APPENDIX TABLE OF CONTENTS

OPINIONS AND ORDERS

Order of the Supreme Court of Virginia Denying Petition for Appeal (November 4, 2021) 1a

Order of the Court of Appeals of Virginia Denying Petition for Appeal (January 13, 2021) 3a

Per Curiam Opinion of the Court of Appeals of Virginia (November 20, 2020) 5a

Order of the Circuit Court of the County of Powhatan County, Virginia, Denying Motion to Vacate Sentences (March 30, 2020) 17a

Letter Opinion of the Circuit Court of the County of Powhatan County, Virginia (March 24, 2020) 19a

Sentencing Order of the Circuit Court of the County of Powhatan County, Virginia (February 27, 2020) 22a

Letter Opinion of the Circuit Court of the County of Powhatan County, Virginia on Evidentiary Motions in Limine (July 21, 2019) 27a

APPENDIX TABLE OF CONTENTS (Cont.)

TRANSCRIPTS

Pre-Trial Hearing on Motion to Admit Hearsay Testimony of the Deceased, Relevant Excerpts (July 19, 2019) 35a

Sheri Arnold Testimony, Relevant Excerpts (October 22, 2019) 48a

Gregory Waddell Testimony, Relevant Excerpts (October 22, 2019) 58a

Paul Harvey Testimony, Relevant Excerpts (October 23, 2019) 62a

Brady Cutts Testimony, Relevant Excerpts (October 23, 2019) 68a

Mike Harrell Testimony, Relevant Excerpts (October 23, 2019) 71a

Richard Endrich, Jr. Testimony, Relevant Excerpts (October 23, 2019) 74a

Aga Lewelt Testimony, Relevant Excerpts (October 24, 2019) 77a

Karina Rafter Testimony, Relevant Excerpts (October 24, 2019) 79a

ORDER OF THE SUPREME COURT OF VIRGINIA DENYING PETITION FOR APPEAL (NOVEMBER 4, 2021)

IN THE SUPREME COURT OF VIRGINIA
held at the Supreme Court Building in the City of Richmond on Thursday the 4th day of November, 2021

KARINA RAFTER,

Appellant,

against

COMMONWEALTH OF VIRGINIA,

Appellee.

Record No. 210183

Court of Appeals No. 0382-20-2

On Appeal from the Court of Appeals of Virginia

Upon review of the record in this case and consideration of the argument submitted in support of the granting of an appeal, the Court refuses the petition for appeal.

A Copy,

Teste:

Muriel-Theresa Pitney
Clerk

By: /s/ Melissa B. Layman
Deputy Clerk

**ORDER OF THE
COURT OF APPEALS OF VIRGINIA
DENYING PETITION FOR APPEAL
(JANUARY 13, 2021)**

IN THE COURT OF APPEALS OF VIRGINIA
on Wednesday the 13th Day of January, 2021.

KARINA RAFTER,
S/K/A KARINA MALGORZATA RAFTER,

Appellant,

against

COMMONWEALTH OF VIRGINIA,

Appellee.

Record No. 0382-20-2

Circuit Court Nos.
CR19000001-00 and CR19000001-01

On Appeal from the
Circuit Court of Powhatan County

Before: DECKER, Chief Judge,
BEALES and HUFF, Judges.

For the reasons previously stated in the order entered by this Court on November 20, 2020, the petition for appeal in this case hereby is denied.

This order shall be certified to the trial court.

A Copy,

Teste:

Cynthia L. McCoy
Clerk

By: /s/ Kristen M. Mekergie
Deputy Clerk

PER CURIAM OPINION OF THE COURT OF APPEALS OF VIRGINIA (NOVEMBER 20, 2020)

IN THE COURT OF APPEALS OF VIRGINIA
on Friday the 20th Day of November, 2020.

KARINA RAFTER,
S/K/A KARINA MALGORZATA RAFTER,

Appellant,

against

COMMONWEALTH OF VIRGINIA,

Appellee.

Record No. 0382-20-2

Circuit Court Nos.
CR19000001-00 and CR19000001-01

On Appeal from the
Circuit Court of Powhatan County

PER CURIAM

This petition for appeal has been reviewed by a judge of this Court, to whom it was referred pursuant to Code § 17.1-407(C), and is denied for the following reasons:

I. through III. A jury found appellant guilty of first-degree murder and use of a firearm in the commission

of a felony. She contends that the evidence is insufficient to support her convictions.

"When reviewing the sufficiency of the evidence, '[t]he judgment of the trial court is presumed correct and will not be disturbed unless it is plainly wrong or without evidence to support it.'" *Smith v. Commonwealth,* 296 Va. 450, 460 (2018) (quoting *Commonwealth v. Perkins,* 295 Va. 323, 327 (2018)). "In such cases, '[t]he Court does not ask itself whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt.'" *Secret v. Commonwealth,* 296 Va. 204, 228 (2018) (quoting *Pijor v. Commonwealth,* 294 Va. 502, 512 (2017)). "Rather, the relevant question is, upon review of the evidence in the light most favorable to the prosecution, whether *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.* (quoting *Pijor,* 294 Va. at 512). "If there is evidentiary support for the conviction, 'the reviewing court is not permitted to substitute its own judgment, even if its opinion might differ from the conclusions reached by the finder of fact at the trial.'" *Chavez v. Commonwealth,* 69 Va. App. 149, 161 (2018) (quoting *Banks v. Commonwealth,* 67 Va. App. 273, 288 (2017)).

"In accordance with familiar principles of appellate review, the facts will be stated in the light most favorable to the Commonwealth, the prevailing party at trial." *Gerald v. Commonwealth,* 295 Va. 469, 472 (2018) (quoting *Scott v. Commonwealth,* 292 Va. 380, 381 (2016)). In doing so, we discard any of appellant's conflicting evidence, and regard as true all credible evidence favorable to the Commonwealth and all inferences that may reasonably be drawn from that evidence. *Id.* at 473.

On the morning of December 9, 2016, then-thirteen-year-old M.R. awoke to discover that his father, John Rafter, had not woken him up for school as he usually did. M.R. went into his father's room and found him dead in his bed. M.R. called 911 at 8:41 a.m. M.R. reported to the police that he heard a "loud boom" at 7:58 that morning. When the police arrived at 8:50 a.m., however, Rafter's phone alarm which had been set for 6:00 a.m. was still ringing. M.R. told the police that he touched his father's body, including his lips.

Powhatan Sheriff's Detective Arthur Gregory, Jr. responded to the house and processed the scene. He found Rafter on his back in his bed with a gunshot wound to his head. On the bed was a firearm Gregory described as "a double barrel shotgun that has two triggers." He also found a hatchet underneath a blanket on the bed. Rafter's hands were on his chest when the police found him. Gregory examined the gun and determined that "[b]oth shot shells had been fired." Forensic scientist James Bullock also examined the weapon and explained that the gun was "designed to fire 16 gauge shot shells and it has two triggers, meaning that if you pull the front trigger, that will fire the right barrel. If you pull the rear trigger, that will fire the left barrel." Chief Medical Examiner Bill Gormley testified that Rafter died from gunshot wounds to his head which were immediately incapacitating. Based on the measurements of the shotgun and Rafter's arms, Gormley concluded that the wounds could not have been self-inflicted.

Appellant and Rafter married in 2002, at which time appellant had a seven-year-old daughter, M.L. In 2003, they had a son, M.R., and in 2004, a daughter.

They divorced in 2005, but later remarried. In 2016, they again separated, and appellant moved out of the marital residence in Powhatan County and resided with her parents in Chesterfield County. In July 2016, Rafter filed for divorce. Nevertheless, the two communicated frequently about the children. In November 2016, appellant and Rafter disagreed about appellant's desire to homeschool their daughter. Rafter had filed for custody of both children, and there was a hearing in their divorce case scheduled for December 13, 2016. Greg Wadell, Rafter's divorce attorney, testified that Rafter expressed concerns regarding appellant's reaction to his filing for custody. Rafter told Wadell that he wanted to purchase a weapon for protection. Rafter asked if he could change the locks on the marital home and expressed "increasing fear" as the hearing date approached.

Richard Endrich, Rafter's co-worker, testified that Rafter asked to meet with him because he had also been "through a bad divorce." Endrich explained that Rafter stated that he was afraid of appellant and asked if he could use Endrich's shooting range to practice using a new handgun he had purchased. Appellant's older daughter and several other witnesses also testified that in the weeks and days before his death, Rafter stated that he was afraid appellant would harm him.

Mary Keehan, a forensic scientist with the Virginia Department of Forensic Science, analyzed the shotgun residue evidence in this case. She explained that particles "characteristic" with primer residue are "rarely formed by anything other than a discharge of a weapon." Particles "consistent" with primer residue "can be formed from the discharge of a weapon, but

there are other environmental sources for consistent particles." The primer residue kit from appellant revealed "one particle characteristic of primer residue" on her left hand and no residue on her right hand. M.R.'s residue kit revealed there were particles "consistent with" primer residue on his left hand and no residue on his right hand.

Rafter's shotgun was found next to his body on his bed. In 2015, appellant took possession of the firearm at the request of Rafter's therapist after Rafter expressed suicidal thoughts. Appellant took the shotgun to her parents' house, but she claimed that months before his death, Rafter asked for the gun and she returned it to him. On November 30, 2016, appellant purchased shotgun shells at Walmart. Appellant stated that she purchased the ammunition at Rafter's request and that she had already returned the gun to him at that time.

