

SUPREME COURT OF THE STATE OF NEW YORK
BRONX COUNTY : CRIMINAL TERM

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THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,
- against -

AFFIRMATION
Ind. No. **Redacted**
(Yearwood, J.)

Survivor

,

Defendant.

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I, **RYAN P. MANSELL**, under penalty of perjury and pursuant to Rule 2106 of the CPLR hereby affirm and state:

1. I am an Assistant District Attorney admitted in the State of New York, in the Office of **DARCEL D. CLARK**, District Attorney of Bronx County, and I am presently assigned to the Conviction Integrity Unit.

2. Unless otherwise indicated, I make this affirmation upon personal knowledge and information and belief, based upon records maintained by this Office.

3. On the morning of February 27, 2012, **Decedent ("Deced")** responded to an ad for sexual services posted on the website backpage. The person featured in the classified web-ad, **Survivor**, responded and agreed to have sex with **Deced** at a rate of one hundred and fifty dollars an hour. Defendant's boyfriend, **Abuser**, drove her to **Deced**'s residence. Before going inside, defendant retrieved the agreed-upon payment from **Deced** and took it back to **Abuser** who was waiting in the car. Defendant then returned to **Deced** and went inside his apartment. She left the door unlocked. After an hour, **Deced** paid for an additional two hours of services, although they never actually

had sex, and began doing drugs. At some point he allegedly got angry and grabbed defendant, who then texted **Abuser** about the incident.

4. Thereafter, **Abuser** and defendant exchanged dozens of text messages. The text messages show that **Abuser** was the one who had machinations of robbing **Deced**. At **Abuser**'s behest, defendant provided **Abuser** with detailed information about **Deced** and his apartment. After answering **Abuser**'s many inquiries, defendant went to use the bathroom and took **Deced**'s dog with her. When she came out, **Abuser** and his Uncle, **Co-Def**, were beating **Deced** with a baseball bat in the stairwell. The two male assailants eventually knocked **Deced** unconscious and tied him up with zip-ties. Defendant went back into the apartment and took money and drugs that were sitting on **Deced**'s mantle. Following the crime, defendant and **Abuser** went together to stay with **Abuser**'s cousin. **Deced** did not survive the incident.

5. On March 7, 2012, defendant and her two codefendants, **Abuser** and **Co-Def**, were indicted for two counts of Murder in the Second Degree (Penal Law §§ 125.25[1], [3]), two counts of Robbery in the First Degree (Penal Law §§ 160.15[1], [2]), and two counts of Burglary in the First Degree (Penal Law §§ 140.30[2], [3]).

6. On September 8, 2016, defendant pled guilty to Robbery in the First Degree (Penal Law § 160.15) and was sentenced to ten years' incarceration to be followed by five years' post-release supervision.¹

¹ On October 26, 2016, a judgment was rendered in Supreme Court, Bronx County (Yearwood, J.), convicting **Co-Def**, upon his plea of guilty, of Robbery in the First Degree (Penal Law § 160.15[1]), and sentencing him to a determinate term of fourteen years' of imprisonment. On July 17, 2016, a judgment was rendered in Supreme Court, Bronx County (Yearwood, J.), convicting **Abuser**, upon his plea of guilty, of Manslaughter in the First Degree (Penal Law § 125.20), and sentencing him to a determinate term of nineteen years' incarceration, to be followed by five years' post-release supervision.

7. The instant conviction constitutes her first and only criminal offense.

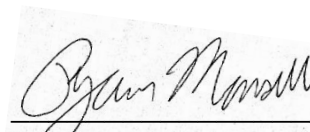
8. Now, in papers dated August 3, 2020, defendant, through her attorneys, moves for relief and resentencing under the Domestic Violence Survivors Justice Act (“DVSJA”). Through a variety of supporting documents, including a psychological evaluation from Dr. Chitra Raghavan, defendant claims that she suffered tremendous abuse at the hands of her then-intimate partner and codefendant, **Abuser**. She further claims that her underlying criminal conduct can be attributed to a “traumatic bond” that she formed with her abuser, qualifying her for relief under the DVSJA.

9. The People have reviewed defendant’s motion, the supporting documentation, the complaint, inmate disciplinary records, and conducted interviews of defendant and others.

10. Specifically, on July 24, 2020, the undersigned, along with ADA Jennifer Russell and defendant’s attorneys, spoke with defendant via Webex video conference. At that time, defendant described in detail the abuse **Abuser** inflicted. She also displayed a tattoo of **Abuser**’s name on her neck, a spot of his choosing.

WHEREFORE, the People of the State of New York respectfully request that defendant’s motion be granted, that a date for resentencing be scheduled no sooner than September 29, 2020, and that defendant be released upon her own recognizance until such date.

Dated: Bronx, New York
August 4, 2020



RYAN P. MANSELL
Assistant District Attorney

SUPREME COURT OF THE STATE OF NEW YORK
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THE PEOPLE OF THE STATE OF NEW YORK,

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- against -

Survivor

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MEMORANDUM
OF LAW
Ind. No. Redacted
(Yearwood, J.)

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STATEMENT

The People submit this memorandum of law in support of the decision to consent to defendant's motion seeking resentencing under the DVSJA.

THE FACTS

The facts relied on in the memorandum of law are contained in the affirmation of Assistant District Attorney Ryan P. Mansell and the exhibits attached to the defense motion papers.

