

COUNTY COURT : DUTCHESS COUNTY

PRESENT: HON. EDWARD T. McLOUGHLIN  
Dutchess County Court Judge

DECISION AND ORDER  
(CPL §60.12)

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THE PEOPLE OF THE STATE OF NEW YORK

Ind. No. 74/2018

- against -

Putnam County District Attorney by  
CHANA KRAUSS, ESQ.  
LARRY GLASSER, ESQ.  
Attorneys for Plaintiff

NICOLE ADDIMANDO,

Defendant.

JOHN INGRASSIA, ESQ.  
BENJAMIN OSTRER, ESQ.  
ELIZABETH J.M. HOOD, ESQ.  
Attorneys for Defendant

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Post Sentencing Hearing Submission-----X  
Reply in Opposition to the Defendant's  
Post Sentence Hearing Submission -----X  
Defendant's Sur Reply -----X  
Trial Transcript (2,316 pages)  
/accompanying exhibits -----X  
Post Trial Hearing Transcript (367 pages )  
/accompanying exhibits -----X

The foregoing papers were considered in deciding this motion.

The defendant is awaiting sentencing following her conviction after a jury trial for Murder in the Second Degree, a Class A-I Felony (Penal Law §125.25[1]) and Criminal Possession of a Weapon in the Second Degree, a Class C Armed Violent Felony (Penal Law §265.03[1][b]).

## THE CASE

On the night of September 27, 2017, Nicole Addimando fired a semi-automatic handgun, point-blank into the left temple of Christopher Grover, causing his death. The defendant and Christopher Grover had been in a relationship since 2009, and are the parents of two young children.

Over the course of several years before the homicide, the defendant alleges numerous instances of physical and sexual violence against her by Christopher Grover, culminating in the assertion of a justification defense at trial, based on her position that she acted as a result of "Battered Women's Syndrome". The People alleged that Christopher Grover was murdered while sleeping on his couch, and that there was insufficient proof that the victim abused the defendant over the course of the previous years.

The trial was conducted in the beginning of March, 2019, with both parties presenting a vigorous exposition of the facts of the murder itself, as well as extensive background information regarding events that occurred during the relationship over several years. A jury of eight women and four men found that the People disproved, beyond a reasonable doubt, the defendant's justification defense. The jury unanimously convicted the defendant of intentional Murder and Criminal Possession of a Weapon on April 12, 2019.

## PROCEDURAL HISTORY

On June 20, 2018, the Dutchess County Grand Jury indicted Nicole Addimando in a four count indictment charging Murder in the Second Degree, Manslaughter in the First Degree, Manslaughter in the Second Degree and Criminal Possession of a Weapon in the Second Degree.

The case was presented by the Putnam County District Attorney's office by Special Prosecutor Chana G. Kraus and Larry Glasser, Putnam County Assistant District Attorneys.<sup>1</sup> The defendant was represented by attorneys John Ingrassia, Benjamin Ostrer and Elizabeth Hood.

The trial began on March 18, 2019. At the trial, the People called nine witnesses on its direct case and four witnesses on rebuttal. The defense presented 15 witnesses, including the defendant, who testified for approximately three full days.

On April 12, 2019, the jury of eight women and four men convicted the defendant of intentional murder. The jury unanimously rejected, beyond a reasonable doubt, the defendant's battered women's syndrome justification defense.<sup>2</sup>

After the trial, and before sentencing, the defense petitioned this Court to conduct a hearing pursuant to Penal Law §60.12, to allow the defendant an opportunity for sentencing pursuant to the dictates of that statute. At the hearing conducted on September 9th, 10th and 11th, the defendant, as the moving party, called four witnesses. The People presented no witnesses, but submitted one exhibit that constituted a video compilation created by Christopher Grover, during the time that the defendant was pregnant with their first child.

Both parties asked the Court to consider the full transcript of the trial, as well as all trial exhibits, in making its decision pursuant to Penal Law §60.12. Both parties submitted lengthy

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<sup>1</sup>The Dutchess County District Attorney's Office recused itself due to a conflict regarding an Assistant District Attorney, who was a potential witness.

<sup>2</sup>Among other characteristics of the twelve individuals on the jury, eight were women ranging in age from 22 to women in their 60s. The female jurors included a 22 year old recent college graduate, a divorced mother of three, a career financial advisor, an IBM and Central Hudson manager, a writer with five children and a medical professional. The male jurors included two medical professionals, a history teacher and a technology expert, ranging in age from 30s to 60s.

legal briefs in support of their position.

The Court agreed to review all of the testimony, evidence and exhibits submitted by both parties before rendering a decision and determining an appropriate and lawful sentence.

THE STATUTE  
PENAL LAW §60.12

Penal Law §60.12 as amended on May 14, 2019, one month after the jury verdict in this case, states in pertinent part:

“...the Court, upon a determination following a hearing that

(a) at the time of the instant offense, the defendant was a victim

of domestic violence subjected to a substantial physical, sexual

or psychological abuse inflicted by a member of the same family

or household as the defendant as such term is defined in subdivision

1 of Section 530.11 of the Criminal Procedure Law;

(b) such abuse was a significant contributing factor to the defendant’s

criminal behavior;

(c) having regard for the nature and circumstances of the crime and

the history, character and condition of the defendant, that a sentence

of imprisonment pursuant to section 70.00 would be unduly harsh, may

instead impose a sentence in accordance with the section. A Court

may determine that such abuse constitutes a significant contributing

factor pursuant to paragraph (b) of this subdivision regardless of

whether the defendant raised a defense pursuant to Article 35, Article

40 or Subdivision (1) of Section 125.25 of this chapter.

“At the hearing to determine whether the defendant should be sentenced pursuant to this section, the Court shall consider oral and written arguments, take testimony from witnesses offered by either party, and consider relevant evidence to assist in making its determination. Reliable hearsay shall be admissible at such hearings.”

If the Court finds in favor of the defendant’s motion, §60.12 permits the court to impose a lesser sentence. In the instant case a determinate sentence of 5 to 15 years, plus post release supervision is available, if the Court grants the application. If the Court finds the defendant has not met her burden, the Penal Law allows an indeterminate sentence of 15 to life, up to 25 to life.

This is a newly amended statute which has not been interpreted by judicial decisions. In the statute, certain standards and definitions are not addressed. For example, the statute does not dictate the appropriate standard of proof that the defendant must achieve. The statute also does not define “reliable hearsay”. The burden of proof and persuasion is on the moving party, the defendant.

The original section of Penal Law §60.12, signed into law in 1998, used critically different verbiage in the elements required in this section. In 1998, Penal Law §60.12 stated as follows:

“...the Court, upon a determination following a hearing that

- (a) the defendant was the victim of physical, sexual or psychological abuse by the victim or intended victim of such offense,
- (b) such abuse was a factor in causing the defendant to commit

such offense; and

(c) the victim or intended victim of such offense was a member of the same family or household as the defendant as such term is defined in subdivision 1 of Section 530.11 of the Criminal Procedure Law, may in lieu of imposing such determinate sentence of imprisonment, impose an indeterminate sentence of imprisonment in accordance with subdivisions 2 and 3 of this section.”

Most notable about the amendment added by the legislature in 2019 is the addition of the following phrases: **“Having regard for the nature and circumstances of the crime”**; **“the history, character and condition of the defendant”** in section (c); and in section (b) that the abuse must constitute **“a significant contributing factor”**. The amended statute allows for a hearing with oral and written arguments, testimony, and the opportunity to present ‘reliable hearsay’. The statute was also amended to require that the alleged abuse must be inflicted by a member of the same family or household.

There is a dearth of case law to assist in the interpretation and application of the statute. In People v. Sheehan, 106 AD3d 1112 (2013), the Second Department addressed the question as to whether the defendant’s sentence should have been altered pursuant to Penal Law §60.12. In Sheehan, the defendant was charged with Murder in the Second Degree and Criminal Possession of a Weapon in the Second Degree - the exact two charges addressed by the jury in the instant case. In Sheehan, the defendant was acquitted of Murder based on a justification defense, but convicted on the Criminal Possession of a Weapon in the Second Degree charge. While the Sheehan Court determined that Penal Law §60.12 was applicable because the victim/defendant in

that case had been the victim of domestic violence, and that violence was a factor in the defendant's commission of Criminal Possession of a Weapon, the Appellate Court, "under the particulars circumstances of this case" decided it was not an improvident exercise of discretion for the Court to decline to sentence the defendant pursuant to Penal Law §60.12.

It is notable that although the 2009 version of the statute in Sheehan did not yet include the "nature of the case" consideration, the Appellate Division included that consideration in its decision. That same language, relied upon by the Appellate Division in Sheehan in 2013 is now included in the 2019 amendment.

