NO: _____

IN THE
SUPREME COURT OF THE UNITED

MARIA SANUTTI-SPENCER-PETITIONER

V.

COMMONWEALTH OF PENNSYLVANIA- RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO UNITED STATES SUPREME COURT

APPENDIX OF PETITIONER

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APPENDIX:

A

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
MARIA I. SANUTTI-SPENCER	:	
Appellant	:	No. 782 MDA 2016

Appeal from the Judgment of Sentence December 18, 2015
In the Court of Common Pleas of Columbia County Criminal Division at No(s): CP-19-CR-0000754-2014

BEFORE: BOWES, J., OLSON, J., and RANSOM, J.

MEMORANDUM BY RANSOM, J.: **FILED JANUARY 11, 2018**

Appellant, Maria I. Sanutti-Spencer, appeals from the judgment of sentence of life in prison without the possibility of parole followed by an aggregate of two hundred fifty months (250) to six hundred ninety-six months (696) of incarceration, imposed December 18, 2015, following a jury trial resulting in her conviction for criminal homicide, criminal solicitation to commit homicide, criminal conspiracy, burglary, receiving stolen property, criminal solicitation to commit burglary, multiple counts of arson, criminal solicitation to commit arson, criminal attempt to commit homicide, terroristic threats, and multiple counts of perjury.[1] We affirm.

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[1] ***See*** respectively, 18 Pa.C.S. §§ 2501; 902(a); 903(a)(1); 3502(a)(2); 3925(a); 902(a); 3301(a)(1)(ii); 902(a); 901(a); 2706(a)(1); and 4902(a).

The relevant facts and procedural history are as follows. Appellant married Frank Spencer ("the Victim") in February 1997. Between 2006 and 2012, the Victim reported approximately twenty-five (25) to thirty-five (35) domestic incidents to the Hemlock Township police department. ***See*** Notes of Testimony (N.T.), 11/12/2015, at 145. Police records confirm that the Victim reported that Appellant had threatened to kill him on "numerous occasions." ***Id.*** Following one such occasion, which occurred in October 2006, the Victim filed for divorce. ***See id.*** at 159.

On May 15, 2007, the Victim reported that Appellant threatened that her Father, Anthony Rocco Franklin ("her Father"), would kill him. ***Id.*** at 160. Contemporaneous with this report, other testimony established that Appellant sought help from a former coworker, Lee Mix, to secure an early parole for her Father. N.T., 11/12/2015, at 61-62, 65.[2] When Mix and Appellant were coworkers in 2005, Appellant threatened to harm the Victim. ***See id.*** at 61-64 (Lee Mix testified Appellant threatened to kill the Victim by injecting him with insulin while he was asleep). Appellant also implied that her Father was in the Mafia. ***Id.*** at 64. Mix informed Appellant that she could not help. ***Id.*** at 65.

In March 2009, her Father submitted a home plan to the parole board, in which he proposed to live at a residence jointly owned by Appellant and the Victim ("Fairview Drive Residence"). ***Id.*** at 87-88. Parole agent James Curry

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[2] At the time, Mix was equal employment opportunity director for the parole board. N.T., 11/12/2015, at 65.

conducted the pre-parole investigation. ***Id.*** at 85-86. When Curry investigated the proposed home plan, the Victim told Curry that he did not want her Father living at the Fairview Drive Residence because Appellant and the Victim were getting a divorce. ***Id.*** at 88. Her Father's proposed home plan was denied. ***See id.***

In September 2009, her Father's home plan was resubmitted, proposing again to live at the jointly owned residence. Appellant indicated to the parole board investigator that she was divorced and the homeowner. ***Id.*** at 98-99, 104. Her Father's home plan was approved. However, at the time, the divorce was not final; Appellant and the Victim were subject to an interim divorce order, giving each party the right to live at the Fairview Drive Residence when it was their turn to have custody of the kids. N.T., 11/13/2015, at 52.

Between January 2010 and September 2011, police responded to and/or investigated approximately sixteen incidents specifically involving the Victim and Appellant at the Fairview Drive Residence. ***Id.*** at 52-53. Appellant threatened to burn down the Victim's new house and threatened to burn down the house of the Victim's girlfriend, Julie Dent. ***Id.*** at 57-58; ***see also*** N.T., 11/12/2015, at 167-168 (the Victim's mother heard Appellant threaten to burn down the house "50" times and say her Father was in the Mafia and would have the Victim killed); ***id.*** at 105-106 (the Victim's lawyer knew the Victim lived in fear based on threats by Appellant to burn down his house and of being killed by her Father). In January 2010, a fire occurred at the Victim's

home. N.T., 11/12/2015, at 107. In August 2010, another fire burned the house of the Victim's girlfriend to the ground. ***See id.***

The evidence presented at trial suggested that the Victim lived in absolute fear of Appellant and her Father. The Victim was very worried that her Father was capable of killing him and that they were threatening to kill him. N.T., 11/13/2015, at 146; N.T., 11/10/2015, at 188. The Victim "was absolutely in fear to the point where he was changing his habits so he wouldn't be going to the bank on the same day." N.T., 11/10/2015, at 187. Appellant expressed anger and hostility toward the Victim following divorce hearings, often concerning custody of their children. ***Id.*** at 185. According to one witness, "on numerous occasions, [Appellant] would fly in the driveway and get out and there would be a screaming match that would ensue." ***Id.*** at 186.

On June 8, 2012, a divorce decree was issued dissolving the marriage and designating the Victim as homeowner of the Fairview Drive Residence. N.T., 11/11/2015, at 43. A police officer helped the Victim compose a no-trespassing letter to Appellant (dated 6/27/2012), telling Appellant to stay off his property except when exchanging custody of their children in the driveway. ***Id.*** at 44; ***see also*** N.T., 11/13/2015, at 61, 63.

On June 30, 2012, news of the divorce appeared in the local paper. On the evening of June 30, 2012, Appellant called the Victim's cousin and warned him that if the Victim's mother moved into the Fairview Drive Residence, Appellant would burn it to the ground; Appellant threatened that "that house

This was alleged to have happened on July 30, 2012. After the murder.

will be her last.... And she can join [the Victim]." N.T., 11/11/2015, at 135. The Victim's cousin immediately reported Appellant's threats to the police. ***Id.***

On July 3, 2012, the Victim's body was discovered shot dead in the foyer of the Fairview Drive Residence. N.T., 11/17/2015, 234-236, 237-238. The evidence established that the Victim was shot from a distance as he was entering the house and that no one heard from the Victim between July 1-2, 2012. The Victim was killed by two rapidly fatal gunshot wounds: one to the head and one to the left arm. ***Id.*** The parties stipulated that the bullet recovered from the Victim's torso was from a .30 caliber class discharged rifle and the bullet recovered from his head/neck was fired from a .38, .357 caliber, or nine-millimeter class handgun. N.T., 11/12/2015, at 31. Blood splatter was found on the interior of the front-door threshold, "indicative of the door being opened when the bloodletting event occurred." N.T., 11/11/2015, 23. Officer Sergeant Brian J. Dropinski found two shell casings near a tree with a Y shape in front of the house. N.T., 11/12/2015, at 36. Officer Droplinski testified that the tree offered support for the firing position and was within firing range of the front door. ***Id.*** at 38; ***see also id.*** at 59 (noting distance between perch and house was 115 feet).

Corporal David Andreuzzi found yellow, cleaning gloves at the scene, one on the kitchen floor and one in the kitchen sink. N.T., 11/11/2015, 26, 29, 39. A forensic expert testified that DNA samples recovered from the gloves matched the DNA profile of Appellant. ***Id.*** at 157-58, 226.

On July 23, 2014, a grand jury issued an indictment, finding probable cause to believe that Appellant and her Father engaged in a series of crimes, culminating in the Victim's murder. On July 28, 2014, Appellant was arrested and charged with twenty-six (26) crimes as described above.[3] On October 30, 2014, Appellant filed a motion for writ of habeas corpus. Following a hearing, Appellant's motion was denied. ***See*** Order, 1/5/2015. Appellant also filed an omnibus pre-trial motion, including a motion to preclude hearsay testimony. ***See*** Def.'s Mot. (filed 3/9/2015). Following a hearing, the omnibus motion was denied, except the motion to preclude hearsay testimony was denied without prejudice to Appellant's ability to file motions in limine six weeks before jury selection. ***See*** Order, 6/22/2015.

In September 2015, the Commonwealth filed a motion to preclude irrelevant evidence related to Appellant's health as well as the Victim's alleged drug abuse and violent propensities. Upon consideration of Appellant's response and following a hearing, the court issued a pre-trial order precluding Appellant from introducing evidence of the Victim's alleged drug abuse and violent propensities. ***See*** Order, 11/3/2015. In addition, the court denied Appellant's motions in limine.

Following a two-week jury trial, the jury returned a guilty verdict against Appellant on all twenty-six counts on November 20, 2015. On December 18,

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[3] Appellant's Father fled to Argentina after testifying before the grand jury; however, in April 2017, he was extradited back to Harrisburg to face criminal prosecution.

2015, Appellant was sentenced as described above. Appellant timely filed a notice of appeal. On February 3, 2016, the court issued a concise statement order pursuant to Pa.R.A.P. 1925(b). On February 16, 2016, appellate counsel entered his appearance and contemporaneously sought an extension of time to file the 1925(b) statement. The trial court granted the extension on February 24, 2016.

On March 18, 2016, this Court quashed the direct appeal due to Appellant's failure to file a docketing statement. ***See*** Order, 150 MDA 2016, dated 3/18/2016; ***see also*** Pa.R.A.P. 3517. On May 5, 2016, Appellant's appellate rights were reinstated *nunc pro tunc*. Thereafter, Appellant timely filed a court-ordered 1925(b) statement. The trial court filed a responsive opinion, noting that Appellant's concise statement raised more than forty allegations of error. ***See*** Trial Ct. 1925(a) Op. (TCO), 6/30/2016, 6-7. The trial court reorganized these to facilitate its review, given the "the volume of [Appellant's] complaints and the vague and sometimes repetitive nature [of] her not so [c]oncise [s]tatement[.]" ***Id.*** at 7.

On appeal, Appellant raises the following issues:

1. [Appellant] was precluded from presenting evidence of another's motive, of the [Victim]'s abuse, and of her significant health issues that would have made it physically impossible to perform the acts required to commit the crime as alleged by the government. Did these exclusions violate her right to present a complete defense?

2. By saying to the jury before the witness testified "I don't think it necessarily rebuts anything," did the trial court improperly invade[] the province of the jury by commenting of the weight

to give a defense witness' testimony? Is this especially so when this witness was called to directly rebut the government's theory of motive? Did these inappropriate comments violate [Appellant]'s right to a fair and impartial trial?

3. A corporal was permitted to testify to his opinion, because of his experience as a police officer, that he believed that a certain set of yellow cleaning gloves found in the kitchen of the [Victim]'s house and later found to have [Appellant's] DNA in them were used to move a body from outside to inside the house. Was he testifying as an expert or is that the type of knowledge and science so ordinary that "everyone knows it"?

4. After a sequestration order was issued for all witnesses, was it permissible for the trial court to do absolutely nothing when two witnesses, who provided a bold, public admission of the murder made by [Appellant], were caught violating that order (with one admitting to it) in giving the other a "heads up" as to what he was going to be "quizzed" about by the defense?

5. Was it error for the trial court to read, as a non-responsive answer to a jury question, the criminal information as a fact (not as an allegation) prefaced by "attention-getting words" of "in order to avoid any confusion about the charges in this case I am going to read the following to you" and then after the reading of the criminal information, the words "That is all I have to say on that issue. Again, I hope it [clarifies] the issues for you."?

Appellant's Br. at 5-7 (suggested answers omitted).

First, Appellant contends that her due process rights were violated when she was not permitted to present a complete defense due to evidentiary rulings of the trial court. ***See*** Appellant's Br. at 30-31. Appellant maintains that the court erred in excluding the following: (A) evidence of Appellant's physical ailments to rebut the theory that she was physically capable of shooting a rifle or dragging the Victim's 200-pound body; (B) evidence of the Victim's domestic abuse to rebut the theory that the Victim was afraid of

Appellant; (C) evidence of the Victim's drug use to suggest that others may have had a motive to kill the Victim; and (D) proffered testimony of two witnesses to establish that her Father had an independent motive against the Victim based on the alleged domestic abuse. ***See id.*** at 30. In her reply brief, Appellant concedes that the trial court's rulings were based upon established evidentiary rules. ***See*** Appellant's Reply Br. at 1. However, she maintains that the court applied the rules in a "mechanical" fashion that deprived her of due process and the right to present a complete defense pursuant to the guarantees of the Due Process Clause of the Fourteenth Amendment and the Confrontation Clause of the Sixth Amendment. ***See id.*** at 1-2; ***see also*** Appellant's Br. at 34 (relying on ***Holmes v. South Carolina***, 547 U.S. 319, 324-326 (2006)). Appellant maintains that the combination of adverse rulings cumulatively had an impact on her ability to present a full and complete defense, and constitutes the denial of a trial in accord with fundamental standards of due process. ***Id.*** at 31-35 (relying on ***Holmes,*** 547 U.S. at 324-25; ***Montana v. Egelhoff***, 518 U.S. 37, 53 (1996); ***Chambers v. Mississippi***, 410 U.S. 284, 294 (1973)).

Our standard of review is as follows:

> The admissibility of evidence is within the sound discretion of the trial court, and this Court will not reverse a trial court's decision concerning admissibility of evidence absent an abuse of the trial court's discretion. An abuse of discretion will not be found based on a mere error of judgment, but rather exists where the court has reached a conclusion which overrides or misapplies the law, or where the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias or ill-will.

Commonwealth v. Alicia, 92 A.3d 753, 760 (Pa. 2014) (internal citations omitted). "A defendant has a fundamental right to present evidence provided that the evidence is relevant and not subject to exclusion under one of our established evidentiary rules." ***Commonwealth v. McGowan***, 635 A.2d 113, 115 (Pa. 1993) (citation omitted). "All relevant evidence is admissible, except as otherwise provided by law." Pa.R.E. 402. Relevant evidence "tends to prove or disprove some material fact, or tends to make a fact at issue more or less probable." ***Commonwealth v. Patterson***, 91 A.3d 55, 71 (Pa. 2014) (citing ***McGowan***, 635 A.2d at 115); ***see also*** Pa.R.E. 401 (defining relevant evidence)). The Supreme Court of the United States recognizes:

> [W]ell-established rules of evidence permit trial judges to exclude evidence if its probative value is outweighed by certain other factors such as unfair prejudice, confusion of the issues, or potential to mislead the jury. [T]he Constitution permits judges to exclude evidence that is repetitive ..., only marginally relevant or poses an undue risk of harassment, prejudice, [or] confusion of the issues.

Holmes, 547 U.S. at 326-37 (internal citations and quotation marks omitted).

First, Appellant claims that the court erred in excluding evidence of her severe diabetes and other health issues. ***See*** Appellant's Br. at 35. Appellant contends that this evidence was relevant for the factfinder to determine that she was physically incapable of shooting the Victim with a sniper rifle or dragging his 200-pound body into the house. ***See id.*** at 35-38. Appellant claims that such evidence would have rebutted the Commonwealth's twelve witnesses who testified that the Victim was afraid of her.

In response, the Commonwealth maintains that it "has never argued that [Appellant] fired the shot from the sniper's nest or that she drug [sic] [the Victim's] body into the house by herself." ***See*** Commonwealth's Br. at 29. The Commonwealth's theory of the case was that Appellant was engaged in a conspiracy to commit the murder. "It is well-established ... that a defendant who was not a principal actor in committing the crime, may nevertheless be liable for the crime if [she] was an accomplice of a principal actor." ***Commonwealth v. Murphy***, 884 A.2d 1228, 1234 (Pa. 2004) (citing 18 Pa.C.S. § 306).

Here, the trial court found Appellant's physical health irrelevant to rebut the Commonwealth's theory of the case that Appellant's Father or another co-conspirator fired the shot from a sniper's nest. TCO at 14-15. The court opined that the "purported evidence was loaded with the potential for unfair prejudice having the tendency to elicit sympathy for [Appellant]." ***Id.*** at 15. Further, the court found Appellant's physical ailments "irrelevant to the issues properly being tried before the jury and likely to unfairly prejudice the Commonwealth." ***Id.***

It was within the province of the trial judge to exclude Appellant's health issues on the basis of irrelevancy and unfair prejudice. ***See Holmes,*** 547 U.S. at 326-37; ***see also*** Pa.R.E. 403. We discern no abuse of discretion in that regard.

Next, Appellant challenges the preclusion of evidence of the Victim's alleged abuse and drug use. As both constitute character evidence, we address these two claims together. Under the Pennsylvania Rules of Evidence, character evidence is governed by Rule 404, which provides:

> **Rule 404. Character Evidence; Crimes or Other Acts**
>
> **(a) Character Evidence.**
>
> *(1) Prohibited Uses.* Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.
>
> *(2) Exceptions for a Defendant or Victim in a Criminal Case.* The following exceptions apply in a criminal case:
>
> (A) a defendant may offer evidence of the defendant's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it;
>
> (B) subject to limitations imposed by statute a defendant may offer evidence of an **alleged victim's pertinent trait**, and if the evidence is admitted the prosecutor may:
>
> (i) offer evidence to rebut it; and
>
> (ii) offer evidence of the defendant's same trait; and
>
> (C) in a homicide case, the prosecutor may offer evidence of the alleged victim's trait of peacefulness to rebut evidence that the victim was the first aggressor.

