilo Cavalcante.

At 2221 hours, I got the keys for the locked apartment door from Brandao so Cpl. Reynolds and I could search the upstairs apartment, A-1. I unlocked the front door with keys and I called out "police show yourself" before making entry to the second floor apartment. No one responded so we continued to walk up the stairs I had my duty weapon in low ready position as we went room to room looking for Cavalcante. I continued to yell Danilo's name and "police show yourself" as we moved slowly through the apartment and then into the attic. Cavalcante wasn't inside or outside the apartment building. I did see an empty bottle of vodka on the kitchen table in the apartment. We left the apartment and I re locked the door. I gave the keys to the apartment back to Brandao.

Brandao called Eleni Cavalcante, Danilo Cavalcante's sister, to the apartment. Eleni Cavalcante translated for me to Brandao. Brandao gathered some things out of the apartment and she made arrangements for her and her children to stay at her sister's house in Phoenixville for the night. Brandao feared for her safety and her children's safety and she didn't want to stay in the apartment in case Cavalcante returned home. I took pictures of her injured lip and the dried blood on her dress. I had her sign a victims right form and explained PFA information to her. She answered the lethality assessment questions. I gave her my business card and I told her I would be arresting Danilo Cavalcante for assaulting her. I told Eleni Cavalcante to have her brother call me if she spoke to him.

This investigation was recorded on my body camera. I attached the pictures to this report along with the victim's rights form and lethality assessment.

I filed a criminal charges against Danilo Cavalcante for Simple Assault, Terroristic Threats and Harassment. I filed for an arrest warrant for Cavalcante because he left the scene prior to our arrival and no on view arrest could be made. Sgt Tobin checked and approved the criminal complaint. I gave the criminal complaint to day shift to get the warrant signed by the on call judge.

COMMENTS / NARRATIVES

Title			
SUPPLEMENTAL			
Narrative Created By / Creation Date	06/27/2020	Narrative Updated By / Update On	06/28/2020
MARK MINNICK		MARK MINNICK	
Narrative Approved By / Approved Date	06/28/2020		
MATTHEW TOBIN			

Supplemental Report by Officer Minnick:

On 6/27/2020, I made contact with DJ Berhardt the on call judge. I requested an arrest warrant for Danilo Cavalcante. I swore to the warrant over the phone. I then emailed the criminal complaint to the judge for the warrant. I recieved the arrest warrant for Danilo Cavalcante from DJ Berhardt by email. I will be serving the warrant on 6/28/2020.

68-20-03382
IRF 1.6

06/26/2020

APPROVED BY: MATTHEW TOBIN
APPROVED ON: 06/28/2020

PAGE 5
Print Date/Time 04/18/2021 18:47:34

Upper Providence Township Police

Incident Report Form

68-20-03382

06/26/2020

SIMPLE ASSAULT/PHYSICAL

COMMENTS / NARRATIVES

Title

SUPPLEMENTALNarrative Created By / Creation Date
MARK MINNICK

06/28/2020

Narrative Updated By / Update On
MARK MINNICK

06/28/2020

Narrative Approved By / Approved Date
MATTHEW TOBIN

06/29/2020

On 6/28/2020, I called and spoke to Eleni Cavalcante about this investigation. I asked her if she heard from Deborah Brandao or her brother, Danilo Cavalcante, since Friday night. She had spoken to Brandao and she was back in the apartment but she didn't hear from her brother. Brandao told her, he hasn't returned to the apartment. Cavalcante confirmed Brandao and her brother only speak and understand Portuguese. I told her to have her brother call me when she makes contact with him.

Sgt. Tobin and I went to 600 2nd Ave to serve the arrest warrant on Danilo Cavalcante. He wasn't at the apartment and had not returned after the incident. His work van was no longer parked in the parking lot. I returned to the station and entered Cavalcante into NCIC but he was already enter by DC 38-1-13, DJ Berhardt. I entered Cavalcante into the NCIC log and I attached his arrest warrant to this report. I placed the original criminal complaint in court folder 38-1-19. I placed the case folder containing the arrest warrant in the active warrant drawer.

COMMENTS / NARRATIVES

Title

SUPPLEMENTALNarrative Created By / Creation Date
MATTHEW TOBIN

06/29/2020

Narrative Updated By / Update On
MATTHEW TOBIN

06/29/2020

Narrative Approved By / Approved Date
MATTHEW TOBIN

06/29/2020

On June 28, 2020 on or about 1830 hours I responded to 600 2nd Avenue to look for the suspect. On location I found Brandao outside removing her son from her car. With broken Spanish I asked her if she has seen Calvalcante. She said no. I asked her if he was in the house and she said no. I asked her if her lip was ok and she said yes. I asked her if she obtained a PFA but she said she doesn't understand English. With nothing to suggest the suspect was on location, I cleared after advising Officer Minnick.