The Sheehan decision affirmed the sentencing court's decision to not grant leniency pursuant to §60.12, and quoted the sentencing Judge as follows: "Society certainly must be concerned with self-help, violent behavior that is not sanctioned by law."

The Appellate Division in Sheehan determined that "since the Court viewed general deterrence as an overriding sentencing principle, we cannot say that the emphasis was erroneous or that the interest of justice calls for a reduction in the defendant's sentence." People v. Sheehan, 106 AD3d 1112, at 1113. It should be noted that the Sheehan decision was published approximately six years before the 2019 amendment of Penal Law §60.12.

#### THE LEGAL STANDARD

Although §60.12 of the Penal Law, either in its original 2009 version or 2019 version, does not include a standard of proof, there are other substantive sentencing sections in the Criminal Procedure Law that provide guidance.

For instance, in CPL §400.20(5), titled "Procedure for Determining Whether Defendant Should Be Sentenced as a Persistent Felony Offender", the statute provides that matters

pertaining to the defendant's history and character and the nature and circumstances of his criminal conduct can be established by any relevant evidence not legally privileged, regardless of admissibility, and provides that the standard of proof with respect to such matters shall be a "preponderance of the evidence." Additionally, CPL §440.30 entitled "Motion to Vacate Judgment and to Set Aside Sentence; Procedure" dictates that at a hearing the defendant has the burden of proving "by a preponderance of the evidence every fact essential to support the motion".

Therefore, this Court determines the standard of proof pursuant to Penal Law §60.12 is a "preponderance of the evidence".<sup>3</sup> The burden of proof must be met by the defendant, as the moving party.

#### "RELIABLE HEARSAY"

In §60.12 of the Penal Law, subdivision 1, the Court is directed to consider oral and written arguments, take testimony from witnesses offered by either party, and consider relevant evidence to assist in making its determination. The statute then dictates that "reliable hearsay" shall be admissible at such hearings. The statute does not define "reliable hearsay". The phrase "reliable hearsay" is also used in §440.47(2)(e) in CPL Article §440, entitled "Re-sentencing in Domestic Violence Cases".

The phrase "reliable hearsay" has been legally interpreted most often in Sex Offender Registration Act ("SORA") proceedings. For instance, Corrections Law §168-n(3) allows

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<sup>3</sup>It should be noted that both parties agreed to that standard at the start of the §60.12 hearing (HT page 7, line 18; HT page 9, line 6).



consideration of “reliable hearsay evidence” as long as it is relevant to the determination.<sup>4</sup>

Corrections Law §168-n is titled “Judicial Determination”, and provides direction to the Court in determining whether the offender is a sexual predator, sexually violent offender or predicate sex offender. (See also Corrections Law §168-d(3)).

In People v. Mingo, 12 NY3d 563, the Court addressed the concept of “reliable hearsay”. While rejecting certain documentary evidence that was in the form of a ‘synopsis’ or collected data, the Court acknowledged that at a SORA hearing, “reliable hearsay can include the Board of Examiners Sex Offender Report, a Pre-Sentence Report, a case summary, Grand Jury testimony, misdemeanor and felony complaints, and trial testimony”. In Mingo, the Court ordered a hearing to establish the appropriate foundation of the documents submitted for consideration. The Mingo Court stated, “Where an unsworn statement is equivocal, inconsistent with other evidence or seem dubious in light of other information on the record, a SORA Court is free to ignore it. Mingo at page 577.

Further, in §370.50 of the Criminal Procedure Law, entitled “Procedure for Determining Whether Certain Misdemeanor Crimes are Serious Offenses Under the Penal Law”, subdivision 3 allows for “reliable hearsay” to the determination relevant to the statute. As long as the relevant evidence has a “indicia of reliability”, such evidence does not violate the defendant’s right of confrontation under the Sixth Amendment (McKinney’s Article 1, Section 6: Idaho v. Wright, 497 US 805) (See also, People v. Robinson, 89 NY2d 648).

Therefore, this Court deems it appropriate to consider all trial testimony and exhibits,

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<sup>4</sup> It should be noted that the burden of proof in that particular statute is “clear and convincing evidence”.

including video taped recordings of the defendant speaking to Officer Sisilli, Detective Honkala, and Detective Hamill. The defense has also submitted certain medical records. Although the records were not permitted at trial, (such proffered notations by a medical professional in a non-diagnostic setting were not admissible hearsay) for purposes of the §60.12 hearing, such evidence is “reliable hearsay” which the court has considered.

#### THE ELEMENTS OF PENAL LAW §60.12

Penal Law §60.12(1)(a) requires the Court to examine whether “**at the time of the instant offense**, the defendant was a victim of domestic violence, subjected to substantial physical, sexual or psychological abuse inflicted by a member **of the same family or household**, as such term is defined in subdivision 1 of section 530.11 of the Criminal Procedure Law.” (emphasis added)

Penal Law §60.12(1)(b) requires that such abuse was **a significant contributing factor** to the defendant’s criminal behavior. (emphasis added)

Penal Law §60.12(1)(c) provides that having regard for the **nature and circumstances of the crime and the history, character or condition of the defendant**, that a sentence of imprisonment pursuant to (the appropriate section) would be **unduly harsh**, may instead impose a sentence in accordance with this section. 60.12(1) also allows the Court to determine whether evidence of domestic violence constituted a “significant contributing” factor, even if the defense did not interpose a defense pursuant to Article 35.<sup>5</sup> (emphasis added)

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<sup>5</sup> In the instant case, the defendant served the appropriate notice and interposed a defense pursuant to Article 35, based on the claim that she acted under the influence of Battered Women’s Syndrome.

## DEFENDANT'S ALLEGED HISTORY OF ABUSE

In her trial testimony, defendant related a lifelong, extensive history of abuse before and during her relationship with Christopher Grover, and by other men as well. According to the defendant, the abuse started when she was a young child and continued throughout several relationships, including abuse by individuals with whom she was not in a consensual relationship. During her trial testimony, the defendant recounted numerous abusive acts by the decedent, Christopher Grover, over the course of their relationship.

The relationship with the decedent began when both Christopher Grover and the defendant were employees at a local gymnastics business (TT page 151, line 17)<sup>6</sup> in 2008 (TT page 639, line 11). They moved in together in 2012 (TT page 639, line 19) and moved to a residence in Hyde Park in late 2013 (TT page 645, line 24). The Defendant testified that the sexual and physical abuse began before her first pregnancy, continued after her first child was born, continued throughout 2015, and continued during her second pregnancy (TT page 646, line 13-25).

Defendant's allegations of abuse include forced sex (TT page 648, line 7) and other violent encounters, including beatings about the face and body (TT page 650, 655, 660, 661). The defendant described the decedent burning her around her vaginal area with a heated spoon (TT page 655, line 16). The defendant's testimony regarding the abuse by the victim with a heated spoon included her testimony that the decedent held her on the floor with one hand, pulled down her underwear, heated a spoon on a stove flame with the other hand, pulled her knees apart and repeatedly burned the defendant "over and over again" (TT page 655, line 14).

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<sup>6</sup> TT= trial testimony; HT = hearing testimony; HV = Honkala video; SV=Sisilli video

Defendant also alleged that the victim once had bound her and left her tied up for a period of time. (TT page 687, line 25). The defendant claimed that the abuse by the victim continued into 2016 (TT page 697, line 12-21) and at one point the victim raped her vaginally with a bottle (TT page 706, line 25). At the trial, numerous pictures of injuries on the defendant were submitted for the jury's consideration (TT page 650, 660, 666), purportedly as corroboration in support of her claim of abuse.

The abuse included allegations that the victim took still photos and video of the defendant, in degrading and abusive situations, and preserved the images in his camera and on his laptop computer. The defendant also alleged that the victim uploaded these images and videos to a pornographic website called "Pornhub".

The defendant also described verbal abuse by the victim, including that he told her twice on the night of the homicide that he would kill her (TT page 740, line 9). The defendant alleged that the victim would also use instruments to gag the defendant, and would use whips to assault her (TT page 1019, line 1-5). The defendant claimed that the victim once told her that he could "kill her in her sleep" (TT page 1053, line 19). The defendant also recounted that the defendant would tell her that she "didn't learn her lesson", and was told she needed to "respect him" (TT page 663, line 17).

The defendant also testified to numerous instances of abuse by other individuals throughout her life. Defendant recounted that she was abused as a child by a neighbor known to her as "Butch" (TT page 761, line 15; TT page 810, line 21). Defendant testified that she has post traumatic stress disorder due to this abuse as a child (TT page 811, line 16). One witness recalled learning from the defendant that she had been abused by a friend's father during a sleep

over (TT page 1846, line 18), presumably referencing the above abuse.