Around midnight on December 8, 2016, appellant went to a Walmart store. She told the police that she did not bring her cell phone with her. Video from the store showed appellant at the Walmart, and she had a receipt from the store. Appellant claimed she returned home after leaving Walmart and later that morning she drove her daughter to school in Powhatan County. She then went back to her residence, dropped off a check at her attorney's office, picked up her brother, and then returned to the school to have lunch with her daughter. That morning, she received an alert on her phone that M.R. had called 911. She called Rafter's phone and left a message. Appellant had her daughter's phone and saw a text M.R. sent at 8:59 a.m. stating that their father was dead and that she should get away from appellant. Appellant

spoke with her attorney but did not contact M.R. Appellant called her son's school to see if he was there and learned that he was not. She called M.R. at 10:39 a.m. The police met appellant at her daughter's school to inform her of Rafter's death. Appellant agreed to speak with the police and submitted to a long interview. Appellant recounted her whereabouts to the police.

The jury heard evidence that during their first separation, Rafter was hospitalized for depression and suicidal ideation. Although appellant presented evidence of Rafter's mental health struggles in 2015 and 2016, the trial court excluded prior records of Rafter's hospitalization and suicide attempt. Rafter's counselor testified at trial, and the jury heard other evidence about Rafter's mental health. Appellant presented evidence that M.R. also suffered mental health problems and was taking medication for it.

Appellant argues the evidence was insufficient to support her convictions and failed to exclude the reasonable hypotheses of innocence that either M.R. killed Rafter or Rafter killed himself. The "reasonable-hypothesis principle is not a discrete rule unto itself." *Vasquez v. Commonwealth,* 291 Va. 232, 249 (2016). It "does not add to the burden of proof placed upon the Commonwealth in a criminal case." *Id.* at 250 (quoting *Commonwealth v. Hudson,* 265 Va. 505, 513 (2003)). To satisfy its burden of proof, the Commonwealth must exclude "every *reasonable* hypothesis of innocence, that is, those 'which flow from the evidence itself, and not from the imagination of defendant's counsel.'" *Tyler v. Commonwealth,* 254 Va. 162, 166 (1997) (quoting *Turner v. Commonwealth,* 218 Va. 141, 148 (1977)).

"Merely because [a] defendant's theory of the case differs from that taken by the Commonwealth does not mean that every reasonable hypothesis consistent with his innocence has not been excluded. What weight should be given evidence [remains] a matter for the [fact finder] to decide." *Miles v. Commonwealth,* 205 Va. 462, 467 (1964). The appellate court asks only whether a reasonable finder of fact could have rejected the defense theories and found the defendant guilty beyond a reasonable doubt. *Jordan v. Commonwealth,* 273 Va. 639, 646 (2007). This Court's deference to the fact finder "applies not only to findings of fact, but also to any reasonable and justified inferences the fact-finder may have drawn from the facts proved." *Turner v. Commonwealth,* 65 Va. App. 312, 331 (2015) (quoting *Sullivan v. Commonwealth,* 280 Va. 672, 676 (2010)).

"[C]ircumstantial evidence is competent and is entitled to as much weight as direct evidence[,] provided that the circumstantial evidence is sufficiently convincing to exclude every reasonable hypothesis except that of guilt." *Finney v. Commonwealth,* 277 Va. 83, 89 (2009) (quoting *Dowden v. Commonwealth,* 260 Va. 459, 468 (2000)). "Circumstantial evidence is not 'viewed in isolation[.]'" *Rams v. Commonwealth,* 70 Va. App. 12, 27 (2019) (quoting *Muhammad v. Commonwealth,* 269 Va. 451, 479 (2005)). "The reasonableness of 'an alternate hypothesis of innocence' is itself a question of fact, and thus, the fact finder's determination regarding reasonableness 'is binding on appeal unless plainly wrong.'" *Id.* at 28 (quoting *Wood v. Commonwealth,* 57 Va. App. 286, 306 (2010)). It is the function of the trier of fact to determine the credibility of witnesses and the weight afforded the

testimony of those witnesses. *Thorne v. Commonwealth,* 66 Va. App. 248, 253 (2016). "In its role of judging witness credibility, the fact finder is entitled to disbelieve the self-serving testimony of the accused and to conclude that the accused is lying to conceal his guilt." *Speller v. Commonwealth,* 69 Va. App. 378, 388 (2018).

Here, the evidence proved that appellant and Rafter were involved in a contentious divorce and that Rafter was seeking sole custody of their children. Appellant's actions and behavior caused Rafter to fear for his safety and suspect that appellant intended to harm him. Although M.R. recalled hearing a "loud boom" shortly before 8:00 a.m., Rafter's alarm set for 6:00 a.m. was still ringing, suggesting that Rafter was killed before that time. Appellant was unable to verify her precise location for that time period. The evidence proved that although Rafter's shotgun had been removed from the house and had been in appellant's possession, it was the weapon used to kill Rafter. Soon before Rafter's death, appellant purchased ammunition for the rifle and the jury permissibly rejected her claim that Rafter asked her to return the gun and buy the bullets. Hours after the shooting, appellant had primer residue on her hand consistent with having fired a gun. The presence of primer residue on M.R.'s hand was explained by his having touched Rafter after he had been killed. Appellant had a motive and the opportunity to kill Rafter, and evidence supports the jury's conclusion that appellant, and not M.R. or Rafter himself, killed Rafter. The Commonwealth's evidence was competent, was not inherently incredible, and was sufficient to prove beyond a reasonable doubt that appellant was

guilty of murder and use of a firearm in the commission of a felony.

IV. Appellant contends that the trial court erred by excluding her "exhibit 'D' pertaining to John Rafter's medical records because they were directly relevant to support the theory that [he] committed suicide."

"The admissibility of evidence is within the broad discretion of the trial court, and a ruling will not be disturbed on appeal in the absence of an abuse of discretion." *Warnick v. Commonwealth,* 72 Va. App. 251, 263 (2020) (quoting *Amonett v. Commonwealth,* 70 Va. App. 1, 9 (2019)). "The scope of relevant evidence in Virginia is quite broad, as '[e]very fact, however remote or insignificant, that tends to establish the probability or improbability of a fact in issue is relevant.'" *Commonwealth v. Proffitt,* 292 Va. 626, 634 (2016) (quoting *Virginia Elec. & Power Co. v. Dungee,* 258 Va. 235, 260 (1999)). "To be material, 'the evidence [must] tend[] to prove a matter that is properly at issue in the case.'" *Id.* at 635 (quoting *Brugh v. Jones,* 265 Va. 136, 139 (2003) (citations omitted)).

Appellant sought to admit a discharge summary from Rafter's hospitalization in 2005. The document included references to Rafter's mental health struggles and indicated that he was "not just depressed but was self-mutilating." The document also referenced Rafter's earlier commitment in 2001 and mentioned his "suicidal ideations." Appellant sought to admit the document to show "a pattern" that Rafter became suicidal during the parties' first divorce, which tended to show he was suicidal during their second divorce. The trial court rejected the evidence, finding that "any probative value it might have would be outweighed

by the potential it would have to confuse the jury based on old information."

Here, appellant presented extensive evidence regarding Rafter's history of mental illness and suicidal thoughts. The document she sought to introduce, however, related to a hospitalization over ten years before his death and was not relevant to his mental health at the time of his death. Instead, the potential for confusion to the jury substantially outweighed the evidence's probative value. *See* Va. R. Evid. 2:403. Accordingly, we find no abuse of discretion with the trial court's decision.

V. Appellant argues that the trial court erred by "admitting hearsay testimony pertaining to conversations John Rafter had with friends about his alleged fear of appellant because they were barred under *Crawford.*"

We review *de novo* "whether a particular category of proffered evidence is testimonial hearsay." *Cody v. Commonwealth,* 68 Va. App. 638, 658 (2018) (quoting *Holloman v. Commonwealth,* 65 Va. App. 147, 170 (2015)). In *Crawford,* the Supreme Court held that the Confrontation Clause applies only to exclude testimonial hearsay statements. *Crawford v. Washington,* 541 U.S. 36, 51 (2004). The "core class of 'testimonial' statements" includes:

> *ex parte* in-court testimony or its functional equivalent—that is, material such as affidavits, custodial examinations, prior testimony that the defendant was unable to cross-examine, or similar pretrial statements that declarants would reasonably expect to be used prosecutorially; extrajudicial statements . . .

> contained in formalized testimonial materials such as affidavits, depositions, prior testimony, or confessions; statements that were made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial.

Id. at 51-52. Here, Rafter's statements to his friends and family were not testimonial as they were not made "under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial." *See id.* at 52. Further, the statements were not prepared in anticipation of trial. "[A] statement is testimonial if its primary purpose is 'for use in an investigation or prosecution of a crime.'" *Cody,* 68 Va. App. at 664 (quoting *Sanders v. Commonwealth,* 282 Va. 154, 164 (2011)). Accordingly, the record supports the trial court's conclusion that the statements were not testimonial.

Relying on *Clay v. Commonwealth,* 262 Va. 253 (2001), the trial court further found that Rafter's statements were admissible under the state of mind exception to the rule against hearsay. "Although the specific contours of the state-of-mind exception have evolved over time, the existence of an exception to the hearsay rule based on a declarant's 'state of mind' is long-standing and unquestioned." *Hodges v. Commonwealth,* 272 Va. 418, 436 (2006). In *Clay,* the Supreme Court of Virginia held the trial court did not err in allowing testimony regarding the victim's statements that she "planned to move because she was afraid of what [the accused] might do to her." *Clay,* 262 Va. at 257. Similarly, in this case, the trial court admitted

Rafter's statements expressing his fear that appellant intended to harm him. The statements reflected Rafter's state of mind at the time he made the statements and were admissible as an exception to the rule against hearsay. Accordingly, we find no abuse of discretion with the trial court's admission of the evidence.

This order is final for purposes of appeal unless, within fourteen days from the date of this order, there are further proceedings pursuant to Code § 17.1-407(D) and Rule 5A:15(a) or 5A:15A(a), as appropriate. If appellant files a demand for consideration by a three-judge panel, pursuant to those rules the demand shall include a statement identifying how this order is in error.

The Commonwealth shall recover of the appellant the costs in the trial court.

This Court's records reflect that Miriam Airington-Fisher, Esquire, and Jennifer Quezada, Esquire, are counsel of record for appellant in this matter.

