



IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY  
TRIAL DIVISION—CRIMINAL SECTION

COMMONWEALTH OF PENNSYLVANIA :  
 :  
 v. : CP-51-CR-0003543-2020  
 :  
 ERIC RUCH :

**COMMONWEALTH’S MOTION FOR RECONSIDERATION OF SENTENCE**

LAWRENCE S. KRASNER, the District Attorney of Philadelphia County, by his assistants, VINCENT CORRIGAN, Assistant District Attorney, and BRIAN M. COLLINS, Assistant District Attorney, respectfully represents:

On November 17, 2022, this Court sentenced the defendant, Eric Ruch, for his convictions on the charges of Voluntary Manslaughter, 18 Pa. C.S. §2503, and Possession of an Instrument of Crime, 18 Pa. C.S. §907. The Court acknowledged the appropriate guideline range for Voluntary Manslaughter, with the deadly weapon used enhancement, of 54-72 months +/- 12 months. The Court also discussed the guideline range for Possession of an Instrument of Crime, with a range<sup>1</sup> of RS-3 +/- 3. The Court sentenced the defendant to 11 ½ months to 23 months of incarceration on the Voluntary Manslaughter charge and no further penalty on the Possessing Instruments of Crime charge. This sentence is a gross downward departure from the *mitigated* range of the guidelines for Voluntary Manslaughter and an even greater downward departure from the standard range. The record does not support this departure, such a departure severely lessens the gravity of the offense for which the defendant was convicted – intentionally taking the life of another human being, and suggests that a different standard applies to this defendant than other defendants. For all of the reasons contained below, the Commonwealth respectfully

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<sup>1</sup> The Deadly Weapon Enhancement does not apply to Possessing Instruments of Crime. *See* Pa. Code §303.10 (a) (3) (stating that there shall be no deadly weapon enhancement for, *inter alia*, Possessing Instruments of Crime).

requests that the Court reconsider its sentence, and sentence the defendant within the guidelines. His conduct warranted such a sentence, and it would be the just result.

## I. **INTRODUCTION AND STANDARD OF REVIEW**

When the appellate courts review the sentence of a trial court, the courts consider the four factors contained within 42 Pa. C.S. §9781 (d): 1) the nature and circumstances of the offense and the history and characteristics of the defendant; 2) the opportunity of the sentencing court to observe the defendant, including any presentence investigation; 3) the findings upon which the sentence was based; and 4) the guidelines promulgated by the commissions. *See, e.g., Commonwealth v. Daniel*, 40 A.3d 494, 497 (Pa. Super. Ct. 2011) (overturning a sentence of 11 ½ to 23 months incarceration followed by five years of probation on an open guilty plea on Aggravated Assault charges where the standard guideline range was 54 to 72 months); *Commonwealth v. Days*, 502 A.2d 1339 (Pa. Super. Ct. 1986) (overturning a sentence after waiver trial of Time-in (approximately 8 months) to 23 months' incarceration plus one-year concurrent probation on robbery and kidnapping charges where the standard guideline range was 24 to 48 months); *Commonwealth v. Shull*, 148 A.3d 820, 835 (Pa. Super. Ct. 2016) (overturning a sentence of 11 ½ to 24 months' incarceration (minus one day) for a robbery conviction following waiver trial where the standard guideline range was 40 to 54 months with the application of the deadly weapon possessed enhancement); *Commonwealth v. McCain*, 176 A.3d 236, 241 (Pa. Super. Ct. 2017) (overturning a sentence of 11 ½ to 23 months' incarceration followed by five years' probation for a conviction on the charge of Aggravated Assault, among other charges, where the standard range was 72-84 months' incarceration); *Commonwealth v. Ball*, 728 A.2d 357, 359 (Pa. Super. Ct. 1999) (overturning a sentence of 6 to 23 months' incarceration on simple assault convictions – one of them an M1 involving a minor victim –

following a guilty plea where the standard guideline range was 12-18 months on the M2 and 21-30 months on the M1). An appellate court may disturb the sentencing court's determination if either the sentence is unreasonable based on the foregoing. During sentencing, the Court must also consider the factors contained within 42 Pa. C.S. 9721 (b), which includes the guidance that the Court should follow the general principle that it impose total confinement that is consistent with 42 Pa. C.S. §9725. 42 Pa. C.S. §9725 requires the court to consider, when determining the appropriateness of a total confinement sentence, the need for specific deterrence with respect to the defendant, the treatment/rehabilitative needs of the defendant, and whether a lesser sentence would depreciate the seriousness of the crime of the defendant. These factors provide the framework for determining whether an incarceration sentence is warranted, but say nothing about what length of confinement is appropriate.