Pa.R.E. 404 (emphasis added). "[S]pecific instances of a victim's prior conduct are admissible to show a victim's character trait only if the trait in question is probative of an element of a crime or a defense." ***Commonwealth v. Minich***, 4 A.3d 1063, 1071 (Pa. Super. 2010). Under Rule 404(2)(B), evidence of "the alleged victim's pertinent trait" is "limited to a character trait

of the victim that is relevant to the crime or defense at issue in the case." ***Minich***, 4 A.3d at 1072. "[C]riminal defendants asserting self-defense may introduce evidence of a victim's prior conduct tending to establish the victim's violent propensities." ***Id.***; ***see also Commonwealth v. Miller***, 634 A.2d 614, 622 (Pa. Super. 1993) (where self-defense was properly at issue in the case, then expert testimony regarding "battered woman syndrome" was relevant to prove the defendant's state of mind as it relates to an element of a theory of self-defense).

The trial court found that neither the Victim's alleged abuse nor his drug use were relevant to any crime or defense asserted in the case. TCO at 7. The court determined that the evidence was unfairly prejudicial. ***See id.*** The court notes that Appellant had ample opportunity to effectively cross-examine witnesses and introduce some of the Victim's abusive conduct. TCO at 9-10.

As Appellant did not raise self-defense in this case, it was within the court's discretion to exclude evidence of the Victim's bad character traits because such evidence was not pertinent to any crime or defense being raised. ***See Minich, supra***. Moreover, the trial court concluded that the Victim's drug use "constituted nothing more than speculation." TCO at 13 (citing ***Commonwealth v. Williams***, 720 A.2d 678, 686 (Pa. 1998) (noting that it was proper to exclude evidence that another person had a motive to kill because the evidence was speculative)). Finally, the trial court found that the probative value of the evidence did not outweigh the potential for unfair

prejudice. ***See*** Pa.R.E. 404(b)(2). We discern no abuse of the court's discretion.

Next, Appellant contends that the court erroneously precluded her from presenting so-called "dad witnesses" to testify that her Father had an independent motive to kill the victim based on his knowledge of abuse. Appellant's Br. at 40, 46. Defense counsel proffered that these witnesses would have said that her Father had an independent motive to be upset with the Victim because of the alleged domestic abuse by the Victim against Appellant. She proposed testimony of a prison guard and inmate regarding conversations that they had with her Father while he was in prison circa 2007, 2008, and 2009. ***See*** N.T., 11/16/2015, at 223. Appellant sought to introduce this testimony under the coconspirator exception to the rule against hearsay, ***see*** Pa.R.E. 803(25)(E), or alternatively, under the state-of-mind exception, ***see*** Pa.R.E. 803(3). ***See*** Appellant's Br. at 44.

The trial court opined that the proffered testimony was "pure hearsay" and inadmissible. TCO at 16. We agree. "'Hearsay' means a statement that (1) the declarant does not make while testifying at the current trial or hearing; and (2) a party offers in evidence to prove the truth of the matter asserted in the statement." Pa.R.E. 801. "Hearsay is not admissible except as provided by these rules, by other rules prescribed by the Pennsylvania Supreme Court, or by statute." Pa.R.E. 802. The proffered statements are clearly hearsay

because they were out-of-court statements and were offered to prove that her Father had an independent motive to kill the victim.

Appellant's argument is unpersuasive. In order for the coconspirator exception to apply, "the existence of a conspiracy between the declarant and the defendant must be demonstrated by a preponderance of the evidence; the statements must be shown to have been made during the course of the conspiracy; and they must have been made in furtherance of the common design." ***Commonwealth v. Johnson***, 838 A.2d 663, 674 (Pa. 2003) (citation omitted). Thus, first and foremost, in order for this exception to apply, Appellant would be required to concede that she participated in a conspiracy with her Father, and therefore, his statements would be attributable to her. There was no admission of conspiracy by Appellant. Accordingly, the coconspirator exception is inapplicable.

Although the defense concedes that the proffered evidence was hearsay, Appellant maintains that it should have been permitted to afford Appellant her right to present a defense. ***See*** Appellant's Br. at 40-41. At trial, Appellant also argued that the statements should be admitted under the state of mind exception, which provides an exception for:

> A statement of the declarant's then-existing state of mind (such as motive, intent or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will.

Pa.R.E. 803(3). Appellant's argument is without merit.

"An accused has a fundamental right to present evidence so long as the evidence is relevant and not excluded by an established evidentiary rule." ***Commonwealth v. Ward***, 605 A.2d 796, 797 (Pa. 1992) (citation omitted). Our Rules are clear that hearsay is inadmissible unless a recognized exception applies. ***See*** Pa.R.E. 802. Here, the trial court ruled that these statements were hearsay and properly deemed inadmissible because they were irrelevant. ***See*** TCO at 16-18.[4] We agree.

In her second issue, Appellant seeks a new trial based on the trial judge's prejudicial commentary during the testimony of defense witness Dale Scott Jones. At issue is the following exchange:

> Q. Mr. Jones, in the year 2008 and the year 2009, did you have a romantic relationship with [Appellant]?
>
> A. I believe I had a wonderful relationship in both of those years, yes.
>
> Q. And how often would you see [Appellant] during the course of those years within the terms of that romantic relationship?
>
> A. There's really – occasionally, I was in the Philadelphia area, [Appellant] was working in that area from time to time at hospitals, she represented nurses there. So it was occasional dinners. [Appellant] was very involved with children and so she was not --
>
> D.A.: Your Honor, if I can interpose an objection and perhaps I should have asked for an offer of proof. I'm not sure what relevance this has to the underlying charges.

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[4] Here, the trial court does not specifically address whether the state of mind exception applied to a statement of Appellant's coconspirator.

> Defense: It's very relevant, Your Honor, because the Commonwealth has alleged that my client has suggested to individuals if she can't have [the Victim], nobody can. This demonstrates that she's dating other individuals that would rebut that idea.
>
> **COURT: I don't think it necessarily rebuts anything.**
>
> Defense: I guess that's for the panel, Your Honor, respectfully.
>
> COURT: Yes, it is for the panel, so I'll allow the questioning to go on.

N.T., 11/18/2015, at 107-110 (emphasis added).[5]

Appellant contends that the judge's commentary (in bold above) invaded the province of the jury by suggesting the proper weight to accord to Mr. Jones' testimony, thus violating Appellant's right to a fair and impartial trial. Appellant's Br. at 50 (relying on ***U.S. v. Olgin***, 745 F.2d 263, 269 (3d Cir. 1984) (considering the following factors in evaluating whether the court's comment required a new trial: "materiality of the comment, its emphatic overbearing nature, the efficacy of any curative instruction, and the prejudicial effect of the comment in light of the jury instruction as a whole.")). Appellant also complains that the court failed to issue a curative instruction to remedy

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[5] According to Appellant, "this evidence would have, at the very least, weakened the government's motive and possibly could have destroyed it.... Although the testimony was ultimately allowed, [Appellant argues that it] was condemned prior to its presentation by this authoritative pre-judgment from the bench." *Appellant's Br.* at 50-51 (citing in support ***Commonwealth v. Nicholson***, 454 A.2d 581 (Pa. Super. 1982)).

its prejudicial remark. ***See id.*** at 58; Appellant's Reply Br. at 5. Appellant's argument is devoid of merit.

Appellant failed to preserve this issue by making an objection. Further, Appellant requested no curative instruction. Therefore, we find that the issue is waived. No relief is due.

Third, Appellant contends that the court erred in overruling her objection to the Corporal's testimony regarding the yellow, cleaning gloves recovered from the scene of the murder. According to Appellant, this testimony constituted an unqualified, expert opinion and exceeded the scope of layperson testimony under P.R.E. 701. ***See*** Appellant's Br. at 63-69; ***see also*** Pa.R.E. 702. Further, Appellant claims that this admission was not harmless error. ***Id.*** at 68 (citing in support ***Commonwealth v. Brennan***, 696 A.2d 1201, 1203 (Pa. Super. 1997)).

Pa.R.E. 701 allows "testimony by a lay witness in the form of an opinion, where the opinion is (1) rationally based on the perception of the witness and (2) helpful to the determination of a fact in issue." ***Commonwealth v. Yedinak***, 676 A.2d 1217, 1221 (Pa. Super. 1996). Police officers are permitted to testify to what they observe during the course of an investigation and how their observations led to their conclusions. ***See, e.g., Commonwealth v. Berry***, --- A.3d ---, 2017 PA Super 282, at *3 (filed Aug. 31, 2017).

As an initial matter, Appellant mischaracterizes the Corporal's testimony. Appellant baldly asserts that the Corporal testified that Appellant used the cleaning gloves "to drag the decedent's body into the house." Appellant's Br. at 66. Upon close inspection, however, the certified record and the contents of the trial transcript do not support Appellant's assertion.

> D.A.: Did the fact that the victim had ended up in an unnatural position and your finding the blood, did that have any connection in your mind?
>
> Corporal: In my mind it does. When I see that these cleaning gloves are away from the victim in the kitchen, the thought obviously, were these gloves worn by anybody? Were they worn to drag the victim in? Because his body was, from what I am seeing was removed from the outside, because the initial blood letting event occurred outside the residence. He is now inside. Obviously, the bod[y] got inside somehow. So I believe he is pulled in. So I believe the gloves... [Objection]

Id. at 16-17. Notably, the Corporal did not testify at any point that *Appellant* used the yellow, cleaning gloves to drag the body.

Next, the Commonwealth asked the Corporal to explain several photographs that he took of the crime scene. He described photographs showing how the Victim was positioned. ***See*** N.T., 11/11/2015, at 24. He observed that the Victim's arms were up with his legs pointed toward the garage. ***Id.*** He also described areas of pooled blood near the body. ***Id.*** at 25. The Corporal described the photographs of the kitchen and stated his lay opinion that things seemed out of place, with "stuff scattered about," and "we can see on the floor, there is a yellow cleaning glove which just doesn't fit in

with what I am seeing throughout the residence." ***Id.*** at 26. Specifically, he described where he found a yellow, cleaning glove on the floor of the kitchen. ***Id.*** at 26. A second yellow glove was found in the sink. ***Id.*** at 39.

Substantively, we agree with the trial court that the Corporal's testimony, explaining photographs that he took of the body and the gloves, was rationally based on his perception. ***See*** TCO at 42. Combined with forensic expert testimony confirming Appellant's DNA on the gloves, the Corporal's testimony may have given rise to an *inference* that Appellant did drag the Victim's body into the house. However, the Corporal's testimony was based on his experience as a police officer and what he directly observed. The testimony was helpful for the factfinder to interpret the evidence. This does not exceed the scope of layperson testimony under Pa.R.E. 701. ***See Berry, supra***, at *4. Whether or not Appellant dragged the Victim's body into the house was a matter relating to weight and credibility properly reserved for the jury as factfinder. ***See id.*** Accordingly, Appellant's argument is without merit. We discern no error or abuse of discretion.

Fourth, Appellant contends that two prosecution witnesses, Derk Reed and Brian Wawroski, violated the court's sequestration order. Appellant claims this was a serious violation intended to shape the witness's testimony. ***See*** Appellant's Br. at 73-74 (citing in support ***Commonwealth v. Smith***, 346 A.2d 757, 760 (Pa. 1975)). Appellant maintains that she is entitled to a new

trial because the violation influenced the jury and the outcome of the trial. ***Id***. at 75. We apply the following legal principles.

> The selection of a remedy for the violation of a sequestration order is within the sound discretion of the trial court. In exercising its discretion, the trial court should consider the seriousness of the violation, its impact on the testimony of the witness, and its probable impact on the outcome of the trial. ***We will disturb the trial court's exercise of its discretion only if there is no reasonable ground for the action taken.***

Smith, 346 A.2d at 760 (internal citations omitted) (emphasis added); ***see also*** Pa.R.E. 615.

The trial court issued a sequestration order in this case. ***See*** N.T., 11/10/2015 at 27. On the sixth day of trial, the Commonwealth's witness Derk Reed testified about a conversation he had with Appellant while standing in the end zone during a kids' football game on September 7, 2012. N.T., 11/17/2015, at 100, 107. Reed testified as follows:

> D.A.: Confine yourself to exactly what you said as you recall and how [Appellant] was responding.
>
> Reed: Well, she was mad. And, as I started pushing harder on the fires.... [t]hen she started back and she said 'You know, your home will burn, too.' And I am like 'Are you kidding me?' Then she said, you, know, 'Bo will find you.' I am looking at her and the thing she said to me was disturbing, for two parts. I will say the first part of what she said and I will explain the disturbing part when we were there. [Appellant] made the comment to me, nastiest, craziest voice you could ever hear, she looked at me and said "I am going to tell you right now, the last thing [the Victim] saw when he was laying on that ground looking up was me."
>
> ...
>
> And I was like in shock...

Id. at 108-109. On cross-examination, defense counsel questioned Reed about the noise level at the game, suggesting that Reed misheard Appellant. ***Id.*** at 118-119. Following cross-examination, the court adjourned for a lunch recess.

Immediately after lunch, the Commonwealth called Brian Wawroski who testified as follows, in relevant part:

> Q. I want to turn your attention to September 7th of 2012. Do you recall where you were that evening?
>
> A. Yeah, I believe we were talking about the football game, yep.
>
> Q. Where were you, Sir?
>
> A. I was in the end zone where most of the parents and families that know each other, we gather in the end zone. **It is quieter down there.** You don't have all the band and noise and what have you up in the stands. And it is a place that we, you know, talk.

N.T., 11/17/2015, at 130-131 (emphasis added).

On cross-examination, defense counsel asked Wawroski if he met with Mr. Reed during the lunch recess. ***Id.*** at 137. Wawroski admitted that he walked across the street to Reed's office and briefly discussed how Reed's testimony went, by asking him "how did it go." ***Id.*** Reed told Wawroski that he was quizzed by the defense on the layout of the field and whether it was quiet in the end-zone. ***Id.*** at 138-139. Upon soliciting this testimony from Wawroski, defense counsel moved to strike the testimony and for the court to instruct "on the rules of sequestration that [the witness had] violated." ***Id.*** at 140. The court overruled Appellant's objection, finding that the subject of the

testimony was what was said by Appellant at the football field in Wawroski's presence. ***Id.***

In its 1925(a) opinion, the trial court acknowledged that Wawroski's response on direct "was at least in part informed by what he discussed with Mr. Reed prior to testifying" and indicated a violation of the court's sequestration order had occurred. TCO at 53. However, the court found "the influence of Mr. Reed did not change [Wawroski's] testimony in any material way or prejudice [Appellant]." ***Id.*** at 53. Further, the court found any "impact on the witness's testimony was limited and it had no impact on the outcome of the trial." ***Id.*** at 54. The violation of the sequestration order "ultimately had no material impact [on] the testimony of Mr. Wawroski[], and did not deprive [Appellant] of a fair trial." ***Id.*** at 55.

Ultimately, the court decided not to take action based on the reasonable ground that the violation had no material impact on the testimony and no impact on the outcome of the trial. We agree. Because Appellant has failed to establish that Wawroski's testimony influenced the outcome of the trial, no relief is due. ***See Stevenson, supra***. Accordingly, we decline to disturb the trial court's exercise of discretion. ***Smith, supra***.

Fifth, Appellant contends that the court erred in clarifying counts 1, 2, 6, and 14 on the criminal information sheet during jury deliberation. Appellant's Br. at 76-84; ***see*** N.T., 11/20/2015. Appellant contends that the court's reinstruction of the jury was improper, that the "judge's last word is apt to be the decisive word." Appellant's Br. at 80 (citation omitted).

Appellant contends that the court read the criminal information as fact, and "removed from the jury their right to decide the facts and the verdict." ***Id.*** at 82. Appellant relies on ***Commonwealth v. Archambault***, 290 A.2d 72, 75 (Pa. 1972), which states:

> An expression by the judge that in his opinion the accused is guilty leaves an indelible imprint on the minds of the jury. The jury is undoubtedly going to attribute to the judge, because of his experience in criminal cases, special expertise in determining guilt or innocence.... The influence of the trial judge on the jury is necessarily and properly of great weight, ... and jurors are ever watchful of the words that fall from him. Particularly in a criminal trial, the judge's last word is apt to be the decisive word.

Commonwealth v. Archambault, 290 A.2d 72, 75 (Pa. 1972) (internal citations and quotation marks omitted). Appellant's reliance is misplaced as the trial judge never stated an opinion that Appellant was guilty.

