NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
Appellee	:	
v.	:	
ARTHUR LAMONT HENDERSON,	:	
Appellant	:	No. 1155 WDA 2013

Appeal from the Judgment of Sentence Entered March 26, 2013,
In the Court of Common Pleas of Allegheny County,
Criminal Division, at Nos. CP-02-CR-0001873-2012 and
CP-02-CR-0001874-2012.

BEFORE: FORD ELLIOTT, P.J.E., SHOGAN and MUSMANNO, JJ.

MEMORANDUM BY SHOGAN, J.: **FILED DECEMBER 23, 2014**

Appellant, Arthur Lamont Henderson, appeals from the judgment of sentence entered following his conviction of fifty-three crimes stemming from multiple violent robberies and sexual attacks on women in the suburbs of Pittsburgh. We affirm.

We summarize the procedural history of this case as follows.[1] Appellant was charged with over fifty crimes in connection with the January 2012 violent robberies of multiple women and several men, and the rapes and sexual assaults of three women. Subsequently, the trial court denied Appellant's motions to sever and suppress evidence, as well as his petition

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[1] For a more detailed presentation of the factual and procedural history of this matter, we direct the reader to the redacted version of the opinion authored by the trial court. ***See*** Trial Court Opinion, 10/23/13, at 1-7.

for writ of *habeas corpus*. On September 6, 2012, the Allegheny County Public Defender's Office moved to withdraw representation of Appellant, and the motion was granted. Appellant then motioned for appointment of counsel. The trial court granted that motion and the Allegheny County Office of Conflict Counsel was appointed to represent Appellant. On September 17, 2012, Attorney Richard Narvin, chief counsel of the Office of Conflict Counsel, entered his appearance on behalf of Appellant.

On February 4, 2013, Attorney Narvin filed a motion to withdraw as counsel on behalf of Appellant. A colloquy and waiver-of-counsel hearing was held on February 4, 2013. A jury trial commenced on February 5, 2013 and concluded on February 11, 2013. Appellant represented himself at trial, with Mr. Narvin and his associate acting as stand-by counsel. Appellant was found guilty of all charges except those involving a male robbery victim.

On March 5, 2013, Appellant filed a motion for appointment of counsel for sentencing through appeal and to postpone sentencing. The trial court entered an order denying postponement of sentencing and an order granting appointment of conflict counsel.

On March 26, 2013, the trial court sentenced Appellant to serve an aggregate term of incarceration of sixty-one to one hundred twenty-two years. The trial court issued a sentence of "no further penalty" on forty-two

of the charges. Appellant filed post-sentence motions, which were denied. This appeal followed.

Appellant presents the following issues for our review:

> I. DID THE TRIAL COURT ERR IN DENYING [APPELLANT'S] MOTION TO SUPPRESS WHERE, IF ALL DELIBERATE AND MATERIAL OMISSIONS AND MISSTATEMENTS WERE PROPERLY EXTRACTED, THE FOUR CORNERS OF THE AFFIDAVIT FAILED TO ESTABLISH PROBABLE CAUSE TO JUSTIFY THE SEARCH AND SEIZURE OF [APPELLANT'S] DNA AND PERSONAL BELONGINGS?
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> II. DID THE TRIAL COURT VIOLATE [APPELLANT'S] CONSTITUTIONAL RIGHTS TO SELF-REPRESENTATION, DUE PROCESS, AND A FAIR TRIAL WHEN IT FORCED [APPELLANT], WHO PROCEEDED *PRO SE*, TO REMAIN SEATED AT THE DEFENSE TABLE AT ALL TIMES THROUGHOUT THE COURSE OF TRIAL?
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> III. DID THE TRIAL COURT VIOLATE [APPELLANT'S] CONSTITUTIONAL RIGHT TO ASSISTANCE OF COUNSEL BY REFUSING TO APPOINT HIM NEW TRIAL COUNSEL EVEN THOUGH [APPELLANT'S] TRIAL COUNSEL REFUSED TO SUBPOENA AND CALL CRITICAL WITNESSES, WAS UNPREPARED FOR TRIAL, AND THERE WAS NOTHING TO SUPPORT THE TRIAL COURT'S BELIEF THAT [APPELLANT] SOUGHT NEW COUNSEL MERELY TO DELAY TRIAL?
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> IV. DID TRIAL COURT ABUSE ITS DISCRETION IN REFUSING TO APPOINT [APPELLANT] NEW TRIAL COUNSEL WHERE THAT DECISION WAS INFLUENCED BY THE COURT'S PARTIALITY TOWARDS THE COMMONWEALTH?
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> V. DID THE TRIAL COURT VIOLATE [APPELLANT'S] CONSTITUTIONAL RIGHT TO ASSISTANCE OF COUNSEL AT SENTENCING WHERE [APPELLANT] SPECIFICALLY REQUESTED TO BE REPRESENTED BY COUNSEL AND NEVER WAIVED THIS RIGHT?
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> VI. DID THE TRIAL COURT ABUSE ITS DISCRETION BY NOT ALLOWING [APPELLANT] TO PRESENT VIDEO SURVEILLANCE

> FOOTAGE OF HIMSELF AT THE MEADOWS CASINO ON JANUARY 9, 2012, WHERE THAT EVIDENCE WAS BOTH RELEVANT AND CRITICAL TO [APPELLANT'S] DEFENSE?
>
> VII. DID TRIAL COURT ABUSE ITS DISCRETION BY SENTENCING [APPELLANT] TO A MANIFESTLY UNREASONABLE AND EXCESSIVE SENTENCE OF INCARCERATION WHERE THE COURT FAILED TO ABIDE BY THE MANDATES OF 42 Pa.C.S. §9721(b), WHICH REQUIRES THE COURT TO CONSIDER THE RECOMMENDED SENTENCING GUIDELINES AT THE SENTENCING HEARING?

Appellant's Brief at 8-9.

Appellant first argues that the trial court erred in denying his motion to suppress physical evidence. Appellant contends that the four corners of the affidavit failed to establish probable cause. He asserts that the affidavit contains deliberate misstatements, which should have been extracted by the trial court, and omissions for the purpose linking Appellant to the sexual assaults.

The standard of review an appellate court applies when considering an order denying a suppression motion is well-established. An appellate court may consider only the Commonwealth's evidence and so much of the evidence for the defense as remains uncontradicted when read in the context of the record as a whole. ***Commonwealth v. Russo***, 934 A.2d 1199, 1203 (Pa. 2007) (citing ***Commonwealth v. Boczkowski***, 846 A.2d 75 (Pa. 2004)). Where the record supports the factual findings of the trial court, the appellate court is bound by those facts and may reverse only if

the legal conclusions drawn therefrom are in error. ***Id***. However, it is also well settled that the appellate court is not bound by the suppression court's conclusions of law. ***Id***. (citing ***Commonwealth v. Duncan***, 817 A.2d 455 (Pa. 2003)).

> With respect to factual findings, we are mindful that it is the sole province of the suppression court to weigh the credibility of the witnesses. Further, the suppression court judge is entitled to believe all, part or none of the evidence presented. However, where the factual determinations made by the suppression court are not supported by the evidence, we may reject those findings. Only factual findings which are supported by the record are binding upon this [C]ourt.

Commonwealth v. Benton, 655 A.2d 1030, 1032 (Pa. Super. 1995) (citations omitted). In addition, questions of the admission and exclusion of evidence are within the sound discretion of the trial court and will not be reversed on appeal absent an abuse of discretion. ***Commonwealth v. Freidl***, 834 A.2d 638, 641 (Pa. Super. 2003).

Moreover, we are aware that Pennsylvania Rule of Criminal Procedure 581, which addresses the suppression of evidence, provides in relevant part as follows:

> (H) The Commonwealth shall have the burden . . . of establishing that the challenged evidence was not obtained in violation of the defendant's rights.

Pa.R.Crim.P. 581(H).

> The Fourth Amendment to the United States Constitution and Article I, Section 8 of the Pennsylvania Constitution protect individuals from unreasonable searches and seizures, thereby ensuring the "right of each individual to be let alone."

> ***Schneckloth v. Bustamonte***, 412 U.S. 218, 236, 36 L. Ed. 2d 854, 93 S. Ct. 2041 (1973); ***Commonwealth v. Blair***, 394 Pa. Super. 207, 575 A.2d 593, 596 (Pa. Super. 1990).

Commonwealth v. By, 812 A.2d 1250, 1254 (Pa. Super. 2002).

Under both state and federal constitutions, search warrants must be supported by probable cause. ***Commonwealth v. Hoppert***, 39 A.3d 358, 361-362 (Pa. Super. 2012), *appeal denied*, 57 A.3d 68 (Pa. 2012). Pennsylvania Rule of Criminal Procedure 203 addresses the requirements for the issuance of a search warrant and provides, in pertinent part, as follows:

> **Rule 203. Requirements for Issuance**
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> (B) No search warrant shall issue but upon probable cause supported by one or more affidavits sworn to before the issuing authority in person or using advanced communication technology. The issuing authority, in determining whether probable cause has been established, may not consider any evidence outside the affidavits.

Pa.R.Crim.P. 203(B).

> In [Pennsylvania], the question of whether probable cause exists for the issuance of a search warrant must be answered according to the totality of the circumstances test articulated in ***Commonwealth v. Gray***, 509 Pa. 476, 503 A.2d 921 (1985), and its Pennsylvania progeny, which incorporates the reasoning of the United States Supreme Court in ***Illinois v. Gates***, 462 U.S. 213, 103 S. Ct. 2317, 76 L.Ed.2d 527 (1983). The task of the magistrate acting as the issuing authority is to make a practical, common sense assessment of whether, given all the circumstances set forth in the affidavit, a fair probability exists that contraband or evidence of a crime will be found in a particular place. A search warrant is defective if the issuing authority has not been supplied with the necessary information. The chronology established by the affidavit of probable cause must be evaluated according to a common sense determination.

Commonwealth v. Arthur, 62 A.3d 424, 432 (Pa. Super. 2013) (internal citations and quotation marks omitted) (quoting ***Commonwealth v. Huntington***, 924 A.2d 1252 (Pa. Super. 2007)). Probable cause is based on a finding of probability of criminality, not a *prima facie* showing. ***Id***.

Pennsylvania law makes clear probable cause depends only on a "fair probability" that the items sought will be found in the place to be searched. ***Commonwealth v. Davis***, 595 A.2d 1216, 1222 (Pa. Super. 1991). As we stated in ***Davis***:

> [T]he law does not require that the information in a warrant affidavit establish with absolute certainty that the object of the search will be found at the stated location, nor does it demand that the affidavit information preclude all possibility that the sought after article is not secreted in another location.

Id. at 1222.

Because reasonable minds can differ on whether a particular affidavit establishes probable cause, "the preference for warrants is most appropriately effectuated by according great deference to a magistrate's determination." ***Commonwealth v. Jones***, 988 A.2d 649, 656 (Pa. 2010). "A grudging or negative attitude by reviewing courts towards warrants…is inconsistent with the Fourth Amendment's strong preference for searches conducted pursuant to a warrant; courts should not invalidate warrants by interpreting affidavits in a hypertechnical, rather than a commonsense, manner." ***Id***. at 655-656. "Further, a reviewing court is not to conduct a *de novo* review of the issuing authority's probable cause determination…." ***Id***.

at 655. Rather, the proper inquiry is whether there is record evidence to support the decision to issue the warrant. ***Id***.

Here, we have reviewed the briefs of the parties, the relevant law, the certified record before us on appeal, and the thorough opinion of the Honorable Donna Jo McDaniel dated October 23, 2013. It is our conclusion that the trial court properly determined that the evidence seized should not have been suppressed and that Judge McDaniel's opinion adequately and accurately addresses this issue. Accordingly, we adopt Judge McDaniel's analysis as our own and affirm on its basis. Trial Court Opinion, 10/23/13, at 7-10. The parties are directed to attach the redacted copy of that opinion in the event of further proceedings in this matter.

In his second issue, Appellant argues that the trial court violated his constitutional rights to self-representation and a fair trial by forcing him to remain seated throughout the trial and prohibiting him from participating in sidebars. Appellant claims these restrictions denied him the right to meaningful self-representation and created the impression that he posed a danger in the courtroom.

"It is universally accepted that the trial judge has the responsibility and authority to maintain in the courtroom the appropriate atmosphere for the fair and orderly disposition of the issues presented. Proper security measures fall within the trial court's exercise of discretion. When necessary

to prevent a defendant from disrupting a trial and possibly injuring others, reasonable security measures will not prejudice the defendant's fair trial rights." ***Commonwealth v. Gross***, 453 A.2d 620, 622 (Pa. Super. 1982). ***See also In re F.C. III***, 2 A.3d 1201, 1222 (Pa. 2010) (stating that "Proper security measures are within the sound discretion of the trial court, and, thus, will not be disturbed absent an abuse of that discretion"). "[W]henever a courtroom arrangement is challenged as inherently prejudicial ... the question must be not whether jurors actually articulated a consciousness of some prejudicial effect, but rather whether an unacceptable risk is presented of impermissible factors coming into play." ***Commonwealth v. Philistin***, 53 A.3d 1, 32 (Pa. 2012) (internal quotations omitted).