## II. **FACTUAL BACKGROUND**<sup>2</sup>

This Court presided over the trial so it is not necessary to recount the facts in full detail, however, a brief review would assist in ruling on this motion.

On December 27, 2017, Denis Plowden was driving in a car with a passenger that the Philadelphia homicide division had identified as a vehicle of interest in a homicide investigation. The homicide division had circulated an alert about the car and told patrol officers to use caution. Also, on this night, the defendant was working as a member of the Burglary Detail team for the 35<sup>th</sup> District, which was one of the Captain's Five Squads. The record at trial is not clear on exactly when the defendant knew about the patrol alert and how much he knew about the warnings stated within the alert. At trial, although there was testimony from the defendant and some of his colleagues that they were aware of the patrol alert, the radio transmissions from the

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<sup>2</sup> Since the trial transcripts are not yet complete, the Commonwealth recounts these facts to the best of its information and belief.

night of Mr. Plowden's homicide belies this assertion, and creates the inference that the defendant was not completely cognizant of this information at the time of the stop. Notably, none of the Burglary Detail cars alerted police radio of the information about Mr. Plowden's vehicle, which would be essential information for backup to know before engaging in a stop. The defendant also went over the radio to request "information on a mover" and received basic registration information about the car. This request to radio only makes sense if the defendant did not affirmatively know the identity of the car and whether it was connected to the homicide. The Commonwealth, as the verdict winner, would be entitled to the reasonable inference that the defendant was not consciously aware of this information about Mr. Plowden's vehicle when he went to pull it over. These facts are significant to the sentencing determination, in part, because the Court seemingly placed great emphasis on the victim's conduct and how it, at least partially, excused the conduct of the defendant and diminished his responsibility. However, the record suggests the defendant did not have full knowledge and awareness of the car's relation to a homicide at the time of the initial stop.

After attempting to pull the car over, Mr. Plowden, the driver, fled at a high rate of speed through a residential neighborhood, nearing 80 miles per hour. The chase happened at approximately 8:30 p.m., on a very cold night, and few people were out on the street at the time. Mr. Plowden crashed his car near the intersection of Opal and Nedro Streets, spinning out and coming to rest at the corner. Several police cars gave chase, including the defendant's car.

After the crash, Mr. Plowden got out of the car, took a couple steps and then fell to the ground. The defendant and his fellow officers surrounded Mr. Plowden who was seated or reclining on the ground. Mr. Plowden raised his left hand, propped himself up with his right

hand, and was looking away from the defendant when the defendant shot him one time through his upraised hand and into his skull, fatally wounding him.

Immediately following the shooting, officers Murphy and Strubinger took Mr. Plowden to the closest trauma center where he succumbed to his wounds. Testimony at trial indicated that the defendant was distraught after the discharge. While this testimony supports the conjecture that the defendant was immediately remorseful about what happened, there are other equally likely explanations for this conduct, for example, he realized the gravity of the situation and the potential consequences. The defendant offered testimony at trial<sup>3</sup> that supported a self-defense/justification defense, which the jury rejected. He did not accept responsibility for his actions.