Our review of the record reveals that the jury deliberated for over five hours and was sent home overnight. The following day, the jury sent a message to the judge seeking written or oral clarification about specific counts. ***See*** N.T., 11/20/2015, at 2. Defense counsel indicated opposition to re-reading the instruction for conspiracy or accomplice liability, which the jury did not request. ***Id.*** at 5-6. The parties and court agreed to a re-reading of the charges for the requested counts: first-degree murder, criminal solicitation to commit murder, criminal solicitation to commit burglary, and terroristic threats. ***See id.*** at 7-11. For each requested count, the court restated each element that the jury must find to determine guilt. ***See id.***

Following the re-reading of the four charges, the district attorney asked to convene with defense counsel at the bench for a sidebar. ***Id.*** at 13. The district attorney stated:

> D.A.: Your Honor, under the instruction for criminal homicide that you gave, clearly it is giving the [j]ury the impression that [Appellant] has to be present for criminal liability. As charged, we have charged her as a principal and/or accomplice. I know we have been down this road in the last day or so discussing this your honor, but giving the [j]ury half the tool, [sic] it is a charged element.
>
> COURT: Counsel, here is what I am willing to do and you are going to set the record on that request, I will read that one sentence and that is it. And I'm going to note [Appellant's] strenuous objection to that.

Id. at 13.

> The court then instructed the jury as follows:
>
> COURT: Ladies and gentlemen of the Jury, in order to avoid any confusion about the charges in this case I am going to read the following to you:
>
> On or about July 1st 2012, the Defendant did intentionally cause the death of Frank Spencer at 20 Fairview Drive, Hemlock Township, Columbia County. The Defendant having acted as a principal or an accomplice in bringing about [the Victim's] death by murder. That is all I have to say on that issue. Again, I hope it clarif[ies] the issues for you.
>
> Defense Counsel: Your Honor, I would ask, that that is simply the allegation.
>
> COURT: Excuse me, that is the allegation. Thank you, Counsel. You are absolutely right. That is only the allegation and as in the instruction I gave you before, charges are only allegations. They are not facts in this case unless you find from the evidence the facts that would support such an allegation to reach your conclusions. Thank you, Counsel. I appreciate that very much to

> a clarify that for the Jury [sic]. Thank you. Would you pl[e]ase take the Jury out to convene their deliberations?

N.T., 11/19/2015, at 14. Thereafter, Appellant moved for a mistrial, claiming that there was allegedly insurmountable prejudice resulting from re-reading the allegations to the jury when the jury did not ask for that particular information. ***Id.*** at 15-16. The court denied Appellant's motion, noting that the jury was given accurate and specific instructions that the charges were allegations for the jury to decide. ***Id.*** at 15-17. Later that morning, the jury returned a verdict of guilty on all counts.

Here, Appellant argues that the court proceeded to read the allegations from the criminal information sheet without specifying that they were merely allegations. Appellant's Reply Br. at 8. However, upon review of the record, we note that Appellant requested a curative instruction immediately. In the section quoted above, the trial court clearly clarified to the jury that it was reading from the Commonwealth's allegations.

Appellant suggests that the judge's words influenced the outcome of the trial. Appellant's Br. at 83-84. However, as noted by the court, the "record plainly indicates that the jury was instructed adequately and in accordance with the law." TCO at 47. Further, the court reminded the jury that it was their duty to "find from the evidence the facts that would support such an allegation to reach [its] conclusions." ***See*** N.T. at 14. Accordingly, we discern no error. No relief is due.

J-A26036-17

Judgment of sentence affirmed. Jurisdiction relinquished.

Judgment Entered.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 1/11/2018

APPENDIX:

B

COMMONWEALTH OF PENNSYLVANIA	: IN THE COURT OF COMMON PLEAS : OF THE 26TH JUDICIAL DISTRICT, : COLUMBIA COUNTY BRANCH, PA
vs.	: CRIMINAL DIVISION
MARIA SANUTTI -SPENCER Defendant	: NO. 754 of 2014

By the Honorable MICHAEL DUNLAVEY

I. FACTS AND PROCEDURAL HISTORY

This matter comes before the Court pursuant to a Criminal Information filed against the above named Defendant by the Attorney General of Pennsylvania on September 25, 2014. A twenty-six (26) count Amended Information was filed on September 24, 2015, charging the Defendant with Criminal Homicide, 18 P.A. §2501, Criminal Solicitation to Commit Homicide, 18 P.A. §902(a)(§1102(c)); Criminal Conspiracy 18 P.A. §903(a)(1)-(§1102(c)); Burglary 18 P.A. §3502(a)(2); Receiving Stolen Property, 18 P.A. §3925(a); Criminal Solicitation to Commit Burglary, 18 P.A. §902(a)(3502(a)(2)); Arson 18 P.A. §3301(a)(1)(ii); Criminal Solicitation to Commit Arson §902(a)(3301(a)(1)); Attempted Homicide 18 P.A. §901(a)/2501-(1102(c)); Terroristic Threats 18 P.A. §2706(a)(1) and Perjury 18 P.A. §4902(a).

Defendant filed a Petition for Writ of Habeas Corpus on October 30, 2014. The Honorable Senior Judge Brendan J. Vanston scheduled a hearing by Order on November 3, 2014. Subsequently, on Motion of the Commonwealth, the Court rescheduled argument on the matters raised in Defendant's Motion of October 30, 2014 for a hearing on December 17, 2014. The Commonwealth filed their answer to Defendant's Motion on December 15, 2014 and a hearing was conducted before the

Honorable Judge Vanston on December 17, 2015. Defendant's Motion for Habeas relief was denied by Order dated January 5, 2015.

On February 20, 2015 the Court entered a scheduling Order, which in pertinent part Ordered that Defendant's Omnibus Pretrial Motion shall be filed no later than March 2, 2015, and directed Commonwealth to respond thereto no later than April, 3, 2015. A Hearing on the anticipated motions was scheduled for June 17, 2015. Subsequently, responding to a Defense request, the Court Ordered that Defendant's Omnibus Motion deadline was extended to March 9, 2015.[1]

On March 9, 2015 the Defendant filed her Omnibus Pre-Trial Motion raising the following issues: Motion to Quash Indictment; Motion for Change of Venue; Motion for Change of Venire; Motion to Preclude Hearsay Testimony; Motion to Sever Counts; Motion to Compel Discovery. Judge Vanston, by Order dated March 9, 2015 reaffirmed his Order of February 20, 2015, and scheduled argument on the Defendant's Omnibus Motion for June 17, 2015. The Commonwealth requested additional time to file their response to the Defendant's Motions and sought a Continuance of the hearing scheduled to occur on June 17, 2015. On March 31, 2015 the Court granted the Commonwealth's request to extend the time to file their response and denied their

[1] Order of Judge Brendan J. Vanston dated 2-26-2015" it is Ordered that the time in which to file the Defendant's Omnibus Pre-Trial Motion is extended to March 9, 2015."

request for a Continuance.[2] The Commonwealth filed their Answer on April 17, 2015 and a series of ancillary motions followed. [3]

The Trial Court heard argument on the aforementioned pre-trial motions on June 17, 2015. Following that hearing, a review of the record and the briefs of the parties, on June 22, 2015, Judge Vanston issued a series of Orders as follows: Order Denying Defendant's Motion for Severance; Order denying Defendant's Motions for a change of Venue or Venire without prejudice; Order Denying Defendant's Motion to Preclude Hearsay Testimony without prejudice to file Motions in Limne approximately six (6) weeks prior to jury selection; Order Denying Defendant's Motion to Compel Discovery ; Order Denying Bail; and an Order Denying Defendant's Motion to Quash the Indictment. The Court Ordered that Jury Selection be rescheduled to November 10, 2015 in an Order dated June 25, 2015. A subsequent Order of June 30, 2015, recused the presiding Judge and requested another senior Judge be appointed to preside over the matter.[4]

On September 22, 2015 the Commonwealth filed Motions in Limine to "exclude irrelevant evidence" and to seek a ruling from the Court relative to "statements made by Frank Spencer prior to his murder." [5] A hearing was conducted on September 24, 2015 and the Court deferred ruling on the evidence and proposed to conduct another Pre-

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[2] The Commonwealth requested an additional "Motion for One Business Day Extension" to file their response to Defendant' brief which was granted by Order dated April 10, 2015. Another subsequent request was granted and Commonwealth's Answer was Ordered to be field no later than April 17, 2015.

[3] Defendant filed a "Notice of Alibi Defense" on May 22, 2015 and a "Motion to Set Bail" on June 12, 2015. Argument on Defendant's Motion for bail was scheduled for June 17, 2015. The Commonwealth filed a Reciprocal Notice of Witnesses on and their Answer for Defendant's bail petition on June 12, 2015.

[4] The Honorable Michael E. Dunlavey was appointed to preside over this matter following the recusal of Judge Brendan J.Vanston.

[5] Commonwealth's Motions filed September 22, 2015.

Trial Conference. The Court subsequently scheduled argument on the Commonwealth's Motions and the Defendant's anticipated responses thereto to be conducted on October 23, 2015.

On October, 5, 2015, the Defendant filed: Proposed Points for Charge; Proposed Voir Dire; a Motion to Limit Introduction and Publishing to the Jury of Photographs or Videos; a Motion in Limine to Preclude a phone call recorded on February 4, 2010; a reply to the Commonwealth's Notice to Admit Evidence pursuant to Pa. R. Evid. 404(b); and the Defendant's responses to the Commonwealth's Motions in Limine filed on September 22, 2015.

The Commonwealth filed a series of responses to the Defendant's October 5, 2015 filings on October 13, 2015. Subsequently, on October 14, 2015, Defendant filed additional Motions to Compel Discovery; Continue Trial; Extend the time to file Pre-Trial Motions and a supplemental reply to the Commonwealth's Motion to Exclude "irrelevant evidence." The Commonwealth responded to Defendant's October 14, 2015 pleadings on October 21, 2015. Defendant's Motion to Continue trial was Denied without prejudice.[6]

Following a careful review of the record and the conduct of a hearing the Court issued a series of Orders dated November 3, 2015. The Orders of November 3, 2015 precluded the Defendant from introducing evidence of Frank Spencer's alleged drug abuse and violent propensities; Denied the Defendant's Motion for a Continuance; Denied Defendant's Motion in Limine to Preclude the admission of the February 4, 2010

[6] Order dated November 3, 2015.

recorded phone call from co-conspirator and Denied the Defendant's Motion in Limine to preclude the Defendant's statement, "Life is going to be good now." The Court, noting that additional discovery was recently provided to the Defense, Granted Defendant's Motion for an extension of time to file pre-trial motions and noted no objections to the photographs that were reviewed by the court and parties.[7] The Court went on to Order that the letter sent by the decedent to President Judge Thomas A. James and the Honorable Gary E. Norton, then Columbia County District Attorney, were admissible on the issue of the Defendant's fear.

A jury trial commenced on November 9, 2015, and the jury returned their verdict on November 20, 2015, when the Defendant, Maria Sanutti-Spencer, was found guilty beyond a reasonable doubt on all twenty-six (26) counts. A Pre-Sentence Investigation (PSI) was Ordered and to be completed by the Columbia County Adult Probation and Parole Department prior to sentencing. On December 18, 2015, following the conduct of a hearing, the Defendant was sentenced to life in prison without the possibility of parole on Count One, Criminal Homicide in the first degree. Counts two (2), six (6) and thirteen (13) merged for sentencing purposes. On the remaining Counts the Defendant was sentenced to an aggregate consecutive period if incarceration of a minimum of two hundred and fifty months (250) to a maximum of six hundred and ninety-six (696) months in a state correctional facility.[8]

On January 11, 2016, the Defendant, through her counsel, filed a Notice of Appeal. By Order dated February 3, 2016, this Court directed the Defendant to file her

[7] Orders dated November 3, 2015.

[8] The Sentences imposed for counts seven (7); eleven (11); twelve (12); and counts eighteen (18) through twenty-six (26) were Ordered to run concurrently with the sentences previously Imposed.

Concise Statement of Errors Complained of on Appeal pursuant to Pa. R.A.P. 1925(b) within twenty-one (21) days. On February 16, 2016, Justin McShane, Esquire entered his appearance for the Defendant and contemporaneously he sought by written motion an extension of time to file the Defendant's 1925(b) statement. By order dated February 24, 2016 we granted Defendant additional time to file her Concise Statement.

On March 18, 2016 the Superior Court entered an Order dismissing the Defendant's appeal, which was docketed at 150 MDA 2016, finding that she failed to comply with Pa. R.A.P. 3517. The Defendant filed a motion with this Court seeking leave to file her appeal Nunc Pro Tunc on May 5, 2016. On May 5, 2016 we Granted the Defendant's Motion to Appeal Nunc Pro Tunc and Ordered that the Defendant shall be deemed to have timely filed a Notice of Appeal if it is received, filed and docketed by no later than June 1, 2016.

The Defendant, through her new Appellate Counsel, filed a Notice of Appeal on May 12, 2016. On May 31, 2016, we Ordered the Defendant to file her Concise Statement of Errors Complained of on Appeal pursuant to Pa. R.A.P. 1925(b) within twenty one (21) days. On June 30, 2016, Defendant filed her counseled Concise Statement pursuant to Pa. R.A.P. 1925(b). For the reasons set forth below, the Defendant's appeal should be denied, and the verdict and sentence affirmed.

II. LAW AND DISCUSSION

Rule 1925 is intended to aid the trial court in identifying the issues raised for meaningful review. Pa. R.A.P. 1925. The Defendant's Concise Statement filed pursuant

to Pa. R.A.P. 1925(b) raises more than forty allegations of error.[9] The volume of alleged errors limits this court's opportunity to meaningfully review and discuss Defendant's claims. We expect that Defendant's counsel will not address each and every one of these issues in the Appellant's brief. Given the volume of the Defendant's complaints and the vague and sometimes repetitive nature her not so Concise Statement we will not discuss the issues seriatim but instead we will organize our analysis in what we believe is a logical and efficient manner. Out of necessity, we adopt Appellant's cumbersome numbering scheme.

4.1.1

Appellant first complains that the trial court erred in excluding evidence of Frank Spencer's abusive character, submitting that said evidence would rebut the evidence supporting the claim that he was afraid of the Defendant. We disagree.

Following the conduct of a hearing and a review of the record in this matter we entered an Order granting Commonwealth's Motion in Limine to exclude evidence of the alleged abusive character of Frank Spencer finding the proffered evidence ot be both irrelevant and unfairly prejudicial. It has been held by our Pennsylvania Supreme Court

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[9] See Commonwealth v. Jordan, 2015 WL 7077229 (No. 144 MDA 2015 "(T)he mere multiplication of claims *ad infinitum* is of no direct benefit in obtaining appellate relief. To the contrary it is often counter-productive: When I read an appellant's brief that contains ten or twelve points, a presumption arises that there is no merit to any of them. I do not say that it is an irrebuttable presumption, but it is a presumption that reduces the effectiveness of appellate advocacy. Appellate advocacy is measured by effectiveness, not loquaciousness." *see also* ... Commonwealth v. Snyder, 870 A.2d 336, 340 (Pa.Super.2005) ("The effectiveness of appellate advocacy may suffer when counsel raises numerous issues, to the point where a presumption arises that there is no merit to any of them.").

that "it is well settled that the admission of evidence is within the sound discretion of the Trial Court." Commonwealth v. Collins, 888 A.2d 564, 577 (Pa. 2005). A trial court's ruling on a motion in limine is "final, conclusive and binding at trial," unless the Commonwealth files an interlocutory appeal. Commonwealth v. Padilla, 923 A.2d 1189, (Pa. Super. 2007). The standard of review for a trial court's ruling on motions in limine is abuse of discretion. Commonwealth v. Rosen, 42 A.3d 988 (Pa. 2012) An abuse of discretion is not shown merely by an error in judgment. Rather, the Defendant must establish, by appropriate reference to the record, that the sentencing judge ignored or misapplied the law, exercised his judgment for reasons of partiality, prejudice, bias, or ill-will, or arrived at a manifestly unreasonable decision. Commonwealth v. Zurburg, 937 A.2d 1131 (Pa. Super. 2007).

We further note that though a defendant does indeed have a fundamental right to present defensive evidence, that right is not absolute. Such evidence is admissible provided that it is relevant and not excluded by an established evidentiary rule." Commonwealth v. Seibert, 2002 PA Super 15, 799 A.2d 54, 67 (Pa. Super. 2002) (internal quotation marks and citation omitted). See also Chambers v. Mississippi, 410 U.S. 284, 93 S. Ct. 1038, 35 L. Ed. 2d 297 (1973). Our Pennsylvania Supreme Court has observed that an accused exercising his or her right to present evidence "must comply with established rules of procedure and evidence...." Commonwealth v. Bracero, 515 Pa. 355, 363, 528 A.2d 936, 939 (1987) (quoting Chambers, 410 U.S. at 302).