Again, we have reviewed the briefs of the parties, the relevant law, the certified record before us on appeal, and the thorough opinion of the trial court dated October 23, 2013. It is our conclusion that the trial court properly addressed Appellant's conduct during trial and that the trial court's opinion adequately and accurately addresses this issue. We decline to substitute our judgment for that of the trial court, based on the cold record before us, and discern no error in the trial court's determination, in conjunction with the sheriffs in charge of courtroom security, that Appellant's movement be restricted. We are left to conclude that the trial

court's handling of the matter was not so egregious as to deprive Appellant of his right to a fair trial. ***See Commonwealth v. Rega***, 70 A.3d 777, 786, n.8. (Pa. 2013) (stating "courts have never tried, and could never hope, to eliminate from trial procedures every reminder that the State has chosen to marshal its resources against a defendant to punish him for alleged criminal conduct"). Accordingly, we adopt the trial court's analysis as our own and affirm on its basis. Trial Court Opinion, 10/23/13, at 19-21.

In his third issue, Appellant argues that the trial court abused its discretion by failing to appoint new trial counsel where court-appointed counsel refused to subpoena critical witnesses and was allegedly unprepared for trial. Appellant asserts that he waived his right to counsel only after the trial court denied his request for newly appointed counsel.

A criminal defendant's right to counsel is guaranteed by the Sixth Amendment to the United States Constitution and Article I, Section 9 and Article V, Section 9 of the Pennsylvania Constitution. ***Commonwealth v. Owens***, 750 A.2d 872, 875 (Pa. Super. 2000). The Pennsylvania Rules of Criminal Procedure provide that "[a] motion for change of counsel by a defendant for whom counsel has been appointed shall not be granted except for substantial reasons." Pa.R.Crim.P. 122(C). This Court has explained that "[a] defendant is not entitled to appointed counsel of his choice." ***Commonwealth v. Burkett***, 5 A.3d 1260, 1277 (Pa. Super. 2010) (citation

omitted). "Whether a motion for change of counsel should be granted is within the sound discretion of the trial court and will not be disturbed on appeal absent abuse of discretion." ***Commonwealth v. Cook***, 952 A.2d 594, 617 (Pa. 2008) (citation omitted). Generally, before this Court will conclude that a trial court erred in refusing to appoint new counsel, "a defendant must demonstrate that he has an irreconcilable difference with counsel that precludes counsel from representing him." ***Commonwealth v. Wright***, 961 A.2d 119, 134 (Pa. 2008) (citations omitted).

In addition, a criminal defendant has a well-settled constitutional right to dispense with counsel and to defend himself before the court. ***Commonwealth v. Starr***, 664 A.2d 1326, 1334 (Pa. 1995) (citing ***Faretta v. California***, 422 U.S. 806 (1975)). "Deprivation of these rights can never be harmless." ***Commonwealth v. Payson***, 723 A.2d 695, 699-700 (Pa. Super. 1999).

As our Supreme Court explained in ***Starr***:

> In short, this highly personal constitutional right operates to prevent a state from bringing a person into its criminal courts and in those courts force a lawyer upon him when he asserts his constitutional right to conduct his own defense. ***Faretta***, ***supra***, at 807. Further, the denial of a criminal defendant's right to proceed *pro se* is not subject to a harmless error analysis. ***McKaskle v. Wiggins***, 465 U.S. 168, 177, n.8, 104 S.Ct. 944, 79 L.Ed. 2d 122 (1984) ("the right to self-representation is either respected or denied; its deprivation cannot be harmless").

Starr, 664 A.2d at 1334-1335. However, a criminal defendant's right to self-representation is not absolute. ***Commonwealth v. Vaglica***, 673 A.2d 371, 373 (Pa. Super. 1996).[2]

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[2] Pennsylvania Rule of Criminal Procedure 121 addresses the right to waive counsel and the appropriate colloquy for a criminal defendant who wishes to assert his right to self-representation, as contemplated in ***Faretta***, and provides as follows:

> **Rule 121. Waiver of Counsel**
>
> **(A) Generally.**
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> (1) The defendant may waive the right to be represented by counsel.
>
> (2) To ensure that the defendant's waiver of the right to counsel is knowing, voluntary, and intelligent, the judge or issuing authority, at a minimum, shall elicit the following information from the defendant:
>
>> (a) that the defendant understands that he or she has the right to be represented by counsel, and the right to have free counsel appointed if the defendant is indigent;
>>
>> (b) that the defendant understands the nature of the charges against the defendant and the elements of each of those charges;
>>
>> (c) that the defendant is aware of the permissible range of sentences and/or fines for the offenses charged;
>>
>> (d) that the defendant understands that if he or she waives the right to counsel, the defendant will still be bound by all the normal rules of procedure and that counsel would be familiar with these rules;

A defendant's request to proceed *pro se* must be timely and unequivocal and not made for purpose of disruption or delay. ***Commonwealth v. Davido***, 868 A.2d 431, 438 (Pa. 2005). Also, "the inquiry surrounding whether a request to proceed *pro se* is unequivocal is fact intensive and should be based on the totality of the circumstances

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> (e) that the defendant understands that there are possible defenses to these charges that counsel might be aware of, and if these defenses are not raised at trial, they may be lost permanently; and
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> (f) that the defendant understands that, in addition to defenses, the defendant has many rights that, if not timely asserted, may be lost permanently; and that if errors occur and are not timely objected to, or otherwise timely raised by the defendant, these errors may be lost permanently.

(3) The judge or issuing authority may permit the attorney for the Commonwealth or defendant's attorney to conduct the examination of the defendant pursuant to paragraph (A)(2). The judge or issuing authority shall be present during this examination.

* * *

(C) Proceedings Before a Judge. When the defendant seeks to waive the right to counsel after the preliminary hearing, the judge shall ascertain from the defendant, on the record, whether this is a knowing, voluntary, and intelligent waiver of counsel.

(D) Standby Counsel. When the defendant's waiver of counsel is accepted, standby counsel may be appointed for the defendant. Standby counsel shall attend the proceedings and shall be available to the defendant for consultation and advice.

Pa.R.Crim.P. 121.

surrounding the request." ***Id***. at 439. Thus, "[t]he right to waive counsel's assistance and continue *pro se* is not automatic." ***Commonwealth v. El***, 977 A.2d 1158, 1163 (Pa. 2009). "Rather, only timely and clear requests trigger an inquiry into whether the right is being asserted knowingly and voluntarily." ***Id***.

"Regardless of the defendant's prior experience with the justice system, a penetrating and comprehensive colloquy is mandated." ***Commonwealth v. Owens***, 750 A.2d 872, 876 (Pa. Super. 2000). "The question of waiver [of counsel] must be determined regardless of whether the accused can or cannot afford to engage counsel." ***Payson***, 723 A.2d at 701 (quoting ***Commonwealth v. Ford***, 715 A.2d 1141 (Pa. Super. 1998)). Failure to conduct a thorough on-the-record colloquy before allowing a defendant to proceed to trial *pro se* constitutes reversible error. ***Id***.

Once again, we have thoroughly reviewed the briefs of the parties, the relevant law, the certified record before us on appeal and the opinion authored by the trial court and it is our determination that the trial court's opinion comprehensively and accurately addresses this issue. Upon review, we conclude that the trial court's decision to deny Appellant's requests for new counsel was fully within its discretion, and we decline to grant Appellant relief on this basis. Appellant's request at issue was made after jury selection and sought new appointed counsel, not substitution of counsel of

his choosing at his own expense. Moreover, contrary to Appellant's assertion, defense counsel was indeed prepared for trial. The trial court determined that Appellant failed to set forth a legitimate reason for appointing new counsel. Therefore, Appellant's request was properly denied. ***See e.g. Commonwealth v. Floyd***, 937 A.2d 494, 497 (Pa. Super. 2007) (citation omitted) (holding that "'substantial reasons' or 'irreconcilable differences' warranting appointment of new counsel are not established where the defendant merely alleges a strained relationship with counsel, where there is a difference of opinion in trial strategy, where the defendant lacks confidence in counsel's ability, or where there is brevity of pretrial communications"); ***see also*** Pa.R.Crim.P. 122(C). In addition, the trial court properly colloquied Appellant on his request for self-representation, then permitted Appellant to proceed *pro se*. Accordingly, Appellant's claim of trial court error fails, and we affirm on the basis of the trial court's well-reasoned opinion. Trial Court Opinion, 10/23/13, at 10-18.

In his fourth issue, which also concerns the appointment of counsel, Appellant argues the trial court's decision to refuse Appellant's request for the appointment of new defense counsel was influenced by partiality towards the Commonwealth. Appellant asserts that, at the waiver-of-counsel hearing, the trial court made statements that demonstrated it was acting in

concert with the Commonwealth when it denied Appellant's request for new trial counsel.

At the outset, we observe that Appellant has failed to provide any legal argument on this issue beyond citation allegedly pertaining to due process and fair trial.[3] Appellant's Brief at 63-66. Appellant baldly concludes, "Because the Court's 'partiality, prejudice, bias, or ill-will' is evidenced by the record, the Court abused its discretion and thus violated [Appellant's] constitutional rights to due process and a fair trial under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article 1, Section 9 of the Pennsylvania Constitution." ***Id***. at 66.

We need not reach the merits of this issue because we are constrained to conclude that Appellant's discussion contained in the argument section of his brief addressing this issue is not properly developed for appellate review. It is well settled that the argument portion of an appellate brief must be developed with pertinent discussion of the issue, which includes citations to relevant authority. Pa.R.A.P. 2119(a). ***See Commonwealth v. Genovese***, 675 A.2d 331, 334 (Pa. Super. 1996) (stating that "[t]he argument portion of an appellate brief must be developed with a pertinent discussion of the point which includes citations to the relevant authority").

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[3] We note that Appellant's single citation to legal authority actually pertains to the appropriate standard of review to be utilized in addressing challenges to the discretionary aspects of sentencing. ***Commonwealth v. Cunningham***, 80 A.2d 566, 575 (Pa. Super. 2002).

In ***Commonwealth v. B.D.G.***, 959 A.2d 362 (Pa. Super. 2008), a panel of this Court offered the following relevant observation regarding the proper formation of the argument portion of an appellate brief:

> In an appellate brief, parties must provide an argument as to each question, which should include a discussion and citation of pertinent authorities. Pa.R.A.P. 2119(a). This Court is neither obliged, nor even particularly equipped, to develop an argument for a party. ***Commonwealth v. Williams***, 566 Pa. 553, 577, 782 A.2d 517, 532 (2001) (Castille, J., concurring). To do so places the Court in the conflicting roles of advocate and neutral arbiter. ***Id***. When an appellant fails to develop his issue in an argument and fails to cite any legal authority, the issue is waived. ***Commonwealth v. Luktisch***, 680 A.2d 877, 879 (Pa. Super. 1996).

Id. at 371-372. Thus, failure to cite case law or other legal authority in support of an argument results in waiver of the claim. ***Commonwealth v. Owens***, 750 A.2d 872, 877 (Pa. Super. 2000).

Here, Appellant's argument pertaining to this issue contains no citation to relevant legal authority beyond a cursory legal citation at the end of his argument. Appellant's Brief at 63-66. Instead, the argument portion of Appellant's brief contains a list of circumstances which allegedly support his allegation that the trial court was partial towards the Commonwealth. ***Id***. Because Appellant's argument on this issue consists of broad statements and allegations but no analysis with relevant law, the argument is not properly developed for our review as it fails to apply the law to the facts of the case. This failure to develop a legal argument precludes appellate review. Thus, we conclude that this issue is waived.

In his fifth issue, Appellant argues that the trial court violated his right to assistance of counsel at sentencing where Appellant had requested to be represented by counsel. Appellant notes that the trial court reappointed Attorney Narvin, but also expressed that Attorney Narvin would be serving only as stand-by counsel.