Defendant also stated that she was abused for approximately one and half years by a maintenance worker at her apartment complex named "Caesar", (TT page 816, line 16) during the time that she alleges Christopher Grover was abusing her (TT page 812, line 22, TT page 817, line 7-10). This occurred in 2011 and 2012, (TT page 823, line 10) when she saw Caesar two to three times per week (TT page 816, line 22). Defendant alleged that during the year and a half that Caesar was sexually abusing her, at one point he used a power tool to vaginally penetrate her (TT page 824, line 24). At the time, Caesar was supervised by defendant's mother, who was the property manager of the apartment complex. (TT page 1909, 1910) During this period, defendant also told her close friends that Caesar had been abusing her (TT page 1389, line 25). Defendant told Dr. Kirschner, the People's psychiatric expert, that there had been a multitude of situations where Caesar had abused her (TT page 1909, line 17).

Additionally, a witness recounted that the defendant told her about other individuals who had abused her, including a different individual named "Chris" (TT page 1908, line 23). The defendant had also once showed a witness physical evidence of abuse that had just occurred, including displaying a ripped shirt and scratches on her cheek, at a time when Christopher Grover was away for the weekend (TT page 1839, line 20).

Further, an individual who was a police officer, "D.T." allegedly abused her. The defendant testified that she originally moved from her mother's house to D.T.'s home to "get away" from Christopher Grover and Caesar. (TT page 827, line 9) The defendant moved into D.T.'s house approximately 1 ½ years after she began her relationship with Christopher Grover (TT page 1718, line 4). According to several friends and therapists, D.T.'s relationship with the

defendant was understood to have been sexually abusive. One witness recounted that D.T., according to the defendant, had been stalking the defendant (TT page 1387, line 8; TT page 1388, line 10) by showing up at grocery stores and at other places, uninvited (TT page 1395, line 22, 24). A close confidant of the defendant understood the relationship between D.T. and the defendant as “not consensual” (TT page 1397, line 19), but not forceful (TT 1393, line 4). According to the defendant’s long-time therapist and confidant, D.T. had raped the defendant (HT page 164, line 23; HT page 169, line 11). The defendant’s therapist reported that D.T. had forced the defendant to perform oral sex (H.T. 167, line 16) and at the time the defendant told her this, the therapist noted a cut on the defendant’s lip (HT page 167, line 23). According to the defendant’s therapist, sex with D.T. was not consensual (HT page 186, line 16) and was assaultive (HT page 215, line 7). It should be noted that during the trial, when asked if D.T. ever forced himself on the defendant, the defendant told the jury “no”. (TT page 829, line 5)

Defendant’s therapist also referred to an account by the defendant that she was raped by a person nicknamed “Race” (HT page 240, line 18) while in her 20s, and also made reference to an abusive encounter with a person nicknamed “A-Rod” (HT page 253, line 20). At the trial, every relationship described by the defendant that occurred with a male partner or acquaintance included either physical or sexual abuse, or both.

During the trial, multiple witnesses testified to observing various wounds on numerous parts of the defendant’s body over time. A friend of the defendant noticed bruises on the defendant’s cheekbone in 2016 and noted that she was usually “covered up” (TT page 1247, line 24), but stated that she did not know how the wounds occurred (TT page 1250, line 14). Another witness testified that she had observed bruises and attempts to cover up bruises with makeup, on

numerous occasions (TT page 1252, line 10; TT page 1253, line 10) from 2015 to 2016. Another acquaintance testified that she noted bruises on the defendant's face and arms along with burns (TT page 1258, line 6) in 2015. The same witness noted bruises on the defendant's face (TT page 1260, line 5) and noted that she had been injured almost every time she saw her (TT page 1263, line 17). The defendant's midwife noted wounds on the defendant's private parts in 2017 (TT page 1289, line 5). In addition, a midwife noted swelling and bruising to the defendant's face (TT page 1292, line 6). The midwife documented the injuries using photos (TT page 1295, line 23). Another witness testified that she observed black eyes and bruises on the defendant on several occasions in late 2015 (TT page 1364, line 1; TT page 1365, line 23). Another domestic violence professional noted injuries to the defendant's cheek, breast, thigh and private parts in 2014 (TT page 1487, line 24 et seq). At the request of the defendant, Sergeant Ruscillo of the Hyde Park Police Department was able to view pornographic pictures of abuse uploaded to "Porn Hub". Another witness testified that the defendant would often wear scarves around her neck and face, even though the weather did not require it (TT page 1539, line 3) and also noticed a bruise on the defendant's cheek in 2016 (TT page 1541, line 3).

At the Penal Law §60.12 hearing, several witnesses were presented by the defendant, including a witness that had observed red marks and bruising on the defendant (HT page 16, line 17; HT page 19, line 18). The defendant's therapist testified at the hearing that she observed red lines on the defendant's neck (HT page 60, line 8), injuries to the defendant's face (HT page 63, line 20) and was told of burns to the defendant's private parts (HT page 73, line 22). This witness also recounted over ten sessions she had with the defendant where she observed wounds on the defendant's person (HT page 60 et seq).

The defendant's original therapist testified at the §60.12 hearing that she was able to view a filmed, forced sexual intercourse video involving another individual and the defendant (HT page 279, line 23), who she now believes, approximately five years later, to be Christopher Grover.

Throughout these numerous encounters and reported observations by the other witnesses, the defendant disclosed that Christopher Grover was her abuser to only two witnesses.

Defendant claimed at trial that throughout the time period leading up to the homicide, she was under the control of Christopher Grover. For instance, the defendant was worried that the victim would find out that she was seeing doctors and thereby reveal his identity as her abuser to them (TT page 1460, line 12). Defendant also told her therapist in an email on December 9, 2016, "I don't think there was a way I would be without him, unless one of us aren't alive anymore" (HT page 206, line 12).

Defendant's psychiatric expert, Dr. Hughes, testified at length about the nature of domestic violence. She observed that abuse can be interspersed with normalcy (TT page 1596, line 4). The doctor stated that violence usually doesn't happen in public and in front of other witnesses (TT page 1737, line 17). The defendant's mid-wife testified that often, women stay with men that abuse them and thereby give them permission to continue (TT page 1358, line 12). Dr. Hughes testified that in her opinion, Christopher Grover, was still a threat and had control of the defendant, even when the defendant possessed a gun on the night of murder (TT page 1741, line 9). The defendant's psychiatric expert testified, by a reasonable degree of scientific certainty, that the defendant was acting under the influence of Battered Women's Syndrome on the night of the homicide (TT page 1648, line 4).



## PEOPLE'S POSITION

In opposition to the defendant's Battered Women's Syndrome defense at trial, and the defendant's application pursuant to §60.12, the People contend that the defendant was not under the control of Christopher Grover during the time period before the homicide, is an unreliable historian regarding her history of abuse and the identity of her abuser, is inconsistent regarding the facts of the homicide, and had a host of resources available to her that would have enabled her to avoid murdering Christopher Grover.

With respect to Christopher Grover's control of the defendant, regarding her financial independence, the defendant testified that she and Christopher Grover had separate checking accounts (TT page 991, line 1). Also, the defendant had a joint account with her father, into which her father would sometimes deposit money (TT page 991, line 8). Defendant also stated that she had a small business creating and selling "booties" to earn a minor income (TT page 914, line 17).

Further, the defendant's Battered Women's Syndrome expert, Dr. Hughes, stated in her opinion that the defendant was not socially isolated (TT page 1708, line 9). Dr. Hughes stated that the victim was not a jealous person (TT page 1710, line 5) and did not stop her from seeing a therapist (TT page 1711, line 4). The doctor observed that Christopher Grover did not object to the defendant living with D.T., a police officer, and his family, during their relationship and during the time that Christopher Grover was allegedly abusing the defendant (TT page 1718, line 24; TT page 1719, line 6). Dr. Hughes observed that, according to the defendant, after Christopher Grover had been regularly abusing the defendant, the defendant moved from the home of a police officer into Christopher Grover's home (TT page 1720, line 19), where the

abuse continued.

Dr. Kirschner, the People's Battered Women's Syndrome expert, testified that it was notable that if Christopher Grover was an abuser, it was unusual for him to allow the defendant to move in with a police officer while Christopher Grover was abusing her (TT page 1916, line 7), and thereby trust her to not reveal the abuse. Dr. Kirschner stated that a common characteristic of a batterer is to not trust his victim (TT page 1916, line 13). Dr. Kirschner also noted that the defendant had, in an earlier published article, publicly rejected marriage to the victim (TT page 1926, line 2; see also TT page 874, line 7). According to Dr. Kirschner, these were all indicia that Christopher Grover was not controlling the defendant. He also noted that, according to the defendant, she had the opportunity to leave her residence at night and go for car rides (TT page 1927, line 22).