The character of a victim is only relevant when pertinent trait exculpates the Defendant Commonwealth v. May, 587 Pa. 184, 898 A.2d 559 (Pa 2006). See also

Commonwealth v. Minich, 4 A.3d 1063 (Pa Super. 2010) In Commonwealth v. Beck, 485 Pa. 475, 402 A.2d 1371 (1979), our Pennsylvania Supreme Court explained "... [P]rior convictions involving aggression by the victim of a homicide may be introduced into evidence by a defendant where a claim of self-defense is made for either one of two purposes: "(1) to corroborate his alleged knowledge of the victim's quarrelsome and violent character to show that the defendant reasonably believed that his life was in danger; or (2) to prove the alleged violent propensities of the victim to show that the victim was in fact the aggressor." Commonwealth v. Beck, 485 Pa. 475, 402 A.2d 1371 (1979)

Given that the Defendant did not raise self-defense as a justification, we see no relevance to Defendant's assertions that the victim was abusive towards her or had bad character. We also note that the Commonwealth's theory of the case was that the victim was ambushed having been shot from a "sniper's nest" and executed as he lie on the ground. Under these circumstances, the alleged abusive character of Frank Spencer was not relevant to the case and this evidence was properly excluded.[10] Accordingly, the Defendant's appeal must fail.

Defendant in a sub part to her concise statement went on to claim that the door to evidence of Frank Spencer's abusive character was opened by the witnesses Yodock and Mix. We disagree.

The Defendant's counsel had ample opportunity to effectively cross examine Mr. Yodock regarding the "apology" and indeed some evidence of Frank Spencer's abusive

[10] Order dated November 3, 2015 responsive to Commonwealth's Motion in Limine to exclude irrelevant evidence. Frank Spencer's purported violent propensities were ruled inadmissible.

conduct, directed toward the Defendant, was presented to the jury. Defense counsel's very first question to Mr. Yodock was about Frank Spencer punching the Defendant. (N.T. Trial Vol. II p. 205-206) We allowed Defense counsel to pursue a line of questioning which introduced evidence that Frank Spencer hit the Defendant after the witness opened the door to that line of questioning in one of his responses on direct examination. (N.T. Vol. II p. 204-206) Nonetheless, Mr. Yodock's response did not open the door so wide that the Defendant became entitled to present any evidence of the Defendant's bad character. For the aforementioned reasons, Defendant's appeal fails.

We are similarly unpersuaded that the testimony of Ms. Lee Mix opened the door to evidence of the victim's alleged abuse and bad character. The relevant testimony of Lee Mix was as follows:

> Q. Now, I want you to turn your attention to a later time period after you left the Human Relations Commission, did you ever have occasion to have contact with the Defendant at your home?
>
> A. Yes, the Defendant came to my house I believe it was 2007 because I sold my house the year after so it would have been probably 2007. I was outside in the yard and she pulled up and we sat out on the porch and talked for a while. And I had been—I was the equal employment opportunity director for the board for the parole board and she came to the house and asked me I was working for the parole board and could I get her dad out on parole early. (N.T. Vol. IV p.65)

The issue came up again at the conclusion of Lee Mix's direct examination.

> Q. I want to turn your attention now to July of 2012, did you ever learn about something in the media at that time?
>
> A. Yes, I saw that in the in the news that Mr. Spencer was found dead.
>
> Q. As a result of hearing that news, what did you do at that point?
>
> A. I talked to two co-workers of mine and I sent Detective Williams an e-mail to the barracks commander in Bloomsburg, the PSP commander, 'cause I didn't know if there was an investigation, if there was

> who was handling it, and I detailed what I just told you about the Defendant coming to my house and asking me to get her father out 'cause it just seemed really strange.

Defense counsel, citing the rule of completeness, asserted that the witness opened the door to evidence of domestic violence allegations against Mr. Spencer because at the preliminary hearing the witness testified that the Defendant told her that if her father was out of jail the domestic violence in the household would stop. (N.T. Vol. IV p. 67) We are not aware of any independent doctrine explaining the rule of completeness apart from Pennsylvania Rule of Evidence 106 which states as follows:

> If a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part--or any other writing or recorded statement--that in fairness ought to be considered at the same time. Pa.R.E. 106

Clearly, the testimony of Lee Mix did not implicate this rule as no writing or recorded statement was introduced. We look instead to Pa. R. Evid. 611(b) and conclude without hesitation that the line of questioning defense counsel sought to pursue was outside the scope of direct examination. Cross examination of witnesses is limited to matters brought out on direct examination, with exception to questions could demonstrate bias on the part of the witness. Commonwealth v. Katsafanas, 318 Pa. Super. 143, 464 A.2d 1270 (1983).

The trial court has discretion to limit the scope of cross examination and rulings regarding same may not be reversed absent a showing that the court abused its discretion. Commonwealth v. Gibson, 547 Pa. 71, 88; 688 A.2d 1152, 1160, cert denied 522 U.S. 948 (1997). Additionally, it is not an abuse of discretion to preclude cross examination that would elicit inadmissible evidence. Commonwealth v. Ramtahal, 33 A.3d 602 (2010). It appeared to the Court that the Defendant was attempting to present

her own testimony through cross examination of Commonwealth witnesses. The witness remained under subpoena and was available to the Defendant for her case in chief.[11] For the aforementioned reasons, the Defendant's appeal must fail.

Three of the Defendant's issues are variations on the same issue. We address these issues together to enhance clarity. Appellant complains as follows:

4.1.2 The Court erroneously excluded evidence of the DEA and FBI investigation into Frank Spencer's drug usage and dealing. This evidence was part and parcel of Ms. Sanutti-Spencer's defense. It provides alternative theories of the murder.

4.1.4 The Court erroneously excluded evidence of evidence of crack pipe outside Frank Spencer's home, which would have given credence to alternative suspects and theories of the murder related to his drug use and drug dealing.

4.3.3 The Court erred in excluding the 404(b) evidence of Frank Spencer, specifically, that Frank Spencer had been investigated by the FBI and DEA for drug usage and dealing.

Following the conduct of a hearing on pre-trial evidentiary matters, evidence relative to alleged drug dealing and drug use was deemed inadmissible and remote in time pursuant to an Order dated November 3, 2015. We found the proffered evidence irrelevant in part because the Commonwealth represented that no drugs were found in the body of Mr. Spencer or inside his home. The Defendant failed to demonstrate that the purported evidence of Frank Spencer's alleged drug dealing and or usage was

[11] Mix was not recalled by the Defendant in her case in chief.

relevant and this purported evidence was correctly deemed inadmissible. Further, the mostly speculative evidence of drug use and dealing would have prejudiced the Commonwealth and confused the jury.

A trial court may exclude evidence that is irrelevant to the issues presented. Evidence is not relevant "unless the inference sought to be raised by it bears upon a matter in issue and renders the desired inference more probable than it would be without the evidence." Commonwealth v. Vallejo, 532 Pa. 558, 616 A.2d 974, 976 (Pa. 1992). Relevant, evidence may, however, be excluded if its probative value is outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. Pa.R.E. 403.

Here, by Order dated November 3, 2015, we declined to allow the Defendant to present evidence of the victim's alleged drug use and or dealing finding that such evidence had no bearing on whether the Defendant and her father murdered him. The Defendant's assertions relative to the victim and drug use constituted nothing more than speculation. See Commonwealth v. Williams, 554 Pa. 1, 720 A.2d 679, 686 (Pa. 1998) (holding that the trial court properly excluded evidence that other persons had a motive to kill the victims because, *inter alia*, such evidence was speculative); Commonwealth v. Cook, 544 Pa. 361, 676 A.2d 639, 647 (Pa. 1996) (holding that the trial court properly excluded evidence relating to a purported additional suspect where the evidence was speculative and had little or no probative value). Accordingly, Defendant's appeal fails.

4.1.3

The Defendant next alleges that it was error to exclude evidence relative to the health problems of the Defendant.

"Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Commonwealth v. Mitchell, 588 Pa. 19, 902 A.2d 430, 465 (Pa. 2006). See also Pa. R.E. 401. Evidence is relevant if it logically tends to establish a material fact in the case or tends to support a reasonable inference regarding a material fact. Taliferro v. Johns-Manville Corp., 617 A.2d 769, 803 Pa. Super. Ct. 1992). Pennsylvania Rule of Evidence 403 provides that evidence, although relevant, may be excluded if its probative value is outweighed by the danger of unfavir prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. Pa.R.E. 403. Evidence is only admissible where the probative value of the evidence outweighs its prejudicial impact. Commonwealth v. Story, 476 Pa. 391, 383 A.2d 155 (1978).

Determinations of admissibility will not be reversed on appeal absent a clear abuse of discretion. Commonwealth v. Chmiel, 738 A.2d 406, 414 (1999) cert. denied. 528 US 1131 (2000). An abuse of discretion is not merely an error of judgment; however, if in reaching a conclusion, the court overrides or misapplies the law, or the judgment exercised is shown by the record to be manifestly unreasonable or the product of partiality, prejudice, bias, or ill will, discretion has been abused. Estate of Sacchetti v. Sacchetti, 2015 PA Super 240, 128 A.3d 273 (2015).

First, the Commonwealth's theory of the case was that the Defendant's father, or another unknown co-conspirator, fired the rifle shot from the sniper's nest overlooking the front door of Mr. Spencer. He was given a coup de grace with a .357 magnum pistol on his front porch. (N.T. Vol. II p. 238 lines 2-16) A mixture of DNA from the Defendant's father, Mr. Rocco Franklin, and another unidentified party was collected from the crime scene. (N.T. Vol. III p. 153) We deemed evidence related to the Defendant's health inadmissible because such evidence would have nothing to rebut the prosecution's argument. Furthermore, we found that the purported evidence was loaded with the potential for unfair prejudice having the tendency to elicit sympathy for the Defendant in the minds of the jurors. For the foregoing reasons, the evidence Defendant sought to introduce at trial was irrelevant to the issues properly being tried before the jury and likely to unfairly prejudice the Commonwealth. Accordingly, the Defendant's appeal must fail.

Additionally, the Appellant declines to point to the record to identify what evidence she wished to admit at trial. A Concise Statement must "properly specify the error to be addressed on appeal." Commonwealth v. Hansley, 24 A.3d 410, (Pa. Super. 2011) quoting Commonwealth v. Dowling, 778 A.2d 683 (Pa. Super. 2001). We endeavor to address each of the Defendant's issues in a considered and meaningful way. Nonetheless, some of the Defendant's issues are stated so generally that they defy meaningful review and are therefore waived.

Pa. R.A.P. 1925(b)(4)(ii) provides that an appellant's statement of matters complained of [on appeal] must "concisely identify each ruling or error that appellant intends to challenge with sufficient detail to identify all pertinent issues for the judge."

Pa.R.A.P. 1925(b)(4)(vii) provides that all issues not raised in accordance with subsection (b) of this rule are waived. "When a court has to guess what issues an appellant is appealing, that is not enough for meaningful review. Commonwealth v. Butler, 756 A.2d 55, 57 (Pa. Super 2000) See also: Giles v. Douglass, 2000 Pa. Super 219, 757 A.2d 962, 963 (Pa. Super. 2000). A vague Concise Statement is equivalent to no concise statement at all. Commonwealth v. Dowling, 778 A.2d 683 (Pa. Super. 2001).

Thus, we find this allegation of error is both meritless and likely waived. Accordingly, the Defendant's Appeal must fail.

4.1.5

Appellant, citing Pa.R.E. 803(3) and referring to a proffer relative to the Batuik brothers and a Mr. Ulrich, complains as follows: "The Court erroneously excluded evidence that Anthony Rocco Franklin had the intent and motive to kill Frank Spencer."

At trial the Defendant's counsel proffered that the three aforementioned witnesses would testify that at some time in 2007 and or 2008, prior to Anthony Rocco Franklin's release from SCI Coal Township, Mr. Franklin said that he planned to kill Frank Spencer. (N.T. Vol. VI p. 223) Counsel argued that the statements were evidence of Anthony Rocco Franklin's state of mind and admissible pursuant to Pa.R.E. 803(3). (N.T. Vol. VII. p. 4) We disagree. Custody Hearings where [illegible] in March 2008, April 2008 & [illegible] and sent to PR.

The Defendant's proffer was pure hearsay and was properly deemed inadmissible. Pennsylvania Rule of Evidence 802 provides that, "Hearsay is not admissible except as provided by these rules, by other rules prescribed by the

Pennsylvania Supreme Court, or by statute." Pa R.E. 802. Hearsay is an out-of-court statement offered to prove the truth of the matter asserted in the statement. Commonwealth v. Laich, 566 Pa. 19, 25, 777 A.2d 1057, 1060 (2001) citing Commonwealth v. Puksar, 559 Pa. 358, 740 A.2d 219, 225 (1999), *cert. denied,* 531 U.S. 829, 121 S.Ct. 79, 148 L.Ed.2d 42 (2000). Her argument that this proffered hearsay evidence could be entered pursuant to the co-conspirator exception to the general rule against hearsay also fails. See Pa. R.E. 803(25)(E). We note that the party seeking to offer hearsay bears the burden of proof and must persuade the court that the hearsay statement is admissible against the party opponent. Harris v. Toys "R" Us-Penn, Inc., 880 A.2d 1270, Super.2005, appeal denied 895 A.2d 1262, 586 Pa. 770.

"The coconspirator exception to the hearsay rule requires: (1) the existence of a conspiracy between the declarant and the defendant must be demonstrated by a preponderance of the evidence, (2) the statements must be shown to have been made during the course of the conspiracy, and (3) they must have been made in furtherance of the common design." Commonwealth v. Johnson, 838 A.2d 663, 576 Pa. 23, Sup.2003, reargument denied, certiorari denied 125 S.Ct. 617, 543 U.S. 1008, 160 L.Ed.2d 471. See also Pa. R. E. 803(25)(E)

In the present case, the proffered statements were alleged to have been made in 2007 and or 2008. (N.T. Vol. VI p. 223) Critically, the conspiracy as alleged, then later proven beyond a reasonable doubt, began some time just prior to the October 31, 2009 burglary of Frank Spencer's residence. Thus, the statements made by him in 2007 and 2008 clearly were not made during or in furtherance of the conspiracy. The Defendant attempted to argue on the one hand that her Father's statement comes in under the co-

conspirator exception while denying that there ever was a conspiracy suggesting that her Father acted on his own. The Defendant's counsel continually pointed to an empty chair as a defense and also presented a nearly fifty year old game violation. The jury was unpersuaded. Appellant's complaint of error is without merit and her appeal fails.

4.2

Defendant complains that "the court committed reversible error when the trial judge stated, in open court, and in front of the jury that he believes Dale Scotts Jones's testimony does not rebut the Commonwealth's theory that if the Defendant cannot not have Frank Spencer than no one could." (Appellant's 1925b Statement at 4.2) We note that the Court's comment was an inquiry responsive to the arguments of counsel relative to the relevance and admissibility of the witness's testimony. (N.T. Vol. VIII p.109-110)

Counsel's offer of proof for the witness was as follows: "It's very relevant, your honor, because the Commonwealth has alleged that my client has suggested to individuals if she can't have Frank Spencer, nobody can. This demonstrates that she is dating other individuals that would rebut that idea." Id. Though the Court questioned counsel's argument that the proffered testimony was rebuttal evidence, the Court allowed counsel to develop the witness's testimony after agreeing, "Yes, it is for the panel so I'll allow the questioning to go on." (N.T. Vol. VIII p. 110) The Court was only agreeing with counsel not opining on the Defendant's statement.

This allegation of error is wholly without merit. The trial judge may comment on evidence where such comment is helpful to the jury's understanding of the use of

evidence. Pa. R.E. 103(b). More importantly, the Court instructed the jury at the outset of the trial as to what they are to consider as evidence. (N.T. Vol. I p. 8-9) (N.T. Vol. II p. 35) The Court again so instructed the jury at the conclusion of the trial. (N.T. Vol. IX p. 5 lines 12-18) The jury is presumed to follow the Court's instructions. Commonwealth v. Reid, 627 Pa. 151, 202, 99 A.3d 470, 501 (2014) citing Commonwealth v. Travaglia, 611 Pa. 481, 28 A.3d 868 (2011). The Appellant offers no argument or evidence that the jury disregarded the Court's instructions. Thus, the Defendant's allegation of error is meritless.

4.3

The court erred in multiple evidentiary rulings:

4.3.1

The Defendant next alleges that it was error to admit "hearsay testimony regarding statements allegedly made by Frank Spencer and letters written by Frank Spencer, violating both the rules of evidence and the Defendant's right to confrontation."

By Order dated November 3, 2015, the Court ruled that the letters of the victim to President Judge James and District Attorney Norton were admissible on the issue of the decedent's fear. Statements that a decedent feared the defendant are admissible to demonstrate ill will and malice. Commonwealth v. Luster, 71 A.3d 1029, 1041, (Pa. Super) App. denied 83 A.3d 414 (Pa. 2013) See also, Commonwealth v. Brown, 538 Pa. 410, 648 A.2d 1177 (Pa. 1994), Commonwealth v. Puksar, 559 Pa. 358, 368, 740 A.2d 219, 225, (Pa. 1999) The evidence presented at trial through these letters fairly represented Mr. Spencer's fear and state of mind during the campaign of harassment

and intimidation visited upon him by the Defendant and her co-conspirator, Mr. Anthony Rocco Franklin.

Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. Commonwealth v. Puksar, 740 A.2d 219, 225, (Pa. 1999) citing Commonwealth v. Griffin, 511 Pa. 553, 515 A.2d 865, 870 (Pa. 1986). Pa rule of evidence 803(3) provides an exception to the exclusion under the general hearsay rules for statements relative to the declarant's state of mind. Pa. R. Evid 803(3). In the present case, Mr. Spencer's statements were not offered for their truth and consequently they are not hearsay. When an extrajudicial statement is offered for a purpose other than proving the truth of its contents, it is not hearsay and is not excludable under the hearsay rule. Id.

Similarly, the Defendant's right to confrontation is not impaired since she was the object of the statements and made personal statements consistent with the decedent's fear of her and her father.

4.3.2

Appellant alleges that the Court erred in admitting 404(b) evidence relating to prior arrests and summons issued to the Defendant.

Pennsylvania Rule of Evidence 404(b), governing evidence of other crimes, wrongs or acts, provides as follows:

> (b) Other crimes, wrongs, or acts.
>
> (1) Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith.

(2) Evidence of other crimes, wrongs, or acts may be admitted for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident.

(3) Evidence of other crimes, wrongs, or acts proffered under subsection (b)(2) of this rule may be admitted in a criminal case only upon a showing that the probative value of the evidence outweighs its potential for prejudice.

(4) In criminal cases, the prosecution shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial.

Pa. R.E. 404(b)(2) authorizes the admission of evidence of an accused's prior bad acts where the proffered evidence is offered to prove motive, intent, plan, knowledge, identity, or absence of mistake. Pa.R.E.404(b). Such evidence of prior bad acts may not be admitted only to demonstrate that the defendant is a person of bad character. Commonwealth v. Davis, 737 A.2d 792, 796 (Pa. Super. 1999). Prior bad acts may however be admitted to provide context to the case at bar. In Commonwealth v. Powell, the Supreme Court of Pennsylvania upheld the trial court which allowed evidence of the defendant's abuse of a child reasoning that said evidence was a part of a chain or sequence of events that formed the history of the case. Commonwealth v. Powell, 956 A2d 406, 419-420 (Pa. 2008). (See also Commonwealth v. Sherwood, 892 A.2d 483 (Pa. 2009) A case in which prior acts of abuse were relevant to establish the chain of events which culminated in a fatal beating.) "Evidence of bad acts is also admissible where the particular crime or act was part of a chain, sequence or natural development of events forming the history of the case." Commonwealth v. Passmore, 2004 Pa Super 336, 857 A.2d 679 (Pa 2004).

In the instant case the Defendant was accused of the following relevant crimes: burglarizing the home of the decedent in October of 2009; arson and conspiracy to commit same for burning down the residence of the decedent in January of 2010; arson and conspiracy to commit same for burning down the occupied residence of the decedent's then paramour, Ms. Julie Dent, in August of 2010; the attempted homicide of Ms. Dent for that same incident; and in July of 2012 the homicide of the decedent, Mr. Frank Spencer and terroristic threats made after the death of Frank Spencer which were directed toward his friend Derk Reed, alluding to shooting Reed and purportedly stating that "your house will burn too Reed." (Amended Information September 24, 2015.)

In light of the foregoing, this case clearly involved a course of criminal conduct by the Defendant and her co-conspirator over the period of nearly three (3) years. The additional uncharged or disposed of criminal episodes involving the Defendant plainly were admitted not for their truth but to explain the long history of this case and the motive, malice, intent and plan of the Defendant. We also fail to see how allegations of summary and misdemeanor offenses brought against the Defendant who stood trial for homicide, attempted homicide and arson prejudiced the jury to such a degree as to deny her a fair trial. The story of this case is disturbing but it was written in large part by the Defendant herself. Her conduct was rightly presented to the jury for the limited purposes proscribed by law. We do not hesitate to conclude that her Appeal must fail.

Alternatively, given that the Appellant does not point to a single example of the complained of error, we find her issue identified at 4.3.3 is waived.

4.3.4

The complaint 4.3.4 is a preamble to a litany of complaints stating as follows:

The court erred in allowing the Commonwealth to admit evidence that violated rules of evidence 401, 402, and 403 because the evidence was not relevant, and even if relevant, the probative value was outweighed by unfair prejudice, confusion of the issues, misleading the jury, and needlessly presenting cumulative evidence. This alleged error includes:

4.3.4.1 The voicemails Ms. Sanutti-Spencer left.

4.3.4.2 The text messages form Ms. Sanutti-Spencer.

Pa. R.E. 803(25) governs the admissibility of statements made by a party or a co-conspirator. Generally, subject to relevance, a party's own statement may be used against him at trial. Havasy v. Resnick, 415 Pa. Super. 480, 488, 609 A.2d 1326, 1329 1992) (See also Commonwealth v. Edwards, 588 Pa. 151; 903 A.2d 1139, 1157 -1158 (Pa. 2006) reaffirming the admission exception to the hearsay exclusion in a criminal case.) Although we do not doubt the Defendant would prefer that the jury had not heard the various voice mails and text messages sent by her we found them to be relevant and more importantly, found no basis to exclude them.

We also find that these issues identified as issue 4.3.4.1 and 4.3.4.2 are likely waived. In discussing the purpose for Rule 1925(b), Appellant's own 1925 Statement cites Commonwealth v. Reeves, declaring "A 1925b statement must be detailed enough so that the judge can write an opinion, but not so lengthy that it does not meet the goal of narrowing down the issues previously raised to the few that are likely to be presented

to the appellate court without giving the trial judge volumes to plow though." (Appellant's Concise Statement at p. 2) Commonwealth v. Reaves, 907 A.2d 13 (Pa. Super. 2006).

The preceding two issues raised by the Appellant invite us to plow through the seven volumes of trial transcript to find examples of her issue. We decline her invitation and we consider the issues identified at 4.3.4.1 and 4.3.4.2 waived. Appellant does not point to even one voicemail or text message. Rule 1925 does not require a response to such boiler plate complaints. We note that the authenticity of most if not all of the Appellant's texts and calls was stipulated to by trial counsel. (N.T. Vol. II p. 6) Furthermore, authenticity notwithstanding, the voicemails and texts left or sent by the Defendant are plainly admissions as pursuant to Pa. R.E 803(25)(A). Although the meaning of her messages could be open to interpretation, we need not adopt her interpretation prior to ruling on their admissibility. In light of the foregoing, Defendant's Appeal fails.

The Defendant's Concise Statement at 4.3.4 lays out a general boiler plate preamble to the seventeen issues numbered 4.3.4.1 through 4.3.4.17. Noteworthy, this generalized statement raises only relevance and prejudice as governed by Pa.R.E. 401, 402, 403. Our analysis of these issues will likewise begin with a general statement of the relevant authority in an effort to keep our Opinion brief and concise.

Rule 401 of the Pennsylvania Rules of Evidence states, "Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." *Pa.R.E. 401*. While Rule 403 provides, "...relevant, evidence may be excluded if its probative value is outweighed by the danger of unfair

prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." *Pa.R.E. 403*.

Relevance is a threshold consideration in determining the admissibility of evidence. Whyte v. Robinson, 421 Pa. Super 33; 617 A.2d 389, 383 (1992). Evidence is relevant if it logically tends to establish a material fact in the case or tends to support a reasonable inference regarding a material fact. Evidence is only admissible where the probative value of the evidence outweighs its prejudicial impact. Commonwealth v. Story, 476 Pa. 391, 383 A.2d 155 (1978). Where the evidence is not relevant, there is no need to determine whether or not the probative value of the evidence outweighs its prejudicial impact. Commonwealth v. Stokes, 2013 PA Super 272, 78 A.3d 644, 654 (2013).

Moreover, it is well settled that the admission of evidence is within the sound discretion of the trial court and determinations of admissibility will not be reversed on appeal absent a clear abuse of discretion. *Commonwealth v. Chmiel, 738 A.2d 406, 414 (1999) cert. denied. 528 US 1131 (2000)*. An abuse of discretion is not merely an error of judgment. Commonwealth v. Allburn, 721 A.2d 363, 366 (Pa. Super 1998) An abuse of discretion occurs where the record demonstrates that "the court, in reaching a conclusion, overrides or misapplies the law, or exercises its judgment in a manifestly unreasonable manner which is the result of partiality, prejudice, bias or ill will." Id.

4.3.4.3

Mrs. Yodock's testimony regarding her reaction to the Defendant telling her about her father. See Day III, p. 92; 7-19

Whereas here, when a Defendant is charged with homicide and conspiracy to commit homicide for allegedly shooting and or conspiring to shoot someone in the head, we think that evidence that the Defendant was aware that her co-conspirator discussed shooting people in the head prior to the homicide is highly relevant. Mrs. Yodock testified that Defendant's father told her son Cy stories "about popping people in the head" and the Defendant posed no objection. Therefore the objection is waived. (N.T. Vol. III p. 91)

Appellant's now complains of the relevance of Mrs. Yodock's "reaction" to that information. (N.T. Vol. III p. 92) The Defendant's admissions relative to her father are relevant to the issue of her relationship to her co-conspirator and her reported knowledge of his activities or claims. We further find that Mrs. Yodock's reaction to the information is relevant to the issue of her credibility. Evidence that impeaches, or corroborates or rehabilitates a witness is relevant. Commonwealth v. Davis, 554 A.2d 104 (Pa. Super. Ct. 1989) The prosecutor's question in essence asked what did she do with the information and her response was that she told her husband and her mother in law about the encounter. (N.T. Vol III p. 93) In our view, the witness's response was a fair inquiry addressing her credibility. Accordingly, Appellant's appeal is without merit and must fail.

In the alternative, if the Honorable Superior Court deems the admission of Mrs. Yodock's "reaction" error we suggest that this error is harmless given that the testimony which implicated the Defendant and her co-conspirator was previously admitted without objection and one minor witness's reaction could not have contributed to the jury's

verdict. See Commonwealth v. Sandusky, 77 A.3d 663 (Pa. Super. 2013). Accordingly, Defendant's judgement of sentence should be affirmed.

4.3.4.4

Defendant appeals this Court's November 3, 2015 Order Denying the Defendant's Motion in Limine to preclude the admission of the February 4, 2010 recorded phone call, from co-conspirator Rocco Franklin to the Pennsylvania State Police. A statement by one co-conspirator is admissible against other members of the conspiracy in criminal cases if the statement is made during the course and in furtherance of the conspiracy. Pa. R.E. 803(25)(E), Commonwealth v. Dreibelbis, 426 A.2d 1111 (Pa. 1981). The standard of proof for demonstrating these facts is preponderance of the evidence. Commonwealth v. Stocker, 622 A.2d 333 (Pa. Super. Ct. 1993). Appellate courts apply the abuse of discretion standard when analyzing a trial court's rulings on motions in limine. Commonwealth v. Rosen, 42 A.3d 988 (Pa. 2012). The Confrontation Clause of the Sixth Amendment is not offended by the introduction against the accused of non-testimonial hearsay statements of a co-conspirator made, during and in furtherance of the conspiracy of which the accused is a member Crawford v. Washington, 541 U.S. 36, (2004).

Officer Scott Traugh heard the February 4, 2010 voice mail at issue which was left for the Pennsylvania State Police and he identified the caller as Anthony Rocco Franklin, the Defendant's father. (N.T. Vol. IV p. 245). Ten days after the fire at Mr. Frank Spencer's home, the then unidentified caller represented that he had been solicited to set the fire. (N.T. Vol IV p. 249) Commonwealth's Exhibit #244, Vol IV p. 246. The evidence proffered at the time the Court ruled on the admissibility of the

February 4, 2010 statement demonstrated by a preponderance of the evidence that Anthony Rocco Franklin was in a conspiracy with the Defendant and that his call was made in furtherance of the conspiracy.[12] The evidence adduced at trial gave us no reason to reverse our judgment. The evidence presented by the Commonwealth suggested that Rocco Franklin had knowledge about the fire at Mr. Spencer's Millville Road home and that he attempted to either guage the interest of the State police in him as a suspect or misdirect authorities away from him, his daughter or their confederates.[13]

In light of the fact that the Criminal Information charged the Defendant with Homicide, Arson and Conspiracy to commit same, we find that the evidence of the February 4, 2010 phone call was highly relevant and not unfairly prejudicial. Accordingly Appellant's Judgment of Sentence should be affirmed.

4.3.4.5

Appellant next alleges error in admitting her statement "life is going to be good now." We disagree.

In isolation, the Defendant's statement, "Life is going to be good now" is meaningless; however, in the context of this case her statement is clearly relevant for the purpose of establishing her knowledge of and participation in the conspiracy. Critically, her statement was made after Frank Spencer was murdered but prior to his body being discovered. (N.T. Vol. VI. P. 187-188) Plainly, the Defendant's knowledge at

not accurate. She said call-Star 9 and that's [illegible]. See Note!

[12] At the time of the fire the Defendant and the victim were at a hotel in Williamsport. (N.T. Vol. VI p. 117)

[13] Given that the preamble of Appellant's 1925b at 4.3.4 raised only relevance and unfair prejudice we believe that we could find the hearsay elements of her complaint waived. We analyze the issue to amplify our reasoning and aid subsequent Appellate Courts.

a time when the demise of Mr. Spencer was otherwise unknown does indeed have a tendency to make the existence of a fact that is of consequence to the determination of the action more probable and the evidence was properly admitted. See Pa.R.E. 401. Consequently, Appellant's allegation of error is meritless.[14]

4.3.4.6

Appellant alleges that the Court erred admitting "Statements made by Frank Spencer to Mr. Yodock when the Court ruled that whether Frank Spencer was contacting law enforcement went to his state of mind. Day II, 189-190; 16-13" For the reasons set forth below we disagree.

Pennsylvania Rule of Evidence 803(3) provides an exception to the general rule against the admission of hearsay evidence where the evidence is a statement of the declarant's then existing state of mind. Pa. R. E. 803(3). The statements may not be offered to prove the fact remembered or believed. Id. The witness testified that he discussed the fires with Mr. Spencer and that Mr. Spencer made reports about same to law enforcement. (N.T. Vol. II p. 189-190) The evidence was admitted to demonstrate the victim's state of mind during the lengthy period of intimidation visited upon him by the Defendant.

Particularly in a homicide case, a statement evidencing the decedent's state of mind may be offered not for the truth of what was said but to show motive or malice. Commonwealth v. Puskar, 559 Pa. 358, 368; 740 A.2d 219, 225 (1999). Cert denied

[14] The Appellant's Complaint citing the "rule of completeness" has no application to this alleged error. No writing was introduced and we know of no authority that requires "complete" recitations of verbal exchanges.

531 U.S. 829, 121 S.Ct. 79 (2000). Determinations of whether such statements are admissible rest with the sound discretion of the trial court and will not be disturbed absent an abuse of discretion. Commonwealth v. Collins, 550 Pa. 46, 703 A.2d 18 (1997) In the instant case, the Commonwealth did not offer Mr. Spencer's statement for the truth of the matter, but instead to establish his fear and reactions thereto during the course of acrimonious relations with the Defendant.

"Evidence concerning the previous relations between a defendant and a homicide victim is relevant and admissible for the purpose of proving ill will or malice ... This principal applies when the decedent was the spouse of the accused, thus evidence concerning the nature of the marital relationship is admissible for the purpose of proving ill will, motive or malice." Commonwealth v. Chandler, 721 A.d 1040 (Pa. 1998) citing Commonwealth v. Ulatoski, 472 Pa. 53, 60, 371 A.2d 186, 190 (1977). See also Commonwealth v. Fletcher, 561 Pa. 266, 750 A.2d 261 (2000).

We find that the testimony that the decedent made reports to the police goes directly to the issue of his fear of the Defendant during the course of the conspiracy against him. Appellant's appeal must fail.

4.3.4.7

Appellant's next allegation, again presumably relying on the general relevance complaint at 4.3.4 of her 1925b statement, reads as follows: "Police reports regarding threats that Ms. Sanutti-Spencer (Defendant) allegedly made against Julie Dent and Madeline Spencer. Day IV, 148-149; 19-14." The existence of police reports relative to threats against Julie Dent, a paramour of the victim at the relevant time, were especially

relevant in the present case because of the Defendant's course of conduct attempting to intimidate the victim.[15]

"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. Drumheller, 570 Pa. 117, 808 A.2d 893 (2002) citing Commonwealth v. Stallworth, 566 Pa. 349, 781 A.2d 110, 117–118 (2001). Moreover, it is well settled that the admission of evidence is within the sound discretion of the Trial Court and determinations of admissibility will not be reversed on appeal absent a clear abuse of discretion. Commonwealth v. Chmiel, 738 A.2d 406, 414 (1999) cert. denied. 528 US 1131 (2000). We first note that the portion of the transcript the Appellant cites indicates that no evidence was offered that threats were made against the victim's mother. (N.T. Vol. IV 148-149) Seargent Traugh's testimony only indicated that her name was included in the police reports. Id.

Even if we were to adopt the Appellant's understanding of the evidence at issue we do not hesitate to find that the evidence of threats against those close to the decedent is relevant to the issue of the Defendant's motive and ill will toward the decedent himself. Police reports relative to threats made against Julie Dent are also relevant because the Defendant was charged with committing or conspiring to attempt homicide by an arson fire which occurred at Julie Dent's occupied home on August 25, 2010. (Amended Information filed 9/24/2015 at Counts 10,11,12,13) The evidence is relevant to the Defendant's malice and it supports Commonwealth's theory that the

[15] Appellant does not raise authentication, hearsay or confrontation issues.