COMMENTS / NARRATIVES

Title

SUPPLEMENTALNarrative Created By / Creation Date
MICHAEL SHEEHAN

07/02/2020

Narrative Updated By / Update On
MICHAEL SHEEHAN

07/02/2020

Narrative Approved By / Approved Date

Supplemental by Ofc. M Sheehan:

On Wednesday, July 1, I received a walk in request at the station. Deborah Brandao and Rejane Scott were on location wanting information about the domestic assault at Deborah's residence on Friday June 26. Deborah does not speak English and Scott was there to translate for her. They wanted to know how Deborah could drop the charges against her boyfriend for simple assault. I explained that Danilo Calvalcante had an arrest warrant issued for him and that the best thing he could do, is to turn himself in at District Court 38-1-19 or at our Police Station on Monday. I explained that Deborah would have to speak with Ofc. Minnick, who is the arresting officer, regarding the case.

COMMENTS / NARRATIVES

Title

68-20-03382

06/26/2020



APPROVED BY: MATTHEW TOBIN

PAGE 6

IRF 1.6

APPROVED ON: 06/28/2020

Print Date/Time 04/18/2021 18:47:34

Upper Providence Township Police
Incident Report Form

68-20-03382

06/26/2020

SIMPLE ASSAULT/PHYSICAL

SUPPLEMENTAL

Narrative Created By / Creation Date
SCOTT REYNOLDS

07/02/2020

Narrative Updated By / Update On
SCOTT REYNOLDS

07/02/2020

Narrative Approved By / Approved Date

On June 26th 2020, I assisted Officer Minnick with a domestic at 600 2nd Ave.

During the course of the investigation, it was determined that Danilo had bitten Brandao on the lip causing injury and fear.

Officer Minnick and I checked the area outside the apartments and inside the apartment buildings but did not locate Danilo.

At the conclusion of Officer Minnick's investigation, I asked Brandao the questions as they appear on the lethality assessment form. The answer's did not trigger a response.

COMMENTS / NARRATIVES

Title
SUPPLEMENTAL

Narrative Created By / Creation Date
MARK MINNICK

07/07/2020

Narrative Updated By / Update On
MARK MINNICK

09/09/2020

Narrative Approved By / Approved Date

Supplemental report by Officer Minnick:

I received an email from ADA Lauren Marvel about this case and she requested a phone call. I called and spoke to her about this case. Marvel requested I attempt to have Yasmin interview at Mission Kids as a witness in this case. She also requested a copy of the Watch Guard recording for this case. I told her I would have the video sent to her but I didn't think Deborah Brandao would cooperate with an interview because she already wanted to withdraw the charges against Cavalcante.

I spoke to Det Franchini about setting up an appointment with Mission Kids. I called Rejane Scott, the interpreter, and made arrangements for Danilo Cavalcante to turn himself in on 7/15/2020 because he never showed up at the station on 7/6/2020. Scott wasn't aware that he didn't show up at the station. I asked her to also contact Barndao and get permission for an interview with Yasmin. Scott said she would be glad to help me and would call me back with Brandao's response. I spoke to Sgt Hilt about sending the Watch Guard video to ADA Marvel.

As of 9/9/2020, I haven't heard back from Scott and Danilo Cavalcante hasn't turned himself in on the arrest warrant. On 9/9/2020, At 1258 hors, I went to 600 2nd Avenue, apartment A-2 to sever the arrest warrant on Danilo Cavalcante. On location, I didn't see Cavalcante white van or Brandao's vehicles parked in the parking lot. I went to their apartment door and knocked on the door two different times. I didn't hear any noise from inside the apartment. I waited at the door and no one answered the door. I left my business card in the door jam of the apartment door for someone to call me back.

68-20-03382

06/26/2020



APPROVED BY: MATTHEW TOBIN

PAGE 7

IRF 1.6

APPROVED ON: 06/28/2020

Print Date/Time 04/16/2021 18:47:34

APPENDIX M

PENNSYLVANIA COMMISSION ON SENTENCING

GUIDELINE SENTENCE FORM

7th Ed. (12/28/2012) and amendments

Date printed: 8/28/2023

Date submitted: 8/28/2023

PO Box 1200

State College, PA 16804

SGS Web ID Number

W6452095

SGS Web Generated Form (PCS 01.2023.1 PST-S)

Offender's Name (Last, First Middle) Cavalcante, Danelo, Souza	Date of Birth 7/3/1989	Gender Male	Race White	Form 2 of 2
--	----------------------------------	-----------------------	----------------------	-----------------------