As we previously indicated, "The right to counsel is enshrined in both the United States and Pennsylvania Constitutions." ***Commonwealth v. Smith***, 69 A.3d 259, 265 (Pa. Super. 2013) (citations omitted). Moreover, there is no disputing that there exists a constitutional right to counsel at sentencing. ***Id***. Furthermore, to the extent that Appellant sought the appointment of new counsel, we note that "the right to appointed counsel does not include the right to counsel of the defendant's choice." ***Id***. at 266 (quoting ***Commonwealth v. Albrecht***, 720 A.2d 693, 709 (Pa. 1998)). Rather, the decision to appoint different counsel to a requesting defendant lies within the discretion of the trial court. ***Smith***, 69 A.3d at 266. A defendant must show irreconcilable differences between himself and his court-appointed counsel before a trial court will be reversed for abuse of discretion in refusing to appoint new counsel. ***Id***.

Here, our review of the record reflects that on March 5, 2013, Appellant filed a *pro se* "Motion for Appointment of Counsel for Sentencing through Appeal and to Postpone Sentencing." Docket Entry 23. On March

22, 2013, the trial court entered an order granting the motion for appointment of conflict counsel and denying the motion for postponement of sentencing. Docket Entry 24. Thereafter, Attorney Narvin filed a motion to withdraw as counsel. Docket Entry 25. Attorney Narvin's motion contained the following statement:

> 3. On March 18, 2013, by Order of this Honorable Court, counsel was again appointed to represent [Appellant] at sentencing now scheduled for March 26, 2013.

Motion to Withdraw, 3/26/13, at 2. In addition, review of the sentencing transcript reflects that Attorney Narvin was appointed to represent Appellant at the sentencing proceedings, and did, in fact, represent Appellant at the time of sentencing. N.T., 3/26/13, at 2-5, 6-7. Accordingly, Appellant's contrary assertion that he was deprived of counsel at the time of sentencing is belied by the record. Therefore, this claim lacks merit.

In his sixth issue, Appellant argues that the trial court abused its discretion in failing to permit Appellant to show video-surveillance footage at trial. Specifically, Appellant contends that the trial court erred in failing to permit him to show a video of himself at the Meadows Casino in which he was wearing a different hooded sweatshirt than the one worn by the suspect in the Citizen's Bank ATM video surveillance footage.

Questions concerning the admissibility of evidence lie within the sound discretion of the trial court, and we will not reverse the trial court's decision

on such a question absent a clear abuse of discretion. ***Commonwealth v. Maloney***, 876 A.2d 1002, 1006 (Pa. Super. 2005). An abuse of discretion is not merely an error of judgment, but is rather the overriding or misapplication of the law, or the exercise of judgment that is manifestly unreasonable, or the result of bias, prejudice, ill-will or partiality, as shown by the evidence or the record. ***Commonwealth v. Cameron***, 780 A.2d 688, 692 (Pa. Super. 2001).

Pennsylvania Rule of Evidence 402 provides that generally, "[a]ll relevant evidence is admissible" and "[e]vidence that is not relevant is not admissible." Pa.R.E. 402. "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Pa.R.E. 401.

Thus, the basic requisite for the admissibility of any evidence in a case is that it be competent and relevant. ***Freidl***, 834 A.2d at 641. Evidence is relevant if it logically tends to establish a material fact in the case or tends to support a reasonable inference regarding a material fact. ***Commonwealth v. Barnes***, 871 A.2d 812, 818 (Pa. Super. 2005). Although relevance has not been precisely or universally defined, the courts of this Commonwealth have repeatedly stated that evidence is admissible if, and only if, the evidence logically or reasonably tends to prove or disprove a

material fact in issue, tends to make such a fact more or less probable, or affords the basis for or supports a reasonable inference or presumption regarding the existence of a material fact. ***Freidl***, 834 A.2d at 641.

Our review of the record reflects that Appellant sought to show video-surveillance footage of himself at the Meadows Casino on the afternoon of one of the crimes, in which Appellant was wearing a light grey colored sweatshirt. The purpose was to refute that he was the perpetrator of the rape committed eight hours earlier on that day. The victim of the rape indicated that the perpetrator was wearing a dark colored sweatshirt. However, as the trial court explains "The Commonwealth never alleged that [Appellant] had only one hoodie – in fact, as the police search demonstrated, [Appellant] had multiple hoodies of several different brands – including Champion and Nike . . . . Since there was never an averment that [Appellant] had *only one* hoodie, video footage of him in different color hoodies is not probative of anything and has absolutely no relevance to the case." Trial Court Opinion, 10/23/13, at 35-36 (emphasis in original). Accordingly, we cannot conclude that the trial court abused its discretion in refusing to permit Appellant to show the video-surveillance footage in question. Thus, this claim lacks merit.

In his final issue, Appellant argues that the trial court abused its discretion by sentencing him to the statutory maximum term of incarceration

on multiple convictions. Appellant claims that the trial court fashioned his sentence without acknowledging the recommended sentencing guideline ranges.

Appellant contends that the trial court erred in imposing a manifestly unreasonable sentence, and thus, he challenges the discretionary aspects of his sentence. It is well settled that there is no absolute right to appeal the discretionary aspects of a sentence. ***Commonwealth v. Hartle***, 894 A.2d 800, 805 (Pa. Super. 2006). Rather, an appellant's appeal should be considered to be a petition for allowance of appeal. ***Commonwealth v. W.H.M.***, 932 A.2d 155, 162 (Pa. Super. 2007).

As we observed in ***Commonwealth v. Moury***, 992 A.2d 162 (Pa. Super. 2010):

> An appellant challenging the discretionary aspects of his sentence must invoke this Court's jurisdiction by satisfying a four-part test:
>
> > [W]e conduct a four-part analysis to determine: (1) whether appellant has filed a timely notice of appeal, ***see*** Pa.R.A.P. 902 and 903; (2) whether the issue was properly preserved at sentencing or in a motion to reconsider and modify sentence, ***see*** Pa.R.Crim.P. [720]; (3) whether appellant's brief has a fatal defect, Pa.R.A.P. 2119(f); and (4) whether there is a substantial question that the sentence appealed from is not appropriate under the Sentencing Code, 42 Pa.C.S.A. § 9781(b).

Id. at 170 (citing ***Commonwealth v. Evans***, 901 A.2d 528 (Pa. Super. 2006)).

Whether a particular issue constitutes a substantial question about the appropriateness of a sentence is a question to be evaluated on a case-by-case basis. ***Commonwealth v. Kenner***, 784 A.2d 808, 811 (Pa. Super. 2001). As to what constitutes a substantial question, this Court does not accept bald assertions of sentencing errors. ***Commonwealth v. Malovich***, 903 A.2d 1247, 1252 (Pa. Super. 2006). An appellant must articulate the reasons the sentencing court's actions violated the sentencing code. ***Id***. "A substantial question will be found where the defendant advances a colorable argument that the sentence imposed is either inconsistent with a specific provision of the Sentencing Code or is contrary to the fundamental norms underlying the sentencing process." ***Commonwealth v. Ventura***, 975 A.2d 1128, 1133 (Pa. Super. 2009) (citations omitted).

Herein, the first three requirements of the four-part test are met; Appellant brought an appropriate appeal, raised the challenge in his post-sentence motions, and included in his appellate brief the necessary separate concise statement of the reasons relied upon for allowance of appeal pursuant to Pa.R.A.P. 2119(f). Therefore, we will next determine whether Appellant has raised a substantial question requiring us to review the discretionary aspects of the sentence imposed by the trial court.

In Appellant's Rule 2119(f) statement, he extensively cites case law explaining that the sentencing court must provide adequate reasons for

departing from the sentencing guidelines and asserts that the sentencing court abused its discretion because "the sentences imposed on six of the seven counts exceeded the aggravated recommended sentence, yet the trial court failed to reference the applicable guideline ranges at sentencing. Thus, a substantial question exists and this Court should review the discretionay aspects of [Appellant's] sentence.." Appellant's Brief at 78.

We have found that a claim, which challenges the adequacy of the reasons given by the court for its sentencing choice, raises a substantial question. ***Commonwealth v. Rodda***, 723 A.2d 212, 214 (Pa. Super. 1999) (*en banc*) (explaining that a substantial question is raised when an appellant claims the sentencing court failed to sufficiently state reasons for imposing a sentence outside the guidelines). Thus, we conclude that in this instance, Appellant has raised a substantial question. Accordingly, because Appellant has stated a substantial question, we will consider this issue on appeal. Nevertheless, we conclude that Appellant is entitled to no relief on this claim, as the record reveals that the court did consider the appropriate factors at the time of sentencing.

We reiterate that sentencing is a matter vested in the sound discretion of the sentencing judge, and a sentence will not be disturbed on appeal absent a manifest abuse of discretion. ***Commonwealth v. Fullin***, 892 A.2d 843, 847 (Pa. Super. 2006). In this context, an abuse of discretion is not

shown merely by an error in judgment. ***Id***. Rather, the appellant must establish, by reference to the record, that the sentencing court ignored or misapplied the law, exercised its judgment for reasons of partiality, prejudice, bias or ill will, or arrived at a manifestly unreasonable decision. ***Id***.

> When the sentencing court imposes a sentence outside the guidelines, it must provide a contemporaneous written statement of the reason or reasons for the deviation from the guidelines. The Sentencing Code requires a trial judge who intends to sentence outside the guidelines to demonstrate, on the record, his awareness of the guideline ranges. Having done so, the sentencing court may, in an appropriate case, deviate from the guidelines by fashioning a sentence which takes into account the protection of the public, the rehabilitative needs of the defendant, and the gravity of the particular offense as it relates to the impact on the life of the victim and the community. In doing so, the sentencing judge must state of record the factual basis and specific reasons which compelled him or her to deviate from the guideline ranges. When evaluating a claim of this type, it is necessary to remember that the sentencing guidelines are advisory only.
>
> [W]hen deviating from the sentencing guidelines, a trial judge must indicate that he understands the suggested ranges. However, there is no requirement that a sentencing court must evoke "magic words" in a verbatim recitation of the guidelines ranges to satisfy this requirement. Our law is clear that, when imposing a sentence, the trial court has rendered a proper "contemporaneous statement" under the mandate of the Sentencing Code "so long as the record demonstrates with clarity that the court considered the sentencing guidelines in a rational and systematic way and made a dispassionate decision to depart from them."
>
> Our Supreme Court has ruled that where pre-sentence reports exist, the presumption will stand that the sentencing judge was both aware of and appropriately weighed all relevant

> information contained therein. . . . As our Supreme Court has explained, "it would be foolish, indeed, to take the position that if a court is in possession of the facts, it will fail to apply them to the case at hand."
>
> When the record demonstrates that the sentencing court was aware of the guideline ranges and contains no indication that incorrect guideline ranges were applied or that the court misapplied the applicable ranges, we will not reverse merely because the specific ranges were not recited at the sentencing hearing.

Commonwealth v. Griffin, 804 A.2d 1, 7-8 (Pa. Super. 2002) (citations omitted) (quotation marks in original).

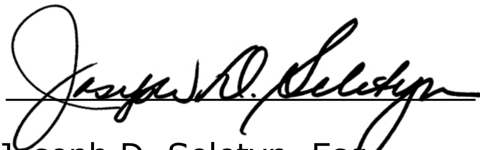
Here, the sentencing court specifically stated that it "ordered, read and considered a pre-sentence report in this case." N.T., 3/26/13, at 2. In fact, the sentencing judge stated at the time of sentencing that she had the report for several weeks. ***Id***. at 3. Although the sentencing court may not have recited at the time of sentencing the myriad of specific sentencing guideline ranges applicable, our review of the record does not reflect that incorrect guideline ranges were applied or that the sentencing court misapplied the applicable ranges. Therefore, we decline to find an abuse of discretion merely because the specific ranges were not recited by the sentencing court at the sentencing hearing.

Furthermore, our review of the record reveals that the sentencing court fulfilled the requirement of a contemporaneous written statement when it placed its reasons for the sentence imposed on the record during

sentencing. N.T., 3/26/13, at 37-38. At the conclusion of sentencing, the judge reiterated Appellant's applicable prior record score and offense gravity score for the multiple felony-one convictions. ***Id***. at 40. Thus, the record reflects proper consideration by the court of the appropriate statutory considerations. Therefore, we discern no abuse of discretion on the part of the sentencing court. Appellant's contrary claim lacks merit.

Judgment of sentence affirmed.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 12/23/2014

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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA

v. CC: 201201873, 201201874

ARTHUR HENDERSON,

Defendant

13 OCT 23 AM 9:09

OPINION

Filed By:

Honorable Donna Jo McDaniel
President Judge
Court of Common Pleas of Allegheny County
323 Courthouse
Pittsburgh, PA 15219

(412) 350-5434

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IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
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COMMONWEALTH OF PENNSYLVANIA

v. CC: 201201873, 201201874

ARTHUR HENDERSON,

Defendant

OPINION

The Defendant has appealed from the judgment of sentence entered on March 26, 2013. A review of the record reveals that the Defendant has failed to present any meritorious issues on appeal and, therefore, the judgment of sentence must be affirmed.