ARGUMENT

**DEFENDANT HAS PRESENTED SUFFICIENT EVIDENCE
TO QUALIFY FOR RELIEF UNDER THE DVSJA**

The People agree with defendant that she qualifies for resentencing under the DVSJA. The applicable law requires defendant to make several evidence-based showings. The hearing court may only impose a new sentence if it finds that (1) at the time of the underlying offense, defendant was the victim of substantial physical, sexual, or psychological abuse inflicted by an intimate partner, or other qualifying person; (2) such abuse was a significant contributing factor to the defendant's criminal behavior;

and (3) that an ordinary sentence would be unduly harsh, taking into account the defendant's history, character and condition, as well as the nature and circumstances of the crime.

In order to demonstrate that defendant was a victim of substantial abuse at the time of the offense, she must include at least two pieces of evidence corroborating her claim. One piece of evidence must be a court record, presentence report, social services record, hospital record, witness statement, law enforcement record, domestic incident report, or order of protection (CPL § 440.7.47[2][c]). Notably, there is no requirement that the corroborating evidence predate the offense. Here, defendant provides a contemporaneous pre-disposition evaluation from STEPS to End Family Violence ("STEPS report") as well as an affirmation from her then-attorney, Marika Meis, Esq. (*see* def. ex. 4, 12).

While these are largely secondary accounts, defendant's relationship with **Abuser** was brief, lasting only a few short months leading up to the robbery of **Deced**. Tragically, the swift and brutal onset of violence and abuse against defendant works as an unfair evidentiary disadvantage in these proceedings. The lack of a protracted period of abuse gave less opportunity for family, friends, social workers, law enforcement, and medical professionals to witness and document the abuse. Defendant herself had a very limited opportunity to consider making a domestic incident report or to obtain an order of protection. Given this context, the STEPS report and affirmation from her attorney are as sufficient of proof as possible and persuasive evidence of her abuse.

While defendant's contemporaneous evidence speaks little of physical abuse, the statute does not require that abuse be physical. Indeed, defendant only need

demonstrate psychological or sexual harm. Here, there is substantial evidence that defendant suffered from severe sexual and psychological abuse (*see* def. ex. 2, 3). Defendant was forced into prostitution by **Abuser** , and he used verbal threats, isolation, branding, manipulation, cyclical harm and affection, and coercive conditioning to control defendant. There was visible sincerity in defendant's recounting of her abuse, and certain details, including the particulars of her first encounter with **Abuser** , are consistent between the 2013 STEPS report and her personal recounting today. Granular details of the forced prostitution, including where **Abuser** would wait, the fact that he would collect the money at the beginning of the encounters, and phrases that he would use, were consistent from the STEPS report to defendant's in-person CIU interview.

Defendant has also demonstrated that **Abuser** 's abuse was a significant contributing factor to her criminal behavior. Defendant has no prior criminal history, and there is no evidence that defendant ever engaged in prostitution or robberies prior to meeting **Abuser** . As a foundational matter, there would have been no criminal opportunity but for **Abuser** 's abuse. Had **Abuser** never abused defendant by forcing her into prostitution, she never would have had an opportunity to observe drugs and money inside **Deced** 's home. As for her participation in the robbery scheme, it is clear that defendant either wanted to appease **Abuser** in order to avoid further instances of abuse, or felt that robbing **Deced** was a way out of the financial difficulties that had motivated **Abuser** to prostitute and abuse her. In either case, **Abuser** 's abuse of defendant was at the heart of the conduct.

Indeed, both defendant and the STEPS report assert that **Abuser** 's decision to prostitute defendant was based, at least in part, on severe financial difficulties. When questioned during her interview about the agency she displayed in her text messages to **Abuser** , defendant felt that obtaining the money and drugs she observed in **Deced** 's apartment might have been valuable enough to **Abuser** to end his prostitution of her. That motivation flows directly from the abuse she experienced and cannot be untethered from **Abuser** 's abhorrent behavior. Moreover, the text messages show that defendant was merely complying with **Abuser** 's information gathering and planning efforts. Defendant was never put in charge of deciding what to take, how to take it, what tools to use, or when to do it. Instead, defendant was told what to do and when.

In making an assessment under the third prong, it cannot be overlooked that **Deced** was killed during this robbery. But defendant exhibited no more agency in this regard than the baseball bat that **Abuser** used to bludgeon **Deced** . Defendant was **Abuser** 's tool, not a wholly independent actor. Furthermore, **Abuser** and Panthier are not going to be held less accountable if defendant is resentenced; the considerations at work in defendant's circumstances simply do not apply to her codefendants. Defendant has no prior criminal history, and there has never been any evidence that she directly participated in the fatal beating of **Deced** .

CONCLUSION

For the reasons outlined, the People agree that defendant qualifies for relief under the DVSJA and consent to that portion of defendant's motion. As defendant has already served the maximum incarceratory period of any allowable resentencing under the DVSJA, the People also consent to defendant's immediate release from prison. The People and defendant, however, have yet to come to an agreement on the appropriate amount of post-release supervision, if any. Should this Court agree that defendant is entitled to relief, then, the People ask this Court calendar defendant's date for resentencing no sooner than September 29, 2020. The People further consent to defendant's request that she be released on her own recognizance until such date.

Respectfully submitted,

DARCEL D. CLARK
District Attorney
Bronx County
Attorney for the Respondent

RYAN P. MANSELL
JENNIFER RUSSELL
Assistant District Attorneys
Of Counsel

August 2020