The Commonwealth arrested and charged the defendant and subsequently proceeded to trial on charges of Third-Degree Murder, Voluntary Manslaughter, and Possession of an Instrument of Crime. Following a jury trial, the jury returned a verdict of guilty on the Voluntary Manslaughter and Possession of an Instrument of Crime charges. The Court scheduled sentencing for November 17, 2022 where the Court acknowledged the sentencing guidelines on the Voluntary Manslaughter charge as 54-72 months +/- 12 months with the deadly weapon used enhancement. The Court also acknowledged the sentencing guidelines on the Possession of an Instrument of Crime charge as restorative sanctions to 3 months, +/- 3 months. The defendant gave an allocution during this hearing, and still did not accept responsibility for his actions. While he expressed sorrow over the outcome of the incident, he also said he wished that he could erase the moment when “that split-second decision had to be made that night,” continuing to

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<sup>3</sup> The Commonwealth expects that these Notes of Testimony will be ready soon and respectfully requests leave to supplement the record at a reconsideration hearing with excerpts from the notes if they are relevant to this sentencing decision.

assert that his actions were justified and he had to do what he did that night. The Court then sentenced the defendant to 11½ to 23 months of incarceration on the charge of Voluntary Manslaughter and no further penalty on the charge of Possession of an Instrument of Crime.

### III. **ARGUMENT**

The sentence for the charge of Voluntary Manslaughter is unreasonable and far outside of the guideline range without sufficient rationale. The Court, in essence, concluded that the guidelines were not made for the defendant. “Consideration of the guidelines,” as required by the law, becomes meaningless if the Court simply engages in a formulaic recitation of the guidelines while then setting them aside wholesale. In fact, if not for the defendant’s homicide conviction, the Court stated that the defendant could have walked out of the courtroom with no further penalty. *See* NT Nov. 17, 2022 p. 93, 3-10 (“the only reason he’s getting jail time is because of the third factor under 42 Section 9725.<sup>4</sup> Without the factor, that a lesser sentence would depreciate the seriousness of the crime, he could walk out of this courtroom today because nothing that he is going to do in prison is going to make him a better person.”).

Although the Court acknowledge the appropriate guidelines, the Court did not specifically state its reasons for departing downward and such a failure creates a substantial question of whether the sentence is appropriate. *See, e.g., Commonwealth v. McIntosh*, 911 A.2d 513 (Pa. Super. Ct. 2006) (citing *Commonwealth v. Rodda*, 723 A.2d 212, 214 (Pa. Super. Ct. 1999)).

To the extent that the Court departed downward from the guidelines and had reasons for doing so, it relied on improper reasons and gave undue emphasis to reasons that are standard,

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<sup>4</sup> The Court’s reliance on 42 Pa. C.S. §9725 is somewhat misplaced. Section 9725 outlines when the Court should consider an incarceration sentence as necessary, but does not provide justification for the extreme downward departure from the guidelines.

routine, or already accounted for by the reduced verdict from third-degree murder to voluntary manslaughter. For example, the Court improperly and excessively blamed the victim in this case even though the defendant's conviction for the lesser charge of voluntary manslaughter, as opposed to third-degree murder, already accounted for the victim's conduct in bringing about the homicide. Among the Court's first statements following all of the evidence submitted at the hearing were:

I would be remiss if I did not indicate on the record the act itself, what happened that day. And I think this is the first time in my career as a judge in which I really have had to do it to this degree, where I have to look at what happened and who started this incident. I'm sorry, but it was Dennis Plowden who refused to stop. It was Dennis Plowden who hit one police car; Dennis Plowden who continued down those blocks endangering anyone who was out on the street, endangering other vehicles, not just the police vehicles in the chase, who crashed into other cars, Dennis Plowden.

*Id.* p. 89, 3-17.

Although the Court stated that this was an unusual circumstance, and that it had not encountered another case where it had to account for how the incident started to this degree, the Court has surely presided over a number of pleas and trials where the initial charges included murder but the ultimate plea or verdict resulted in a manslaughter conviction. A manslaughter conviction, by its nature, includes victim conduct (or another third party, but victim conduct is the only relevant factor here) that reduces the killing from murder to manslaughter. The concurrent offense gravity score reduction that occurs in a reduction from murder to manslaughter already accounts for this victim conduct.

Nothing in the sentencing record supports a sentence this far below the standard guideline range.