The Defendant was charged with a total of 53 counts[1] in relation to the sexual assaults of three (3) women on January 7 and 9, 2012.[2] A jury trial was held before this Court from February 5 through 11, 2013, at the conclusion of which the Defendant was found guilty of all charges. Timely Post-Sentence Motions and Supplemental Post-Sentence Motions were filed and were denied on July 9, 2013. This appeal followed.

The evidence presented at trial established that on January 6, 2012, M[redacted] E[redacted] was celebrating her 50th birthday with friends. The group had dinner and then went to the Rivers Casino in downtown Pittsburgh to gamble. After the party broke up, E[redacted] returned to her

[1] Due to the numerous charges, this Court has created a chart showing the charges, their disposition and resulting sentence, which it has attached to this Opinion as Appendix 1.

[2] The Defendant was also charged with a number of charges related to the robbery and beating of P[redacted] L[redacted] at a separate information; However, as the Defendant was acquitted of all of those charges, they are not enumerated here.

townhouse in Hempfield Township, Beaver County[3] at approximately 2:30 a.m. on January 7th. She was not ready to end her evening, however, so she changed into jeans and a sweatshirt and drove to the Meadows Casino approximately 45 minutes away, where she played the rest of the night. When E[redacted] left the casino just after 7 a.m., surveillance video revealed that she was followed out of the garage by a dark blue Ford Expedition with a brake light out and driver's side damage driven by the Defendant. E[redacted] arrived home at approximately 7:45 a.m. to take her fiancée's son to school; however, the teenager was still asleep on her living room couch. Without waking him, E[redacted] went up the stairs to her bedroom to change. She heard a noise behind her and turned to find a man dressed in black clothing, wearing a black ski mask, hat, sunglasses, gloves and boots, and holding a gun coming up her stairs. Then man told her to be quiet and he would not hurt her, and then demanded money. E[redacted] gave him $10 – all the money she had in her purse – and a silver bracelet and the man told her to take her clothes off. He positioned her in a kneeling position on the bed and penetrated her vagina with his penis from behind. He then turned her over and forced her to take his penis in her mouth, then re-positioned her in the kneeling position and again penetrated her vaginally. He allowed E[redacted] to get dressed, then put her in the bathroom and told her not to come out for 15 minutes. She waited a few minutes, and when she came out of the bathroom, the man was gone. She ran out of the house and drove to the Moon Township Police Department, as she was new to the Hempfield area and didn't know where their Police Department was located. She was transported Sewickley Hospital where a rape kit examination was performed.

Later that morning, at 9:00 a.m., A[redacted] A[redacted] was taking her dog and her friend's dog for whom she was dog-sitting for a walk outside of her apartment at the Woodhawk Club

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[3] The Beaver County District Attorney's Office relinquished this case to the Allegheny County District Attorney's Office for prosecution;

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Apartments in Ross Township. On her way out of her apartment, she noticed a man dressed all in black, wearing a mask and carrying a box outside of her building. Thinking he was a delivery man, she said hello and proceeded on her usual half-mile walk around her neighborhood. When A[redacted] returned to her apartment approximately 15 minutes later, she noticed the same man on the landing near her apartment. She brought the dogs into her apartment and then began to close the door when she felt resistance on it and saw the masked man from the hallway attempting to push in behind her. She screamed and tried to push the door closed, but the man pointed a gun at her and she backed up. The man came into the apartment and told her to lock up her dogs. He followed her while she put one dog in the bathroom and one in the bedroom. Then in a calm voice, the man demanded money. A[redacted] had $60 or $80 in her wallet and she gave it to him, and he also took two debit cards and one credit card from her. He then made her take off her clothes and while she was naked, he made her write down the PIN numbers for the cards. The man asked A[redacted] if she had condoms or saran wrap and she replied that she did not. He then positioned A[redacted] behind a chair, touched her vagina with his fingers and then penetrated her vagina with his penis. He then re-positioned her on an ottoman and again penetrated her vaginally with his penis. After he was done, he made her lay on the floor and bound her ankles and hands tightly with tape he got from the box he had been carrying, asked her again for the PIN numbers for her cards, took her cell phone and left the apartment. After some time, A[redacted] was eventually able to work herself free from the tape and she ran to her next-door neighbor's for help. The police were called and A[redacted] was transported to UPMC Passavant Hospital, where a rape kit examination was performed.

Sometime between 9:45 and 10:00 a.m. on that same morning, Woodhawk Club resident J[redacted] M[redacted] was outside walking her dog when she observed a black man with an un-

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covered face wearing a dark zippered hoodie and a black hat jogging from A's building to the parking lot. He looked over his shoulder several times as if to see if he was being followed. Shortly thereafter, the man drove by M on his way out of the complex in a dark blue Ford Expedition with damage to the drivers' side. When M saw police cars, fire trucks and television news crews appearing soon after, she realized that she may have seen something important and called the Ross Township Police Department with what she had seen.

Using M's description, Ross Township Police were able to use tapes from the traffic cameras on McKnight Road to locate the vehicle exiting the Woodhawk Club complex immediately after A's rape and driving down McKnight road towards downtown Pittsburgh. Shortly thereafter, A's debit and credit cards were used by a man wearing a hoodie at an ATM in the Manchester section of the North Side of the City of Pittsburgh. The ATM surveillance camera also picked up a dark blue Ford Expedition.

Two days later, on January 9, 2012, M M r woke up at 6:00 a.m. to get ready for work. She took her dog out for a walk in the area of her townhouse at the Cascade Apartment complex in Ross Township while her fiancé tried to sleep for a few more minutes. When she returned to the house, fiancé's alarm clock and iPod alarm were going off, and she ran upstairs to turn them off so the noise would not wake their four-month-old baby who was asleep in her nursery. When M r entered the bedroom, she saw her fiancé J S on the floor, bound and unable to move. A man wearing a dark hooded sweatshirt, jeans, boots and a ski mask and holding a gun told her in a calm voice that as long as she did what he said, he was not going to hurt her. He asked for money and she gave him the key to their safe and S gave him the passcode and the man opened the safe and took between $300 and $400 that the couple had saved. The man attempted to have M r use tape he had brought with him but she was unable

to get the roll started, and so he made her retrieve duct tape from her kitchen which he used to tie up S■■■. The man took M■■■r into the baby's room, who by now was awake and screaming, stood between M■■■r and the baby and told her to undress. Once she was naked, the man bound M■■■r's wrists with tape, positioned M■■■r on her hands and knees, touched her vagina with his fingers and pulled out her tampon, throwing it on the floor in front of her. He then forcefully penetrated her anus with his penis which was painful, and then he penetrated her vagina with his penis. Once he was done, the man made M■■■r lie down on her stomach and taped her mouth and her ankles. He then made M■■■r hop back into the bedroom naked and lie down on the ground next to her fiancée. He took her engagement ring which she had just received on Christmas Day, along with $20 from the couple's dresser and their cell phones, and left the townhouse. After a few minutes, M■■■r and S■■■ were able to free themselves, and M■■■r called the police and went to the baby while S■■■ retrieved his gun and went to look for the man. The police responded and M■■■r was taken to Magee Women's Hospital, where a rape kit examination was performed.

The next morning, January 10, 2012, Ross Township Police set up a checkpoint at the entrance to the Cascades Apartment complex to canvass for witnesses and look for the dark blue Ford Expedition described by J■■■ M■■■. The Defendant was stopped entering the complex in a dark blue Ford Expedition and told the officer that he hadn't seen anything unusual. The officer noted damage to the side of the vehicle and took down the vehicle's license plate. Further investigation by the Ross Township Police Department revealed that the vehicle was registered to the Defendant, Arthur Henderson.

Sometime during the day of January 10, 2012, the Defendant contacted an acquaintance named P■■■ L■■■, whom he knew from playing poker at the casinos around town, and asked if

L wanted to buy a diamond ring from him. L declined. That evening, L went to Meadows Casino to play poker, played all night and left at approximately 4:45 a.m. the next morning, when he returned to his home above his family's restaurant, on Ohio River Boulevard in Emsworth. As L was entering the building, a man dressed in dark clothing, wearing a ski mask, hat and gloves and carrying a gun pushed in the door behind him. The man told L to give him the money and he would not be hurt. L thought he recognized the man despite the obstructive clothing and said so, and in response the man punched L in the face and knocked him to the floor. The man began to beat L and L screamed for help. L's sister-in-law L came to the stairs and was able to see through the eye holes of the ski mask that the assailant was African-American. She retreated and called the police. The man beat L into submission and then reached in his pocket and took one of his envelopes of money, which L later estimated at between $4,500 and $5,000, in denominations of $100. The police arrived and L was transported to Allegheny General Hospital where his wounds were treated. He told police that he thought he knew the assailant, and believed that it was either "Black Art" or "Frankie A," both of whom he knew from playing poker. The casino staff was contacted by the State Police, who identified Black Art as the Defendant, Arthur Henderson and Frankie A as poker dealer Frank Auld, a white man who was on medical leave and bed-ridden while recovering from major surgery. Further police investigation revealed that on January 10, 2012, the same day as the robbery of P L two Western Union wires were made at a Money Mart on the North Side in the amounts of $893.67 payable to Ford Motor Credit for a payment on the dark blue Ford Expedition registered to the Defendant Arthur Henderson and for $122.99 payable to Bristol West Insurance for auto

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insurance on the same vehicle. Receipts from both transactions show payments made by cash in denominations of $100.

Police then obtained a search warrant for the Defendant's car and residence and for a buccal swab to obtain his DNA. The Defendant's DNA was subsequently tested and was found to be a match to the samples taken from the rape kit examinations of M[redacted] E[redacted] A[redacted] A[redacted] and M[redacted] M[redacted]r.

The Defendant has raised numerous issues on appeal, which are discussed[4] as follows:

1. Suppression Issues

Initially, the Defendant argues that this Court erred in denying his Motion to Suppress. He argues that the Affidavit of Probable Cause contained "deliberate and materially false assertions" and when those assertions are removed, the remaining information within the four corners of the Affidavit did not support probable cause. A review of the record reveals that this claim is meritless.

It is well-established that the appellate court's "standard of review in addressing a challenge to the denial of a suppression motion is limited to determining whether the suppression court's factual findings are supported by the record and whether the legal conclusions drawn from those facts are correct. Because the Commonwealth prevailed before the suppression court, [the appellate court] may consider only the evidence of the Commonwealth and so much of the evidence for the defense as remains uncontradicted when read in the context of the record as a whole. Where the suppression court's findings are supported by the record, [the appellate court is] bound by these findings and may reverse only if the court's legal conclusions are erroneous." Commonwealth v. McAdoo, 46 A.3d 781, 783-4 (Pa.Super. 2012).

[4] The issues have been re-ordered, combined and separated for ease of discussion and review.

Moreover, "the legal principles applicable to a review of the sufficiency of probable cause affidavits are well-settled. Before an issuing authority may issue a constitutionally valid search warrant, he or she must be furnished with information sufficient to persuade a reasonable person that probable cause exists to conduct a search. The standard for evaluating a search warrant is a 'totality of the circumstances' test as set forth in Illinois v. Gates, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983), and adopted in Commonwealth v. Gray, 509 Pa. 476, 503 A.2d 921 (1985). A magistrate is to make a 'practical, common sense decision whether, given all the circumstances set forth in the affidavit before him, including the 'veracity' and 'basis of knowledge' of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.' The information offered to establish probable cause must be viewed in a common sense, non-technical manner. Probable cause is based on a finding of probability, not a prima facie showing of criminal activity, and deference is to be accorded to a magistrate's finding of probable cause." Commonwealth v. Ryerson, 817 A.2d 510, 513-4 (Pa.Super. 2003).

A review of the four-corners of the Affidavit of Probable Cause reveals ample facts in support of the finding of probable cause necessary for the search warrant. Without even considering the evidence questioned by the Defendant, the Affidavit notes the casino footage of the dark blue Ford Expedition following M[redacted] E[redacted] out of the casino parking lot, the statement of J[redacted] M[redacted] wherein the Defendant was seen leaving A[redacted] A[redacted]'s building at the time of her rape and driving off in a dark blue Ford Explorer, Officer Devenyl's identification of the Defendant and the dark blue Ford Expedition being driven by and registered to the Defendant, the Defendant's relationship with Eboni LeSesne, a resident of the Cascades Apartment Complex near the scene of the M[redacted] M[redacted]r rape and Cascades Management's

identification of the Defendant's dark blue Ford Explorer as being seen parked in the complex at the time of M[redacted] M[redacted]r's rape on January 10, 2012. A common-sense reading of this evidence certainly establishes sufficient probable cause to justify the issuance of the search warrant.