A Copy,

Teste:

Cynthia L. McCoy
Clerk

By: /s/ Marley VP. Ring
Deputy Clerk

ORDER OF THE CIRCUIT COURT OF THE COUNTY OF POWHATAN COUNTY, VIRGINIA, DENYING MOTION TO VACATE SENTENCES (MARCH 30, 2020)

VIRGINIA: IN THE CIRCUIT COURT OF THE COUNTY OF POWHATAN

FIPS CODE: 145

COMMONWEALTH OF VIRGINIA,

Plaintiff,

vs.

KARINA RAFTER,

Defendant.

No. CR#19000001-00 & 01

Date: March 26, 2020

Before: Paul W. CELLA, Judge.

Social Security No.: ***-**-5512

Date of Birth: 02/05/1976

Hearing Type: MOTION TO VACATE SENTENCES, MOTION FOR APPEAL BOND, and REQUEST FOR STAY OF EXECUTION OF SENTENCE

Attorney for the Defendant: Miriam Airington-Fisher

Original Charge Description:
Murder 1st Degree
Use of Firearm in Commission of Felony

Statute/Ordinance Violation Convicted of:
18.2-32 & 18.2-53.1

Offense Date: 12/09/2016

Sentencing Date: 02/19/2020

ORDER

It appearing to the Court that on March 12, 2020, Miriam Arrington-Fisher, counsel for defendant, Karina Rafter filed a written motion to vacate sentences, motion for appeal bond, and request for stay of execution of sentences imposed by this Court on February 19, 2020. Commonwealth filed a response and objects to said motions. For reasons stated in the courts letter date March 24, 2020, the Court hereby DENIES said motions.

/s Paul W. Cella
Judge

Entered: March 30, 2020

LETTER OPINION OF THE CIRCUIT COURT OF THE COUNTY OF POWHATAN COUNTY, VIRGINIA (MARCH 24, 2020)

PAUL W. CELLA, JUDGE
Powhatan County Courthouse
3880-C Old Buckingham Road
Powhatan, Virginia 23139
Telephone (804) 598-5664
Telecopier (804) 598-1340

ELEVENTH JUDICIAL CIRCUIT
COMMONWEALTH OF VIRGINIA

March 24, 2020

Miriam Airington-Fisher, Esq.
Airington, Stone & Rockecharlie, PLLC
530 East Main Street, Suite 200
Richmond, Virginia 23219

Matthew C. Ackley, Esq.
Susan L. Parrish, Esq.
Special Assistant Commonwealth's Attorneys
Post Office Box 90775
Henrico, Virginia 23273-0775

Commonwealth v. Rafter/Powhatan Circuit Court

Dear Ms. Airington-Fisher, Mr. Ackley, and Ms. Parrish:

My comments regarding defendant's Motion to Vacate Order and Motion for Appeal Bond and Request to Stay Execution of Sentence are as follows:

1. The Commonwealth is correct in noting that these motions are barred under Rule 1:1. *Velazguez v. Commonwealth*, 292 Va. 603, 791 S.E.2d 556 (2016), which defendant relies upon, is inapposite. *Velazguez* dealt with a motion to vacate a guilty plea, and that motion was filed within the 21-day period that is specified in Rule 1:1. The Supreme Court of Virginia's holding dealt with whether the trial court had the authority to consider the motion to vacate the guilty plea, notwithstanding the fact that a notice of appeal had been filed in the Court of Appeals. This holding did not extend the trial court's jurisdiction beyond the 21-day period that is specified in Rule 1:1.

2. Defendant has already made one motion for an appeal bond, and that motion was denied.

3. Defendant has already made one motion to set aside the jury's verdict, and that motion was denied. Even if I were to have jurisdiction to modify defendant's sentence under Virginia Code § 19.2-303, I do not believe that such a modification would be appropriate.

4. At this point, any issues that defendant has will need to be addressed at the appellate level. For reasons previously stated, I believe that my decision to exclude the 2005 medical records of John R. Rafter, Jr., was correct. In addition, considering the minimal objections that were made at trial, I think this case boils down to a simple question of sufficiency of the evidence, and that that was a jury question. I am not sure that I understand defendant's assertion that there are "multiple meritorious issues for appeal," (Motion to Vacate Order at 1), but that will be for the appellate courts to decide.

For the reasons stated above, defendant's motions are denied. Under separate cover, a court order will be mailed to you.

Thank you.

Sincerely,

/s Paul W. Cella

SENTENCING ORDER OF THE CIRCUIT COURT OF THE COUNTY OF POWHATAN COUNTY, VIRGINIA (FEBRUARY 27, 2020)

VIRGINIA: IN THE CIRCUIT COURT OF THE COUNTY OF POWHATAN

FIPS CODE: 145

COMMONWEALTH OF VIRGINIA,

v.

KARINA RAFTER,

Defendant.

No. CR19000001-00 and CR19000001-01

Hearing Date: February 19, 2020

Before: Paul W. CELLA, Judge.

The defendant came before the Court for sentencing and appeared in person with counsel, Craig Cooley. The Commonwealth was represented by Matthew Ackley and Susan Parrish, special prosecutors from Henrico, Virginia.

On October 25, 2019 the defendant was found guilty by jury of the following offense(s):

Case Number:	CR19000001-00
Offense Description:	Murder 1st Degree
Offense Date:	12/9/2016
Va. Code Section:	18.2-32
VCC:	MUR0925F2
Case Number:	CR19000001-01

Offense Description:	Use of Firearm in Commission of Felony
Offense Date:	12/9/2016
Va. Code Section:	18.2-53.1
VCC:	ASL1319F9

Prior to sentencing, counsel for the defense made motion to set aside verdict for failure to establish beyond a reasonable doubt the element of criminal agency and error to exclude from evidence a discharge summary form of victim.

The Commonwealth objected to said motions indicating that the jury is entitled to convict the defendant on circumstantial evidence alone, and that error to exclude prior medical discharge summary was irrelevant due to various testimony given that expressed suicidal thoughts prior to victims' death.

The Court overruled said motions and defense exception is noted.

The pre-sentence report was considered and is ordered filed as a part of the record in accordance with the provisions of Code § 19.2-299.

Pursuant to the provisions of Code § 19.2-298.01, the Court has considered and reviewed the applicable discretionary sentencing guidelines and the guidelines worksheets. The sentencing guidelines worksheets and the written explanation of any departure from the guidelines are ordered filed as a part of the record.

Before pronouncing the sentence, the Court inquired if the defendant desired to make a statement and if the defendant desired to advance any reason why judgment should not be pronounced.

The Court SENTENCES the defendant to:

Incarceration with the Department of Corrections for the term of: Twenty (20) Years for Murder 1st Degree and Three (3) Years for Use of Firearm in Commission of Felony. The total sentence imposed is Twenty-Three (23) Years.

Supervised Probation. The defendant is placed on probation to commence upon release from incarceration, under the supervision of a Probation Officer, for a period of Five (5) Years, or until released by the Court or the Probation Officer. The defendant shall comply with all the rules and requirements set by the Probation Officer.

Counsel for the defendant noted filing an appeal and asked the Court for an appeal bond. The Commonwealth objects to said bond indicating that the defendant has already been convicted of the offenses and deems her a flight risk. The Court agrees

with the Commonwealth and overrules said motion. Defense exception is noted.

Costs. Pursuant to Titles 16.1 and 17.1 of the Code of Virginia, (1950) as amended, the defendant shall pay court costs, including attorney fees, if appointed, and any interest that may accrue until the balance is paid in full.

Interest is deferred on all fines and/or costs pending the defendant's release from incarceration on this/these charge(s). No deferral is extended to those defendants participating in alternative programs.

Departure. The defendant is remanded to the custody of the Sheriff.

Recording Device. These proceedings were memorialized by digital recording.

Court Reporter. These proceedings were reported by Crane-Snead & Associates, Inc., Court Reporters.

/s Paul W. Cella
Judge

Date: 2/27/2020

Defendant Identification:

Alias: N/A

SSN: ***-**-5512 DOB: 02/05/1976 Sex: Female

Sentencing Summary:

TOTAL SENTENCE IMPOSED:
Twenty-Three (23) Years

TOTAL SENTENCE SUSPENDED:
Zero

TOTAL SENTENCE TO SERVE:
Twenty-Three (23) Years

rmh/rmh

LETTER OPINION OF THE CIRCUIT COURT OF THE COUNTY OF POWHATAN COUNTY, VIRGINIA ON EVIDENTIARY MOTIONS IN LIMINE (JULY 21, 2019)

PAUL W. CELLA, JUDGE
Powhatan County Courthouse
3880-C Old Buckingham Road
Powhatan, Virginia 23139
Telephone (804) 598-5664
Telecopier (804) 598-1340

ELEVENTH JUDICIAL CIRCUIT
COMMONWEALTH OF VIRGINIA

July 21, 2019

Craig S. Cooley, Esq.
Post Office Box 7268
Richmond, Virginia 23221

Matthew C. Ackley, Esq.
Susan L. Parrish, Esq.
Special Assistant Commonwealth's Attorneys
Post Office Box 90775
Henrico, Virginia 23273-0775

Commonwealth v. Rafter/Powhatan Circuit Court

Dear Mr. Cooley, Mr. Ackley, and Ms. Parrish:

I am writing to follow up on the hearing that was held July 16, 2019.

Undisputed Matters

In response to defendant's Motion in Limine, the Commonwealth stipulated that it will not seek to introduce (1) allegations regarding molestation of the son of defendant and John Richard Rafter, Jr. (John Rafter), and (2) the opinions of witnesses as to defendant's culpability or the culpability of third parties. I agree with these stipulations. At the hearing, it was stated that the allegations regarding molestation of the son were investigated and determined to be unfounded, and unfounded allegations are not proper evidence. It will be up to the jury to decide whether defendant is guilty, based upon the law and the evidence, and it is improper for witnesses to express their opinions on this issue.