- a. *Since the Court did not give a contemporaneous statement of its reasons for a downward departure, the Court should reconsider its prior sentence.*

In every instance where the Court departs from the guidelines, the Court must make a contemporaneous written statement of the reason or reasons for the deviation from the guidelines. *See* 42 Pa. C.S. §9721 (b). Failure to follow this rule “shall be grounds for vacating the sentence or resentence and resentencing the defendant.” *Id.* Also, the lack of sufficiently stated for departure creates a substantial question as to the appropriateness of the sentence. *McIntosh*, 911 A.2d at 520. The Court, in rendering its sentence, stated its reasons why total confinement was warranted, and stated that the third factor was the only factor upon which it relied. *See* NT Nov. 17, 2022 p. 93, 3-10 (“the only reason he’s getting jail time is because of the third factor under 42 Section 9725. Without the factor, that a lesser sentence would depreciate the seriousness of the crime, he could walk out of this courtroom today because nothing that he is going to do in prison is going to make him a better person.”). Notably, the factors in Section 9725 define the factors to consider when answering the question of whether total confinement is appropriate. Those factors do not apply to the length of the sentence. The factors under 42 Pa. C.S. §9781, however, do speak to the appropriate length of sentence. The Court, in its ruling, asserted its reason for incarcerating the defendant, but did not state its reason for departing so drastically from the guidelines. Thus, the Court should reconsider its sentence.

- b. *By blaming the victim, the Court double counted mitigation in the defendant’s favor and trivialized the death of Mr. Plowden.*

As this Court knows, the voluntary manslaughter standard jury instructions distinguish it from murder because “certain reducing circumstances are present.” *See* Pa. SSJI (Crim.) §15.2503A. The law defines these reducing circumstances as falling into one of two categories – the defendant killed as a result of a heat of passion following legally adequate provocation or the

defendant killed under a subjective, but objectively unreasonable, belief in justifying circumstances. *Id.* Both categories involve potential victim behavior creating a scenario where the homicide occurs. For a manslaughter conviction, either the victim or a third party, must create a situation where provocation occurs or the defendant believes that justifying circumstances exist. *Id.* In this particular case, only Mr. Plowden could have brought these circumstances about and thus, when the jury considered the facts of this case and convicted the defendant, the jury did so while accounting for Mr. Plowden's conduct and any "blame" potentially ascribed to him.

Thus, when the Court recited Mr. Plowden's "culpability" in this matter, it improperly further reduced the severity of the defendant's conduct and gave him mitigation above and beyond what was reasonable under the circumstances.

- c. *The Court diminished the severity of the offense by sentencing the defendant to incarceration at the county level and ignoring the Sentencing Guidelines' definition of the offense as a Level 5 Offense which warrants state incarceration.*

The Sentencing Guidelines sentencing matrix defines offenses as falling within five categories. The level applicable here, Level 5, calls for incarceration at the state level, and for a defendant with a prior record score of 0, this range begins with the offense gravity score of 9, two points below the defendant's offense gravity score. *See* Basic Sentencing Matrix, 204 Pa. Code §303.16 (a). While these categories are not dispositive, they add additional context to the recommendations of the sentencing guidelines by noting that the general sentence applicable to these crimes is incarceration at the state level absent substantial reasons warranting a departure. *See, e.g., Commonwealth v. McCain*, 176 A.3d 236 (Pa. Super. Ct. 2017) (overturning as unreasonable a sentence of 11 ½ to 23 months with immediate parole to house arrest plus seven years' probation where the guidelines called for a standard range of 72 to 84 months). The

Superior Court in *McCain* noted that sentencing drastically below even the mitigated range of the guidelines, “ignores the Sentencing Guidelines recommendation that Level 5 offenses correspond to state prison terms, rather than other forms of restrictive intermediate punishment,” and ultimately found the sentence at issue unreasonable. *Id.* at 243. Further when a sentencing court plainly fashions a sentence to avoid state incarceration, without sufficient justification for the departure, the Superior Court has overturned the sentence. *See Commonwealth v. Shull*, 148 A.3d 820, 836 (Pa. Super. Ct. 2016) (noting that the reproduced record makes plain that the sentencing court “tailored a sentence not to the individual history and circumstances surrounding Shull and the crime he committed, but, instead, to what was necessary to avoid a State sentence for Shull, regardless of whether the term was consistent with the principles promoted within the scheme.”).