Moreover, the Defendant's claims of deliberate falsehoods and mischaracterizations of evidence are simply not borne out by a close reading of the Affidavit. The Affidavit notes P[redacted] L[redacted]'s identification of the assailant as "Black Art," but also mentions his sister-in-law's identification of the assailant as an African-American man. The Defendant places a great deal of emphasis on the absence of Frankie A's name in the Affidavit however, because the police had determined that Frank Auld was Caucasian and bedridden and the suspect was "Black Art" during their hospital visit to Mr. L[redacted] shortly after the beating, it was not a mischaracterization of any evidence when the Affidavit did not discuss "Frankie A." As to the hoodie issue, the hoodie is alternately described as being "dark-colored", "navy blue" and "bluish-grey". In two of the assaults, the assailant is simply described as wearing "dark clothing". There is nothing unusual or improper about these descriptions. As discussed more fully below, see Issue 10, *infra*, there was no averment that the Defendant had only one hoodie and the color of the hoodie was not probative of the Defendant's guilt or innocence.

Ultimately, a common-sense reading of the four-corners of the Affidavit of Probable Cause demonstrates ample evidence to support the issuance of a search warrant. This claim is meritless.

The Defendant also argues that this Court erred in failing to re-open the record to include what he claims were "additional fabrications and material omissions" contained in the Affidavit. This Court notes that no such request to re-open was made by the Defendant during trial.

The decision to re-open a suppression hearing is at the discretion of the trial court. Commonwealth v. Branch, 437 A.2d 748, 751 (Pa.Super. 1981). Reference is made to the discussion above. Although the police eventually received information from another witness named Justin Lee, a.k.a. Pumpkinhead, that the ring the Defendant was attempting to sell contained multiple stones (T.T. p. 347), whereas M[redacted] M[redacted]'s ring only had one (1) stone, this did not impact this Court's previous ruling on the Motion to Suppress. As discussed above, the Affidavit was more than sufficient to establish probable cause for the reasons previously discussed, this Court was well within its discretion in not making a *sua sponte* decision to re-open the suppression hearing. This claim must also fail.

2. *Waiver of Counsel*

Next, the Defendant argues that this Court erred in failing to grant his request for the appointment of new counsel and claims that this Court's refusal to do so forced him to proceed pro se and amounted to an unknowing, involuntary and unintelligent waiver of counsel. This claim is utterly without merit.

It is well-established that "'the right to appointed counsel does not include the right to counsel of the defendant's choice'... Moreover, whether to grant a defendant's petition to replace court appointed counsel s a decision which is left to the sound discretion of the trial court. As a general rule, however, a defendant must show irreconcilable differences between himself and his court appointed counsel before a trial court will be reversed for abuse of discretion in refusing to appoint new counsel... In some cases, [our appellate courts] have concluded that 'substantial reasons' or 'irreconcilable differences' warranting appointment of new counsel are not established where the defendant merely alleges a strained relationship with counsel, **where there is a difference of opinion in trial strategy**, where the defendant lacks

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confidence in counsel's ability or where there is a brevity of pretrial communications." Commonwealth v. Floyd, 937 A.2d 494, 497 (Pa.Super. 2007), internal citations omitted.

"Before a defendant is permitted to proceed pro se, however, the defendant must first demonstrate that he knowingly, voluntarily and intelligently waives his constitutional right to the assistance of counsel...The "probing colloquy" standard requires Pennsylvania trial courts to make a searching and formal inquiry into the questions of (1) whether the defendant is aware of his right to counsel or not and (2) whether the defendant is aware of the consequences of waiving that right or not." Commonwealth v. Starr, 664 A.2d 1326, 1335 (Pa. 1995). Specifically, the court must ensure:

> *(a) that the defendant understands that he or she has the right to be represented by counsel, and the right to have free counsel appointed if the defendant is indigent;*
>
> *(b) that the defendant understands the nature of the charges against the defendant and the elements of each of those charges;*
>
> *(c) that the defendant is aware of the permissible range of sentences and/or fines for the offenses charged;*
>
> *(d) that the defendant understands that if he or she waives the right to counsel, the defendant will still be bound by all the normal rules of procedure and that counsel would be familiar with these rules;*
>
> *(e) that the defendant understands that there are possible defenses to these charges that counsel might be aware of, and if these defenses are not raised at trial, they may be lost permanently; and*
>
> *(f) that the defendant understands that, in addition to the defenses, the defendant has many rights that, if not timely asserted, may be lost permanently; and that if errors occur and are not timely objected to, or otherwise timely raised by the defendant, these errors may be lost permanently.*

Pa.R.Crim.Pro. 122(A)(2).

Initially, it bears mention that from time of his arrest until the time of trial, the Defendant was represented by four (4) different attorneys: Blaine Jones, Esquire; Wendy Williams, Esquire; Art Ettinger, Esquire of the Allegheny County Office of the Public Defender; and J. Richard Narvin, Esquire assisted by Violet Silko, Esquire, both of the Office of Conflict Counsel. Attorneys Ettinger, Narvin and Silko were all court-appointed attorneys.

The trial of this matter was initially scheduled for September 12, 2012, at which time the Defendant was represented by Public Defender Ettinger. Only days before the trial was scheduled to begin, Attorney Ettinger filed a Motion to Withdraw as counsel and the Defendant filed pro se Motions to Postpone Trial and for Appointment of Counsel. This Court granted the motions, appointed attorney Narvin of the Office of Conflict Counsel and re-scheduled the trial until January 31, 2013.

On February 4, 2013, after a jury had already been chosen, witness brought in from out-of-town and the trial was scheduled to begin the next day, attorney Narvin filed a Motion to Withdraw as counsel. At a hearing on the Motion, Attorney Narvin indicated that the Defendant no longer wished for Mr. Narvin to represent him. Upon this Court's inquiry into the reasons for the Defendant's request, it was determined that the Defendant did not agree with Attorney Narvin's assessment of the case and the available defenses and that the Defendant was demanding that Attorney Narvin call various witnesses that Attorney Narvin believed would be helpful to the Commonwealth. The Defendant alleged that Attorney Narvin did not properly investigate the case, with which Mr. Narvin disagreed, citing the work he had done and the hiring of a private investigator which is borne out by the record inasmuch as that investigator was appointed for the Defendant by this Court at Mr. Narvin's request. The conflict was further elucidated as follows:

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THE DEFENDANT: This is my point, Your Honor, if I want to subpoena someone and I want them to get on the stand so we can cross-examine or have them as our witness, I have that right.

THE COURT: Well, you have that right under certain conditions. One, it has to be relevant to the case. Two, we have to be able to subpoena him. Three, you can't ask any lawyer to violate an ethical duty and their oath to the court.

So do you have another witness you want subpoenaed?

THE DEFENDANT: I would like all the doctors.

THE COURT: What?

THE DEFENDANT: Any medical doctor or examiner that's involved in this case, I would like to get to cross-examine them.

If the Commonwealth doesn't call them, I would like to have them on the stand.

MR. NARVIN: I'm assuming at this point –

THE DEFENDANT: All the detectives as well.

THE COURT: Now, why would you be calling the people to the stand that are going to testify against you? Let's think this through. Do you think –

THE DEFENDANT: No, no –

THE COURT: Do you think any of the detectives involved in this case are going to get to the stand and give you anything whatsoever that is helpful?

THE DEFENDANT: Do I have the right to have that? Yes, Your Honor.

THE COURT: You'll have to ask your lawyers.

THE DEFENDANT: Well, I already had that conversation. That's where we have a conflict at.

I'm asking, do I have the right to have them questioned?

MR. NARVIN – Your Honor –

THE DEFENDANT: Whether they call them or not, do I have that right?

MR. NARVIN: Your Honor, this is part of the issue as far as the witnesses go. I will not call witnesses that I believe will be helpful to the prosecution and of no

value to Mr. Henderson, and I don't care how much Mr. Henderson requests me to do that. I will not do that.

THE COURT: And you know you have no duty to do so. Okay. That's it. See you tomorrow.

THE DEFENDANT: Okay. Well, I will represent myself. I no longer want him.

THE COURT: Okay. Now, if you are going to represent yourself, let's sit down. I'll give you some more rules.

(Colloquy and Wavier of Counsel Transcript, p. 8-11).

At the hearing, this Court cautioned the Defendant against representing himself and urged him to allow Mr. Narvin to continue with the representation:

THE COURT: Are you going to represent yourself? Those are your two choices. You can either represent yourself and Mr. Narvin will sit with you; you can allow Mr. Narvin to represent you, which, of course, is the only really good solution here; or you can have an attorney here at 9:30 in the morning that you have paid that is ready and prepared to go to trial. This case will not be postponed.

THE DEFENDANT: Excuse me, Your Honor, no disrespect to you or this courts, me and Mr. Narvin disagree on absolutely everything.

THE COURT: You don't have to take Mr. Narvin home to Thanksgiving dinner. He's a good lawyer and he'll do a good job of representing you.

THE DEFENDANT: Ma'am –

THE COURT: He knows what he's doing. You don't' know, Mr. Henderson –

THE DEFENDANT: Ma'am –

THE COURT: You don't' know the rules or the laws.

THE DEFENDANT: I know my case. That's what I know.

THE COURT: And so does Mr. Narvin.

(Colloquy and Waiver of Counsel Transcript, p. 3-4).

This Court then engaged in an extensive colloquy regarding the Defendant's choice to represent himself:

THE COURT: There's another problem though, Mr. Henderson. If you represent yourself – this is something you really need to think about – you cannot later claim that you had ineffective assistance of counsel because you're representing yourself. You're giving up that waiver.

THE DEFENDANT: I understand to a certain degree.

THE COURT: Well, wait. What don't you understand about it, because you have to understand to all degrees?

THE DEFENDANT: Well, am I representing myself or is Mr. Narvin representing me?

THE COURT: Well, that's your choice. You just told me you were representing – can you make up your mind here?

THE DEFENDANT: No ma'am. I would rather represent myself if he won't call – if he won't subpoena the detectives and the doctors to the stand.

THE COURT: Okay. Do you understand the nature of the charges against you and that there are four informations?

MR. NARVIN: Three separate informations, four distinct cases.

THE COURT: Four cases, three informations.

In one information, you were charged with rape, two counts of aggravated indecent assault, sexual assault, indecent assault, robbery, intimidation, burglary. Persons not to possess a firearm has been severed out.

Unlawful restraint, false imprisonment, terroristic threats, theft, receiving, access device fraud, possession of an instrument of crime, rape, involuntary deviate sexual intercourse, two counts of aggravated indecent assault, sexual assault, indecent assault, robbery, serious bodily injury, intimidation of witnesses, unlawful restraint, false imprisonment, terroristic threats, theft by unlawful taking, receiving stolen property. Person not to possess has been severed out. Robbery, intimidation, unlawful restraint, false imprisonment, terroristic threats, recklessly endangering another person and possession of instrument of crime for which you could receive, I don't know, 150 years in jail give or take.

At the second information, you are charged with rape, involuntary deviate sexual intercourse, aggravated indecent assault two counts, sexual assault, indecent assault, robbery, burglary.

Person not to possess has been severed.

Possession of an instrument of crime, false imprisonment, unlawful restraint, terroristic threats, theft and receiving stolen property, which is probably another 70 years, give or take...

...So if found guilty, you could receive in excess of 200, 300 years. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Okay.

THE DEFENDANT: May I ask you a question?

THE COURT: No. Do you understand that if you waive the right to counsel, you are bound by all the normal rules of procedures [sic] and that counsel would be familiar with these rules and adhere to them? Do you understand that?

THE DEFENDANT: Um-hum.

THE COURT: Answer yes or no.

THE DEFENDANT: Yes.

THE COURT: Do you understand that are possible defenses to these charges with which counsel may be aware of, and if these defenses are not raised by you at trial, they may be lost permanently?

THE DEFENDANT: Yes.

THE COURT: Do you understand that in addition to the defenses, that you have many rights which, if they are not timely asserted, may be lost permanently, and that if errors occur and are not timely objected to or otherwise timely raised, these errors may be lost permanently?

THE DEFENDANT: I understand.

THE COURT: Hum?

THE DEFENDANT: I understand.

THE COURT: Okay.

(Colloquy and Waiver of Counsel Transcript, p. 13-17).