Dr. Kirschner also noted that the defendant's admission to him that she continued an affair with D.T., including in Christopher Grover's home when he was not there, is the kind of act inconsistent with a person who claims that she is afraid and under the control of her alleged batterer. In expressing doubts about the defendant, Dr. Kirschner stated that having an affair with another man in the batterer's home is inconsistent with the actions of an abused person (TT page 1921, line 17), if the abuse allegations are true.

In a revealing series of communications between the defendant and the victim, three days before the homicide, according to the People, the defendant made a series of comments and responses to Christopher Grover in a text conversation:

“Are you this stupid?” (TT page 95, line 25)

“Do you remember or is something wrong with your brain?” (TT page 96, line 21)

“I have full complex thoughts like a human being.” (TT page 97, line 25)

“WTF is wrong with you?”, the defendant observed that the victim “has some sort of mental disorder” (TT page 98, line 6)

“I have an asshole man child for a partner. That’s my disorder.”  
(TT page 99, line 16)

These quotes are contained in People’s Exhibit 6 and 7.

Also, in defense Exhibit CCCC and Exhibit Y submitted at the trial, the defense offered the following text statements were made by the defendant to Christopher Grover, approximately three days before the homicide:

“What the fuck are you talking about?” (TT page 934, line 14)

“Are you this stupid?” (TT page 934, line 24)

“Is something wrong with your brain?” (TT page 936, line 17)

“No, I have full complex thoughts like a human being and you can’t understand them.” (TT page 938, line 21)

“You might have some sort of mental disorder.” (TT page 939, line 14)

“I have an asshole man child for a partner.” (TT page 940, line 8)

*Defendant’s* expert, Dr. Hughes, stated that these statements by defendant were “emotionally degrading” to Christopher Grover three days before the homicide (TT page 731, line 21). Also, defendant’s mid-wife, who had stated that the defendant was controlling of Christopher Grover (TT page 1345, line 8), believed that both the victim and the defendant were “sick and abusive” to each other (TT page 1346, line 9).

The People’s expert, Dr. Kirschner, described the defendant’s texts as “berating and condescending” (TT page 1941, line 1). Dr. Kirschner described the activity by the defendant as

“provocative” under the circumstances (TT page 1943, line 5). He observed that if in fact, according to the defendant, Christopher Grover found “respect” to be an important issue, normally disrespect to the abuser would be a trigger for more abuse. (TT page 1941, line 19)

Dr. Kirschner, the People’s expert, conceded that often domestic violence victims do not leave an abuser’s home due to concerns about children or money. However, he observed that none of those concerns existed when the defendant left police officer D.T.’s house to move in with Christopher Grover (TT page 1920, line 18), (who was allegedly already abusing her) because the defendant’s children had not yet been born.

#### ABUSE ALLEGATIONS

The People also argue there is evidence that does not corroborate the defendant’s allegations of abuse. The defendant testified that abusive sex and violence continued during her second pregnancy. (TT page 646, line 13-25). However, the defendant’s mid-wife testified that she performed full exams on the defendant during the pregnancy and did not document any evidence of abuse during the pregnancy (TT page 1324, line 1).

Further, one of the People’s witnesses, Marissa Hart, testified that she saw no physical injuries on the defendant in 2014 (TT page 1805, line 20), and observed that the defendant dressed the same as other moms that she encountered (TT page 1809, line 13). Ms. Hart also testified that the defendant often used fabric bands on her wrists during gymnastic training (TT page 1814, line 8). The People contend this is a possible explanation for the defendant’s reported wrist-binding wounds.

The People assert, most notably, that four weeks before the night of the homicide, the defendant texted a friend stating, “It’s okay. I haven’t figured out a way to kill him yet without

being caught, so I'm still here." (TT page 52, line 18). The defense contends that the defendant followed up that text with a "grimacing" emoji approximately four seconds later, and that the statement was made in jest.

The People argue there are other facts which do not corroborate the defendant's position, but that actually highlight the defendant's inconsistencies. For instance, although the defendant testified that Christopher Grover destroyed a camera on the night of the homicide, which according to the defendant had pictures and video of her abuse, the camera memory was resurrected and no actual pictures of abuse were found on the camera (TT line 347, line 13-25). Similarly, although defendant testified that a laptop which she stated contained evidence of abuse had been broken in half and submerged under water in a bathtub, presumably by Christopher Grover, the resurrected computer memory revealed no images of pornographic or sexual abuse once it was examined (TT page 387, line 1).

Also, although the defendant testified that her therapist had repeatedly told her to secure the photographic evidence on the laptop and bring it with her if she left Christopher Grover, (TT page 929, line 6), the defendant chose not to do so on the night of the homicide.

#### ABUSER IDENTITY

The People argue that the identity of the defendant's abuser is not corroborated by any witness or pictures, but comes solely from the defendant. The defendant's expert, Dr. Hughes, acknowledged that the defendant, in recounting certain incidents, could have facts "sort of blend together" (TT page 1734, line 23), and that she may not have the precision to give details of the who, what, why, where and when (TT page 1735, line 12). Dr. Hughes also acknowledged that the defendant at one point was conflating two separate abusive situations, (TT page 1715, line 1)

perhaps because she didn't want people to know it was her partner who was the abuser. When Dr. Hughes was confronted by the People as to whether the defendant was very confused about who was doing particular acts to her, meaning Christopher Grover or Caesar, she stated that she thought the defendant was confused, and that there were elements of disassociation, avoidance, compartmentalization, and suppression (TT page 1714, line 5-11).

The defendant testified at trial that for some period of the time she was being abused by Christopher Grover, Caesar was also abusing her (TT page 804, line 4-24). The defendant testified that Caesar had abused her for approximately one and a half years (TT page 816, line 16). The defendant stated her memories are fragmented regarding the abuse that occurred at the same time by Caesar and Christopher Grover (TT page 823, line 19). During this same time, the defendant was also in a relationship with D.T., from whom she had sought protection from Caesar. However, although the defendant was willing to tell D.T. that Caesar was abusing her, the defendant did not tell D.T. that Christopher Grover was also abusing her, according to the defendant's testimony (TT page 828, line 6).

The People allege that the defendant was also inconsistent about whether the contact with D.T. was forcible, abusive rape, or consensual. The defendant testified to the jury that D.T. did not force himself on her (TT page 829, line 6). However, according to her close friend, Elizabeth Clifton, the defendant told her friend that D.T. was stalking her (TT page 1387, line 8; TT page 1388, line 10), specifically at a grocery store (TT page 1395, line 22) and he would often show up places uninvited (TT page 1395, line 24). Elizabeth Clifton also testified that she had the impression that the contact with D.T. was not consensual (TT page 1397, line 18).

The defendant also told Sarah Caprioli that she did not want to have sex with D.T., but

“she wasn’t able to stop it” (HT page 164, line 23). Sarah Caprioli also relayed that the defendant had told her that D.T. had forced oral sex on her (HT line 167, line 16) and that at that time, the defendant was observed with a cut on her lip (HT page 167, line 23).

Sarah Caprioli testified that her understanding was that the sexual contact with D.T. was not consensual (HT page 186, line 15) and that the contact was assaultive (HT page 215, line 7). Ms. Caprioli recounted that the defendant told her that at one point D.T. attempted to have sex with her and she said no to him (HT page 94, line 23). However, the defendant told the trial jury that the sexual contact with D.T. was not forced on her (TT page 829, line 5).

Sarah Caprioli also confirmed that she was previously told by the defendant that she had been raped by a person named “Race” while in her 20s (HT page 240, line 18) and that Caesar was assaulting her at the same time D.T. was having sex with her non-consensually (HT page 241, line 10). Sarah Caprioli also recounted the defendant’s statements regarding an abusive sexual contact with a person she described as “A-Rod” (HT page 253, line 20).

Further, the defendant told numerous people, including D.T., Elizabeth Clifton, Sarah Caprioli and others that Caesar had been abusing her, but did not tell any of those individuals that Christopher Grove was allegedly abusing her at the same time (TT page 1385, line 18). The defendant did tell Sarah Caprioli later.

At trial, Sergeant Ruscillo testified that in any abusive “Porn Hub” pictures that he viewed, there was never a person, besides the defendant, shown in the pictures (TT page 1532, line 24).

Dr. Kirschner, the People’s expert, testified that at one point in her life, according to the defendant another person named “Chris” had been abusing her (TT page 1908, line 23). The

defendant also told Dr. Kirschner, as she told the jury, that D.T. never forced her or was violent with her (TT page 1913, line 4). Dr. Kirschner also questioned why the defendant never told D.T., (TT page 1913, line 22), a police officer with whom the defendant had sought and received sanctuary, that Christopher Grover was abusing her, but had told him about Caesar.

Dr. Kirschner questioned why the defendant, if the victim was beating her, would move from the sanctuary of a police officer's home, into the home of her abuser (TT page 1919, line 24; et seq TT page 1920, line 10). Dr. Kirschner described D.T. as a potential "personal body guard" for the defendant (TT page 1917, line 1) and questioned her refusal to accept help from him (TT page 1917, line 5).