Defendant's Motion for Commonwealth to Provide Written Statements and Details of Exculpatory Information and Evidence Known to It.

Defendant states that the Commonwealth has provided a "haystack" of information and asks for an "Order directing the Commonwealth to set forth a written articulation of exculpatory information known to it and details thereof." In other words, defendant is arguing that if there is a needle in the "haystack," the Commonwealth must specify the location of the needle.

The Commonwealth states that it has employed an "open file" policy with the defense and cites language from *Workman v. Commonwealth*, 272 Va. 633, 636 S.E.2d 368 (2006), to the effect that this is sufficient to comply with the Commonwealth's duty of disclosure under *Brady v. Maryland*, 377 U.S. 83 (1963), and

Rule 3:8(d) of the Virginia Rules of Professional Conduct. The Commonwealth argues that while it may not willfully or intentionally withhold exculpatory information from the defense, "there is absolutely no duty to specify what information is exculpatory." (Commonwealth's Response to Defendant's Motion to Provide Written Statements and Details of Exculpatory Evidence ¶ 8; emphasis in original.) As Ms. Parrish noted at the hearing, it is not always clear whether information is or is not exculpatory because, for example, the defense may have a theory of the case under which certain evidence might be exculpatory, but the defense's theory of the case has not been disclosed to the Commonwealth.

I acknowledge that this issue is controversial. For example, the Virginia State Bar (the Bar) asked for comments on a proposed legal ethics opinion, Legal Ethics Opinion 1888 (LEO 1888), which dealt with a scenario in which allegedly exculpatory information was included in 200 hours of recorded jail telephone calls. The question was whether the Commonwealth fulfilled its duty under Rule 3:8(d) of the Virginia Rules of Professional Conduct by providing all of the calls to the defense, or whether the Commonwealth had to specify one conversation that was allegedly exculpatory. Ultimately, Leo 1888 was withdrawn. The details regarding the comments that were received on LEO 1888, and the Bar's decision to withdraw it, are not in evidence, but I think it is safe to say that the issue is controversial.

I will also note that there has been no allegation that the Commonwealth has deliberately tried to hide exculpatory evidence by burying it in a voluminous amount of discovery material. In other words, there

have been no allegations of bad faith on the part of the Commonwealth.

Taking everything into consideration, I believe that under existing law, the Commonwealth's position is correct, and the defense is asking for something that is not currently required. Therefore, defendant's motion is denied.

Commonwealth's Motion to Exclude Irrelevant Evidence

An autopsy was performed following John Rafter's death. The autopsy determined that there were no controlled substances in his system. The Commonwealth argues that any evidence regarding John Rafter's use of illegal drugs is irrelevant and under Virginia Rule of Evidence 2:402 it should, therefore, be excluded. Defendant argues that evidence as to whether John Rafter used drugs is relevant because he used illegal drugs to fight "suicidal ideations" and "severe depression and despondency," and the absence of those drugs in his system is "consistent with the theory of suicide which is an alternative explanation of the death in this case (and therefore a viable defense)." (Defendant Rafter's Response to Commonwealth's Motion in Limine to exclude Irrelevant Evidence ¶ 4.) In addition, defendant argues that John Rafter's use of illegal drugs is relevant because his supplier may have taken action against him, or third parties may have broken into his house to try to steal his drugs or money.

I believe that it would be premature for me to rule on this motion at this time. I agree with the Commonwealth that if the defense tries to introduce evidence regarding John Rafter's use of illegal drugs merely to

try to make John Rafter look bad in the eyes of the jury, that would be inflammatory and irrelevant. On the other hand, if the defense can lay a credible foundation for this evidence to be introduced as part of a viable defense, then it might be admissible. I believe that this decision will need to wait till trial.

Third-Party Guilt

Based on *Ramsey v. Commonwealth*, 63 Va. App. 341, 757 S.E.2d 576 (2014), the Commonwealth moved to prevent defendant from introducing speculative evidence regarding the possibility that a third party murdered John Rafter. At the hearing, Mr. Ackley clarified that the Commonwealth does not object to defendant introducing evidence that is pertinent to valid defense theories of the case, such as suicide or burglary, but that the Commonwealth does not want defendant to identify specific individuals as the perpetrator.

In *Ramsey*, the Court of Appeals said that "once the appropriate nexus between a third party and the offense at bar has been established, evidence of the third party's guilt is to be liberally received by the trial court" but that this principle "does not permit a defendant to introduce evidence that merely suggests or insinuates that a third party may have committed the crime." In our case, the key, I think, is whether, at trial, defendant establishes an "appropriate nexus between a third party and the offense," or whether defendant tries to engage in innuendo and speculation. With that in mind, I believe that it would be premature for me to rule on this point now. I am reluctant to say, "Absolutely no evidence of third party guilt" without at least giving defendant a chance to lay the proper foundation for such evidence at trial.

Evidence of Other Crimes

The Commonwealth wants to admit evidence of an assault that defendant committed on John Rafter December 27, 2015. The indictments against defendant allege that December 9, 2016, was the date of John Rafter's murder; thus, the assault occurred over eleven months before John Rafter's death. The Commonwealth acknowledges that under Virginia Rule of Evidence 2:404(b), "evidence of other crimes, wrongs, or acts is generally not admissible to prove the character trait of a person in order to show that the person acted in conformity therewith." The Commonwealth notes, however, that this Rule also says that "if the legitimate probative value of such proof outweighs its incidental prejudice, such evidence is admissible if it tends to prove any relevant fact pertaining to the offense charged, such as where it is relevant to show motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, accident, or if they are part of a common scheme or plan." The Commonwealth argues that defendant's assault against John Rafter is relevant to show her conduct toward him and the "volatile relationship between the parties." (Commonwealth's Motion in Limine to Exclude Evidence of Third Party Guilt and to Admit Certain Evidence and Testimony at 8.)

If the assault had occurred shortly before John Rafter's death, I might be inclined to agree with the Commonwealth. The fact that the assault occurred over eleven months before John Rafter's death, however, diminishes its probative value to the point that the prejudice against defendant outweighs the probative value of this evidence. Therefore, the Commonwealth's motion on this point is denied.

Statements Made by John Rafter

The Commonwealth seeks to introduce certain statements that John Rafter made to the effect that he "feared for his safety because of the defendant." (Commonwealth's Motion in Limine to Exclude Evidence of Third Party Guilt and to Admit Certain Evidence and Testimony at 3.)[1] This raises two issues. First, is there a problem regarding the Confrontation Clause of the Sixth Amendment to the United States Constitution? Second, if there is not a problem regarding the Confrontation Clause of the Sixth Amendment to the United States Constitution, are the statements admissible under Virginia law regarding hearsay?

The controlling case regarding the Confrontation Clause of the Sixth Amendment to the United States Constitution is *Crawford v. Washington*, 541 U.S. 36 (2004). Under *Crawford*, the Sixth Amendment applies to testimonial statements but not to non-testimonial statements. For the reasons stated on page 9 of the Commonwealth's Motion in Limine to Exclude Evidence of Third Party Guilt and to Admit Certain Evidence and Testimony, I agree with the Commonwealth that the statements that John Rafter made to acquaintances are not testimonial, as they were not formal statements made in official proceedings.

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[1] There are actually two motions on this point—the Commonwealth's motion to admit this evidence, and defendant's Motion in Limine, which asks me to exclude it. With respect to the Commonwealth's motion, my understanding is that the Commonwealth stipulates that it will not seek to introduce John Rafter's statements regarding "blackmailing," but that it will seek to introduce statements in which John Rafter indicated that he was afraid of defendant.

Next, I must consider whether the statements at issue are admissible under Virginia law regarding hearsay. Based on *Clay v. Commonwealth*, 262 Va. 253, 546 S.E.2d 728 (2001), the Commonwealth argues that the statements are admissible under the state of mind exception to the hearsay rule. In *Clay*, the Supreme Court of Virginia affirmed a trial court's decision to allow witnesses to testify that a wife, who was murdered by her husband, had told them that she planned to move because she was afraid of her husband. The Supreme Court of Virginia noted that a "victim's statements regarding fear of the accused are admissible to rebut claims by the defense of self-defense, suicide, or accidental death." In my opinion, *Clay* is on point, and the statements that the Commonwealth seeks to introduce are admissible.

Please prepare an appropriate order. Thank you.

Sincerely,

/s/ Paul W. Cella

PRE-TRIAL HEARING ON MOTION TO ADMIT HEARSAY TESTIMONY OF THE DECEASED, RELEVANT EXCERPTS (JULY 19, 2019)

VIRGINIA: IN THE CIRCUIT COURT OF THE COUNTY OF POWHATAN

COMMONWEALTH OF VIRGINIA,

Plaintiff,

v.

KARINA RAFTER,

Defendant.

Case No. CR 19-01

Before: Hon. Paul W. CELLA, Judge.

[July 19, 2019, Transcript, p.3]

(At which time, the Court Reporter was first duly sworn by the Court.)

THE COURT: Good morning, counsel.

MR. ACKLEY: Good morning.

MS. PARRISH: Good morning.

THE COURT: We are here on motions on the Rafter matter. Is the Commonwealth ready?

MR. ACKLEY: Yes, sir.

THE COURT: Mr. Cooley, is the defendant ready?

MR. COOLEY: Yes, sir.

THE COURT: Go ahead. Start with Commonwealth's motion, sir.

MR. ACKLEY: Yes, sir. Judge, I've kind of broken them down into three to four sets of motions. The first one I'd like to start with is dealing with the statements of this—the victim in our case, John Rafter, to his friends and associates. Among these statements are expressions of fear towards the defendant in this case. And, so, our motion is to have the Court find that those are admissible in this trial.

First of all, I would say that the statements to John Rafter's friends and associates are not testimonial. So they would not fall within the Crawford rule of exclusion.