The Court provided no rational basis for sentencing the defendant to 11 ½ to 23 months of incarceration rather than one to two years or more of incarceration, other than the sentence as fashioned means the defendant serves it in a county, rather than state, facility. Such a sentence ignores the sentencing scheme promulgated by the sentencing guidelines and also does what is necessary to avoid a state sentence. This sentence is unreasonable and unsupported by the record.

d. *The Court was overly and improperly deferential to the defendant in the sentencing hearing.*

The sentiments expressed by the Court during sentencing that this case was somehow “different”, “because of what started this incident”<sup>5</sup>, again blaming the victim in the case, among other statements made during the course of the sentencing proceeding, make plain that the tenor of the sentencing hearing was very deferential to the defendant, in a manner similar to the

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<sup>5</sup> NT Nov. 17, 2022, p. 91, 18-19.

sentencing hearing in *Commonwealth v. McIntosh*, 911 A.2d 513 (Pa. Super. Ct. 2006). The Superior Court overturned the trial court’s sentence in *McIntosh*, a sexual assault case, as unreasonable. *Id.* at 523-24. The sentencing court initially sentenced McIntosh to 11 ½ to 23 months incarceration with immediate parole to house arrest and eight years of probation. The recommended minimum sentence in *McIntosh* was 36-54 months in the standard range +/- 12 months. *Id.* at 521.<sup>6</sup> Thus, the sentence was 12 ½ months below the mitigated range of the guidelines and a downward departure.

The Superior Court specifically took issue with how the sentencing court cast the conduct of the defendant writing, “[m]ost critically, however, and of the greatest concern to this Court, the sentencing court erroneously cast McIntosh’s conduct, not as criminal, but as simply ‘bad judgment’, as a ‘mistake of judgment’, and as ‘poor judgment, and dishonorable behavior.’” *Id.* at 522 (internal citations omitted). The Superior Court concluded that this sentiment and description of the defendant’s conduct ignored the factual basis for his plea and “failed to properly treat McIntosh’s admitted criminal conduct as the very serious crime that it is, sexual assault.” *Id.* at 523.

In this case, the Court diminished the severity of the defendant’s conduct and conducted a sentencing hearing deferential to him in several respects – overemphasizing the victim’s potential culpability, giving the defendant additional credit beyond even the mitigated range of the sentencing guidelines for his expressed remorse, explaining away the defendant’s culpability by emphasizing that the jury concluded that “his instantaneous decision was wrong,”<sup>7</sup> and noting

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<sup>6</sup> Although the trial court in *McIntosh* never acknowledged the sentencing guidelines or gave a contemporaneous reason for the departure from the guidelines, the trial court submitted reasons for its departure in a 1925 (b) statement and the Superior Court reviewed those reasons and specifically found “the sentencing court’s reasoning erroneous and its sentence, constituting a severe downward departure from the sentencing guidelines, unreasonable.” *McIntosh*, 911 A.2d at 523.

<sup>7</sup> NT Nov. 17, 2022, p. 92, 1-4.

that the defendant would “remain criminally responsible for the rest of his life,”<sup>8</sup> thus suggesting that he was already “punished enough” by the conviction alone.

Further, the defendant received a sentence which was less than twenty-five percent of the lowest applicable standard range figure, which is a gross departure from the guidelines and unreasonable without sufficient justification. *See, e.g., Commonwealth v. Daniel*, 30 A.3d 494 (Pa. Super. Ct. 2011) (finding a sentence of 11 ½ to 23 months plus five years’ probation unreasonable, which was twenty-five percent of the lowest standard range figure, on an Aggravated Assault conviction with a guideline range of 54-72 months +/- 12 months). While the factual scenarios are not identical between *Daniel* and the current matter before this Court, the guideline ranges and incarceration sentences are identical, and there are still important principles of sentencing to glean from the holding. Most importantly, the Superior Court notes that the 11 ½ to 23-month sentence is not a “slight departure” from the guidelines, but a substantial deviation, particularly considering that at least one of the two victims nearly died. *Id.* at 498-99. In overturning the sentence, the Superior Court also noted the “extreme downward departure from the guidelines was irrational and unsound.” *Id.* at 499.