County Chester	Police Photo ID Num.	Judge's Name Patrick C. Carmody	Person printing form Michael Porter	Date of Sentence 8/22/2023
--------------------------	----------------------	---	---	--------------------------------------

Offender Employed Unknown	Offender Wage Rate	JP Sentence Risk Assessment	Required: Yes	Performed: Yes	Final: Yes	Assessment: N/A
-------------------------------------	--------------------	-----------------------------	-------------------------	--------------------------	----------------------	---------------------------

Prior Offenses	Juvenile Adjudication		Adult Convictions		
Murder & inchoates	0		0		
Vol. Manslaughter	0		0		
Rape	0		0		
Kidnapping	0		0		
I.D.S.I.	0		0		
Arson Endangering Persons (F1)	0		0		
Robbery (F1)	0		0		
Rob. Motor Veh	0		0		0
Agg. Assault (F1-Cause SBI)	0		0		
Burglary (house/person)	0		0		
Agg. Indecent Assault	0		0		
Incest	0		0		
Sexual Assault	0		0		
Ethnic Intimidation to Any F1	0		0		
Drug Delivery/Death & Inchoate	0		0		
Weapons of Mass Destruction	0		0		
Other 4 Point Offenses	0		0		
Subtotal	0	+	0	x4=	0

Inchoate to 4 point offenses	0		0		
Burglary (other F1)	0		0		0
[Other] Felony 1 offenses	0		0		
Subtotal	0	+	0	x3=	0
[Other] Felony 2 Offenses	0	+	0	x2=	0

Felony Drugs [≥50gr.]	0	+	0	x3=	0
[Other] Felony Drugs	0	+	0	x2=	0
[Other] Felony 3 Offenses	0		0		
M1 Offenses Involving Death	0		0		
M1 Offenses Involving Weapons	0		0		0
M1 Offenses Involving Children	0		0		
Subtotal	0	+	0	x1=	0

DUI Offenses [Do not include 1st DUI in total]

Uncl. Misd.		0
M-2		0
M-1	0	0
F-3	0	0
F-2	0	0
Subtotal	0	+
Other Misd.	0	0
(0-1=0, 2-3=1, 4-6=2, 7+=3)		
Crime Free, age 18-28:		

If A is 8 points or greater, and the OGS=9 or more: REVO
 PRIOR RECORD SCORE
 Otherwise, if A + B is 6 points or greater: RFEL
 Otherwise, PRS= A + B + C (maximum of 5): **0**
 Juvenile adjudications do NOT lapse: **0**
 * Juvenile adjudications lapse: **0**

Negotiated Plea as to Sentence: **Yes**

Problem Solving Court:

Total amount of supervision (all sanctions) for this offense
60 Month(s)

Is this offense Totally Concurrent to any other offense? **No**

Reasons for Sentence:
See Next Page

Offense Name/Description
Possessing instruments of crime (criminal instruments)

Title & Section 18 907 A	Date of Offense 4/18/2021	Age at Offense 31	OTN R1301786
------------------------------------	-------------------------------------	-----------------------------	------------------------

Grade M-1	OGS 3	PRS 0	Docket# CP-15-CR-0002951-2021	Count# 4
---------------------	-----------------	-----------------	---	--------------------

Guideline Ranges ~	Mitigated RS - 1 (P1)	Standard 4	Aggravated 2	Level 2
------------------------------	---------------------------------	----------------------	------------------------	-------------------

Fines \$363 - \$544	Community Service 50 - 75 hours	Statutory Limits: 30	Minimum 60	Maximum 60
-------------------------------	---	--------------------------------	----------------------	----------------------

Mandatory Minimum:	Mandatory
--------------------	-----------

Enhancement

Other Information	Victim Age:	JP Sexual Offender Info
Y N	Y N	Y N Assessment:
<input checked="" type="checkbox"/> D&A Eval./Prelim	<input checked="" type="checkbox"/> D&A Dependent	<input checked="" type="checkbox"/> Required
<input checked="" type="checkbox"/> D&A Eval./Full	<input checked="" type="checkbox"/> Addl Info (PSI, Risk)	<input checked="" type="checkbox"/> Ordered
<input checked="" type="checkbox"/> Offense SDTP Eligible	<input checked="" type="checkbox"/> Offense CIP Program Elig.	<input checked="" type="checkbox"/> Completed
<input checked="" type="checkbox"/> DA Waived SDTP Inelig.	<input checked="" type="checkbox"/> DA Waived CIP Prog Inelig.	<input checked="" type="checkbox"/> Hearing held
<input type="checkbox"/> Jdg Accepts SDTP Waiver	<input type="checkbox"/> Jdg Auth CIP Prog Waiver	<input checked="" type="checkbox"/> Sexually Viol. Predator
<input checked="" type="checkbox"/> DA/Vic Opposed SDTP	<input checked="" type="checkbox"/> Offense SSP Eligible	<input checked="" type="checkbox"/> Mandatory 3 Yrs Prob.