During his testimony, Dr. Kirschner conceded that burns and bruises can corroborate abuse, but not necessarily the identity of the abuser (TT page 2028, line 21; TT page 2029, line 3, line 20). Dr. Kirschner noted that defendant had different accounts of who abused her at various times, even when Christopher Grover was not present (HT page 248, line 8).

Initially, the defendant reported that although she had a history of sexual abuse, there was no contemporaneous reporting of abuse by Christopher Grover after an inquiry from her midwife, Susan Ranastad (TT page 1313, line 14), during her contact with this health professional.

At the §60.12 hearing, the defendant's therapist and confidant, Sarah Caprioli, testified that the defendant had expressed that she was upset that her mother had told Detective Hamill of the Town of Poughkeepsie Police Department that she "makes things up for attention".

In addition to the People's allegations that the defendant was inconsistent regarding the identity of who has abused her, the People allege that the defendant has been inconsistent in detailing the type of abuse that she has endured. The People posit a pattern wherein the



defendant alleges to her close friends and acquaintances that she has been abused by someone, revealing injuries and some details to them. However, according to the People, each time those friends and advisors sought to introduce the defendant to actual law enforcement professionals, such as Detective Hamill, Sergeant Ruscillo, CPS and other entities, the defendant would purposely resist a forensic gathering of physical evidence and the submission of a full detailed sworn statement (TT page 1516, line 8 et seq). For instance, Sarah Caprioli testified that it was she who told a forensic nurse what had happened to the defendant and who the defendant's abuser was (HT page 76, line 11 - line 23), not the defendant.

The defendant stated that in 2014, she had been interviewed during a forensic nurse exam (FNE) and did not report that she had been abused by weapons, hard blows, bite marks, choking or burns (TT page 902, line 22 et seq. - TT page 904). However, approximately five days later, she reported to a separate entity that she had, in fact, been burned with a spoon, had been burned and bitten, and a weapon had been used against her (TT page 904, line 15; TT page 905, line 18; TT page 906, line 6, line 16).

Also, the People argue that despite leaving Elizabeth Clifton with the impression that her contact with D.T. had not been consensual, (TT 1397, line 18) and that D.T. had stalked her, the defendant asked Elizabeth Clifton to request that D.T. visit her while she was incarcerated pending trial (TT page 1399, line 4).

Finally, the People argue there are inconsistent facts in the record that create questions regarding the abuse sustained by the defendant. For example, despite the defendant's statement that a camera had been used to take abusive pictures of her and a laptop computer contained images and information regarding her abuse, no such data was located on the camera (TT page

347, line 13-25) or the computer (TT page 387, line 1). The People ask why, if Christopher Grover was purportedly concerned that evidence of abuse by him was contained on the camera or the laptop, would he have made sure they were destroyed, if nothing had actually been recorded on the devices. The People also question why an alleged abuser would teach his victim to load and use a handgun (TT page 731, line 5; see also TT page 1022, line 4-16) and make sure she knew how to operate the gun safety (TT page 1022, line 15).

The defendant testified that she had been told repeatedly by Sarah Caprioli that she should take the lap top with her if she leaves the victim (TT page 929, line 3). However, according to the defendant at trial, she could not turn off her bathtub faucet (TT page 749, line 15), and she also chose not to take the laptop computer that she discovered under water, from the scene (TT page 1975, line 5; TT page 749, line 14).

#### DEFENDANT'S RESOURCES

Throughout the trial and hearing, the defendant and other witnesses referenced numerous individuals who knew or were aware, on various levels, of the abuse that she allegedly endured. Several of those witnesses testified at trial. The vast majority of these individuals offered the defendant help or services.

These individuals included her friends, including Elizabeth Clifton (TT page 800), "Nikita" (TT page 801), Lisa Whalen (TT 716), Lori Horning (HT page 40), Melanie Bailey (TT page 1262), Michelle Wolin (TT page 1243, line 25), Lisa Rosten (TT page 1251) and Noelle Todd (TT page 1535).

Also, according to the defendant, law enforcement professionals were aware and offered her help, including Officer D.T. (TT page 803); Sergeant Ruscillo of the Hyde Park Police

Department (TT page 846, 1529); Detective Chris Hamill of the Town of Poughkeepsie Police Department (TT page 837); Rochelle McDonough of the New York State Police (TT page 859; HT page 46); the Dutchess County District Attorney's Office (TT page 1532, line 7-13); Melissa Massarone, Domestic Violence Advocate for the Hyde Park Police Department (TT page 1525); and Child Protective Services (TT page 974, line 14) (on the day of the homicide).

Other domestic violence trained individuals that the defendant had access to or a close connection to among her family and acquaintances include her Aunt Cathy, who was an advocate at Grace Smith House (TT page 808; HT page 212); therapist Dusty Mason (TT page 806); therapist and confidant Sarah Caprioli (TT page 847); mid-wife Susan Rannestad (TT page 861); mid-wife Susan Condon (TT page 863); Domestic Violence Advocate Judy Lyons (TT page 1486), Debbie Falasco (TT page 856) and Dr. Woo, M.D., (TT page 889).

According to the defendant, she received specific advice on how to safely leave Christopher Grover. Defendant testified that she was very aware of various safety plans which would help her remove herself from her abusive situation (TT page 859, line 21). This advice included suggestions from her therapist and confidant advising her to remove herself from the residence while Christopher Grover was at work (TT page 928, line 24). The defendant testified she was given several reminders that when she left her abusive home, she should remove the laptop containing evidence of the abuse (TT page 929, line 3).

At the §60.12 hearing, Sarah Caprioli confirmed that she had advised the defendant that she should leave while the victim was at work or out of the house (HT page 211, line 3). Ms. Caprioli also advised the defendant that if she could safely take the laptop that contained evidence, she should do so (HT page 211, line 18). Ms. Caprioli also testified that she discussed

places the defendant could live if she left, including with Elizabeth Clifton, at Grace Smith House, at her Aunt Cathy's, at her sister's home and at her father's home (HT page 212, line 5 et seq). Ms. Caprioli also explained to the defendant that she would help her pack her belongings and leave if she needed (HT page 213, line 12). An additional witness testified that she offered the defendant a place to live after observing signs of abuse (TT page 1262, line 8; 1273, line 3).

According to the defendant, she did not follow Ms. Caprioli's advice, nor ask for help on the night of the murder. The defendant testified that she "had nowhere else to go" (TT page 746, line 21) on the night of the homicide. The defendant also testified that she had helped her sister previously get an order of protection through Dutchess County Family Court, (TT page 807, line 25).

Ms. Caprioli also acknowledged that the victim's family had given the defendant support and help before the homicide, paying for her groceries and taking care of her children on occasion (HT page 218, line 12). However Ms. Caprioli noted that "access to services" was not the problem in the defendant's situation (HT page 219, line 25). Further, Ms. Caprioli told the defendant, when she heard that CPS would be contacting her, that "CPS is the safe way out" (HT page 259, line 17). On the day of the homicide, defendant was individually interviewed by CPS in her home, but did not disclose any facts regarding her abuse (TT page 974, line 14).

The law enforcement individuals referenced above all directly approached or were available to the defendant, and offered help at some point before the homicide. For instance, Sergeant Ruscillo of the Hyde Park Police Department waited for hours to speak to the defendant at one point in 2015 (TT page 849, line 3), in an effort to offer her help. Although his efforts were initially unsuccessful on that day, Sergeant Ruscillo ran to the defendant as she was leaving

the meeting to convince her to sign a statement that had been written by Sarah Caprioli on her behalf. This would have resulted in the arrest of Christopher Grover (TT page 1529, line 20-24; TT 1531, line 2). The defendant declined to sign the statement.

The defendant's confidant and therapist Sarah Caprioli confirmed that the defendant would not sign Sergeant Ruscillo's sworn statement which had been presented to the defendant (HT page 114, line 24). Ms. Caprioli confirmed that the defendant herself never actually told Sergeant Ruscillo about the abuse in her presence (HT page 134, line 11), but witnessed Sergeant Ruscillo tell the defendant, "You have options and don't have to live this way." (HT page 135, line 24).

Detective Hamill of the Town of Poughkeepsie Police Department also spoke to the defendant for hours in 2012, at which time the defendant declined to reveal any details of her abuse. The defendant's friend also confirmed that the defendant did not reveal her abuse to Detective Hamill in 2012 (HT page 42, line 4).

At trial, there was testimony that several medical professional and mental health experts also attempted to help the defendant. At each encounter, the defendant either refused to identify her abuser or limited the level of evidence gathering. For instance, defendant initially asked that her mid-wife not photograph her as part of the memorialization of her wounds (TT page 1295, line 2), although the mid-wife ultimately did take photos of the defendant's injuries (TT page 1295).