Defendant was persistently and systematically terrorizing Mr. Spencer and those close to him. A police report indicating that Ms. Dent, a paramour of the victim, was threatened by the Defendant herself clearly tends to support a reasonable inference regarding a material fact and is therefore highly relevant. Appellant's allegation of error is meritless and her appeal must fail.

4.3.4.8

Appellant complains "Police report that Frank Spencer made alleging someone was searching how to kill somebody. Day IV, 149-157, 20-7" Noteworthy, like the preceding issue, Appellant does not raise hearsay or confrontation issues. We admitted the evidence presented on this point because it assisted the jury's understanding of the history of the case and identified one of the initial sources of the decedent's fear. This evidence was not unfairly prejudicial to the Defendant because no evidence was presented that she was using the computer. Accordingly, the Appellant's allegation of error is without merit.

4.3.4.9

The Defendant, again apparently relying on reference to the "relevance" and "unfair prejudice" broadside at 4.3.4 of her 1925(b), next complains that "Sergeant Traugh's testimony of why he believed Frank Spencer was with Ms. Sanutti –Spencer when the house on Millville Road burned down." We strain to understand Appellant's complaint on this point. Our review of the transcript indicates only that Mr. Spencer told Sargent Traugh that he was with the Defendant on the date of the fire at his residence. (N.T. Vol.V p. 144). Appellant's allegation of error does not raise hearsay or

confrontation issues and consequently those issues are waived. Given her general complaint is relevance we analyze the issue to the extent we comprehend it.

Evidence is relevant if it logically tends to establish a material fact in the case or tends to support a reasonable inference regarding a material fact. Commonwealth v. Chmiel, 738 A.2d 406, 414 (1999) cert. denied. 528 US 1131 (2000). Where Mr. Spencer was when his house at 1394 Millville Road was burned down under suspicious circumstances may be relevant in a trial alleging a campaign of escalating violence and arson of that location. Evidence that the victim was with the Defendant at a hotel away from the home amplifies the relevance of that evidence. This is especially true in light of the fact that the Defendant was charged with conspiracy to commit arson and accomplice to arson for the fire at the decedent's residence. Amended Information 9/24/2015 Counts 8,9) Consequently, we find the Appellant's allegation of error as to relevance wholly without merit.

4.3.4.10

Appellant takes issue with "Questioning witnesses regarding why they did not contact the police. Day VI, 54; 9-15."

"Any party, including the party who called the witness, may attack the witness's credibility." Pa. R.E. 607(a) After his witness testified about threats made by the Defendant, the prosecutor on direct examination, asked why the witness did not make a prompt report to police. (N.T. Vol. VI p. 45) As an initial matter we find that this is a fair question preemptively addressing the credibility of a witness.

More importantly, Defendant's counsel did not object at the time the complained of inquiry was made. Instead, defense counsel proceeded to cross examine the witness and only at the conclusion of the witness's testimony did counsel raise the objection. (N.T. Vol. VI p. 54) In order to preserve an issue for appeal a timely and specific objection must be made. Commonwealth v. Tucker, 143 A.3d 955, (Pa. Super. 2016) See also: Commonwealth v. Boring, 453 Pa Super. 600, 684 A.2d 561 (Pa. 1990) (Holding that a motion for a mistrial made subsequent to a sustained objection was untimely when deferred until the conclusion of the witness testimony a considerable length of time after the prejudicial remark occurred) In the present case, like Tucker, counsel failed to make his objection until after the completion of both direct and cross examination. Accordingly, his objection is untimely and this issue is waived.

4.3.4.11

Appellant complains "Ms. Dent was permitted to give her opinion that the fire at her house and the fire at the house on Millville Road were connected."

Appellant raises the issue of a non-expert witness rendering an opinion. We begin our analysis with a review of Pa. R.E. 701.

> Pennsylvania Rule of Evidence 701 provides as follows:
> If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:
> (a) rationally based on the witness's perception;
> (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and
> (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

Opinion testimony of a non-expert is admissible as long as the witness has perceived the events upon which his opinion is based. Commonwealth v. Neiswonger, 338 Pa. Super. 625, 488 A.2d 68 (1985). Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact. Pa. R. Evid. 704.

We note that the present case involved a series of threats and escalating violence directed toward Frank Spencer and Julie Dent who was involved in a romantic relationship with the late Mr. Spencer. At trial, the Defendant was convicted of arson as an accomplice for burning the residence of Frank Spencer on January 24th 2010. She was also convicted of arson and conspiracy for burning the residence of Julie Dent on August 25th 2010. Ms. Dent testified that "she believed the fires were connected." (N.T. Vol. VI p. 83-84) Given the history of threats made against her and Mr. Spencer by the Defendant, and the fires at their respective residences only ten (10) months apart, we find that Ms. Dent's observation was rationally based on her perception, helpful to the jury's understanding of her testimony, the history of the case and required no specialized knowledge. Pa. R.E. 701.

If the jury reached the same conclusion as that offered by Ms. Dent, it is likely because the jury interpreted the facts in the same way and concurred with the witness's opinion, because it fit the facts, and not merely because they happened to hear her lay opinion. Appellant's appeal must fail.

4.3.4.12

Appellant next complains "Ms. Dent testified that she was not trying to act like Frankie's mother. Day VI, 92: 5-25."

Given the overwhelming evidence presented of the Defendant's guilt on all counts we struggle to understand how this witness's response in the negative prejudiced the Defendant. The text and voice mail messages to Ms. Dent did show the Defendant's animosity toward her. Quite candidly, we are at a loss to provide further explanation. It is obvious to this Court, and hopefully to anyone else reviewing the record in this matter that this allegation of error is wholly without merit.

4.3.4.13

Appellant's next complaint alleges that the Court erred permitting "Steven Cvejkus testified to Ms. Sanutti-Spencer's expectations in their relationship. Day VI, 169-170; 18-15"

Once again, given that Appellant's boilerplate objection is relevance; all other allegations of error relative to this complaint are waived. While we agree that it is improper for a witness to testify as to what he imagines the thoughts or "expectations" of the Defendant are, a careful review of the exchange indicates that the witness testified to only what he personally observed. The relevant testimony is as follows:

Q. Prior to Mr. Spencer's death, had you observed a change in the Defendant?

A. Yeah, we spent more time together around that time.

Q. Was there a difference in her expectations with you regarding the relationship?

Mr. Hoey: Objection, your Honor, Relevance.

Mr. Forray: Your Honor, I think what the witness is going to talk about...

Mr. Hoey: Your Honor, if we could have a sidebar?

The Court: You can tell me without getting into the substance of what you're going to say.

Mr. Forray: I think it's relevant, Your Honor, because I expect the witness would express that there was a difference in behavior that he observed.

The Court: Okay, then let's go ahead with it. See where it goes.

Mr. Cvejkus: Yes, there was more time spent together, more time wanting to do things together in that sense, yes.

Thus, while the prosecutor's question could have used clearer language, it was evident from both his proffer and his witness's response that the evidence elicited and ultimately presented was based on the observations of the witness. His observations are relevant because they tended to show, or at least created an inference, that the Defendant was turning away from reconciliation with Frank Spencer by spending more time with another suitor. (N.T. Vol. VI p. 169-170). See Pa. R.E. 401. In the context of an acrimonious marriage followed by arson, divorce then homicide, the witness's observations of a change in the Defendant's behavior around the time of the homicide is relevant, not unfairly prejudicial and thusly her allegation of error is without merit.

4.3.4.14

Appellant next complains as follows: "Patricia Lawton testified to why she provided a voicemail to the police. (N.T. Vol. VII p. 44-45)"

A voice mail left by the Defendant for the witness, Patricia Lawton was presented to the jury as Commonwealth's exhibit 243. (N.T. Vol. VII p.44) The witness was then asked why she provided the voicemail to the police and she was directed to answer over counsel's objection. (Id.) Ms. Lawton went on to testify that she reported the voice mail because she interpreted it as a threat and that she was frightened by the

Defendant. Given that this threat was made after the murder of Frank Spencer ....

Relevant to consciousness of

4.3.4.15

Appellant next appeals the relevance of "Text messages between Cyrus Spencer and Alan Kapp read to the jury. Day VII, 216-218: 5-10"

At trial Corporal Williams of the Pennsylvania State Police read into the record the following exchange of text messages between Alan Kapp and Cyrus Spencer located at Volume VII pages 215 to 218. (N.T. Vol. VII p. 215-218).

> Q. Corporal Williams, do you know approximately what time significant communications occurred between Mr. Kapp and, Cyrus Spencer?
>
> A. Yes, July 3rd, 2012 3:09. Military time 15:09, your Honor.
>
> The Court: Okay
>
> Q. Corporal Williams continue.
>
> A. Yes, from Alan Kapp to Cyrus Spencer, "Hello, do you know what is going around?" Same time, from Cyrus to Alan: "What?" Alan to--- same time Alan to Cyrus: "Never mind, I don't know if I should tell you." Cyrus to Allen, at 3:10 p.m. "Tell." 11:15 or 3:11, one minute later from Alan to Cyrus, "Is it true what happened to your Dad?
>
> Same time, Alan to Cyrus, "Where is your Dad?"

Initially we note once again that a trial court's rulings on the admissibility of evidence will not be reversed absent an abuse of discretion. (Citations omitted) Counsel for the Commonwealth argued that the texts were being introduced for a non-hearsay purpose and we overruled the Defendant's objection (N.T. Vol. VII. P. 216) Noting that the Appellant's allegation of error is relevance, we find that

this issue is waived because at trial defense counsel's objection was hearsay. (N.T. Vol VII p. 216) (See Appellant's Concise Statement at 4.3.4)

4.3.4.16 Theresa Sanutti White was questioned as to whether she was funding her sister's defense.

Pennsylvania Rule of Evidence 607 governs impeachment of witnesses. Pa. R.E. 607. "The credibility of a witness may be impeached by any evidence relevant to that issue, except as provided by statute or these rules." Pa. R.E. 607(b). A cross examiner is permitted to reveal "possible biases, prejudices, or other ulterior motives as they might relate directly to issues or personalities in the case. R. v. Pennsylvania Dept. of Public Welfare, 535 Pa. 440, 466; 636 A.2d 142, 155 (1994). It is proper for the Commonwealth to show by cross-examination matters bearing on the witness' bias or feeling as affecting his credibility. "The latitude allowed in cross-examination is largely in the discretion of the trial court" Commonwealth v. Katz, 138 Pa. Super. 50, 64-65, 10 A.2d 49, 55, (Pa. Super. Ct. 1939) Citing Commonwealth. v. Delfino, 259 Pa. 272, 101 A 949; Commonwealth v. Keegan 70 Pa. Super. 436,441. An improper inquiry on cross examination must appear from the question and answer, or from the question alone, that wholly foreign and irrelevant matter manifestly tending to mislead the jury to appellant's prejudice was put before them under the guise of cross-exam. Commonwealth v. Katz, 138 Pa. Super. 50 (Pa. Super. 1939) Citing Commonwealth. v. Williams, 41 Pa. Super. 326, (Pa. Super 1909).

In the instant case, the prosecutor asked the Defendant's sister if she was financing the Defendant's legal defense. (N.T. Vol. III p. 79-80) This question is fair

cross examination designed to uncover bias or interest, both fair areas of inquiry. Commonwealth v. Butler, 529 Pa. 7, 14; 601 A.2d 268 (1991). See also Commonwealth v. Hlatky, 426 Pa. Super. 66, 80; 626 A.2d 575, 583 (1993) app denied 537 Pa 663; 644 A.2d 1200 (1994). Where the prosecution was permitted to inquire whether the defendant's wife's testimony was affected by a desire to see him freed. Commonwealth v. Hlatky, 426 Pa. Super. 66, 80; 626 A.2d 575, 583 (1993) app denied 537 Pa 663; 644 A.2d 1200 (1994).Noteworthy, the Defendant's sister responded to the question in the negative. (N.T. Vol. III p.79-80). We are convinced that in the instant case that the prosecutor's inquiry was a fair question reasonably designed to elicit evidence of interest or bias and accordingly her appeal fails.

4.3.4.17

Defendant again complains "Testimony concerning Mrs. Yodock's reaction to Maria telling her that her father, Franklin, tells Cyrus stories about popping people in the head." This issue is indistinguishable from the issue raised at issue 4.3.4.3 of Appellants Concise Statement. We rely on the analysis in our response to that complaint in concluding that this allegation of error is likewise without merit.

4.3.5

Appellant alleges that "The rule of completeness was violated when text messages were entered into evidence without any of the surrounding text messages to explain the context and significance of the messages. Day II, 13; 6-6"

As we stated previously in our analysis the last time the Appellant raised a similar issue, we do not believe any "rule" apart from Pa. R. E. 106 makes completeness an issue.

Nonetheless, Appellant misjudges the Rule's purpose and import. Rule 106 is not an exclusionary rule, but, rather, it merely permits the adverse party to introduce related writings so that the documents originally introduced are not read out of context. Commonwealth v. Passmore, A.2d 697, 712-713 (Pa. Super. Ct. 2004) Contrary to Appellant's contention, Rule 106 does not require that a party admit all correspondence and related writings. Rather, the rule's primary purpose is to correct misleading or impartial evidence. *See* Pa. R.E. 106, comment. The Court in Passamore was confronted with the issue of the admissibility of a series of e-mail messages, where some of the e-mails messages between the parties were missing. Id. In spite of the absence of some of the e-mail messages between the defendant and the victim in that case, the Honorable Superior Court held that Pa.R.E 106 did not preclude the admission of the relevant e-mail messages that were admitted into evidence. Id.

Accordingly, the admission of some relevant text messages sent by the Defendant was proper and Appellant's allegation of error is without merit.

4.3.6

Appellant's next allegation of error reads as follows: "Pa. R.E. 701 was violated when the Court allowed Corporal Andreuzzi to give his opinion about items in the decedent's house being out of place or not fitting what he observed when he was at the decedent's

house and when Corporal Andreuzzi gave his opinion about money being in the decedent's truck being significant. Day III 26-29; 22-4; Day III 48-49; 22-18.

Opinion Testimony by lay witnesses

> If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:
> (a) rationally based on the witness's perception;
> (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and
> (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702. Pa. R. E. 701

The portion of the record which Appellant cites as including inadmissible expert opinion testimony pertains to a State Trooper's observations during the investigation based on his experience and training. The trooper saw a rubber glove and photographed it because he thought it might be a clue. (N.T. Vol. III p. p. 26 lines 22-25) Police officers are permitted to testify to what they observe during the course of an investigation and its relevance to their conclusions. Commonwealth v. Yedinak, 676 A.2d 1217, (Pa. Super 1996) See also Commonwealth v. Neiswonger, 488 A.2d 68 (Pa. Super 1985) This allegation of error is wholly without merit. Trooper's testimony regarding the money in the vehicle is relevant because it too is a clue suggesting that the motive is not robbery. (N.T. Vol. III p. 49 lines 14-18) We allowed this testimony over counsel's objection because we found that it was rationally based on the investigator's perceptions and informed by his experience and training. See Yedinak, 676 A.2d 1217, 1221 (Pa. Super 1996)

4.4

The Appellants allegation of error identified in her 1925b Statement as issue 4.4 "There was insufficient evidence presented to uphold the verdicts for counts 1-4, 6-13 and 15-26" is waived.

Issues not raised in a 1925(b) statement are deemed waived. Commonwealth v. Lord, 553 Pa. 415, 719 A.2d 306 (1998). A vague Concise Statement is equivalent to no concise statement at all. Commonwealth v. Dowling, 778 A.2d 683 (Pa. Super. 2001). "If an Appellant wants to preserve a claim that the evidence was insufficient, then the 1925b statement is required to determine which elements of which offenses were unproven?" Commonwealth v. Manley, 985 A.2d 256, 262 (Pa. Super. 2009). Our Honorable Superior Court addressed this issue in Commonwealth v. Williams, 959 A.2d 1252, 1257 (Pa. Super. 2008) as follows: If Appellant wants to preserve a claim that the evidence was insufficient, then the 1925(b) statement needs to specify the element or elements upon which the evidence was insufficient. This Court can then analyze the elements or elements on appeal." The Williams Court went on to state that the 1925(b) statement is required to determine "(w)hich elements of which (o)ffenses were unproven? What part of the case did the Commonwealth not prove?" Id. An appellant's sufficiency claim was deemed waived where his 1925(b) Statement baldly claimed that the Commonwealth did not proffer sufficient evidence to prove beyond a reasonable doubt that [Appellant] was guilty of Robbery. Commonwealth v. Hansley, 24 A.3d 410, 415, (Pa. Super. Ct. 2011). The Appellant's 1925(b) is not nearly as illuminating as the allegation of error deemed waived in Hansley. Accordingly, her complaints are waived.

Alternatively, having presided over the trial in this matter, we do not hesitate to conclude that the evidence presented was more than sufficient to enable the jury to find the Defendant guilty beyond a reasonable doubt on all twenty-six (26) counts.