The next day, immediately prior to the start of trial, this Court ***again*** urged the Defendant to allow counsel to represent him:

> THE COURT: Okay. Also, so that the record is clear, yesterday Mr. Henderson waived his right to have counsel present. The Court conducted the entire colloquy on the waiver of counsel. Veronica Trettel was the court reporter who took the notes of transcript down. That will be a part of this record.
>
> I further was asked today to allow Mr. Henderson's family to speak with him. They spoke with him for some 45 minutes. I believe Ms. Silko was present during most of that trying to convince Mr. Henderson to allow Mr. Narvin and Ms. Silko to represent him during the course of the trial. He has declined to do so. Is that correct, Mr. Henderson?
>
> THE DEFENDANT: Excuse me, ma'am?
>
> THE COURT: You talked to your family today?
>
> THE DEFENDANT: Yes.
>
> THE COURT: They tried to talk you into letting the lawyers represent you, and you don't want them to do that?
>
> THE DEFENDANT: Correct.
>
> THE COURT: Now, I'm going to ask you a question, and I want you to listen to it. You're taking your loved ones, your mother and your father and your brothers to the airport. When you get there, you find out that there is a mechanical problem on one of the jets. Would you seek to fix that yourself, hoping that you did a good job, or would you want a mechanic that had years of experience to fix it so that your loved ones would be safe on their airplane trip?
>
> THE DEFENDANT: In answering your question, I would choose the mechanic.
>
> THE COURT: Okay, well, the reason I'm asking you this is because Mr. Narvin and Ms. Silko are the mechanics of the law. They know what is going on in the law.
>
> **And I truly believe it is in your best interest to have somebody that is competent and a good attorney represent you. And I'm going to ask you again to consider letting them represent you.**
>
> THE DEFENDANT: Well, ma'am, excuse me, Your Honor.
>
> THE COURT: It's yes or no.

THE DEFENDANT: They will assist me. I will represent myself.

THE COURT: Okay. All right. Let's bring the jury down.

(Trial Transcript, p. 5-6), emphasis added.

As the record reflects, this Court made numerous attempts to convince the Defendant to allow counsel to represent him. It told him repeatedly that it was in his best interests to have counsel and not represent himself. When the Defendant refused, this Court engaged in an extensive colloquy with the Defendant, ensuring that the Defendant understood his rights and those he was giving up in choosing to represent himself. Throughout the ongoing discussion, the Defendant repeatedly refused this Court's efforts and insisted on representing himself. Under these circumstances, it is clear that the Defendant's waiver of counsel was knowing, voluntary and intelligent and this Court did not err in allowing the Defendant to represent himself. This claim is meritless.

3. *Failure to Appoint New Counsel for Sentencing*

Next, the Defendant also argues that this Court erred in failing to appoint him new counsel for the sentencing hearing. This claim is meritless on its face, inasmuch as this Court *did* appoint counsel for sentencing. The Defendant's dislike of Mr. Narvin does not change the fact that the Defendant received adequate and effective counsel at the sentencing hearing. "The right to appointed counsel does not include the right to counsel of the defendant's choice." Floyd, *supra* at 497, citing Commonwealth v. Albrecht, 720 A.2d 693, 709 (Pa. 1998). This claim is must fail.

4. Restrictions on Defendant's Movement During Trial

The Defendant also argues that this Court erred in forcing him to remain seated at counsel table during trial instead of allowing him to freely roam the courtroom and approach the witnesses and jury during questioning.

"It is universally accepted that the trial judge has the responsibility and authority to maintain in the courtroom the appropriate atmosphere for the fair and orderly disposition of the issues presented... Proper security measures fall within the trial court's exercise of discretion. When necessary to prevent a defendant from disrupting a trial and possibly injuring others, reasonable security measures will not prejudice the defendant's fair trial rights." Commonwealth v. Gross, 453 A.2d 620, 622 (Pa.Super. 1982).

At trial, the only requirement this Court placed on the Defendant was that he was to remain seated at all times during his questioning of witnesses and during his closing argument. He was not handcuffed or shackled in front of the jury. He was permitted to wear his own clothing.

Reference to the record reveals that the Defendant used his cross-examinations of the victims in a most heinous fashion to further psychologically intimidate and victimize the women. He made the already fragile women tell him they were afraid of him and that they were scared. (T.T. pp. 66, 75, 125, 197, 199). He made M[redacted] E[redacted] describe how she was hurt by the rape (T.T. p. 74-5). He made A[redacted] A[redacted] and M[redacted] M[redacted] deny that they had met before, perhaps to imply that the rapes were consensual (T.T. pp. 121, 128, 197). He made M[redacted] M[redacted] deny that he had been a guest in her house before. (T.T. p. 196-7) and that J[redacted] S[redacted] was physically and mentally abusive to her (T.T. p. 197). And in perhaps the most offensive

exchange of all, he made J S deny that he (S) had paid the Defendant money to have a threesome with M:

> Q. (The Defendant): Okay. All right. I just want to know. Is it true that you met me at the garbage disposal?
>
> A. (J S): No, it isn't.
>
> Q. About 30 days prior to that?
>
> A. I've never seen you before in my life.
>
> Q. Have you ever introduced me to M?
>
> A. No, I did not.
>
> Q. Have you ever offered me any money to have a threesome?
>
> A. No, I did not.
>
> Q. Okay. Did me and you ever exchange phone numbers?
>
> A. No.
>
> Q. Did you ever text me?
>
> A. No, I did not.

(T.T. p. 224).

The record reflects that the Defendant used his cross-examination of the victims to further the effects of his psychological torture. This Court was not about to let him also approach the witnesses physically which would only have intensified the degradation of the victims' being cross-examined by their rapist.

Moreover, as this Court noted on the record, the Sheriffs, who are responsible for guarding defendants during trial, advised this Court that they were uncomfortable with the security risks posed should the Defendant be permitted to walk about the Courtroom during trial.

At trial, this Court briefly placed its reasons on the record:

> THE COURT: However, Mr. Henderson wants to get up and walk around. The sheriffs advised me that they are not in the least bit comfortable with that. I cannot allow him to intimidate either the jury or the witnesses on the witness stand.

(T.T. p. 143-4).

Given the circumstances of this case, this Court was well within its discretion in requiring the Defendant to remain seated during the trial. This claim must fail.

5. *Acting in Concert Claim*

The Defendant next alleges that this Court was "acting in concert" with the Commonwealth to engineer a conviction. He points to an exchange following the waiver of counsel colloquy wherein this Court expressed that cross-examination is typically short for pro-se defendants, and the Assistant District Attorney used the phrase "screw up." Nothing could be farther from the truth.

As reflected in the record as a whole, this Court made every effort to look out for the Defendant's best interests by repeatedly urging him to utilize his appointed counsel, and even delaying trial so that he could meet with his family who also attempted to convince him to proceed with counsel. The record reflects that this Court treated the Defendant appropriately and on occasion even assisted him by rephrasing questions which the witnesses were having difficulty understanding.

There is no evidence whatsoever that this Court was "acting in concert" with the Commonwealth or was in any way attempting to engineer a conviction. This claim must fail.

6. Excessive Sentence

Next, the Defendant argues that the sentence imposed was excessive as it amounted to a de facto life sentence for charges not involving a homicide and that this Court additionally failed to place its reasons for imposing the sentence on the record. These claims are meritless.

The Appellate Court's "standard of review in a sentencing challenge is well-settled: Sentencing is a matter vested in the sound discretion of the sentencing judge, and a sentence will not be disturbed on appeal absent a manifest abuse of discretion. In this context, an abuse of discretion is not shown merely by an error in judgment. Rather, the appellant must establish, by reference to the record, that the sentencing court ignored or misapplied the law, exercised its judgment for reasons of partiality, prejudice, bias or ill-will, or arrived at a manifestly unreasonable decision." Commonwealth v. DiSalvo, 70 A.3d 900, 903 (Pa.Super. 2013). In more expansive terms… an abuse of discretion may not be found merely because an appellate court might have reached a different conclusion, but requires a result of manifest unreasonableness or partiality, prejudice, bias or ill-will, or such lack of support as to be clearly erroneous." Commonwealth v. Dodge, 957 A.2d 1198, 1200 (Pa.Super. 2008).

"In addition, our Supreme Court has noted that: 'the guidelines have no binding effect, create no presumption in sentencing, and do not predominate over other sentencing factors – they are advisory guideposts that are valuable, may provide an essential starting point, and that must be respected and considered; they recommend, however, rather than require a particular sentence." Commonwealth v. Glass, 50 A.3d 720, 727-8 (Pa.Super. 2012). Moreover, "it cannot be gainsaid that a permissible and legal sentence under Pennsylvania statutory law is rendered improper simply because the sentence exceeds the guidelines; The guidelines do not supersede the statute." Commonwealth v. Johnson, 873 A.3d 704, 709 (Pa.Super. 2005). "The sentencing

guidelines are advisory in nature." Commonwealth v. Bowen, 55 A.3d 1254, 1264 (Pa.Super. 2012).

When formulating a sentence, the Court is required to consider a level of "confinement that is consistent with the protection of the public, the gravity of the offense as it relates to the impact on the life of the victim and on the community and the rehabilitative needs of the defendant." 42 Pa.C.S.A. §9721(b). "'When imposing a sentence, a court is required to consider the particular circumstances of the offense and the character of the defendant'... 'In particular, the court should refer to the defendant's prior criminal record, [her] age, personal characteristics and [her] potential for rehabilitation'... Where the sentencing court has the benefit of a pre-sentence investigation report ("PSI"), we can assume the sentencing court 'was aware of the relevant information regarding the defendant's character and weighed those considerations along with the mitigating statutory factors.'" Commonwealth v. Griffin, 65 A.3d 932, 937 (Pa.Super. 2013), internal citations omitted.

At the conclusion of the trial, this Court ordered a Pre-Sentence Investigation Report, and later acknowledged it had read and considered prior to the sentencing hearing. (Sentencing Hearing Transcript, p. 2). At the hearing, this Court listened to the Defendant's statement, the arguments of his attorney and the Assistant District Attorney and the victim impact statements. It then placed its reasons for imposing sentence on the record:

> THE COURT: Mr. Henderson, you have sat here through the victim impact statements and the heinous crimes which were very, very well described by the victims themselves in this case. It is clear to this Court that you have absolutely no regard for anyone in this world including your child who you, by the way, did have at the time you committed the crimes. You may have some concern for yourself.
>
> In my opinion, you are clearly a serial rapist and sociopath, having raped three women in a period of two days. Your juvenile record for felony drugs and escape is something that the Court has considered. You stabbed two different people.

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> You did state time. You are a parole violator. You have been convicted of guns and drugs as well as the other charges that Ms. Ditka mentioned. There are eight convictions. You have been in and out of Court. You have shown no ability to rehabilitate yourself. Even being in jail and being imprisoned did not defer any future criminal activities.
>
> In my opinion, your actions in that January define the word danger. You are a danger to our communities. You are a danger to everyone in the community. You are a danger to people who want to feel safe in their houses, who want to protect their wives and their babies and their loved ones.
>
> You subjected the victims not only by committing the heinous crimes that you did, you then insulted them by questioning them and trying to intimidate them through your questions. It was an even further insult when you tried to insinuate that these actions that you took were the victim's fault or that they were consensual. You assaulted every victim time and time again. It's over now. It's over now for the victims, I hope, and I hope it's over for you.

(Sentencing Hearing Transcript, p. 37-8).

As the record reflects, this Court appropriately considered all of the relevant factors in crafting its sentence. Given the horrific and heinous nature of the series of rapes, this Court was completely within its discretion in imposing the statutory maximum sentences. Although the sentences exceeded the guideline ranges they were, in fact, legal, and this Court appropriately placed its reasons for the sentences on the record. The fact that the Defendant is now upset with the length of his sentence does not make it inappropriate or an abuse of discretion. The sentence imposed was appropriate given the facts of this case and it must be affirmed. This claim must fail.

7. *Merger Issues in Sentencing*

The Defendant also avers that this Court erred in imposing statutory maximum sentences at each of the IDSI and Rape charges with respect to M[redacted] M[redacted]r because the vaginal and anal penetration were part of the same course of conduct.

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"In all criminal cases, the same facts may support multiple convictions and separate sentences for each conviction except in cases where the offenses are greater and lesser included offenses. 'The same facts' means any act or acts which the accused has performed and any intent which the accused has manifested, regardless of whether these acts and intents are part of one criminal plan, scheme, transaction or encounter, or multiple criminal plans, schemes, transactions or encounters." Commonwealth v. Anderson, 650 A.2d 20, 22 (Pa. 1994). See also Commonwealth v. Davidson, 860 A.2d 575, 583 (Pa. 2004). Our Superior Court has further specifically held that when Rape and Involuntary Deviate Sexual Intercourse are "supported by separate facts," the two crimes do not merge for sentencing purposes. Commonwealth v. Snyder, 870 A.2d 336, 350 (Pa.Super. 2005). See also Commonwealth v. Vanderlin, 580 A.2d 820, 829 (Pa.Super. 1990).

As reflected in the record, the Defendant's attack on M[redacted] M[redacted]r was comprised of two (2) distinct penetrations: anal and vaginal.