According to the People, a health professional had once explained to the defendant the difference between a forensic nurse exam and an evidentiary sex-assault forensic exam. The defendant was told that a forensic nurse exam was not utilized to collect evidence for criminal

prosecution (TT page 1498, line 9; TT page 1504, line 23). However, the defendant was also told that if she allowed the *evidentiary* exam, it could be used in a criminal prosecution. The defendant was also told the evidentiary exam results could be preserved, but could be withheld and not be submitted unless the defendant chose to do so later (TT page 1505, line 13-22). The defendant declined the evidentiary option and chose the non-evidentiary option.

At trial, there was testimony that during a forensic examination of the defendant on September 6, 2014, the defendant disclosed some of the details of her abuse. The defendant was interviewed on September 6, 2014 during a forensic nurse exam, and although she did disclose that she had been abused, when asked that there had been weapons used, she denied that she had endured physical blows by hand or feet, that she had sustained any bite marks, choking, or had been burned (TT page 902, line 22 et seq). The defendant also stated that there had been no threats of harm (TT page 904, line 3).

However, according to the People, five days later the defendant was re-interviewed through her therapist, Sarah Caprioli and thereafter reported that she in fact had sustained burns in the last five days (TT page 905, line 15), had sustained a bite mark in the previous five days (TT page 906, line 6), and had also now endured a burn mark in the last five days (TT page 906, line 19).

On September 12, 2017, approximately two weeks before the homicide, defendant was evaluated by Dr. Woo, at which time she did not tell the doctor about her alleged abuse, nor were there any observations by the doctor of wounds on her person (TT page 889-894).

## DECEDENT ABUSER PROFILE

The People argue, with the support of the People's expert, Dr. Kirschner, that Christopher Grover did not fit the profile, nor did he appear to have the characteristics of a typical domestic violence abuser.

The defendant described Christopher Grover as a person who was more like "a big kid" (TT page 931, line 3). Early on in their relationship, the defendant testified that she expressed her concerns and hesitation, based on her previous sexual abuse history, about becoming intimate with Christopher Grover. The defendant was told by Christopher Grover that he was willing to wait for "a year" to be intimate (TT page 762, line 15). As stated above, Christopher Grover accepted that the defendant chose to move in with D.T., a police officer, and his family (TT page 853, line 11-22), during their relationship.

Several days before the homicide, the victim stated to the defendant in a text message, "Maybe you'll be happier if I go, if I make you so unhappy." (TT page 910, line 6). The defendant repeatedly testified at trial that the victim was a wonderful father and loved his children very much (TT page 1080, line 9). The defendant also stated this sentiment to her mid-wife (TT page 1353, line 24).

The defendant's confidant and friend testified that she had not observed any of Christopher Grover's texts to be threatening or controlling (TT page 1453, line 13). Sergeant Rusillo, although being told by the defendant that the victim had photographed physical and sexual abuse and then posted them to an internet website, never actually saw Christopher Grover in any of the pictures (TT page 1532, line 24).

Also, although there were internet searches discovered on the victim's phone which

referenced “force in sexual encounters”, an expert determined that there were no actual pictures of violent pornography on the victim’s phone (TT page 624, line 13).

The defendant’s expert, Dr. Hughes, acknowledged that she did not find any evidence that the victim was jealous (TT page 1710, line 5) and testified that the victim did not try to stop the defendant from seeing a therapist (TT page 1711, line 3).

The defendant told Dr. Kirschner that Christopher Grover started to abuse her only after she reported violent abuse by “Caesar” to Christopher Grover. (TT page 1937, line 10) Dr. Kirschner testified that it is inconsistent with a domestic violence abuser that such abuse only began after the defendant told Christopher Grover about prior abuse by another man (TT page 1937, line 5). Dr. Kirschner testified he had never heard of a situation where abuse began only after the abuser heard of abuse by a different individual (TT page 1937, line 16).

Dr. Kirschner reported that the defendant told him that the victim was great in every other way (TT page 2024, line 15). Dr. Kirschner described that the normal profile of an abuser includes tactics such as monitoring the victim’s calls, following her to work, not allowing her to see her friends and otherwise ensuring control over her (TT page 1904, line 1). Dr. Kirschner testified that there is no evidence Christopher Grover did such acts. Dr. Kirschner testified that it is inconsistent with the profile of a domestic violence abuser to allow the abuser’s victim to move in with a police officer during the time that the abuser is abusing his victim (TT page 1916, line 7).

There is no exhibit presented by the People or the defense, inclusive of the numerous text conversations that were submitted, where Christopher Grover can be described to be verbally abusive to the defendant. Further, there is no quotation contained in any exhibit, where the



defendant complained or made reference to any physical abuse by Christopher Grover<sup>7</sup> to him directly.

At trial, the defendant described the unexpected CPS investigation, involving an investigation of Christopher Grover for abuse of the defendant, as a triggering event for the acts that led to the death of Christopher Grover later that night. Regarding this “triggering event”, the People argue that Christopher Grover’s reaction to the CPS investigation and his actions on the night of the homicide are inconsistent with an abuser who is allegedly concerned that someone may learn about his abusive acts.

Christopher Grover told Melissa Hart after the visit by CPS, that CPS had come to see him. The witness described Christopher Grover as calm (TT page 155, line 8). The defendant also recalled Christopher Grover being calm regarding the CPS visit (TT page 948, line 19). The defendant quoted the victim with regard to the CPS visit as saying, “Don’t worry, its about me” (TT page 987, line 16). The victim also stated to the defendant, regarding the CPS investigation, that “It’s really going to be ok” (TT page 728, line 7). Defendant also told Officer Sisilli, at their roadside encounter, that Christopher Grover thought “CPS was a joke” (SV 53:18; Defense exhibits BB and CCCC).

Further, the People argue that the defendant told Officer Sisilli, the first person she encountered after the homicide, that “This is the least violent he’s ever been tonight. That’s why I asked him to let me go” (in support of their position that the alleged abuse was not occurring “at the time” of the homicide) (SV 47:05). The defendant also told Detective Honkala that their

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<sup>7</sup>However, the defendant was able to express criticism of Christopher Grover as a father and husband during the above-quoted text conversations.

intercourse that night was “gentle” (HV 4:12). The defendant also told Detective Honkala that the victim had said “he’s sorry” after a forcible act, and observed to the detective that “he never says he’s sorry”. (HV 18:02). Defendant told Detective Honkola during her interview that the intimacy on the night of the homicide was “not the usual sex, he was saying sorry” (HV 24:30). Further, defendant testified that on the night of the homicide, the victim engaged in sexual intercourse that was “more gentle and not violent” (TT page 1078, line 5).

On the night of the homicide, according to the defendant, Christopher Grover showed the defendant how to load his handgun, take off the safety, and made the weapon available to her (HV 16:30).

#### MURDER FACTS

On September 27, 2017, shortly after shooting Christopher Grover, the defendant came in contact with Officer Sisilli of the Town of Poughkeepsie Police Department at an intersection, a short way from her home. Thereafter, in response to the defendant’s statements regarding the death of Christopher Grover, Officer Murray of the Town of Poughkeepsie Police Department went to the home of the defendant and discovered the victim on his back on a couch with his legs stretched out, his hands resting on his mid-section, and his head resting on a pillow (TT page 312, line 22). Officer Murray also observed that the shower in the bathroom was running (TT page 305, line 21) and that the water in the bathtub was filling, with a laptop computer submerged under the water (TT page 317, line 12). This device was later determined to be the laptop of Christopher Grover, which had been broken in half. Additionally, a semi-automatic handgun was recovered from the scene near the victim, which was determined to contain one unexpended round in the magazine and one unexpended round in the chamber (TT page 334, line

22-25). Later, an expended round was discovered in the pillow under the head of Christopher Grover, by a forensic investigator (TT page 352, line 6).

Investigator Maria Rouche of the New York State Police Forensic Identification Unit, testified that for the weapon to fire, the trigger must be compressed for each bullet fired (TT page 433, line 19). A forensic pathologist, Dr. Kia Newman, testified that she determined that Christopher Grover was killed with a gun shot wound which entered the left side of his head (TT page 469, line 13) traveling left to right and slightly front to back and downward in its path, until it exited Christopher Grover's head (TT page 466, line 12). Dr. Newman described the wound as a hard contact wound (TT page 471, line 8) which required that the gun be pressed against the skin of the victim (TT page 473, line 15). Dr. Newman testified that the tip of the gun was pressed against the victim's head and left a "muzzle imprint" (TT page 472, line 10). Dr. Newman testified that the victim was laying in the position in which he was found, supine, when he was shot (TT page 479, line 4; TT page 479, line 23 - TT page 480, line 5). Dr. Newman testified that the top of the weapon was oriented towards the top of the victim's head (TT page 506, line 8).