So, finding that, then the next question is are they admissible under traditional hearsay rules and relevancy. The Clay case, I would suggest, is kind of the easiest basis upon which to make this finding that it is relevant and admissible. The Clay case has found that in cases in order to dispute the suggestion that it was a suicide, et cetera, that statements of fear of the victim towards the defendant in a homicide case are admissible. And I have a copy of the a Clay case, if the Court would like to take that.

THE COURT: I've read it, but I'll take the copy anyway.

MR. ACKLEY: Yes, sir. I have a copy for counsel as well. So, basically, Judge, the state of mind exception to the hearsay rule Clay tells us in

cases of rebutting suicide, as I said, it would be admissible. Statements of fear and expressing a desire, in this case John Rafter told several people he was trying to obtain a firearm because he was afraid, and that there were statements made by Mr. Rafter mere days before his homicide, which would specifically refute the defendant's statement to the police that she had returned his gun to him a month prior. So, if she had returned his gun to him a month prior, why in a couple of days prior to his homicide is he seeking to obtain a firearm?

THE COURT: And would propose there would be some sort of limiting instructions to the jury if this evidence were to be admitted.

MR. ACKLEY: Correct. And if the Court to could limit what the jury could accept it for and, for example, for refuting a theory that it was a suicide or for, in the example I just gave, to refute the defendant's statement that she had returned his own firearm to him. But, yes, I think that there are instructions that could be crafted that would allow the—the jury would not be able to consider the statements for any purpose—

THE COURT: So you anticipate that the question whether she had returned that gun is something that's going to be a matter in dispute?

MR. ACKLEY: Absolutely. That's going to be a fact in issue, because there is no question that it was his shotgun that caused his death, and there is no question that at some period of time Ms. Rafter was in possession of that shotgun. Ms. Rafter told the police, I returned that shotgun to John a

month before this happened. So, if that is true, then that could be a defense to this case. If the jury finds that that is not true, then that's certainly is going to be an issue.

THE COURT: And the Commonwealth would dispute that point?

MR. ACKLEY: Exactly.

THE COURT: Okay.

MR. ACKLEY: With respect to the statements, and there are several text messages that were referred it to in the motions about Ms. Rafter blackmailing in quotes, in air quotes, the victim in this case, I agree with Mr. Cooley that this was not blackmail in the legal sense. Obviously, blackmail or extortion requires an attempt to obtain money or some financial benefit. That was not the case here. It was dealing with the child-rearing issues that were arising in their contentious divorce that was early on in the proceedings.

THE COURT: And I think you indicated in your memorandum you are not going to seek to introduce those issues. Am I correct on that?

MR. ACKLEY: Well, we are not seeking to introduce them for the fact of blackmail or anything like that, but I think that they come in with respect to showing the relationship between these parties and the motive for this murder, which I would suggest the wealth of the evidence is going to show that the motive for this murder was the contentious divorce and child-rearing questions that were arising between the parties, and that Ms. Rafter wanted her daughter to be home-

schooled, and Mr. Rafter would not sign a permission form that she wanted him to sign that she repeatedly demanded that he sign.

And the quote, unquote, blackmail that was occurring was Ms. Rafter was asking Mr. Rafter, you sign this letter or I'm going to tell your employer about you allowing me to remain on your health insurance when we were divorced during the period of time we were divorced.

And that is the issue. I don't think that we can cleanse that from the context of the messages that were going back and forth between parties. And that is the basis of the motive for this murder.

It can't be kept from the jury because they wouldn't be able to determine why in world this dispute got to this level. They have to be able to see what the basis of the dispute was and what was going on in the weeks leading up to the murder. And there were messages dealing with this issue of homeschooling leading up to the week prior to the homicide.

So it is part and parcel with the evidence that shows what happened to Mr. Rafter. And I would suggest to the Court that the overwhelming strength of that evidence of what the allegations were between the parties is something that the jury has going to be able sharing of those drugs with other people, including this gentleman. There is—there are funds missing from the Rafter assets that are unexplained, substantial funds that are unexplained. Whether he had a relationship with him and owed more money to the source of his drugs is a question, whether there is somebody

who is aggravated with some debt that he may owe at that point.

There is, as the Commonwealth acknowledged, potential of a robbery, because people are aware, neighbors are aware, other people are aware of his drug use, his purchases and what—perhaps his distribution.

And so we have—this is an interesting residence, because there is an exterior staircase that goes up from—on the outside of the house and goes directly into the room where this—where the death occurred. You don't have to pass through the house. You can come up from the outside and never be seen in any way and enter into this room where Mr. Rafter died. So there is a opportunity for somebody who wants to harm. And there are items we believe the evidence will show are missing from the residence.

So there are potential other culprits in this case. And I certainly agree with the Commonwealth and the case law that if it's just we come in and say, hey, John Doe over here from Goochland might have done this, I think you would rule, and I would have a hard time keeping a straight face keeping that argument. That's not where we are in this case. There are a number of legitimate and valid potential defenses that involve pointing a finger at a third party.

While the Commonwealth has its theory of who committed this offense and has put together its circumstances and suggest that if you look at it through their eyes and through their specific

theory of the case, they point a finger at Ms. Rafter. That's how they see it.

I say to the Court, every piece of information that goes before this jury, that in some form or fashion undermines or challenges every one of those specific circumstances that they put forward, is valid evidence for the defense and something we are entitled to put forward, because that's what —not just case law, but Constitution requires. We are entitled to confront their evidence and to challenge their evidence. And I don't think the Commonwealth really disputes that, but that's how we see it.

THE COURT: That's what reasonable doubt is, I suppose.

MR. COOLEY: Exactly right. Judge, the suggestion of we want to put in statements of his fear of Ms.—Mr. Rafter's fear of Ms. Rafter.

THE COURT: Mm-hmm.

MR. COOLEY: I understand the case law, and if the specific question is something close in time that there is a—I'm afraid of this person, I understand that, in general sense, that that is something that the case law makes admissible. I acknowledge that.

THE COURT: Mm-hmm.

MR. COOLEY: The problem we have here is that while the Commonwealth wants to say, well, none of this is testimonial, but at the same time the Commonwealth says, well, we want the jury to see the entire situation, including the divorce and all this acrimony and circumstances and going

on all of that. Well, every statement Mr. Rafter is making to his friends and people around him is driven by the divorce. He is building his divorce case.

They are going to go to battle in a courtroom, and he's going to need witnesses to say we saw this or we saw that and afraid of or whatever. Then it becomes testimony, because he's not—it's not just a casual conversation that somebody is having with their buddy when they are drinking beer. This is something that he is building his case with a specific goal in mind of securing the better position in the divorce.

And the Commonwealth says, well, we've got this blackmail situation that really isn't blackmail. We concede that, but there is this dispute over whether the child should be homeschooled or not, and that's how they see it.

The child wants to be homeschooled. She is a child that had been homeschooled, wants to be homeschooled and did not want to go into the system. And, so, from Ms. Rafter's position, she is simply defending what her child has asked to do, and has had success within the past.

Okay. We're getting back to wanting to fight the divorce action in this courtroom as part of this allegation of murder that's before the Court. And I would suggest to the Court that the Commonwealth's wants to mix it into when there are points that are to their benefit, but I doubt that they want all of us to—or the defense to be putting on witnesses that goes to divorce issues that try to show why this was being done;

that it's not just acrimony. It is something specific with a valid and right—some cases righteous purpose.

So the Commonwealth is urging this Court that every statement that has been made and everything that has to do with the relationship between Mr. Rafter and Ms. Rafter is relevant to try to point a finger at her and say, well, you know, she is involved in this divorce. So, of course, she is the person most likely to do this.

But I would urge upon the Court that while the Commonwealth's argument that a statement close in timeframe of somebody, I think the case law supports that. But, when we get into evidence of that relationship, evidence about motive, evidence about theory beyond simply the statement why is he afraid or that sort of thing, then we get into he's got—he suffers from paranoia.

And I think I put in one of my responses to the question about—on several occasions, he has been three times hospitalized for suicidal ideation. Three times over a large number of years, he has been in the posture where he had to be hospitalized for that. There is no—in my mind, that goes back to 2001, 2005 and 2015 we have a situation where his therapist calls Mrs. Rafter, knowing that they are fully involved in a divorce, and says to her, I can't let him leave my office. I've either got to commit him because he expressed to me he is going to commit suicide, and he's got a weapon. He's got the ability. He's got the mindset. Everything about this I cannot—I either have to seek to have him committed or I need you to come and get his weapon, weapons and remove them.

And that was all with in roughly a year of this situation.

Ms. Rafter did that, and recovered that, and then he stabilized over that year, and then makes a demand for the return of his weapon, which she has no reason to—doesn't belong to her. Doesn't have any red flags up. So it is returned to him.

That is all part of this case. And her return of that weapon, I understand the Commonwealth's theory, that's going to be an issue in the case, there is no question about that. And they are going to say, well, there is no corroboration of that. We may disagree with that, but that's an issue when we get to that point.

Judge, I guess my bottom line is on what a witness can get up and say when we get in the courtroom. If there is a witness that can say, okay, two days before he said he was afraid for her—

THE COURT: Mm-hmm.

MR. COOLEY:—I may not like that, but I think that is—the case law supports that. But if he is going to get on the stand and say the reason for that is this, this and this, then I would have an objection to those things, because I think the case law supports that there is a statement of fear, but it doesn't support going beyond that to just, okay, I think he was saying that because these are the things that I believe are part—

THE COURT: So the witness could say he said X, but not—my opinion is he said X for reasons A, B and C.

MR. COOLEY: Or even a week before that he told me that they were having a big fight over the divorce or that sort of—I don't think that's—that's not relevant to the—and it doesn't fall under that specific case that seems to give the Court the ability to—the discretion to allow a statement of fear.

