

STATE OF NEW YORK  
SUPREME COURT: COUNTY OF ERIE

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THE PEOPLE OF THE STATE OF NEW YORK

v.

**MOTION IN LIMINE /  
MOLINEUX/SANDOVAL  
RESPONSE AFFIRMATION**

[REDACTED]

Defendant

Indictment No. [REDACTED]

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[REDACTED] Esq., an attorney licensed to practice law in the courts of this State, under penalties of perjury pursuant to CPLR 2106(a), affirms the following statements to be true.

1. I, along with co-counsel, [REDACTED] Esq., are the attorneys for the defendant, SAYED NASIR, who is charged in this indictment with murder in the first degree in violation of NY PL §125.27(1)(a)(vii), murder in the second degree in violation of NY PL §125.25(1), and one count of Aggravated Criminal Contempt in violation of NY PL §215.52.
2. I make this affirmation in response to the prosecution's motion in limine dated [REDACTED] 2023, as a response to the motions made by the prosecution regarding *Molineux* and *Sandoval*, and in support of the defendant's motion for the relief described below.

**I MOTION IN LIMINE RESPONSE – 911 Call**

**[REDACTED] – 911 call – Excited Utterance**

3. The prosecutors filed a motion for an order to allow them to introduce into evidence the 911 call of [REDACTED] as an excited utterance.

4. In their arguments, the prosecution acknowledges that Mr. ██████ did not witness what he alleges to be true in his 911 call, where he states: “the husband came and hurt the wife and she’s bleeding so badly.” Earlier in paragraph 6 of the prosecution’s motion, they state as fact that “█████ ran downstairs, *saw that the victim HAD been severely injured.*”
5. ██████ by the prosecution’s own stated facts, did not have personal knowledge that ██████ killed or injured the victim, he only inferred based on the condition of the victim and Mr. ██████ allegedly running away what happened. He is communicating no facts that he personally observed.
6. We do not need to get to whether this was a stressful event because this 911 call does not fit under the excited utterance rule. Mr. ██████ guesses as to what happened should not be played for the jury.

## II *SANDOVAL/MOLINEUX*

7. The Prosecution has filed a motion seeking to have prior and subsequent bad acts of the Defendant admitted.
8. The Defense understands that for Counts 1 and 3 of the indictment, the Prosecution must present evidence of an order of protection and therefore acknowledge that some of the Defendant’s bad acts/criminal history will inevitably be introduced. Anything beyond the October 8<sup>th</sup> issuance of an order of protection by Judge Montour however, would be more prejudicial than probative.

### Prior Bad Acts

9. The Prosecution wishes to introduce the following bad acts:
- a. On some date not specified by the Prosecution, Mr. [REDACTED] “reacted with physical violence at different points in time. The Defendant would approach [REDACTED] and grab her to prevent her from fleeing, leaving bruising and red marks along her arms and back.” (paragraph 13) While the date of the alleged behavior was not specified, the Prosecution alleges this behavior resulted in a reduced plea to Attempted Assault in the 3<sup>rd</sup> degree on [REDACTED] (paragraph 18)
  - b. On dates not specified by the Prosecution, the defendant “broke several orders of protection by coming to [REDACTED] stating he wanted to talk with her and frequently causing injuries to [REDACTED] when she tried to retreat to the house or walk away from the defendant.” (paragraph 13)
  - c. The Prosecution alleges that “after *each* incident between the defendant and [REDACTED] [REDACTED] the Depew Police Department were called and brought the defendant to the department for questioning. After *each* incident, [REDACTED] pressed charges against the defendant for violating the order of protection and for assaulting her.” (paragraph 14)
  - d. The prosecution alleges that on [REDACTED] the defendant violated the order of protection by showing up at the victim’s residence and threatened to kill the victim and her son. They also allege that the victim called her sister who heard the defendant’s voice over the phone.

- e. The prosecution alleges that on [REDACTED] that there was an incident that involved domestic violence and that this incident led to Mr. [REDACTED] August 2, [REDACTED] guilty plea to one count of Criminal Trespass in the Second Degree.
- f. The prosecution alleges that at some point during a 3 month period leading up to the indicted incident, the defendant started a verbal and physical altercation with the brother-in-law over his wife.
- g. The prosecution alleges that between the August 2, [REDACTED] guilty plea and the incident covered by this indictment that the defendant called the victim multiple times on her cell phone.
- h. The prosecution alleges that “in the several weeks leading up to the murder”, the deceased’s sister and brother-in-law observed the defendant in the area around their house. Additionally, the Prosecution alleges that the neighbor, Ms. [REDACTED] observed the defendant driving around the house.

#### **Issues with the Bad Acts Generally**

- 10. The Prosecutors wish to introduce some of the above bad acts with no or very little specificity. In “a,” the Prosecutor alleges that “after [REDACTED] first informed the defendant about her intent to end the relationship, the defendant violently grabbed [REDACTED] *at different points in time*” (paragraph 17). They do not say when these incidents happened.
- 11. The prosecutors state as fact: “after *each* incident between defendant and [REDACTED] the Depew Police Department were called and brought the defendant to the department for questioning. After *each* incident, [REDACTED] pressed charges against the defendant for violating the order of protection and for assaulting her.” (paragraph 14).