Q. (Ms. Ditka): What happens next?

A. (M[redacted]. M[redacted]r): ...And with and ungloved hand – I could feel that there was no glove. He started fondling my vagina. And he tried inserting his fingers, but I had a tampon in, because I was on my period. I had been having issues regulating since I only had a baby four months ago. I said – after he felt that, I said, "I'm on my period." He says, "Oh, don't worry about that."

So he pulls the tampon out; and I can see he threw it up to the left side of my head, because I could see it to the left side of me. He starts fondling me. And then after that – and he's pushing my legs apart with his hand. After that he – I could hear him trying to undo his pants, trying to move things around back there. He has his penis out. He's probing like around my anus. At first I thought that's what he was going to do, he was going to rape me in my anus, because that's what it seemed like. It was somewhat forceful.

Q. M[redacted], did it penetrate your anus even to the slightest degree?

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A. Yeah. It did. Yes, it did.

Q. Did you say anything at that time?

A. I'm sorry?

Q. Did you say anything to him?

A. Once that happened, I said, "Please don't do this." And he said, "If you don't do everything that I say, I'm going to go into that room and I'm going to kill your fiancé." And after that he said, "Let's just get this over with."

So he took his ungloved hand, and he felt for the opening of my vagina. And he stuck his penis in me, raping me unwilling. It was three or four thrusts, and then he removed himself.

(T.T. p. 173-4).

It is clear that the anal penetration and the vaginal penetration of M[redacted] M[redacted]r were two separate instances of penetration, constituting two separate crimes and deserving of two separate sentences. This Court appropriately sentenced the Defendant for each and, therefore, this claim must fail.

8. Sufficiency of the Evidence

Next, the Defendant argues that the evidence was insufficient to support the Involuntary Deviate Sexual Intercourse charge. Specifically, he states that the anal penetration was "an unintentional act and occurred in the course of the rape." This claim is meritless.

When reviewing a claim relating to the sufficiency of the evidence, the appellate court must "evaluate the record 'in the light most favorable to the verdict winner giving the prosecution the benefit of all reasonable inferences to be drawn from the evidence'... 'Evidence will be deemed sufficient to support the verdict when it establishes each material element of the crime charged and the commission thereof by the accused, beyond a reasonable doubt'...Any doubt about the defendant's guilt is to be resolved by the fact finder unless the evidence is so

weak and inconclusive that, as a matter of law, no probability of fact can be drawn from the combined circumstances... The Commonwealth may sustain its burden by means of wholly circumstantial evidence...Accordingly, 'the fact that the evidence establishing a defendant's participation in a crime is circumstantial does not preclude a conviction where the evidence coupled with the reasonable inferences drawn therefrom overcomes the presumption of innocence'... Significantly, [the appellate court] may not substitute [its] judgment for that of the fact finder; thus, so long as the evidence adduced, accepted in the light most favorable to the Commonwealth, demonstrates the respective elements of a defendant's crimes beyond a reasonable doubt, the appellant's convictions will be upheld." Commonwealth v. Rahman, 2013 WL 4780771, p. 2 (Pa.Super., 2013).

Our Crimes Code defines Involuntary Deviate Sexual Intercourse as follows:

> ***§3123. Involuntary deviate sexual intercourse***
>
> *(a)* ***Offense defined.*** *– A person commits a felony of the first degree when the person engages in deviate sexual intercourse with a complainant:*
>
> *(1) by forcible compulsion*

18 Pa.C.S.A. §3123(a)(1). Our Crimes Code further defines deviate sexual intercourse as follows:

> ***§3101. Definitions***
>
> ***"Deviate sexual intercourse." Sexual intercourse*** *per os or* ***per anus*** *between human beings and any form of sexual intercourse with an animal. The term also includes penetration, however slight, of the genitals or anus of another person with a foreign object for any purpose other than good faith medical, hygienic or law enforcement procedures.*

18 Pa.C.S.A. §3101, emphasis added.

Reiterating the discussion above, M[redacted] M[redacted]r testified that the Defendant penetrated her anus with his penis in a forceful manner:

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> A. (Ms. M[redacted]r): ...He has his penis out. He's probing like around my anus. At first I thought that's what he was going to do, he was going to rape me in my anus, because that's what it seemed like. It was somewhat forceful.
>
> Q. M[redacted] did it penetrate your anus even to the slightest degree?
>
> A. Yeah. It did. Yes, it did.

(T.T. p. 173.).

The Defendant's claim that the anal penetration lacked intent or was somehow an accident is an affront to this Court. The statue does not contain an intent component and the Defendant cannot impute one by now saying that the anal penetration was only accidental in the course of his attempt to forcefully penetrate her vagina. The testimony presented at trial was crystal clear and established an instance of anal penetration without question. As such, the evidence was more than sufficient to support the conviction for Involuntary Deviate Sexual Intercourse. This claim must fail.

9. Evidentiary Rulings During Commonwealth's Closing

The Defendant also argues that the Assistant District Attorney made numerous mischaracterizations of the evidence in her closing argument and that this Court erred in overruling his objections thereto. This claim is meritless.

A trial court's rulings on matters pertaining to prosecutorial misconduct in a closing argument are reviewed "for an abuse of discretion... Comments by a prosecutor constitute reversible error only when their effect is to prejudice the jury, forming in [the jurors'] minds a fixed bias and hostility toward the defendant such that they could not weigh the evidence objectively and render a fair verdict... While it is improper for a prosecutor to offer any personal opinion as to the guilt of the defendant or the credibility of the witnesses, it is entirely proper for a prosecutor to summarize the evidence presented, to offer reasonable deduction and inferences

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from the evidence, and to argue that the evidence establishes the defendant's guilt... In addition, the prosecutor must be allowed to respond to defense counsel's arguments, and any challenged statement must be viewed not in isolation, but in the context in which it was offered... 'The prosecutor must be free to present his or her arguments with logical force and vigor,' and comments representing mere oratorical flair are not objectionable." Commonwealth v. Thomas, 54 A.3d 332, 337-8 (Pa. 2012), internal citations omitted.

The Defendant now takes issue with the following portions of Ms. Ditka's closing argument:

> MS. DITKA: Now, A[redacted] A[redacted] is starting her year fresh. She's waiting for her friends to come over for Zumba. Like most of us start the year with resolutions, we're going to get in shape. She goes out to walk her dogs.
>
> She sees somebody standing with black gloves, a black mask, the face covered and holding a box, a white box with orange with the letter "A" on it. When you take this back – she said it was in his arm. She thought he was a delivery man.
>
> THE DEFENDANT: Objection.
>
> THE COURT: Overruled.

(T.T. p. 660).

> MS. DITKA: But when [J[redacted] M[redacted]] starts seeing first responders coming to the Woodhawk Club, she goes to work at the bottom of the hill and calls the police and says, "Hey, I think I just saw something. Something is amiss here, and this is what I saw."
>
> The police take that information, and they get the traffic camera. And what do they see? A blue Ford Explorer. It's the only blue Ford product on McKnight Road. And it's not just an SUV.
>
> THE DEFENDANT: Objection, Your Honor. That's not relevant. There is no facts stating that was the only blue truck on McKnight. That's false.
>
> THE COURT: I'll overrule.

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MS. DITKA: Detective McAllister told you it was the only blue Ford product on McKnight Road that morning.

(T.T. p. 665-6).

MS. DITKA: Where is it going? Down to the North Side. How do we know that? Because you saw the video footage at the ATM of the blue Ford Explorer pulling alongside of the building.

THE DEFENDANT: Objection. I never seen any Ford Explorer near no ATM machine. That's ridiculous. No one ever seen –

THE COURT: You know what? Don't testify through your objection.

MS. DITKA: It was, Your Honor. In fact, the Defendant played it in his cross. He had them play the actual footage.

THE COURT: I will overrule your objection.

THE DEFENDANT: Oh, my goodness.

THE COURT: Mr. Henderson, no side comments.

THE DEFENDANT: All right.

(T.T. p. 666).

MS. DITKA: [M M r] calls 911 immediately. Not the next day. Not some hours later. Immediately. Just like M B . Just like A A "I've been raped. Something has happened." Now the police are on the scene. And they're setting up a checkpoint.

And what are they looking for? A masked man. And they're looking for this blue SUV. And who do they come across? Arthur Henderson driving he same blue SUV that they see in the videos of McKnight Road.

THE DEFENDANT: Objection. Objection. There was never an identification. No license plate number. No nothing. That was not the same vehicle.

THE COURT: Mr. Henderson, you object, then I rule. You cannot argue improperly what the objection is. You're overruled.

(T.T. p. 672-3).

MS. DITKA: Now, the Defendant put into evidence that he was at the casino on the day of P L 's robbery.

> THE DEFENDANT: Objection. I never stated that, and there is no record of that.
>
> THE COURT: Overruled.
>
> MS. DITKA: He put into evidence that the was at the Meadows on the day of that robbery when P[redacted] L[redacted] was there, when P[redacted] L[redacted] happened to leave with fistfuls of cash. Right? $7,000. $4,500 in one pocket, the remainder in the other.

(T.T. p. 674).

> MS. DITKA: Where was the MAC machine that Black Art went to? It was in Manchester. Where did Black Art go and get the money orders immediately after the robbery of China P[redacted]? He went to the North Side.
>
> THE DEFENDANT: Objection.
>
> THE COURT: Overruled.
>
> MS. DITKA: What did the money orders go to pay for? The money orders went to pay for a Ford Expedition. How were the money orders purchased? With $100 bills.
>
> THE DEFENDANT: Objection.
>
> THE COURT: Overruled.
>
> MS. DITKA: And how does the casino pay out money? $100 bills. Now we're starting to see a pattern. Now we're starting to see a pattern.

(T.T. p. 677-8).

> MS. DITKA: Do you see a pattern? Now, they search his car. What do they find in the car? Looky there. It's a white box with orange writing and an "A" on it. He says "That's my box." It's not even like it's a discarded box from somebody else. He takes ownership of the box.
>
> They show the box to A[redacted] and ask A[redacted] "Is this the box that the person had under their arm where they took out the tape they used before they raped you?" "Yes. It's the same box."
>
> THE DEFENDANT: Objection. She never stated that.
>
> THE COURT: Overruled.

(T.T. 678-9).

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MS. DITKA: And they took that DNA, and Arthur Henderson came in and gave a swab in his mouth. He old you DNA isn't a crime. Otherwise, we'd all be in prison. We all have it. We're full of it.

What is a crime is depositing your DNA in the vagina of M[redacted] E[redacted] when she didn't want you to. Depositing your DNA in the vagina of A[redacted] A[redacted] when she didn't invite you or want you or let you. Putting your DNA in the vagina and in the anus of M[redacted] M[redacted]r where she didn't ask you or invite you or let you. That's the crime. And that's what the detective told you.

It came back as a match, and we only did one quintillion. Remember what the scientist told you. It was eight times one to 18 zeros. Eight times one quintillion match that it was somebody else other than him. What kind of conspiracy is that? What did the Defendant keep saying to you? "Come on, now. What makes sense?" I say it right back at you. Come on, now. What makes sense? A blue car follows her home, has a burned out tail light. It's the same car seen going on McKnight Road. It's the same –

THE DEFENDANT: Objection.

THE COURT: Overruled.

MS. DITKA: It's the same car pulling up to the ATM. It's the same car leaving the Cascades.

THE DEFENDANT: Objection.

MS. DITKA:: It's the same driver.

THE COURT: Overruled.

(T.T. p. 681-2).

Viewed in their particular context as well as the narrative aspect of the closing argument in general, the statements complained of are not improper in any way. Although stated eloquently and with oratorical flair, all of the statements were factually correct and did not constitute misstatements or mischaracterizations of the evidence presented.

Rather, the above portions of the record are demonstrative of the Defendant's behavior during the Commonwealth's entire closing argument, wherein the Defendant posed numerous legally and factually invalid and speaking objections and acted in an otherwise obstreperous

manner in a clear effort to disrupt the proceedings and to testify without subjecting himself to cross-examination. For example, despite there being no evidence whatsoever that the women consented to the intercourse, the Defendant cross-examined the scientific witnesses regarding consent. Although he was warned that he was not permitted to argue consent unless he took the stand, he persisted in arguing it and then in attempting to testify during his closing argument:

> THE DEFENDANT: I have proof is what I'm saying to the things I'm talking about. You can't put me in two different places at one time. You can't make accusations and don't follow up and have proof behind it. You can't do it. Your job is to prove beyond a reasonable doubt and they haven't met that. Not even close. Not even close.
>
> One other thing is my DNA. My DNA is not a crime. My DNA is not illegal. My DNA is not proof of anything but that we had sex. That's it. How is that proof? How is that evidence? How is –
>
> MS. DITKA: Your Honor, I'm going to object. He's been warned about this.
>
> THE DEFENDANT: She loved it.