The defendant testified for three days regarding her version of what occurred on the day of the homicide leading to the death of Christopher Grover.<sup>8</sup> The series of events that ended with the death of Christopher Grover began with contact between CPS and him regarding a report CPS had received about alleged abuse of the defendant (TT page 719, line 11). The defendant testified that she was very concerned about CPS being called in the days before the homicide,

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<sup>8</sup>The majority of the known facts regarding the events surrounding the death of Christopher Grover are offered by the defendant, as she is the sole surviving witness to the events.

although CPS presented an opportunity to provide her with assistance and protection (TT page 970, line 20).

On September 26, 2017, CPS came to interview the defendant and Christopher Grover separately, and did so (TT page 721, line 3). On the evening of September 26, 2017, after Christopher Grover had returned from work and the defendant had been away from her house, the defendant encountered Christopher Grover when he came home. At this time, the defendant asked the Christopher Grover how his CPS interview “went” (TT page 729, line 17).

Therein began a series of events the defendant described in her testimony, including the destruction of a camera by the victim and an encounter where the victim instructed the defendant how to load and use his handgun. Christopher Grover also instructed the defendant how to operate the weapon’s safety catch (TT page 1058, line 8). The defendant testified that the victim placed four or five projectiles in the weapon. While the victim taught the defendant how to load and fire his gun (TT page 1022, line 4-16), the defendant had her phone in her hand (TT page 1044, line 3). At some point during this encounter, the defendant testified that Christopher Grover stated that he could “kill the defendant in her sleep” (TT page 1053, line 19). Christopher Grover thereafter made the weapon available to the defendant (TT page 1058, line 16).

The defendant testified that at some point before the homicide, she entered her children’s room and acknowledged that while there, and in fear for her life, she did not exit the ground floor window from her children’s room (TT page 1083, line 9). Defendant testified that when she returned from the children’s room to the victim lying on the couch, she thought Christopher Grover was asleep (TT page 1090, line 16; TT page 1092, line 12).

At some point on this night, the defendant testified that she had encountered the victim in

the shower (TT page 732, line 18). The defendant testified Christopher Grover told her, in the shower, that he could shoot her in the shower, "but it would echo" (TT 732, line 20). Thereafter the defendant testified she joined Christopher Grover on the living room couch. While laying on top of the victim, the defendant stated that the victim produced a gun from between the cushions on the couch. At that point, while the defendant was getting up from the couch, the defendant testified that she kned Christopher Grover in the groin (TT page 742, line 5). The defendant stated that Christopher Grover then dropped the weapon on the floor. The defendant testified she then picked up the weapon, and while a few steps away (TT page 743, line 10), pointed the gun at the victim (TT page 743, line 4), as he lay on the couch. Shortly before the shooting, defendant testified that while she and the victim were conversing, the victim was laying supine and had his eyes closed while "sighing" (TT page 1115, line 11). The defendant testified that while the victim was lying on the couch (TT page 742, line 25), the victim stated that the defendant will "give him the gun, he will kill her and then the children will have no one" (TT page 743, line 23). The defendant testified that there was an ottoman to her right (TT page 744, line 5). The defendant testified the victim did not try to get off the couch (TT page 1116, line 9). The defendant testified that Christopher Grover was a black belt in Taekwondo (TT page 1096, line 18). The defendant told Detective Honkala that while the victim was laying on the couch face up, he had spoken to her, and had "faced her", but then he "looked up for a second, then I shot him" (HV 31:58). Defendant also stated to Detective Honkala, "I think he closed his eyes for a second and was like 'you won't', then I ..." (HV 32:30).

Defendant testified that she "lunged forward and squeezed the trigger" (TT page 1116, line 14). Defendant told the jury that she caused a contact wound to the victim (TT page 1118,

line 14), and stated that after she dropped the gun (TT page 1121, line 21), she knew the victim was dead (TT page 1123, line 11).

However, Sarah Caprioli testified that the defendant told her that she did not believe the gun had touched the victim's head (HT page 263, line 2) and also told Ms. Caprioli that the victim had made some kind of move that made her think he was about to get up (HT page 263, line 11).

Defendant then testified that, after the shooting she picked up the expended cartridge (TT page 749, line 1) and went to the bathroom, but was unable to turn off the tub faucet that was pouring water on a broken laptop (TT page 749, line 6). Defendant testified that she could not turn the shower knobs off (TT page 1132, line 3), but also did not remove the laptop from the water (TT page 1133, line 6). Alternately, defendant testified that she then removed the laptop, but put it back into the running water (TT page 1136, line 7). The defendant also stated that she couldn't turn off the water that was destroying the laptop, but also could not take the laptop from the tub (TT page 1976, line 12). Dr. Kirschner testified that the defendant told him she did not take the laptop because she didn't want to "tamper with evidence", but did take the shell casing ejected from the weapon she had fired (TT page 1976, line 24). Defendant testified that she saw an empty expended shell near the couch and picked it up, but does not recall what she did with it (TT page 1150, line 2-7).

Defendant then testified that she did not call 911 (TT page 752, line 15), but rather placed her children in her vehicle, "drove around" and then went back to her home and re-entered (TT page 753, line 20). Further, shortly after the shooting, the defendant called Elizabeth Clifton twice to tell her that the victim had been shot, but did not tell her that Christopher Grover was, in

fact, deceased (TT page 1466, line 21). Defendant testified that during the encounter with the victim before the homicide, she had access to her phone and had it in her hand (TT page 1007, line 10), but testified that the victim had ordered her to shut off her phone (TT page 1009, line 24).

The People argue that the defendant was inconsistent regarding her account of how she acquired the handgun before the shooting. During her original encounter with Officer Sisilli at the roadside, the first person she spoke to after the homicide, the defendant told Officer Sisilli that she kneeed Christopher Grover (while they were on the couch), the gun fell on the floor, and the defendant picked it up (SV 3:32). She also told Officer Sisilli that she knocked his arm and it fell (SV 42:02). She then told Officer Sisilli that she elbowed Christopher Grover (SV 45:57). Defendant told Detective Honkala in an interview, some hours later, that she had kneeed the victim, that he flinched and “dropped it” (HV 19:45). When asked by Detective Honkala why the defendant picked up the expended bullet, but left the handgun, Defendant responded that she felt that she should not take the expended shell from the scene (HV 29:33). When asked by Detective Honkala whether the safety on the gun was on, defendant testified she was not sure, that she had just “pulled it” (HV 31:35).

There were also a number of google searches on Christopher Grover’s phone on the night of the homicide, reproduced in defense Exhibit Z. The searches contained phrases such as “will they know she was asleep when shot” (TT page 106, line 20); “medulla part of scull” (TT page 111, line 5); “where do you have to get shot in the head to die instantly” (TT page 110, line 9); “part of brain to shoot in suicide” (TT page 113, line 17); and finally, “how they determine I shot person was asleep when shot” (TT page 114, line 25).

The defendant, on the night she encountered Officer Sisilli and later spoke to Detective Honkala, never told the police that Christopher Grover showed her pictures of “where to shoot someone in the head” on his phone (TT page 1964, line 8), although she testified that this did happen that night, at trial.

According to the People, among the numerous unchosen options the defendant had on the evening of the homicide, was that although repeatedly being advised to secure the laptop by Sarah Caprioli, which purportedly contained evidence of her abuse, the defendant did not do so (TT page 1975, line 18).

Defendant stated to Detective Honkala at the end of her interview on the night of the homicide, “It’s obviously self defense, right?” (HV 33:54).

#### ANALYSIS

This Court is keenly aware of the scourge and crisis of domestic violence in our community. Unfortunately, this Court presides over numerous cases where domestic violence has occurred. Most victims don’t want to report their abuse, because they don’t want to anger the abuser by reporting them. Such abuse usually occurs in private. This Court is also keenly aware that an abuser can seem normal and friendly to the outside world. Further, this Court supports the important goals and legal necessity of the battered women’s syndrome defense, as well as the spirit and goal of Penal Law §60.12.

However, the Court’s determination, pursuant to §60.12 of the Penal Law, must be fact-based and of sufficient weight to support its decision. Our system of justice must, at its core, be proof-driven, untrammelled by laudable policy or philosophy.

Under the statute, the burden of proof is on the defendant to prove that she is factually



and legally eligible for relief. The People oppose the relief requested and ask that the Court to rule that the ordinary range of sentences for Murder and Criminal Possession of a Weapon permitted by Penal Law §70.00(2)(a) is appropriate.

The defendant presents a compelling story of abuse, with horrific allegations that include repeated, sadistic sexual violence and physical abuse, complete with pictures and eyewitnesses viewing the results of her abuse. However, the People raise critical questions about the defendant's testimony regarding her alleged abuse, the identity of her abuser and her violent acts and decisions on September 27, 2017. This factual dispute presents significant questions regarding the critical issue of the defendant's abuse.