When reviewing a sufficiency of the evidence claim, a court examines all evidence and reasonable inferences there from in a light most favorable to the verdict winner, and then determines where the evidence is sufficient to enable a fact finder to determine that all elements of the offenses were established beyond a reasonable doubt. Commonwealth v. Hawkins, 549 Pa. 352, 701 A.2d 492, 499 (Pa. 1997).

Only where the evidence offered to support the verdict is in contradiction to the physical facts, in contravention to human experience and the law of nature, is it deemed insufficient as a matter of law. Commonwealth v. Robinson, 817 A.2d. 1153, 1158 (Pa.Super. 2003 quoting Commonwealth v. Santana, 460 Pa. 482, 333 A.2d 876 (1975)). The evidence must be viewed in the light most favorable to the Commonwealth as verdict winner, accept as true all the evidence and all reasonable inferences upon which, if believed, the jury could properly have based its verdict, and determine whether such evidence and inferences are sufficient in law to prove guilt beyond a reasonable doubt. *Commonwealth v. Scatena, 508 Pa. 512, 498 A.2d 1314, 1317 (1985).* After a careful review of the record, and having intently presided over the presentation of the evidence, we find no reason to doubt the jury's verdict.

For the aforementioned reasons, Appellant's allegations of error are both obviously waived and patently frivolous. Appellant's Judgment of Sentence should be affirmed.

4.5 Court erred in denying multiple mistrial requests:

We interpret this allegation of error as a prologue to Appellant's next three complaints. To whatever extent it may be an independent issue, this issue is waived since we cannot determine which request Appellant is referring to.

4.5.1 Sergeant Traugh testified that Frank Spencer's first report to the police was when he found searches related to homicide in the internet search history of his home computer.

This complaint is repetition of the allegation of error identified at 4.3.4.8 of Appellant's 1925(b) statement. To the extent that she now raises the issue of mistrial we provide the following relevant analysis.

The decision to declare a mistrial is within the sound discretion of the trial court. Commonwealth v. Montgomery, 626 A.2d 109 (Pa. 2009). A mistrial is an extreme remedy that may be granted only when an incident is of such a nature that its unavoidable effect is to deprive the defendant of a fair trial. Commonwealth v. Manley, 985 A.2d 256 (Pa. Super 2009). After the jury is exposed to unfairly prejudicial evidence the trial court may implement any appropriate remedy, including offering a remedial instruction or declaring a mistrial. Commonwealth v. Sanchez, 36 A.3d 24, 47–48 (Pa.2011).

Appellant's counsel did make a timely motion for a mistrial when the prosecutor solicited evidence from his witness that Frank Spencer made police reports alleging that someone was researching murder on his home computer. (N.T. Vol IV p. 150). As we noted earlier in our analysis we found this evidence to be relevant to decedent's state of

mind and necessary to explain to the jury the development of the history of the case. We did not and do not believe that this evidence was so prejudicial that its exclusion would be warranted pursuant to Pa R. E. 403. We are likewise unpersuaded that this evidence was so prejudicial that it deprived the Defendant of a fair trial. For the aforementioned reasons, Appellant's Appeal must fail.

4.5.2

Appellant next complains that "Ron Romig testified that he believed the Defendant murdered Frank Spencer. Day VII, 70: 12-20"

This allegation of error is wholly without merit. The Defendant's objection was sustained and the witness's testimony was stricken and the jury was instructed to ignore the comment. (N.T. Vol. VII p. 70). Appellant was convicted of homicide because the jury was so persuaded by the overwhelming evidence of her guilt not because of the opinion of one minor witness.

4.5.3

Appellant next complains that partial jury instruction was given after the jury had an unrelated question to the partial instruction. Day X, 13-14: 6-25; Day X, 15-17; 2-23; See also Day X, 7: 3-4; Day X, 17-25.

The trial court has broad discretion in phrasing instructions to the jury and may choose its own wording as long as the law clearly, adequately and accurately presented for its consideration. Commonwealth v. Chambers, 546 Pa. 370, 685 A.2d 96 (1996). "An appellate court must assess jury instructions as a whole to determine whether they are fair and impartial." Commonwealth v. Collins, 546 Pa. 616, 620, 687 A.2d 1112,

1113 (1996). Further, our appellate courts do not "rigidly inspect a jury charge, finding reversible error for every technical inaccuracy, but rather evaluate whether the charge sufficiently and accurately apprises a lay jury of the law it must consider in rendering its decision." Commonwealth v. Hannibal, 562 Pa. 132, 139-140, 753 A.2d 1265, 1269 (2000), cert denied, 532 U.S. 1039, 121 S.Ct. 2002, 149 L.Ed.2d 1004 (2001). Quoting Commonwealth v. Prosdocimo, 525 Pa. 147, 150, 154 578 A.2d 1273, 1274, 1276 (1990). A deficient jury instruction will only entitle a defendant to a new trial when the instruction was fundamentally erroneous or misled or confused the jury. Commonwealth v. Moury, 992 A.2d 162, 178-179 (Pa. Super. 2010) citing Commonwealth v. Wright, 599 Pa. 270, 961 A.2d 119 (2008). The record plainly indicates that the jury was instructed adequately and in accordance with the law. Accordingly, Appellant's allegation of error is meritless.

4.6 Appellant next complains, in pertinent part, that the Court erred in denying Defendant's motion to sever alleging that the events were unrelated, unduly prejudicial and confusing to the jury.

We disagree. On September 24, 2015, the Attorney General of Pennsylvania filed a twenty-six (26) count Amended Information charging the Appellant with a series of crimes which were then alleged to have occurred between October of 2009 and September of 2013. The offences occurred both before and after the homicide of Frank Spencer charged at count one of the Criminal Information. The offenses were absolutely related insofar as they represented a course of escalating conduct prior to the homicide and unsuccessful attempts to elude justice through perjury before an investigation grand jury over a year after the homicide.

A trial court's decision regarding the severance of offenses will not be disturbed absent an abuse of discretion. Commonwealth v. Jones, 530 Pa. 591, 610 A.2d 931, 936 (Pa. 1992); Commonwealth v. Galloway, 495 Pa. 535, 539, 434 A.2d 1220 (1981). Pa R. Crim.P. 583 "Severance of Offenses or Defendants" provides as follows:

> The court may order separate trials of offenses or defendants, or provide other appropriate relief, if it appears that any party may be prejudiced by offenses being tried together. Pa R. Crim.P. 583

Even offenses charged in separate informations may even be tried together "if the evidence of each offense would be admissible in a separate trial for the other and is capable of separation by the jury so that there is no danger of confusion, or "if the charges are "based on the same act or transaction." Pa. Crim. P. 582(A)(1), Commonwealth v. Lark, 518 Pa. 290, 543 A.2d 491, (Pa.1988) Clearly, the offenses which occurred prior to the homicide would have been admissible to demonstrate motive, intent, common scheme, plan or design or to establish the identity of the person charged with the offense. Pa.R.E. 404(b). Evidence of other crimes may also be admissible where such evidence was part of the "chain or sequence of events which became the part of the history of the case and formed part of the natural development of the facts." Lark, 543 A.2d 491, (1988) citing Commonwealth v. Murphy, 346 Pa. Super. 438, 499 A.2d 1018, 1082 (Pa. Super 1985).

The Pennsylvania Supreme Court thoroughly analyzed and discussed this issue in Lark, the facts of which bear some similarity to the instant case. Commonwealth v. Lark, 543 A.2d 491, (1988). In that case, the defendant was charged in a single information with three separate criminal incidents, a February 1979 homicide; terroristic

threats against a district attorney in November of 1979; and a kidnapping in January of 1980.[16] Lark at 495. The common denominator in the three criminal episodes charged in Lark was the December 1978 robbery for which the defendant was convicted in absentia following his flight at the conclusion of the Commonwealth's case in chief. Id. P. 494. The Lark Court affirmed the defendant's judgment of sentence finding no error in joining the separate criminal incidents for trial noting, "...the evidence of each of the offenses –murder –terroristic threats and kidnapping –would have been admissible in a separate trial for the others. Each of these offenses were interwoven in a tangled web of threats, intimidation and criminal activity which arose from the robbery in 1978." Id. At 487-498.

Like the defendant in Lark, Appellant was charged in a single information with criminal offenses and criminal conduct to avoid arrest and prosecution after her crimes. She was also charged with criminal acts which occurred prior to the homicide that were all part of the same whole, the intimidation of Frank Spencer. To try the Appellant for the arson and attempted homicide relative to Judy Dent without introducing Ms. Dent's relationship to Frank Spencer and the recent arson of his residence is illogical and unnecessary pursuant to law. We find the same is true of the murder of Frank Spencer, and the burglary and arson at his home. Appellant's perjury was plainly relevant as to her consciousness of guilt.

[16] In Lark, the defendant killed the Commonwealth's principal witness against him after the witness testified at his preliminary hearing. Following his conviction for robbery in absentia he proceeded to terrorize and intimidate the district attorney and when he was ultimately located by police as a fugitive from justice he kidnapped a group of innocents to aid his attempt at escape.

Nor do we find that the jury was confused by the allegations of multiple criminal acts at a single trial. To the contrary, the Information as charged led to a coherent and organized trial which enhanced the clarity of the issues presented. The trial court appropriately instructed the jury and we presume they followed our clear instructions.

If the years of criminal conduct, violence and threats of violence directed at the late Frank Spencer and those close to him are not sufficiently related to each other to warrant a single trial we fail to discern what would.

4.7

At 4.7 of her Concise Statement Appellant complains that the totality of errors resulted in a fundamentally unfair trial that violated the due process rights of the Defendant.

We decline to untangle this bald assertion which we interpret as prologue to Appellants next six complaints. To the extent it is an independent issue we find that it is waived for lacking specificity.

4.7.1

The Court erred in overruling counsel's objection to leading questions being used on direct examination. See Day II, 112; 11-17; Day III 103 : 3-7; Day VI, 83: 12-17"

The court has discretion to control the "mode and order" of witnesses and may in its discretion permit leading questions on direct examination where necessary to develop the witnesses testimony. Pa. R. E. 611. Courts have had latitude to "liberally' construe the rule on leading questions for over a century. Commonwealth v. Gurreri,

197 Pa. Superior Ct. 329, 332, 178 A.2d 808,809 (1962), quoting Commonwealth v. Detrick, 221 Pa. 7, 15-16, 70 A. 275, 278 (1908). A trial court has "wide discretion in controlling the use of leading questions." Commonwealth v. Fransen, 42 A.3d 1100 (Pa. Super 2012). "The courts tolerance or intolerance for leading questions will not be reversed on appeal absent an abuse of discretion. Id.

Given that Appellant's allegation of error addresses three distinct portions of the transcript we will identify the allegations of error as A ,B, and C. The record of counsel's objections to leading questions is as follows:

A. Vol. II, 112; 11-17

> Q. And was Sergeant Traugh --- when you were present and you had an opportunity to observe whatever you observed, was Sergeant Traugh the office that normally took whatever Mr. Spencer's complaint was?
>
> Mr. Hoey: I object to the leading nature of the questions as well.
>
> Mr. Siciliano: Yes
>
> The Court: Well, at this point you're just trying to develop what occurred, so just go ahead. (N.T. Vol. II p. 112)

B. Vol. III 103 : 3-7

> Q. Do you recall during the conversation whether the Defendant made any statements about –
>
> Mr. Hoey: Objection, your Honor, leading.
>
> The Court: Overruled. Go ahead. Continuity here.
>
> Q. Do you recall the Defendant making any statements regarding her father and the shape he was in?
>
> A. Yes, I had asked her. I said "How is your father doing?" Because someone had mentioned that he had gotten out of the hospital. And she said "He is doing great. He walked eight miles to my house today." Which I was, you know—eight miles is quite a distance.
>
> Mr. Forray: Thank you. I have nothing further.

C. Vol. VI, 83: 12-17

Q. And did you share with him the fact what had happened?

Mr. Hoey: Objection to leading, your Honor.

The Court: No, overruled. GO ahead.

Q. Did you share with Trooper Fedder what had occurred at Mr. Spencer's home?

A. Yes, I made sure or I asked the question if he was aware of the fire previously at his home.

We overruled counsel's objections because none of the questions which were objected to actually provided the witnesses with their response on an issue of real consequence. In our judgment, counsel was asking appropriate questions aimed at moving the trial along.

4.7.2

Appellant complains "The Court erred in allowing the Commonwealth and their witnesses to use the term "burglary" when describing the break-in. Day II, 118: 4-21; Day VI, 108-109; 23-5"

The Defendant was charged with burglary. We fail to discern the error in permitting a layperson to refer to a break in where property was taken as a burglary. If allowing such testimony was error, it is obviously harmless given the quantity and quality of evidence presented against the Defendant at trial.

4.7.4

The Court erred when it declined to strike the testimony of Brian Wawroski after Wawroski met with previous witnesses Derk Reed over lunch and discussed Reed's testimony and the questions posed to Reed on cross.

At trial Defendant's counsel made an objection and moved to strike the testimony of Brian Wawroski after the witness testified that he met with Derk Reed, a witness who testified just prior to Mr. Wawroski. (N.T. Vol. VII p. 137) The Defendant argues that both witnesses Wawroski and Reed were sequestered and that because Wawroski and Reed spoke about their testimony that the Court should strike the testimony of Mr. Wawroski. We disagree.

The Court did issue a sequestration Order in the present case. Mr. Wawroski also admitted that he spoke with Derk Reed who testified at the Defendant's trial the previous day. (N.T. Vol. VII p. 137) The decision to sequester witnesses, and sanctions for violating sequestration Orders entered pursuant to Pa. R.E. 615, is at the sound discretion of the trial court. Commonwealth v. Counterman, 553 Pa. 370, 719 A.2d 284 (Pa. 1998). The fact that a violation of a sequestration order occurs does not, in and of itself, lead to a finding that the prosecutor committed misconduct of such a nature that a new trial is required. Commonwealth v. Pierce, 537 Pa. 514, 529, 645 A.2d 189, 197 (1994). Further, the rules of evidence do not provide any sanction for violation of Rule 615. Pa. R.E. 615. However, the trial court, in its discretion, may impose sanctions on a prosecution witness for violating a sequestration Order after considering the following three factors: the seriousness of the violation; the impact on the witness's testimony;

and the probable impact on the outcome of the trial. Commonwealth v. Smith, 464 Pa. 314, 346 A.2d 757, 760 (Pa. 1975).

Although we hesitate to characterize any violation of a sequestration Order as frivolous, we are confident that the impact on the witness's testimony was limited and that it had no impact on the outcome of the trial. Mr. Wawroski and Derk Reed were both witness to the Defendant's statement that she, "watched him take his last breath of fresh air", referring to the late Mr. Spencer. (N.T. Vol VII p 132). Mr. Reed testified that after Frank Spencer's death he argued with the Defendant at a football game at which time she told him the "last thing he saw when he was laying on that ground looking up was me." (N.T. Vol. VII p. 108). During his cross examination Derk Reed was questioned about his ability to clearly hear the Defendant. (N.T. Vol VII p. 118-119) Later, Mr. Wawroski, in response to the question, "(w)here were you sir?", answered that he was in the end zone because, "It is quieter down there." (N.T. Vol. VII p. 130-131).

By his own admission Mr. Wawroski did have contact with Mr. Reed after the testimony of Mr. Reed, but before his own and that further Mr. Reed indicated that he was questioned about what occurred on the field. (N.T. Vol. VII p. 138) It also appears that Mr. Wawroski was careful to volunteer that it was quiet where he was standing in response to the question "(w) here were you sir?" His response, in light of his discussion with Mr. Reed, suggests that it was at least in part informed by what he discussed with Mr. Reed prior to testifying. Nonetheless, we find that the influence of Mr. Reed did not change the witness's testimony in any material way or prejudice the Defendant.

The attorneys for the Commonwealth who were clearly not sequestered were aware of the cross examination of Mr. Reed and could have, if given the opportunity, drawn out of Mr. Wawroski the testimony that they deemed a necessary response to the cross examination of Mr. Reed. Mr. Wawroski testified that he told his wife what he had heard immediately after the incident and he spoke informally with the then Columbia County District Attorney about the matter. (N.T. Vol. VII p. 133, 136) Mr. Reed also testified that Mr. Wawroski was nearby as he argued with the Defendant at the football game. (N.T. Vol. VII p. 117-118)

The fact that Mr. Reed testified that Mr. Wawroski was nearby when the statement was made, coupled with the testimony of Mr. Wawroski who stated that he contemporaneously told his wife about the statement and then some time later, so advised the then District Attorney corroborates his testimony that he overheard the Defendant admit to Derk Reed that she was present at the time Mr. Spencer lay dying. These factors weigh against the argument that his testimony was materially influenced by his mid-trial with Mr. Reed. For these reasons, we find that the violation of the sequestration is concerning but that it ultimately had no material impact of the testimony of Mr. Wawroski's, and did not deprive the Defendant of a fair trial. Accordingly, we find the Defendant was not prejudiced and her appeal must fail.