12. If it is fact that the Depew Police Department were called in and they interviewed the defendant *each* incident, we should have paperwork, body worn camera footage, audio recordings, etc., and we should know the dates that these incidents allegedly happened.
13. There is a similar issue with “b” as there was with “a.” If we take the Prosecution’s statement of facts as true – that Depew Police were brought in *each* time there was an incident (paragraph 14) – the Prosecutors could easily provide dates, audio recordings, body worn cameras, etc. regarding each of these incidents.
14. Similarly, for “c,” there should be a recording or at least a record of the interaction between the Depew Police Department and Mr. [REDACTED] if it was true that Depew Police interviewed Mr. [REDACTED] *each* incident (paragraph 14).

**Bad Acts for Purposes of Motive, Intent, Lack of Mistake/Accident, Common**

**Scheme or Plan and to Complete the Narrative**

15. The Prosecution acknowledges that generally, evidence of prior bad acts is not admissible as evidence in chief that a defendant committed a charged crime. They then spell out why they feel these incidents are exceptions.
16. Relative to Completing the Narrative, defense counsel acknowledges that the Order of Protection issued in August of [REDACTED] will be necessary to prove elements of their case in chief. The facts underlying what led to an Order of Protection, however, are not present and conjecture should not be allowed in as evidence. The Defendant did admit guilt however, to Criminal Trespass in the second degree. Defense counsel maintains that the admission of this would be for the purposes of propensity and is more prejudicial than probative.

17. The nature of this offense obviates the need of the Prosecution to demonstrate Lack of Mistake/Accident. The Prosecution is not charging this case as a Manslaughter or as some Negligent Homicide. There is no reason to introduce prior bad acts for the purposes of showing a lack of mistake or accident. If the Prosecutor must show a lack of accident or mistake, this case is severely overcharged.
18. The prosecution cites *People v. Henson*, 33 N.Y.2d (1973) when they say that “The Court of Appeals has held that admission of evidence of uncharged crimes and bad acts is ‘especially warranted’ where, as in the instant case, ‘the crime charged has occurred in the privacy of the home and the facts are not easily unraveled.’” The case at hand is distinguishable in many ways. *Henson* dealt with Criminally Negligent Homicide and the evidence was presented due to the defense presenting the child victim as being “accident prone.” The instant case does not deal with facts that are analogous to *Henson* and the ruling should not be applied to the current case which deals with an alleged intentional act.
19. The bad acts that the Prosecution wishes to have admitted only serve to bolster evidence that will already be admitted. There are multiple knife wounds made with a large knife. The facts of this case do not point to the need to establish that this death was accidental or a mistake with evidence that is normally inadmissible.
20. The Prosecution also wishes to have these bad acts admitted to show a common scheme or plan. They rely on *People v. Washpun* 134 A.D.2d 858 (4<sup>th</sup> Dept. 1987). In *Washpun*, however, the Court allowed for the defendant to be ***cross-examined*** as to the crimes involving the same victim, not to be introduced in their case in chief. They also rely on *People v. Hill*, 163 A.D.2d 813 (4<sup>th</sup> Dept. 1990) where Defense Counsel did not even

make an argument regarding uncharged bad acts. The Court seemed to *sua sponte* assume a non-existent argument only presented at the appeal level. Both *Washpun* and *Hill* have facts that easily distinguish the current case from the rulings by the Court.

**Admissibility Pursuant to *Sandoval* to impeach Defendant should he Testify**

21. The same arguments regarding specificity and vagueness mentioned in paragraphs 11-15 apply here as well. If it is a fact that the Depew Police interviewed Mr. [REDACTED] *each* time, we should have that available to Defense Counsel.

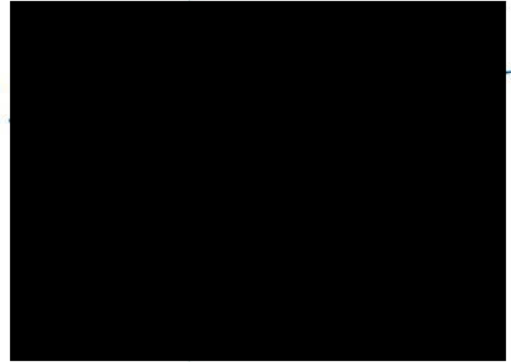
**Conclusion**

22. “Evidence of uncharged crimes is inadmissible where its purpose is only to show a defendant’s bad character or propensity toward crime” (People v. Brewer, 129 AD3d 1619 [4<sup>th</sup> Dept. 2015])
23. The purpose for the admissibility of the listed prior bad acts is propensity. Defense counsel acknowledges, however, that the Order of Protection issued August 2, [REDACTED] is a necessary element. Seeing as how the Defendant pled to a lesser included offense, however, the underlying allegations were never proven.
24. Defense counsel submits that any probative value is severely outweighed by the prejudicial effect they have on Mr. [REDACTED]. The long line of jurisprudence cited by the Prosecutors either does not apply to this case or is easily distinguishable.

**WHEREFORE**, Defense Counsel respectfully request that this trial court deny: 1) the Prosecution’s motion for the introduction of [REDACTED] 911 call; 2) the Prosecution’s application and motion permitting the Prosecution to introduce evidence of these alleged prior bad acts on their direct case; and 3) the Prosecution’s application and motion permitting the Prosecution to introduce these alleged prior bad acts for the

purposes of cross-examination. If the Prosecution's motion is granted in full or in part, we ask that the Court give the appropriate limiting instructions.

DATED: Buffalo, New York  
[REDACTED]



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