A trial jury explicitly determined that the defendant, in murdering the victim, was not justified, beyond a reasonable doubt. The legal conclusion that can be drawn from the jury's verdict, having rejected the defendant's justification defense, was that the jury believed the murder was intentional, and not in self-defense.

The People and the defense team fully presented and argued the defendant's battered women's syndrome defense in their lengthy summations<sup>9</sup>. Although zealously and forcefully presented by a team of excellent defense lawyers, the jury rejected the defendant's battered women's syndrome defense. No person can fully explain the acts of the defendant on the evening of September 27, 2017, but the jury clearly weighed the defendant's non-lethal options, as against all that she had allegedly endured, and unanimously found that her decision to kill Christopher Grover was unlawful. To be clear, although the jury verdict is consistent with this Court's determination under §60.12, the verdict is not determinative.

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<sup>9</sup>The defense summation was 2 ½ hours, the People's summation was 3 ½ hours.

This Court makes no definitive finding as to the level of abuse the defendant endured during her life, or as to which person(s) have abused the defendant. There are significant, unresolved questions regarding the defendant's version of what occurred in her past and on the night of the homicide, as well as weighty questions regarding the nature of her relationship with Christopher Grover and the profile of Christopher Grover as an abuser, in action or by reputation.

There are four factual bases that the Court identifies in support of its decision. First, due to the inconsistent statements by the defendant regarding her life-long abuse by Christopher Grover and others, the expert testimony, and questions regarding the defendant's recollection, the Court finds that the abuse history presented by the defendant is undetermined and inconsistent regarding the extent of the abuse, as well as the identity of her abuser(s).

Second, the nature of the alleged abusive relationship between the defendant and Christopher Grover is undetermined, based on the demeanor and behavior of Christopher Grover on the day of his death, as well as during the weeks prior, as recounted by the defendant and others. This question is impacted by the notable text communications occurring three days before the homicide, between the defendant and the victim.

Third, provided throughout testimony from the defendant, it is clear that the defendant had a tremendous amount of advice, assistance, support, and opportunities to escape her alleged abusive situation, and thereby avoid the decision to take the life of Christopher Grover. By her own admission, the defendant had help and options within her family as well as in the broader health care, domestic violence, and law enforcement community. The decision not to accept the advice and help of these individuals when viewed in the context of the homicide facts, significantly weakens the defendant's position in her use of deadly force. In other words, the

defendant's resources and options must be viewed in the context of choosing to end Christopher Grover's life, with regard to the "nature and circumstances" of the crime committed.

Finally, and most importantly, the specific facts of the homicidal act, as testified by the defendant herself, reveal a situation where the victim was supine, with his eyes closed, on a couch. The defendant admitted she had a path to escape through the front door of her apartment, which was steps away, while armed with the victim's deadly weapon, which she had been shown how to operate. Instead, the defendant lunged forward and shot Christopher Grover point blank in his temple. These facts were stated under oath by the defendant. All of the above four questions and findings, in aggregate, form the factual basis for the Court's decision, but the "nature and circumstance" of the homicide facts are most weighty.

#### ELEMENT ANALYSIS

The above questions and findings are the factual foundation of the Court's legal decision as addressed in the three relevant Penal Law §60.12 elements. The defendant must present sufficient facts, by a preponderance of the evidence, to be entitled to enhanced leniency.

In §60.12(1)(a), the Court is required to determine whether at the time of the instant offense, the defendant was the victim of domestic violence and **subjected to substantial physical, sexual and psychological abuse inflicted by a member of the same family.**

As a preliminary matter, the Court does not adopt the People's analysis that the defendant is required to be enduring physical abuse during the crime. The legislature clearly intended that the defendant must be affected by physical, sexual or psychological abuse before the criminal event, and within a reasonable amount of time during which she would still be under the influence of such abuse. The defense is correct that there need not be actual physical abuse at the

time of the homicide to satisfy Penal Law §60.12. However, alleged events that occurred years earlier may be given more limited weight. As the defense argues, the spirit of the statute requires the Court to consider the culmination of the abuse endured by the domestic violence victim.

Based on the above factual conclusions by the Court in this case however, it is not clear whether the alleged abuse was carried out by Christopher Grover in part or in whole, and to what degree.

§60.12(1)(b) requires the Court to determine that the abuse was a **significant contributing factor** to the defendant's criminal behavior.

The questions and inconsistencies that remain regarding the defendant's alleged abuse and abusers, do not amount to sufficient proof that the alleged abuse was a significant contributing factor in the defendant's act of murder. The choices the defendant made on September 27, 2017, and the choices the defendant did not make on or before September 27, 2017, combined with the undetermined abuse history and the decedents personality profile, provide insufficient evidence to sustain the defendant's burden that her act was caused by abuse that was a "significant contributing factor".

Also, if there was abuse by other individuals inflicted on the defendant, such abuse by those individuals does not constitute a significant contributing factor to the defendant's criminal behavior, in her act of taking the life of Christopher Grover in the manner in which she did. Many of the abuse allegations by others would not constitute abuse by a household or family member in any case.

The factual scenario surrounding the homicide and the events within several days therein create a question as to whether the purported abuse was a significant contributing factor. In other words, because the defendant had numerous opportunities to avoid any further abuse and was

capable of communicating “direct” sentiments to Christopher Grover, it is unknown what motive compelled the defendant.

Finally, §60.12(1)(c) requires the Court to regard the **nature and circumstances of the crime as well as the history, character and condition of the defendant**. It is critical to note that the defendant has no criminal history and has otherwise lived a law abiding life as a mother and partner. This Court also accepts that the defendant has been abused in her life by numerous individuals, as she has named several perpetrators. Further, there is nothing else about the history, character or condition of the defendant that would make her otherwise ineligible for consideration under this statute.

However, as the Court views the **nature and circumstances of the crime**, the defendant does not, by a preponderance of the evidence, sustain her burden of proof. Based upon the options and opportunities she had to avoid her decision to shoot Christopher Grover, as well as her uncontroverted ability to withdraw from her apartment while armed with a deadly weapon, the defendant does not warrant relief under this statute. The intentional murder of Christopher Grover substantially outweighs the undetermined details of the abuse and the abuser. In other words, it is presumed the defendant may have been abused in her life, but the choice she made that night, and the manner in which the murder occurred, outweighs her undetermined abusive history.

It must be noted that the above factual analysis is based almost entirely on the defendant’s own version of what occurred. The People, of course, argue that the defendant simply executed Christopher Grover as he slept on his couch.

## “UNDULY HARSH”

The purpose of Penal Law §60.12 is to allow the Court to consider “enhanced leniency”, which would allow this Court to consider sentences outside the normal statutory sentencing guidelines. However, based on the questions regarding the defendant’s abuse history and the identity of her abuser, in addition to the violent and unjustified actions on the night of the murder, sentencing the defendant within the normal sentencing range would not be “unduly harsh”.

Regarding the evening of the murder, defendant had a myriad of non-lethal options at her disposal. At the moment that she fired the gun at point-blank range into the victim’s head, the victim was supine, initially had his eyes closed, and the defendant was armed with a loaded handgun which she knew how to operate. The defendant was only steps from her front door. Further, as detailed in the above opinion, the defendant had numerous individuals and entities who had offered her help, as well as advice and suggestions of how to extricate herself from her alleged abusive circumstances. The defendant’s testimony regarding the details on the evening of the homicide, together with her questionable statements regarding contact with physical evidence, the alleged actions of the murder, and her inconsistent recounting of which individuals were abusing her, undermine her position that she should be considered for a sentence with “enhanced leniency”.

This Court makes no definitive finding regarding the abuse of the defendant, as there is compelling evidence for both parties’ propositions. This includes both the severity of the abuse and the identity of the abuser(s). However, according to the defendant’s own testimony, the defendant had the opportunity to safely leave her alleged abuser before September 27th. The

defendant had the opportunity to safely leave early in the evening of September 27th before she shot Christopher Grover. The defendant had the opportunity to safely leave her home the moment before she shot Christopher Grover. She did not choose these options.

Due to the myriad of opportunities the defendant had to avoid the murder of Christopher Grover, the defendant fails, by a preponderance of the evidence, to be considered for a sentence outside of the normal range for someone convicted by a jury of her peers, of Murder in the Second Degree and Criminal Possession of a Weapon in the Second Degree.

Defendant's application pursuant to Penal Law §60.12 is denied. The Court designates February 11, 2020 at 1:30 p.m. for sentencing.

The foregoing constitutes the decision and order of the Court.

Dated: Poughkeepsie, New York  
February 11, 2020



HON. EDWARD T. McLOUGHLIN  
COUNTY COURT JUDGE

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