4.7.5

Appellant Complains "The court allowed in hearsay over objection, specifically, Corporal Williams to testifed to what Derk Reed had said. Day VII, 36-37:22-21[17]"

This allegation of error is also meritless. Derk Reed testified at length about this same incident and the Trooper recalled to the jury what he understood to be Derk Reed's statements based on his investigation. Derk Reed was cross examined about the statements the at trial the previous day and we found that the Trooper's reference to Reed's statements were not offered for their truth and were not hearsay.

4.7.6

Appellant alleges that the Court committed reversible error when the "court allowed the Commonwealth to recall Judy Dent for one question over counsel's objection. Day VII, 23-24; 21-4."

The decision to reopen the record is left to the sound discretion of the trial court. Commonwealth v. Griffin, 412 A.2d 897 (Pa. Super. 1979). (See also Pa. R.E. 611(a)(2) "The court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to: (2) avoid wasting time.) The admission of evidence is within the sound discretion of the Trial Court." Commonwealth v. Passmore, 2004 Pa Super 336, 857 A.2d 679 (Pa 2004). Determinations of admissibility will not be reversed on appeal absent a clear abuse of discretion. Commonwealth v. Chmiel, 738 A.2d 406, 414 (1999) cert. denied. 528 US 1131 (2000).

[17] The trial transcript pages identified by Appellant are inaccurate. Shannon Manderbach's testimony occupies pages 28 through 38 of Volume VII of the trial transcript. Trooper Williams' testimony begins at page 173 of volume VII and continues into volume VIII. Counsel's objection is found at page 37 of Volume VIII.

Indeed Ms. Dent was briefly recalled to testify about an encounter between herself, the late Mr. Frank Spencer, and the Defendant. Ms. Dent went on to testify that approximately two (2) weeks after the fire at her residence that the Defendant confronted her in a public place and in essence asked her, "Julie how does life feel?" Given that the Defendant was charged with the arson fire at Ms. Dent's residence and further that this case involved a series of veiled threats made by the Defendant over the course of years culminating in the homicide giving rise to her indictment, we found the evidence relevant. Moreover, we found that the Defendant was in no way unfairly prejudiced by our decision to reopen the record and permit additional testimony from Ms. Dent. Appellant's complaint of error is without merit and must fail.

4.8

Appellant alleges "the court erred in denying Defendant's motion for a change of venue or venire."

The determination of whether to grant a change of venue rests within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion." Commonwealth v. Weiss, 776 A.2d 958,964 (Pa. 2001) Pa.R.Crim.P. 584(a) provides that "(a)ll motions change of venue or for change of venire shall be made to the court in which the case is currently pending." Venue or venire may be changed following a hearing when it is determined that a fair and impartial trial cannot be had in the county where the case is pending. Pa.R.Crim.P.584(a).

The Appellant's motion for change of venue was denied without prejudice by the Order dated June 25, 2015.[18] Counsel did not raise the issue prior to trial. There being no evidence of record regarding pretrial publicity between the date of the June 22, 2015 Order denying the Defendant's Motion and jury selection which commenced November 9, 2015, we find no reason to disturb the judgment of the Court. Even where pretrial publicity is sensational, inflammatory and slanted toward conviction, the passage of time between the last complained of media coverage and jury selection may dissipate any prejudicial effect toward the Defendant. Commonwealth v. Tharp, 830 A.2d 519 (Pa. 2003).

Given that over four months passed since Defendant made her motion for change of venue and trial, we find that any prejudice visited on the defendant by media coverage was sufficiently dissipated by the time the jury panel was seated. Moreover, counsel conducted a thorough individual voir dire of the jurors and ultimately selected a fair and impartial jury. Appellant was convicted by the ample evidence presented from the witness stand.

4.9

Appellant finally complains "All of the above error, meaning the totality of the error, resulted in a trial that was constitutionally infirm upon which the convictions for the various offenses cannot stand."

[18] The Honorable Judge Brendan J. Vanston's June 22, 2015 was entered following the conduct of a hearing on Defendant's Motion seeking change of venue or venire on June 17, 2015.

This allegation of error is catch all boilerplate and is therefore waived. Error is either reversible or it is harmless. If the Appellant intends to invite us to create authority for the proposition that a collection of harmless errors add up to reversible error we decline her invitation.

For the foregoing reasons, the Defendant's Appeal should be Denied, and her verdict and judgment of sentence affirmed.

END OF OPINION

370 Fed.Appx. 294
This case was not selected for
publication in the Federal Reporter.
Not for Publication in West's Federal Reporter See
Fed. Rule of Appellate Procedure 32.1 generally
governing citation of judicial decisions issued
on or after Jan. 1, 2007. See also Third Circuit
LAR, App. I, IOP 5.7. (Find CTA3 App. I, IOP 5.7)
United States Court of Appeals,
Third Circuit.

GOVERNMENT OF the VIRGIN ISLANDS
v.
Gregory WILLIAMS, Appellant.

No. 08-3521.
|
Argued: Dec. 1, 2009.
|
Filed: March 17, 2010.

Synopsis
Background: Defendant was convicted of first degree murder and related charges, and he appealed. The District Court of the Virgin Islands-Appellate Division, 2008 WL 3377325, affirmed, and defendant appealed.

Holding: The Court of Appeals, Nygaard, Circuit Judge, held that trial judge's comments about eyewitness's marijuana use deprived defendant of his right to fair trial.

Reversed and remanded.

Fuentes, Circuit Judge, concurred and filed opinion.

West Headnotes (1)

[1] Criminal Law
⇐ Expressions affecting credibility of witnesses

Trial judge's comments that fact that eyewitness had been smoking marijuana did not affect his perception not only improperly bolstered witness's testimony, but impacted directly on presentation of defendant's defense, thus warranting new trial in first degree murder prosecution, even though judge gave curative instruction, where judge's opinion concerning witness and use of marijuana was unsolicited and made in overbearing or emphatic manner, and curative instruction was vague.

1 Cases that cite this headnote

***294** On Appeal from the District Court of the Virgin Islands-Appellate Division (D.C. Criminal No. 3-05-cr-00056-001), Chief Judge: The Honorable Curtis V. Gomez, District Judge: The Honorable Raymond L. Finch, Superior Court Judge: The Honorable Patricia D. Steele.

Attorneys and Law Firms

Richard F. Della Fera, Esq. (Argued), Entin & Della Fera, Fort Lauderdale, FL, Natalie Nelson Tang How, Esq., St. Croix, VI, for Appellant.

Ernest Bason, Esq., Terryln M. Smock, Esq. (Argued), Office of the Attorney General of Virgin Islands, Department of Justice, St. Thomas, VI, for Appellee.

Before: McKEE, FUENTES, and NYGAARD, Circuit Judges.

***295** OPINION OF THE COURT

NYGAARD, Circuit Judge.

I.

****1** Appellant Gregory Williams was convicted by a jury of first degree murder and related charges involving assault and illegal use of weapons. Judge I've Arelington Swan presided and Williams was sentenced to life in prison without parole.

Williams appealed his conviction to the District Court for the Virgin Islands. His appeal was heard by a three-judge panel of that court's appellate division (Judges Gomez, Finch and Steele [1]). He challenged the sufficiency of the

evidence and argued that comments made by the trial judge deprived him of a fair trial. The District Court affirmed Williams' conviction and he has timely appealed. Because we conclude that the trial judge's comments so infected the trial, and his attempts at a curative instruction were too little, too late, and could not purge the injustice, we will reverse and remand for a new trial.

II.

We have held that "no person [may] be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him." *Wang v. Attorney General,* 423 F.3d 260, 269 (3d Cir.2005) (quoting *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242, 100 S.Ct. 1610, 64 L.Ed.2d 182 (1980)). That assurance is absent-and judicial conduct improper-whenever a judge appears biased, even if he actually is not biased. *See In re Antar (SEC v. Antar),* 71 F.3d 97, 101 (3d Cir.1995). Public confidence in the judicial system turns on "the appearance of neutrality and impartiality in the administration of justice." *LaSalle Nat'l Bank v. First Com. Holding Gr., LLC XXIII,* 287 F.3d 279, 292 (3d Cir.2002). Thus, even if the trial judge here was not actually biased-and we do not speculate as to his state of mind-the "mere appearance of bias" on his part "could still diminish the stature" of the judicial process he represents. *See Clemmons v. Wolfe,* 377 F.3d 322, 327 (3d Cir.2004). In other words, "justice must satisfy the appearance of justice." *Offutt v. United States,* 348 U.S. 11, 13, 75 S.Ct. 11, 99 L.Ed. 11 (1954); *see also Peters v. Kiff,* 407 U.S. 493, 502, 92 S.Ct. 2163, 33 L.Ed.2d 83 (1972). On this record, such an appearance was not satisfied.

III.

The bias of the trial judge here centers on comments he made during the cross examination of a prosecution witness. Raymond Smith was an eyewitness to the murder. He had given a statement to the police describing the perpetrator as "[h]e was like five ten, like 150 to 170, had on a black, black and white plaid shirt and he had a low haircut." Smith also admitted at trial that he had been smoking marijuana before his encounter. He testified that "the weed does-don't affect you mentally-it just give you a natural high." He also acknowledged that he saw the gunman for a "split second" and then never saw him again.

When defense counsel attempted to challenge Smith's ability to identify Williams given the fact that he was enjoying his "natural high," counsel was admonished by the trial judge who made the following comment in the presence of the ***296** jury, and while sustaining an objection by the prosecution:

> ****2** But get to the-get to the perception. Because I'll tell you something. There's a lot of people I does smell that they be smoking, smoking thing, as you pass the cars, and they're better drivers than a lot of these other people on the road that just can't drive.

Judge Swan continued with additional commentary:

> So, my policies might be different from all the other judges. But, then again, I have been here longer than all the other judges. I'm the most senior associate judge so I don't-I have been doing this for a long time and nobody has ever found fault with it. So I don't follow the young folks. I go with my own policy. I've been around longer than all of them. Three of them put together don't have as much years as I have. So, I have my own policy.

In *United States v. Olgin,* 745 F.2d 263 (3d Cir.1984), we set out the appropriate analysis for courts to use in assessing the propriety of a trial judge's comments before the jury. We explained that "[t]here is no bright line separating remarks that are appropriate from remarks that may unduly influence a jury". *Id.* at 268-69. This analysis requires a balancing of the following four factors: (1) the materiality of the comment, (2) its emphatic or overbearing nature, (3) the efficacy of any curative instruction, and (4) the prejudicial effect of the comment in light of the jury instruction as a whole. *Id.*

A. Materiality

Here, the trial judge's comments occurred during the cross-examination of Raymond Smith. Defense counsel asked Smith whether he had been smoking marijuana before the shooting. Raymond Smith replied in the affirmative. The prosecutor objected on grounds of relevancy. Defense counsel responded that Raymond Smith's testimony about whether he had been smoking marijuana was relevant to show his ability to perceive the shooting. The trial judge sustained the objection, explaining his ruling with the aforementioned comments, in the presence of the jury.

We have no difficulty finding his comments material. The trial judge's comments not only improperly bolstered a witness's testimony, but impacted directly on the presentation of Williams' defense. Defense counsel attempted to discredit Smith's testimony by pointing to Smith's own admission that he was high on marijuana when he saw the gunman. We have no doubt that the trial judge's statement could be viewed by the jury as vouching for Smith's testimony and supporting his ability to identify the gunman.

B. Emphatic and Overbearing Comments

In *United States v. Gaines*, we discussed the limitations on the court's power to comment on the evidence:

> Unquestionably, any comment by a trial judge concerning the evidence or witnesses may influence a jury considerably, and emphatic or overbearing remarks particularly may be accepted as controlling, thus depriving a defendant of his right to have questions of fact and credibility determined by the jury. If the judge exercises restraint in his comments, however, and makes it clear in his charge that the jury remains the sole determiner of credibility and fact, he has not overstepped the permissible limits of comment.

**3 450 F.2d 186, 189 (3d Cir.1971). We conclude that the trial judge's unsolicited opinion concerning the witness and the use of marijuana was made in an overbearing *297 or emphatic manner. First, the trial judge made this comment while sustaining the prosecutor's objection:

> [DEFENSE ATTORNEY]: Your eyes get red when you're smoking weed?
>
> [RAYMOND SMITH]: Yes.
>
> Q: Does it affect your ability to move?
>
> A: No, sir.
>
> Q: Can you-do you drive a car?
>
> A: Yes, sir.
>
> Q: Can you drive a car the same when you're not on weed as when you're on weed?
>
> [PROSECUTOR]: Objection, Your Honor. They don't have an expert.
>
> [DEFENSE ATTORNEY]: I'm trying to see how it affects him.
>
> THE COURT: But get to the-get to the perception. Because I'll tell you something. There's a lot of people I does smell that they be smoking, smoking thing, as you pass the cars, and they're better drivers than a lot of these other people on the road that just can't drive.

This comment took place while the trial judge was ruling on an objection. The judge spoke emphatically ("But, let me tell you something ...") in sustaining the prosecutor's objection, and in so doing, came very close to implicitly dismissing an important part of the defense's case in the eyes of the jury. Second, in attempting to impress the jury with his reputation as a jurist, the trial judge's further comments touting his trial experience and longevity is overbearing and compounded the error. Such extemporaneous commentary by the trial judge deprived Williams of his right to have questions of fact and credibility determined by the jury.

C. Efficacy of any Curative Instruction

The trial judge made an attempt to cure the error by an instruction to the jury. He said:

> Anything that I have said in terms of marijuana, that is-I'm going to order that stricken from the record. What that means is that in your consideration of this case, you're not to consider anything whatsoever

> that I mentioned about marijuana. Only what the witnesses said from the witness stand.

Given our previous findings of the materiality and forcefulness of the trial judge's statements, we do not find his instruction sufficient to mitigate any prejudice against Williams. First, the trial court's instruction was not given at the time of the objection, or even in close proximity thereto. Second, the trial court's curative instruction was too vague in that it only told the jurors to "disregard anything I have said in terms of marijuana."

D. Totality of the Instruction

The true impact of the trial courts's statement was that it supported the testimony of a prosecution eyewitness to the murder-an eyewitness the defense was attempting to challenge as unreliable. The trial judge further compounded the difficulty presented by this comment when he emphasized his experience and judicial superiority over the other members of the bench who, presumably, would not have said what he said regarding the use of marijuana. Given the permeating and prejudicial nature of the trial judge's comments, we find this to be one of those cases where "the trial judge's comments are so out of bounds that no cautionary instruction to the jury could remove their prejudicial effect." *Olgin*, 745 F.2d at 268-69.

***298** E. Balancing the Comments against the need for reversal

****4** We conclude that the scales tip sharply in favor of reversing Williams' conviction and remanding this matter for a new trial.

IV.

The trial judge's comments here deprived Williams of a fair trial. We will reverse his conviction and sentence and remand this case for a new trial.

FUENTES, Circuit Judge, concurring.

I agree with the majority opinion that the trial judge's comments during Smith's testimony were inappropriate. I write separately to emphasize an additional prejudicial comment by the trial judge that I believe affected the fairness of Williams's trial. At trial, Makeda Petersen was called as a witness to testify by the Government, and she testified that Williams was not the shooter at the scene. The Government, dissatisfied with her testimony, moved to have Petersen declared a hostile witness under Federal Rule of Evidence 611(c). The court agreed with the Government, and then, in the presence of the jury, stated that it had declared Petersen to be a hostile witness. The trial judge went on to state that the court "*deems her to be uncooperative and evasive,* and particularly twice she has rejected questions by the Government calling her." (Supp App. 365-66 (emphasis added).) The prejudicial effect of remarks like this underscores why courts should not explain evidentiary rulings in the jury's presence. The trial judge's characterization of Petersen's testimony as "uncooperative and evasive" could very well have influenced the jury's assessment of whether or not to credit her testimony. *See Quercia v. United States*, 289 U.S. 466, 470, 53 S.Ct. 698, 77 L.Ed. 1321 (1933). In a case such as this, in which the jury heard contradictory accounts of the critical events and its ultimate decision depended upon whether it believed Petersen's testimony, judicial statements bearing upon the credibility of a witness, such as the trial judge's characterization of Petersen's testimony here, could be highly influential. *Cf. United States v. Anton*, 597 F.2d 371, 374 (3d Cir.1979) ("a strongly worded comment by the court questioning the defendant's credibility may well overbear the jury's ability to make independent fact findings"). Given that no curative instructions were given with respect to the judge's statements about Petersen's testimony, I believe that the judge's comments concerning Petersen, in addition to those regarding Smith, were sufficiently prejudicial to Williams to require a new trial in this case.

All Citations

370 Fed.Appx. 294, 2010 WL 939916

Footnotes

1 The Honorable Patricia D. Steele, Judge of the Superior Court, Division of Saint Croix, sitting by designation.

APPENDIX:

C

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 90 MAL 2018
Respondent	:	
	:	Petition for Allowance of Appeal from the Order of the Superior Court
v.	:	
MARIA I. SANUTTI-SPENCER,	:	
Petitioner	:	

ORDER

PER CURIAM

AND NOW, this 26th day of June, 2018, the Petition for Allowance of Appeal is **DENIED**.

A True Copy Amy Dreibelbis, Esquire
As Of 6/26/2018

Attest: Amy L. Dreibelbis
Deputy Prothonotary
Supreme Court of Pennsylvania