The other comment I'll make, Judge, is this: The Commonwealth makes the big to-do over, well, he didn't have a weapon. We have this situation where he asked an individual can you give me—can I borrow a weapon or get a weapon back from you? But Mr. Rafter had other firearms. He had other firearms.

So on a specific date, so they say, well, because he's asking somebody else to give him a firearm back, and let that witness get up and make statements about, well, he didn't have one, when there are other—there's other evidence that he did have other weapons and the location of those. So he had access to them that had nothing to do with the one that Ms. Rafter had originally had and returned to him. We get into areas of how do I was not because of Mr. Rafter, and it wasn't in 2015. It was in early or part of 2016, and that's when he delivered the gun to Ms. Rafter to keep it away from the house.

As far as the statement of fear that Mr. Cooley would propose that we could introduce that, he said he was afraid of Ms. Rafter but not why, seems to me to be a very difficult thing to present to a jury with a statement with no context.

Now, I think, again, that a curative or an instruction could be given by the Court that if, say, Mr. Rafter says I'm afraid of Karina Rafter because she has said she is going assault me or something like that, the Court can instruct the jury you are not to consider that for the fact that Ms. Rafter actually said that. It's just for the state of mind of the victim at that time and why he felt that he was afraid of Ms. Rafter.

And Mr. Cooley asked you, well, how do I cross-examine that? Exactly how he just proposed, which is, you know, you don't have any evidence that she ever actually said that. Right? And which is true. If in that context, if it's just coming from John Rafter and Mr. Cooley, I'm confident, is going to try to explain in many different ways why Mr. Rafter is paranoid or has these kind of mistaken beliefs about his wife.

But those are all considerations that the jury is certainly capable of divining.

Mr. Cooley suggested that the statements are testimonial because there was this divorce going on at the same time. Judge, I would suggest that is simply not what proffer teaches about what testimonial statement is. Testimonial statement is one that is made with the direct intent of initiating litigation and with a opportunity to fabricate the statement. And that simply is not the case with what Mr. Rafter is texting to his friends about the ongoing dispute with Ms. Rafter.

With respect to the third party guilt, as Mr. Cooley said, certainly we don't have any issue with Mr. Cooley and the defense suggesting that this was

some kind of robbery. Although, I will suggest that a robber entering by this outside stairwell and then using the victim's own gun with ammunition that was found in the garage is kind of a difficult sell. However, they are certainly welcome to make that argument. The argument—

THE COURT: They would make that argument, and you would—Mr. Cooley would argue that to the jury, and you would say this isn't plausible.

MR. ACKLEY: Exactly how it is in, you know, 99 percent of trials that happen. The defense suggests an alternative theory. The Commonwealth . . . .

[. . .]

**SHERI ARNOLD TESTIMONY,
RELEVANT EXCERPTS
(OCTOBER 22, 2019)**

VIRGINIA: IN THE CIRCUIT COURT OF
THE COUNTY OF POWHATAN

COMMONWEALTH OF VIRGINIA,

Plaintiff,

v.

KARINA MALGORZATA RAFTER,

Defendant.

Case Nos. CR19000001-00, CR19000001-01

Before: Hon. Paul W. CELLA, Judge.

[October 22, 2019, Transcript, p.136]

A JUROR: Just a short break would be good.

THE COURT: Pardon me, ma'am?

A JUROR: Just a short break would be good.

THE COURT: All right. Then we'll break for ten minutes, and as always, don't talk about the case.

NOTE: At this time a brief recess is taken; whereupon, the trial continues as follows:

THE COURT: Mr. Morris, please bring the jurors in. Thank you. Ladies and gentlemen, we'll now

continue with the Commonwealth's presentation. Who is your next witness, Mr. Ackley?

MR. ACKLEY: Sheri Arnold, Your Honor.

THE COURT: Sheri Arnold. Please remain standing. Raise your right hand.

SHERI ARNOLD, the witness herein named, being first duly sworn or affirmed to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ACKLEY:

Q. Ma'am, could you please introduce yourself to the . . .

A. Yes. my name is Sheri Arnold.

Q. And what do you do for a living?

A. I'm a licensed clinical social worker.

Q. How long have you been doing that?

A. Well, I got my license in April of 1999.

Q. All right. And please describe your education and background in that field.

A. I got my Master's Degree at Virginia Commonwealth University, and then got my license in '99.

Q. All right. And is part of your practice individual therapy?

A. Yes.

Q. And have you testified in court before?

A. Yes.

Q. All right. I want to ask you about one of your patients, John Rafter. Prior to his death, were you his treating therapist?

A. Yes.

Q. And what was the nature of your treatment? What was he working on?

A. He came in and wanted to—and reported that he wanted to be able to process his relationship with his wife, and to work on better coping skills for his depression and anxiety, and better his parenting skills.

Q. And he had indicated to you that he had a history of depression, is that right?

A. Yes.

Q. When did you begin providing services to John?

A. 7-29-2015.

Q. All right. So, July of 2015?

A. (The witness nodded in the affirmative.)

Q. How often would you see him?

A. That would range. It could be once a week, sometimes twice.

Q. All right. And was he reliable ordinarily to show up for appointments?

A. Yes.

Q. Was there a time that John first expressed suicidal ideations to you during counseling?

A. Yes, and it was November 25, 2015.

Q. And what had he expressed to you?

A. That he had suicide ideations with a plan of running his car into a barricade.

Q. All right. At that point, did you feel that he needed to be hospitalized?

A. No.

Q. Okay. And so what did you and John do to put in place a safety plan?

A. We discussed a safety plan, and we developed one which consisted of making sure that he had access to his family and friends, his support, Al-Anon groups. We went over the procedures of who to contact in a crisis situation.

Q. And Al-Anon is a group, a support group for loved ones of alcoholics, is that fair?

A. Yes.

Q. Did he tell you what had triggered this episode in November of 2015? What was going on in his life at that time?

A. He reported to me that he was struggling with—with his relationship with his wife.

Q. Had they separated at that time and then she had come back to move back into the house?

A. That's what I recall.

Q. All right. And as far as suicidal ideation, is there a continuum, so to speak of ideation, and then plans is more serious and then attempt is kind of the most serious?

A. Yes.

Q. Okay. And ordinarily, is there a level at which hospitalization would be required? Is that ordinarily on the higher end of planning into attempting?

A. Yes.

Q. In December of 2015, so about a month later, did something more serious happen that gave you more concern?

[Transcript, p.140]

A. Yes, that was on December 16. We were in a session, and he reported that he was feeling suicidal, suicidal ideations because of increase in depression and stress.

Q. And did he tell you something About having access to a gun?

A. Yes. He said he had a gun in the trunk of his car.

Q. And so what did you do in response to that?

A. I contacted his wife and asked if she would come into the session.

Q. Okay.

THE COURT: And what year was this, ma'am?

THE WITNESS: This is 2015.

THE COURT: Okay.

BY MR. ACKLEY (Continuing)

Q. And you said December 16?

A. Sixteen, I'm sorry. December 16, 2015.

THE COURT: The date was December 16. December 16, the year was 2015?

THE WITNESS: Right.

THE COURT: Okay. Thank you.

THE WITNESS: Uh-huh.

[Transcript, p.142]

you would ask from time to time if he was feeling suicidal, I gather?

A. Yes.

Q. I would like to take you into 2016. Was there a time you began seeing M.R. for counseling also?

A. Yes.

Q. And that was their son, and he was, I guess, 12 and then 13?

A. I don't recall his exact age at the time.

Q. All right. Does that sound about right?

A. Yes.

Q. Okay. Do you recall a time in March, an incident in March that required M.R. to be hospitalized?

A. Yes.

Q. When he came home, are you aware of where Karina after, his mother went to live?

A. I believe it was at her parents' house.

Q. Okay. And you knew that she was no longer going to be residing with M.R. and John?

A. After the hospitalization?

Q. Yes—

A. Yes.

Q. —after the hospitalization. Okay. I want to take you to the fall of 2016. Did John start expressing increasing concerns?

A. I'm sorry. Concerns of?

Q. Concerns, fears? Concerns about his wife?

A. Yes.

Q. All right. And I would like to show you an email that appears to have been from John to you, and ask if you can identify that. Do you recognize that email?

A. Yes.

Q. And was that from November 18 of 2016?

A. Yes.

Q. Could you read the text of the email please.

A. I didn't sleep last night. I may be losing a little bit of my self-control mainly due to fear. I'm not giving in to hurt. It's not—

Q. There's a redacted portion.

A. Okay. I'm not giving into her demands. I know the text message are cryptic threats, but I can't help but feel personally afraid of what might come next. I don't know if I'm blowing this out of proportion, and I just need to sit back and relax for if I this time need to seek a way of defending myself or contact the police for assistance. I just don't know what to do, Sheri. I don't want to sound like Chicken Little, but she's scaring me. I'm trying not to let this fear show and be strong for M.R..

Q. You remember receiving that email?

A. Yes.

[Transcript, p.147]

THE COURT: Thank you, Mr. Ackley.

MR. ACKLEY: Thank you.

THE COURT: Mr. Cooley, any questions?

MR. COOLEY: Yes, sir. Thank you, Judge.

CROSS-EXAMINATION

BY MR. COOLEY:

Q. Good afternoon to you, Ms. Arnold.

A. Good afternoon.

Q. Thank you. You were subpoenaed both by us and by them, and will be your one appearance, we won't ask you to come back.

A. Thank you.

Q. Let me ask you about the notes that you were just given—

A. Uh-huh.

Q. —asked to identify. Let's take that last one first. December 5, I think that's a duplicate copy of it.

A. Okay.

Q. And can you tell the Court what you wrote down about what was stressing him on that day?

A. Discussed most recent stressors, receiving paperwork from wife. She is pursuing full custody of both children and spousal support.

Q. What does it say he's afraid of?

A. It says he is feeling afraid and anxious, and how he will cope with his feelings and where he is today.

Q. All right. He didn't say I'm afraid of her, he said he's afraid how he will cope with this because she was seeking full custody of both children, is that right?