The Court’s primary reasons for departing appear to be expressions of remorse, the lack of need for rehabilitation, and the conduct of the victim. As to the first, expressions of remorse are common, and generally more palatable when combined with a guilty plea,<sup>9</sup> and not so

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<sup>8</sup> *Id.*

<sup>9</sup> The Court noted at sentencing that the Commonwealth “never offered” the defendant an open plea to voluntary manslaughter. It is true that the Commonwealth never offered to allow the defendant to plead open to voluntary manslaughter in exchange for a dismissal of the third-degree murder charge. However, as this Court knows, a defendant can plead guilty to some, but not all charges. A perfectly effective strategy in a homicide case would be to plead guilty to voluntary manslaughter and possession of an instrument of crime, while pleading not guilty to third degree murder. A plea of this nature would acknowledge acceptance of diminished responsibility. The defendant did not elect to avail himself of this option, and he does not need the Commonwealth’s agreement to do so. Instead, he gambled on winning a trial on all of the charges in place of accepting responsibility. His testimony at trial was also that Mr. Plowden was a threat to his life and so he shot Mr. Plowden. The jury rejected this testimony and defense.

unusual to warrant the extreme downward departure from the guidelines in this matter. The defendant's allocution in this matter, lasted only a few moments, included the asserting that he had to do what he did as recounted above, and covered approximately one and a half pages of the 98-page sentencing hearing transcript.

As to the second reason, rehabilitation alone is not the sole reason for imposing a sentence. As the law makes clear, and the guidelines themselves state, the severity of the offense is also important, or put another way, punishment which is appropriate for the crime committed. The crime in this instance is the intentional killing of another human being and certainly does not merit this extreme downward departure.

For the final reason, as discussed above, the defendant's conviction for voluntary manslaughter, as opposed to third-degree murder, already accounts for the mitigating factors related to the victim's conduct.

- e. *In Commonwealth v. Jones, the Superior Court considered and upheld a downward departure in a voluntary manslaughter case where significant unique factors existed, and where the departure was still less than the departure in this sentencing hearing.*

In *Commonwealth v. Jones*, 640 A.2d 914 (Pa. Super. Ct. 1994), the Superior Court upheld a sentence of 18 to 60 months' incarceration on a voluntary manslaughter charge following trial. In this case, the sentencing court applied the deadly weapon enhancement and the guideline range was 36-54 months.<sup>10</sup> Without the deadly weapon enhancement, the mitigated range would have been 18-24 months. *Id.* at 918.

In *Jones*, the Commonwealth charged the defendant with killing his half-brother in their home during a heated argument. *Id.* at 915. Thus, victim behavior was a factor in this case. The

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<sup>10</sup> At the time of this decision, the sentencing guidelines on voluntary manslaughter were lower, a different set of ranges applied, and the offense gravity score was 8.

jury acquitted the defendant of murder, but found him guilty of voluntary manslaughter and possession of an instrument of crime. *Id.* At sentencing, the court noted the special and unique circumstances of the case, including “the aggressive and provocative behavior of the victim, the undeniably profound remorse of appellee, the pleas for mercy from the mother of both appellee and victim, as well as factors attendant to the sentencing process, such as the presentence report and the prosecution’s request for the deadly weapon enhancement.” *Id.*

While this sentence departed from the guidelines that applied, it would have fallen within the mitigated range without the deadly weapon enhancement. An analogous sentence in this case would have been a minimum of 24 months of incarceration, as the mitigated range for an 11/0 without the deadly weapon enhancement would be 24-36 months. The sentencing court here, however, went even below this very lenient sentence. Certainly, some of the same factors as in *Jones* do not exist here, notably, the defendant and the victim are not family where both “sides” want the same result – that being some measure of leniency. The same scenario does not exist here, and even if it did, this Court went even below this very lenient standard. This Court went below what would be the equivalent sentence in this case and has not provided sufficient justification for its rationale.

IV. **CONCLUSION**

For all of the foregoing reasons, the Commonwealth respectfully requests that this Court reconsider its sentence and sentence the defendant to a sentence within the guidelines.

Respectfully submitted,

/s/ Brian M. Collins  
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Assistant District Attorney

Lawrence S. Krasner  
District Attorney

Dated: November 28, 2022



CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the herein Motion was served upon the following:

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Dated: November 28, 2022

/s/ Brian M. Collins  
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