(T.T. p. 647-8).

Moreover, the Defendant's averment that the exchanges prejudiced the jury to an extent that they could not render a "fair verdict" – by which he obviously means "acquittal" - is completely without merit. While averring in very harsh terms that the jury was biased, he completely neglects to mention the total acquittal on the information relating to the P[redacted] L[redacted] robbery. If his argument were correct – that the jury was so biased by the statements as to have blindly voted for conviction without considering the evidence – then surely the charges relating to P[redacted] L[redacted] would have resulted in convictions as well. The fact that the jury completely acquitted on the P[redacted] L[redacted] charges demonstrates the care with which they jury considered the evidence in an un-biased fashion.

It is clear from a review of the Commonwealth's closing argument and the record as a whole, that all of Ms. Ditka's statements were supported by the evidence and constituted a proper and well-articulated argument. This claim is meritless.

10. Evidentiary Rulings Regarding Surveillance Video

Next, the Defendant argues that this Court erred in denying the Defendant's request to present surveillance video from the Meadow's Casino on January 9, 2012, purportedly to show that he was wearing a different color hoodie than he had been wearing earlier in the day. This claim is meritless.

"The admissibility of evidence is within the 'sound discretion' of the trial court, 'which may only be reversed upon a showing that the court abused its discretion'... 'An abuse of discretion occurs when a trial court, in reaching conclusions, overrides or misapplies the law, or exercises judgment which is manifestly unreasonable or the result of partiality, prejudice, bias or ill will." Commonwealth v. Feese, 2013 WL 5229843, p. 12 (Pa.Super. 2013), internal citations omitted.

Pursuant to Rule 402 of the Pennsylvania Rules of Evidence, in order to be admissible, evidence must be relevant. "Evidence that is not relevant is not admissible." Pa.R.Evid. 402. Rule 401 of the Pennsylvania Rules of Evidence defines relevant evidence as follows:

> *Rule 401. Test for Relevant Evidence.*
>
> *Evidence is relevant if:*
>
> *(a). it has any tendency to make a fact more or less probable than it would be without the evidence; and*
>
> *(b). the fact is of consequence in determining the action.*

Pa.R.Evid. 401.

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At trial, the Defendant sought to introduce surveillance footage from the Meadows Casino taken on the afternoon of January 9, 2012, after the third rape had occurred, for the apparent purpose of showing he was wearing a different colored hoodie than in the ATM footage two (2) days earlier:

> MR. NARVIN: The issue now is there is a video of the surveillance that took place in the Meadows Casino. Ms. Ditka, after I inquired, indicated that she showed that video to prior defense counsel, Arthur Ettinger, but is not planning on introducing it and does not have it here.
>
> I don't have any recollection of it and I don't have it. And Mr. Henderson wants that video produced for introduction at trial.
>
> MS. DITKA: If the Court remembers, we already had discovery motions on this. That was one of the last remaining pieces of evidence, and Mr. Ettinger came in and said that was clear, and that closed our discovery. I don't have it here.
>
> THE COURT: I saw the video. It shows him walking with the grey or dark colored hoody, as I recall. We're not going to relitigate that which has been relitigated.
>
> MR. NARVIN: That sounds familiar. I don't have any recollection of seeing it. When you mention that description, I do remember seeing something like that.
>
> THE COURT: So there we are. That's the problems of representing yourself.
>
> MR. NARVIN: I think it's my requirement to put it on the record.
>
> THE COURT: And you've done a fine job.
>
> MR. NARVIN: Thank you, Your Honor.
>
> MS. DITKA: Thank you.

(T.T. p. 576-7).

This Court sees no relevant purpose to this evidence. The fact that the Defendant wore two (2) different colored hoodies on two (2) different days has absolutely nothing to do with his culpability in the commission of the rapes. The Commonwealth never alleged that the Defendant had only one hoodie – in fact, as the police search demonstrated, the Defendant had multiple

hoodies of several different brands – including Champion and Nike. A[redacted] A[redacted] identified a different color hoodie than the one seen on the January 7, 2012 casino footage. Since there was never an averment that the Defendant had *only one* hoodie, video footage of him in different color hoodies is not probative of anything and has absolutely no relevance to the case. This Court was well within its discretion in denying its admission. This claim must fail.

11. Discovery Issues

Similarly, the Defendant avers a discovery violation with the above-discussed Meadows surveillance footage from January 9, 2012. He claims that the video was never turned over to the defense. However, as is evident from the record, Ms. Ditka represented to this Court that she submitted the video to the Defendant's third attorney, Art Ettinger, Esquire, and after its contents were described, Mr. Narvin indicated that he had received and reviewed that footage as well. (See T.T. p. 577, *supra*). Inasmuch as the defense clearly received the video, this claim is must fail.

12. Severance Issues

Finally, the Defendant argues that this Court erred in denying his Motion to Sever due to the prejudice from the number and nature of the charges. This claim is also meritless.

The joinder of informations is controlled by Rule 582 of the Pennsylvania Rules of Criminal Procedure which states, in relevant part:

> ***Rule 582. Joinder – Trial of Separate Indictments or Informations***
>
> *(A) Standards*
>
> *(1) Offenses charged in separate indictments or informations may be tried together if:*
>
> *(a) the evidence of each of the offenses would be admissible in a separate trial for the other and is capable of separation by the jury so that there is no danger of confusion; or*

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> (b) *the offenses charged are based on the same act or transaction.*

Pa.R.Crim.Pro. 582.

"A motion for severance is addressed to the sound discretion of the trial court, and...its decision will not be disturbed absent a manifest abuse of discretion. The critical consideration is whether the appellant was prejudiced by the trial court's decision not to sever. The appellant bears the burden of establishing such prejudice." Commonwealth v. Page, 59 A.3d 1118, 1133 (Pa.Super. 2013). "Evidence of distinct crimes...is admissible...to show a common plan, scheme or design embracing commission of multiple crimes, or to establish the identity of the perpetrator, so long as proof of one crime tends to prove the others... This will be true when there are shared similarities in the details of each crime." Commonwealth v. Keaton, 729 A.2d 529, 537 (Pa. 1999).

As discussed in great detail above, the three rapes were virtually identical in nature and method. The three (3) rapes occurred within two (2) days of each other. In each instance a man dressed in dark clothing, wearing a mask, hat and sunglasses, and carrying a gun entered the residence of a young woman by coming in behind her as she entered. In each of the cases, the man first demanded money and then made the victims take off their clothes. In each of the cases, the man then "posed" the women in a kneeling position and raped them from behind. In two of the cases, the man taped up the women's wrists and ankles in an identical fashion. In each of the cases, the man threatened to kill his victim if she did not submit to his commands.

The facts of this case clearly establish a logical connection and a common scheme, plan or design in the serial rapes. The evidence was readily separable between the three (3) rapes, and this Court makes particular reference to the analysis of the women's rape kits and comparison to

the Defendant's DNA by three (3) separate technicians. There was nothing confusing about the evidence that rendered the jury incapable of discerning between the cases.

The Defendant's prejudice argument is without merit. By its very nature, all evidence admitted by the Commonwealth is prejudicial to a criminal defendant. The rapes in question were clearly part of a crime spree committed by a serial rapist. The Defendant is undoubtedly upset with the nature and quantity of evidence against him, but ultimately, that was a consequence of his own making. The evidence was not so unduly prejudicial as to require severance and this Court was well within its discretion in denying the Motion to Sever. This claim must fail.

Accordingly, for the above reasons of fact and law, the judgment of sentence entered on March 26, 2013 must be affirmed.

BY THE COURT:

____________________________, P.J.

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CC #	Crime	Victim	Section (18 Pa.C.S.A.)	Disposition	Sentence
201201873	Rape	M E	3121(a)(1)	Guilty	10-20 years
	Involuntary Deviate Sexual Intercourse (IDSI)	M E	3123(a)(1)	Guilty	10-20 years (consecutive)
	Aggravated Indecent Assault	M E	3125(a)(1)	Guilty	No Further Penalty (NFP)
	Aggravated Indecent Assault	M E	3125(a)(2)	Guilty	NFP
	Sexual Assault	M E	3124.1	Guilty	NFP
	Indecent Assault	M E	3126(a)(2)	Guilty	NFP
	Robbery – Serious Bodily Injury	M E	3701(a)(1)(i)	Guilty	NFP
	Burglary	M E	3502	Guilty	NFP
	Persons Not to Possess Firearms	M E	6105(a)(1)	Severed	
	Possessing Instruments of a Crime	M E	907(a)	Guilty	NFP
	False Imprisonment	M E	2903	Guilty	NFP
	Unlawful Restraint	M E	2902(a)	Guilty	NFP
	Terroristic Threats	M E	2706(a)(1)	Guilty	NFP
	Theft by Unlawful Taking	M E	3921(a)	Guilty	NFP
	Receiving Stolen Property	M E	3925(a)	Guilty	NFP
201201874	Rape	A A	3121(a)(1)	Guilty	10-20 years (consecutive)
	Aggravated Indecent Assault	A A	3125(a)(1)	Guilty	NFP
	Aggravated Indecent Assault	A A	3125(a)(1)	Guilty	NFP
	Sexual Assault	A A	3124.1	Guilty	NFP
	Indecent Assault	A A	3126(a)(1)	Guilty	NFP
	Robbery – Serious Bodily Injury	A A	3701(a)(1)(i)	Guilty	NFP
	Intimidation of Witness or Victim	A A	4952	Guilty	NFP
	Burglary	A A	3502(c)(1)	Guilty	NFP
	Persons Not to Possess Firearm	A A	6105(a)(1)	Severed	
	Unlawful Restraint	A A	2902(a)	Guilty	NFP
	False Imprisonment	A A	2903(a)	Guilty	NFP
	Terroristic Threats	A A	2706(a)(1)	Guilty	NFP
	Theft by Unlawful Taking	A A	3921(a)	Guilty	NFP
	Receiving Stolen Property	A A	3925(a)	Guilty	NFP
	Access Device Fraud	A A	4016(a)(1)	Guilty	NFP
	Possessing Instruments of Crime	A A	907(a)	Guilty	NFP
	Rape	M M r S	3121(a)(1)	Guilty	10-20 years (consecutive)
	IDSI	M M r S	3123(a)(1)	Guilty	10-20 years

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					(consecutive)
	Aggravated Indecent Assault	M[redacted] M[redacted]r S[redacted]	3125(a)(2)	Guilty	NFP
	Aggravated Indecent Assault	M[redacted] M[redacted]r S[redacted]	3125(a)(2)	Guilty	NFP
	Sexual Assault	M[redacted] M[redacted]r S[redacted]	3124.1	Guilty	NFP
	Indecent Assault	M[redacted] M[redacted]r S[redacted]	3126(a)(2)	Guilty	NFP
	Robbery – Serious Bodily Injury	M[redacted] M[redacted]r S[redacted]	3701(a)(1)(i)	Guilty	NFP
	Intimidation of Witness or Victim	M[redacted] M[redacted]r S[redacted]	4952	Guilty	NFP
	Unlawful Restraint	M[redacted] M[redacted]r S[redacted]	2902(a)	Guilty	NFP
	False Imprisonment	M[redacted] M[redacted]r S[redacted]	2903(a)	Guilty	NFP
	Terroristic Threats	M[redacted] M[redacted]r S[redacted]	2706(a)(1)	Guilty	NFP
	Theft by Unlawful Taking	M[redacted] M[redacted]r S[redacted]	3921(a)(1)	Guilty	NFP
	Receiving Stolen Property	M[redacted] M[redacted]r S[redacted]	3925(a)	Guilty	NFP
	Burglary	M[redacted] M[redacted]r S[redacted]	3502(c)(1)	Guilty	NFP
	Persons Not to Possess Firearm	M[redacted] M[redacted]r S[redacted]	6105(a)(1)	Severed	
	Robbery – Serious Bodily Injury	J[redacted] S[redacted]	3701(a)(1)(i)	Guilty	10-20 years (consecutive)
	Intimidation of Witness or Victim	J[redacted] S[redacted]	4952	Guilty	NFP
	Unlawful Restraint	J[redacted] S[redacted]	2902(a)	Guilty	NFP
	False Imprisonment	J[redacted] S[redacted]	2903(a)	Guilty	NFP
	Terroristic Threats	J[redacted] S[redacted]	2706(a)(1)	Guilty	NFP
	Recklessly Endangering Another Person	Baby [redacted] S[redacted]	2705	Guilty	1-2 years (consecutive)
	Possessing Instruments of Crime with Criminal Intent	M[redacted] M[redacted]r S[redacted]	907(a)	Guilty	NFP