RRRI Minimum Information (Entire JP)

Y N	Y N
<input checked="" type="checkbox"/> Offender ineligible (prior off.)	<input type="checkbox"/> Judge accepts DA Waiver
<input checked="" type="checkbox"/> Offender ineligible (prior beh., mand.)	<input type="checkbox"/> Judge directs DOC to calc. RRRIM
<input type="checkbox"/> DA Waived Inelig.	

Number of prior RRRRI sentences: **0**

Confinement State Facility Min: 30 Month(s) 0 Day(s) Max: 60 Month(s) 0 Day(s)	Eligible for County Reentry Plan (JP): NA Program: NA When Eligible: NA
---	--

Consecutive to Incarceration in OTN R1301786

Credit for Time Served: **0** Work Release Authorized (County): **No**

Mand. State Reentry Supervision SDTP Ineligible (State): **No**

(12 months for JP): SMBC Ineligible (State): **No**

Probation with Restrictive Conditions

CIP Program Period: CIP Program (1st):

Prob. Balance: Prob. Conditions:

No Probation with Restrictive Conditions for this OTN

Community Service Hours:

If DRUG DEPENDENT, is CIP Program consistent with clinical recommendation?

RESTORATIVE SANCTIONS

Probation Period:

Conditions:

No Probation for this OTN

Community Service Hours:

Fines: \$**0** Restitution: \$**0** JP Costs: \$**0** JP Fees: \$**0**

Guilty without further penalty [NFP]

Conformity Outside Above	Type of Disposition (Conviction) Jury Trial
------------------------------------	---

PENNSYLVANIA COMMISSION ON SENTENCING

GUIDELINE SENTENCE FORM

[7th Ed. (12/28/2012) and amendments]

Date printed: 8/28/2023

Date submitted: 8/28/2023

PO Box 1200
State College, PA 16804

SGS Web ID Number

W6452095

SGS Web Generated Form (PCS 03.2020.1 ADD)

Offender's Name (Last, First Middle) Cavalcante, Danelo, Souza		Date of Birth 7/3/1989	Gender Male	Form 2 of 2
State ID Num. (SID) XXX-XX-XX-X	Police Photo ID Num.	County Chester	Race White	Date of Sentence 8/22/2023
Judge's Name Patrick C. Carmody		Person printing form Michael Porter	Offender Employed Unknown	Offender Wage Rate

ADDITIONAL REASONS FOR SENTENCE

Negotiated Plea Agreement

NARRATIVE

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
 : PENNSYLVANIA
 v. :
 : EASTERN DISTRICT
 :
 DANELO CAVALCANTE : NO. 2531 EDA 2023

CERTIFICATION OF COMPLIANCE PURSUANT TO PA.R.A.P. 2135

This brief contains 10,300 words, which is fewer than the maximum of 14,000 permitted under Pa.R.A.P. 2135.

Date:6/7/24



Maria Heller
Assistant Public Defender
Attorney ID # 79182
Chester County Public Defender's Office
201 W. Market Street, Suite 2325
P.O. Box 2746
West Chester, PA 19380
Attorney for Appellant

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
 : PENNSYLVANIA
 v. :
 : EASTERN DISTRICT
 :
 DANELO CAVALCANTE : NO. 2531 EDA 2023

CERTIFICATION OF COMPLIANCE PURSUANT TO PA.R.A.P. 127

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Date:6/7/24



Maria Heller
Assistant Public Defender
Attorney ID # 79182
Chester County Public Defender's Office
201 W. Market Street, Suite 2325
P.O. Box 2746
West Chester, PA 19380
Attorney for Appellant

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF
 : PENNSYLVANIA
 v. :
 : EASTERN DISTRICT
 :
 DANELO CAVALCANTE : NO. 2531 EDA 2023

PROOF OF SERVICE PURSUANT TO PA.R.A.P. 121

I hereby certify that I am on this 7th day of June of 2024 serving the foregoing Brief for Appellant upon the persons indicated below which satisfies the requirements of Pa.R.A.P. 121.

Service by Email:

Email address confidential at recipient's request, with agreement of:
Gerald P. Morano, Esq.
Chief Deputy District Attorney
201 W. Market St.
West Chester, PA 19380
Attorney for Appellee

By First Class Mail:

Mr. Danelo Cavalcante- SCI-Greene



Maria Heller
Assistant Public Defender
Attorney ID # 79182
Chester County Public Defender's Office
201 W. Market Street, Suite 2325
P.O. Box 2746
West Chester, PA 19380
Attorney for Appellant