A. Yes.

Q. All right. Thank you. Now, the only difference I believe is the highlighting, is that correct?

A. (The witness nodded in the affirmative.)

MR. COOLEY: Judge, I don't know if the Court wants to receive it this way. This the same document that is part of their 65. I would like the highlighted portions.

THE COURT: Well, I think they will have the document, Mr. Cooley, and they're—I'm not sure it's appropriate for us to be—

MR. COOLEY: Duplicating.

THE COURT:—duplicating or marking papers up like that. Ladies and gentlemen, you will have it, and you can see what the whole thing says. Thank you.

BY MR. COOLEY (Continuing)

Q. And you were also shown something dated November 18, and you just identified that and said they were cryptic . . . .

[. . .]

**GREGORY WADDELL TESTIMONY,
RELEVANT EXCERPTS
(OCTOBER 22, 2019)**

VIRGINIA: IN THE CIRCUIT COURT OF
THE COUNTY OF POWHATAN

COMMONWEALTH OF VIRGINIA,

Plaintiff,

v.

KARINA MALGORZATA RAFTER,

Defendant.

Case Nos. CR19000001-00, CR19000001-01

Before: Hon. Paul W. CELLA, Judge.

[October 22, 2019, Transcript, p.125]

MS. PARRISH: No issue.

MR. COOLEY: No issue. Thank you.

THE COURT: Mr. Waddell, would you go to the witness chair please.

THE WITNESS: Certainly.

THE COURT: Sir, please raise your right hand.

GREGORY WADDELL, the witness herein named, being first duly sworn or affirmed to tell the truth,

the whole truth, and nothing but the truth, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ACKLEY:

Q. Good afternoon, sir. Could you please introduce yourself to the jury.

A. Yes, my name is Greg Waddell.

Q. And what do you do for a living?

A. I'm an attorney.

Q. I have had to do this once before, but have you ever been on that side of the courtroom as a witness in a case?

A. Only once previously, but yes.

Q. Okay. Sir, turning your attention to the case that brings us all here, John Rafter. Did you know John Rafter?

A. I did.

Q. How did you know him?

A. John Rafter was a client of mine.

Q. Okay.

A. He had retained me to represent him in a divorce.

Q. All right. And did he retain you sometime around May of 2016?

A. Yes.

Q. Okay.

A. He had retained me. We had spoken several times over the month or two prior to that, but I believe

the May date is accurate for when he actually hired me.

Q. After he hired you, did you go to work preparing divorce paperwork?

A. I did.

Q. When it was being filed, was that in the summertime of 2016?

A. Yes. I believe it was around July of 2016 when it was actually filed.

Q. Okay. And there's a difference between the paperwork being filed and when it actually gets served on the responding party, is that right?

A. That's correct.

Q. When it was filed, did John discuss with you trying to make sure that his daughter, M.L., was not going to be present when the paperwork was going to be served on his wife?

A. I believe that was one of his concerns.

Q. All right. During the course of your representation of John, did he seem to be sensitive to trying to minimize trauma to the children during this divorce?

A. He did. I think he was concerned with that because he—you know, this matter had been traumatic to the children.

Q. All right. I want to take you to the late fall of 2016, around Thanksgiving time. Did John ever express to you that he was afraid?

A. He did. He had expressed that several times over the months leading up to it. I had a phone con-

versation with him on, I believe, it was November 16 of 2016. When he had expressed to me that he was concerned about his wife and her reaction, because we had filed for custody of the children, and I think there had been some discussions between them.

Q. All right.

A. At that point, he had asked me about the possibility of purchasing a gun, whether there's any prohibition against it in his situation, and I had told him there was not.

Q. His situation being the upcoming custody hearing, or the divorce proceedings?

A. Correct.

Q. Did he specifically mention to you potentially goings . . . .

[. . .]

**PAUL HARVEY TESTIMONY,
RELEVANT EXCERPTS
(OCTOBER 23, 2019)**

VIRGINIA: IN THE CIRCUIT COURT
OF POWHATAN COUNTY

COMMONWEALTH OF VIRGINIA

v.

KARINA RAFTER,

Case Nos. CR19000001-00, CR19000001-01

Before: Hon. Paul W. CELLA, Judge.

[October 23, 2019, Transcript, p.179]

. . . him that night?

A. Quite a few texts. We text all the time.

Q. Wouldn't have just been a single text page? What about—and the name of the musician that's deceased.

You would have carried on a conversation?

A. We would text back and forth almost every day.

MR. COOLEY: Thank you.

MS. PARRISH: Paul Harvey.

PAUL HARVEY, a witness called by the Commonwealth, having been duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MS. PARRISH:

Q. Good afternoon. Feel free to move around for your comfort.

Can you introduce yourself to the members of the jury, please?

A. My name is Paul Harvey.

Q. And you're a friend of John Rafter's, weren't you?

A Yes.

[Transcript, p.187]

A. Correct.

Q. And did that prompt Karina to leave the home again?

A. I know she had left the home. My understanding was that she was asked to leave through John and—

Q. She left the home?

A. Yes.

Q. What you know about it, you learned through conversations, but you knew she moved back out?

A. Yes.

Q. And during that time would John confide in you some concerns he had about Karina?

A. Yes.

Q. What were those concerns?

A. That some abuse had taken place.

Q. What about did he have concerns that he verbalized to you about Karina coming to the home in the middle of the night?

A. Yes. There were occasions where he had reached out to me that his daughter was missing.

Q. That would be M.L.?

A Yes, the youngest daughter. And he didn't know where she was gone to. Then he would find out that his wife had come over in the night and taken her and he would—this happened on multiple occasions. And he didn't understand how she would come into the house without him knowing. He was staying up late at night, losing sleep because of this.

Q. Was he doing that often enough that it affected his job?

A. Yes.

Q. Did you actually witness that?

A. Yes.

Q. Did you talk to him about that?

A. Yes, I did. That was one of the reasons why I was going over to his house to work to basically cover for him to allow him to sleep while I was working.

Q. Did there come a point where he was able to get back on track?

A. Correct.

Q. In December, late November 2016, December 2016, you had left the Richmond area by then?

A. Yes.

Q. But were you still a colleague of John's?

A. Yes. I was.

Q. Were you aware he had gotten back on track at work at that point?

A. Yes.

Q. Did you have conversations with John about his changing the locks in the home?

A. Yes.

Q. Tell the jury about that conversation.

A. His neighbor was a locksmith and he had come over and rekeyed all the locks. However, the police informed him that since she was still a home-owner, she was required to have a key. He had to give her a key.

He was worried about that but he did it. I told him to get a deadbolt for the house, but he had to give her a key to the deadbolt, too.

Q. He provided a key because she had legal access to the home?

A. She had to have a key.

Q. Did you have a conversation with him in the fall of 2016 about a camera in the home?

A. Yes. He was concerned that she might have placed a camera in the house. I advised him how to go online to possibly find a way to do camera searches to locate cameras within the house.

He even would not go into certain rooms within the house to see if she would—see if he would—he would not go into certain rooms within the house to see if she would question him if he was not at home at certain points of the day and things such as that.

I don't know if he ever did those things. I know that's plans that we put in place. I just didn't live in Virginia to help him.

Q. That brings me to my next question. You moved back to Texas in late summer, early fall of 2016, is that right?

A. Yes.

Q. Did there come a point in August or September where you were back in town for work?

A. Yes.

Q. Did you contact John when you were back in town?

A. Yes.

Q. Did you make plans to meet up with John?

A. Yes, I did.

Q. Where was that?

A. A local bar.

Q. Was it here in Powhatan?

A. Yes, it was.

Q. Did John come and meet you that night?

A. Yes. For about 15 minutes.

Q. You said about 15 minutes. Is there a reason that he didn't stay longer?

A. He didn't want to be away from his children.

Q. What was his concerns that night?

[. . .]

**BRADY CUTTS TESTIMONY,
RELEVANT EXCERPTS
(OCTOBER 23, 2019)**

VIRGINIA: IN THE CIRCUIT COURT
OF POWHATAN COUNTY

COMMONWEALTH OF VIRGINIA

v.

KARINA RAFTER,

Case Nos. CR19000001-00, CR19000001-01

Before: Hon. Paul W. CELLA, Judge.

[October 23, 2019, Transcript, p.198]

. . . their–their ability to connect.

MS. PARRISH: That's all I have.

MR. ACKLEY: Brady Cutts.

BRADY CUTTS, a witness called by the Commonwealth, having been duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. ACKLEY:

Q. Sir, good afternoon. Could you please introduce yourself to the Court?

A. My name is Brady Austin Cutts.

Q. And how do you spell your last name?

A. C-u-t-t-s.

Q. How did you know John Rafter?

A. I met John Rafter in the late 80's. I became manger of a Walden Book Store in Walnut Mall in Petersburg. He was an employee there.

Q. Did you later become personal friends?

A. Yes, we did, became very close friends. That continued until the time of his death?

A. That is correct.

Q. In 2016, did you end up living with John for a time?

[October 23, 2019, Transcript, p.207]

. . . with the gun? At that time did you know?

A. I was only under the assumption he had taken it there. I did not know for sure.

Q. Did you have other conversations with John in 2016 where he expressed fear?

A. Repeatedly. Yes.

Q. What was he afraid of?

A. He was afraid that Karina was going to hurt him. That was all he would say, I'm afraid she's going to hurt me.

Did you have a discussion with him where you said why don't you get the shotgun from Big Mike?

A. Yes. This was two days before his murder and he was very fearful at that time. I said just go

get the shotgun from Big Mike. He said, I can't, it's at her parents' house. I said, it's at Karina's parents' house. He said, yes.

Out of all the conversations we had, that sticks in my mind the most because that is when I became fearful for John's life. She had means at that point.

MR. ACKLEY: Thank you. I don't have any other questions.

[. . .]

**MIKE HARRELL TESTIMONY,
RELEVANT EXCERPTS
(OCTOBER 23, 2019)**

VIRGINIA: IN THE CIRCUIT COURT
OF POWHATAN COUNTY

COMMONWEALTH OF VIRGINIA

v.

KARINA RAFTER,

Case Nos. CR19000001-00, CR19000001-01

Before: Hon. Paul W. CELLA, Judge.

[October 23, 2019, Transcript, p.146]

MIKE HARRELL, a witness called by the Commonwealth, having been duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MS. PARRISH:

Q. Good afternoon, sir. Could you introduce yourself to the members of the jury, please?

A. My name is Mike Harrell.

Q. Can you spell your last name?

A. H-a-r-r-e-l-l.

Q. And you were a friend of John Rafter's, is that right?

A. Since he was 20.

Q. So for quite a number of years. Did you know him before he and the defendant first married?

A. Yes.

Q. And throughout that first marriage?

A. Yes.

Q. You knew him up until he died in December of 2016, is that right?

A. Yes.

Q. When he and Karina first married, were you aware of any problems they had because of her alcohol use?

[October 23, 2019, Transcript, p.155]

. . . testing them to make sure he was going to be able to use it appropriately and get training.

Q. Were you going to accompany him?

A. Yes.

Q. Did you ever do that?

A. No.

Q. The last six months of John's life, did he make any comments to you about Karina coming into the home unexpectedly?

A. Yes.

Q. What did he tell you about that?

A. I think he had to give her a key, I believe, during —when she assaulted him and got kicked out, something along those lines if I remember cor-

rectly. Therefore, she could come and go. I think she maybe moved back in at some point.

I'm not actually sure about all the details of that part at least. She did come and go and I know that was a problem or had access to the house.

Q. You spent a lot of time with John and M.R. together, is that right?

A. Yes.

Q. What was their relationship like?

A. They loved each other. Mike doted on him like a puppy. He wanted to be where John was.

[. . .]

RICHARD ENDRICH, JR. TESTIMONY, RELEVANT EXCERPTS (OCTOBER 23, 2019)

VIRGINIA: IN THE CIRCUIT COURT
OF POWHATAN COUNTY

COMMONWEALTH OF VIRGINIA

v.

KARINA RAFTER,

Case Nos. CR19000001-00, CR19000001-01

Before: Hon. Paul W. CELLA, Judge.

[October 23, 2019, Transcript, p.140]

RICHARD ENDRICH, a witness called by the Commonwealth, having been duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. ACKLEY:

Q. Afternoon, sir. Could you please introduce yourself to the Court?

A. my name is Richard Endrich, Jr. How do you spell that?

A. E-n-d-r-i-c-h.

Q. And where do you work, sir?

A. Capital One.

Q. Is that how you knew John Rafter?

A. It is.

Q. When did you meet John?

A. Approximately 2002. He became one of my direct reports.

Q. Did he stay as one of your direct reports or did he move elsewhere within the company?

A. He was my direct report for about two years and moved onto another area in Capital One. Did you keep in touch?

A. Yes. Hallway conversations, that sort of thing.

[October 23, 2019, Transcript, p.143]

. . . up, said he had bought a handgun. I don't remember what he told me it was. It wasn't something I was familiar with, but it was a handgun and he wanted to come over to my house. I have a 100-yard range and use that and practice with it.

Q. Did he tell you during this conversation that he was fearful of anything?

A. He did. He indicated that he was afraid that Karina could harm him. My response to John was, well, people say things like that in a divorce. I experienced that myself.

John looked at me and said no, dude, you don't understand. I'm not exaggerating. She really could kill me. I realized at that with point he was very afraid, but I shrugged it off.

Q. You remember those specific words coming from John?

A. I think they're pretty close. It's been a few years, but I think that's pretty close to what he said.

MR. ACKLEY: Thank you. I have no further questions.

[. . .]

AGA LEWELT TESTIMONY, RELEVANT EXCERPTS (OCTOBER 24, 2019)

VIRGINIA: IN THE CIRCUIT COURT
OF POWHATAN COUNTY

COMMONWEALTH OF VIRGINIA

v.

KARINA RAFTER,

Case Nos. CR19000001-00, CR19000001-01

Before: Hon. Paul W. CELLA, Judge.

[October 24, 2019, Transcript, p.80]

AGA LEWELT, a witness called by the Defendant, having been duly sworn, testifies as follows:

DIRECT EXAMINATION

BY MR. COOLEY:

Q. Good morning to you, Dr. Lewelt.

A. Good morning.

Q. Tell the ladies and gentlemen your full name and your profession.

A. My name is Aga Lewelt and I'm a physician.

Q. And Dr. Lewelt, you are the sister to the . . . .

[Transcript, p.86]

BY MR. COOLEY: (Continuing)

Q. What did you see when John Rafter was washing dishes? What did he do?

A. He would stand sideways and watch his like—stand diagonally or sideways from the sink.

Q. Did he say why he did that?

A. Yes.

Q. What was that?

A. That he wanted to watch his back because he was afraid that Maja was going to stab him.

Q. You were not in Virginia the date of John's death?

A. Correct. I was in Florida.

Q. You would come in to assist with having a place for M.R. to stay?

A. I came up just—the shock of the death in the family. I just wanted to be with the family and the kids and I really didn't have a specific plan when I came up. I just came up because I felt like it was the right thing to do.

Q. That photograph that you looked at, was that designed to celebrate his passing or anything of that nature?

A. No. It wasn't. I'm a physician. People deal with grief in different ways. I think we were under . . . .

[. . .]

**KARINA RAFTER TESTIMONY,
RELEVANT EXCERPTS
(OCTOBER 24, 2019)**

VIRGINIA: IN THE CIRCUIT COURT
OF POWHATAN COUNTY

COMMONWEALTH OF VIRGINIA

v.

KARINA RAFTER,

Case Nos. CR19000001-00, CR19000001-01

Before: Hon. Paul W. CELLA, Judge.

[October 24, 2019, Transcript, p.110]

KARINA RAFTER, the defendant, having been duly sworn, testifies as follows

DIRECT EXAMINATION

BY MR. COOLEY:

Q. Good afternoon. Tell the ladies and gentlemen please, your full name.

Q. My name is Karina Malgorzata Rafter.

Q. And you are the mother of three children?

A. Correct. Yes.

Q. And you, until his passing, were the wife of John Rafter?

A. Yes.

Q. You can—I'm going to ask you a few things about yourself. Can you tell the ladies and gentlemen of the jury what is your education? Where did you go to school?

A. Bachelor of Arts degree in foreign affairs

[Transcript, 180]

Q. Now, you made some references to John's suicidal history. Did John suffer from paranoia as well?

A. I would say so.

Q. Did you have occasions during the time frame when he would keep weapons in and about his bedroom, you-all's bedroom?

A. Yes.

Q. What would those weapons be?

A. What he called a hatchet, an ax, and in his vehicle, I think machete, a long knife.

Q. Did he keep guns in his bedroom?

A. At which time?

Q. Go back to when M.L. was dating C. Did he keep guns in his bedroom then?

A. Maja, the older daughter, yes.

Q. I apologize.

A. There were long guns underneath our bed.

Q. Hatchet and an ax in the room?

A. Sometimes—usually close by John. If he was in his car, then in his car. If in the bedroom, then in the bedroom with him.

Q. You heard the description of folks about when John would wash dishes, is that what you observed?

A. That is what I observed.

Q. Did he express to you why he was concerned? Why he would stand sideways?

A. Yes. I did not like hearing about that, but yes, he did share that with me.

Q. That's because he was fearful of Maja?

A. This is correct.

Q. Also C.?

A. That is correct.

Q. Did you-all have the police come to Buford Road some years before John's death when you lived there because he was reporting people coming out of the woods?

A. Yes.

Q. That he wanted a weapon to be able to protect from folks coming out of the woods into the yard?

A. Yes.

Q. John had never been to his dad's grave until he went with M.R. in 2016, is that right?

A. John had not been to his father's gave.

Q. John was very close, was he not, with his father?

A. He was very close with his father.

Q. And let me ask you, was there a time when John's mother had gotten ill in 2016?

A. Yes.

Q. Can you tell the ladies and gentlemen of the jury what you asked to do and what did you do related

. . . .

[Transcript, 187]

. . . words, I think they had to be repeated a few times that he's no longer with us, I needed assistance maybe a little.

Q. Did they as for your—did you tell them you have been calling, you received this message on your app?

A. I almost all the time—one of the officers help my —keep me standing up and I recall holding on to one of the vehicles in the parking lot.

And what was the next question?

Q. The phone. Was there an exchange—did you tell them first of all about the calls and texts that you made?

A. Yes, I did.

Q. Did you show them to them on your phone?

A. Yes, I did.

Q. Did you give them your phone to see that?

A. To the female detective, right, yes, I did.

Q. Was that given back to you at some point in time?

A. Enough for me to unlock the screen and share what the message looked like.

Q. Gave it to her. She gave it back to you. You gave it back to her?

A. To show the text message of the alert and

[Transcript, 196]

A. No, I did not.

Q. After John's death, did you find unpaid bills that John had not taken care of?

A. Yes, I did.

Q. Was that was unusual?

A. Yes, it was.

Q. Were there bills including unpaid bills for M.R.'s hospitalization in March?

A. Yes, he did.

Q. Let me ask you about Brady Cutts. Did you go to your home at some point and be confronted by Mr. Cutts? Did you go by your home?

A. I went by my home on the children's first day of school, the 2016 academic—September 6, 2016.

Q. What happened?

A. I had been upstairs in M.L.'s bedroom for about an hour setting things up in her room. At some point in the late morning I had heard Mr. Brady Cutts yelling.

Q. Was he threatening you?

A. I'm not sure who he was threatening at that point. I heard words that were extremely loud and threatening. Once I opened the door, I heard what his words were.

Q. Was he cursing?

[. . .]