IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,
PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	
	:	CR-1187-2022
vs.	:	
	:	
THERESA SALAZAR, Defendant.	:	Opinion and Order on Post Sentence Motion

OPINION AND ORDER

AND NOW, this 21st day of May 2024, upon consideration of the Defendant's Post Sentence Motion (the "Motion"),[1] and the arguments of counsel,[2] it is hereby ORDERED and DIRECTED that the Motion is DENIED, as explained below.

I. BACKGROUND.

This case arises out of an incident on July 3, 2022, when a white Saturn minivan operated by the Defendant crashed through the doors of the Little League Museum located along Route 15 in South Williamsport, Lycoming County, Pennsylvania (the "Incident"). For several decades prior to the Incident, the Defendant maintained a vendetta against Little League Baseball.[3] She had numerous contacts with Little League officials, sent numerous messages to them and attempted to extract monetary compensation from the organization. Little League sent the Defendant multiple cease and desist letters.

Being the July 4th Holiday weekend, the Little League Museum was occupied by a number of employees and patrons at the time of the Incident. The vehicle was

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[1] Defendant's Post Sentence Motions, filed January 23, 2024.
[2] The Court heard argument on the Motion on April 11, 2024. Order, dated and entered April 1, 2024. At argument, Attorney Diemer represented the Defendant, and Assistant District Attorney Welickovitch represented the Commonwealth. The Defendant appeared by Polycom.
[3] Little League recognizes Carl Stotz as the founder of Little League Baseball. Defendant is a descendant of two brothers named Bert and George Bebble, who managed teams during Little League's inaugural season. Defendant maintains that the Bebbles should be recognized as co-founders of Little League, along with Carl Stotz.

travelling southbound on Route 15 Highway in front of the museum. It stopped and waited for oncoming traffic before making a left turn, crossing the northbound lane and entering Little League property. It then crashed into the entryway and momentarily stopped in the vestibule. At least one Little League employee began to approach the vehicle to check on the driver, when the driver hit the accelerator, crashed through another set of lobby doors and drove further into the building until hitting an interior wall approximately 20-25 feet north of the interior lobby doors.

Four Museum employees and two patrons were in the immediate area of the impact, and approximately three dozen other employees and patrons were in the building at the time. At least some of those individuals were in plain view of the Defendant when she accelerated further into the building. Upon hitting the interior wall, Defendant turned to an employee and said, "I am Teresa Salazar. You know who I am, and you should be scared." The employees and patrons largely fled the immediate area of the accident, but the Defendant remained and was taken into custody by South Williamsport Police shortly thereafter.

The Commonwealth filed a multi-count criminal complaint against the Defendant, and a jury trial was held on November 7, 8 and 9, 2023. The thirteen charges tried to the jury were: Attempted Murder[4] (Count 1), Risking Catastrophe[5]

[4] 18 Pa. C.S. § 901(a) ("A person commits an attempt when, with intent to commit a specific crime, he does any act which constitutes a substantial step toward the commission of that crime"); 18 Pa. C.S. § 2501(a) ("A person is guilty of criminal homicide if he intentionally, knowingly, recklessly or negligently causes the death of another human being"); 18 Pa. C.S. § 2502 (defining the crime of murder). This is a felony of the first degree. 18 Pa. C.S. §§ 905(a) (grading criminal attempt as a crime[] of the same grade and degree as the most serious offense which is attempted"), 2502(c) ("Murder of the third degree is a felony of the first degree").

[5] 18 Pa. C.S. § 3302(b) ("A person is guilty of a felony of the third degree if he recklessly creates a risk of catastrophe in the employment of fire, explosives or other dangerous means listed in subsection (a) of this section"). The "dangerous means" listed in subsection (a) are "explosion, fire, flood, avalanche, collapse of building, release of poison gas, radioactive material or other harmful or destructive force or substance, or by any other means of causing potentially widespread injury or damage, including selling, dealing in or otherwise providing licenses or permits to transport hazardous materials…." 18 Pa. C.S. § 3302(a).

(Count 2), Criminal Trespass-Breaks Into[6] (Count 3), Aggravated Assault-Attempt to Cause Bodily Injury with a Deadly Weapon[7] (Count 4), Terroristic Threats-Serious Public Inconvenience[8] (Count 5), Criminal Mischief[9] (Count 6), six counts of Recklessly Endangering Another Person[10] (Counts 7-12), and Aggravated Assault-Attempt to Cause Serious Bodily Injury[11] (Count 13).

After the three day trial, the jury found the Defendant "not guilty" of Attempted Murder (Count 1), Aggravated Assault-Attempt to Cause Bodily Injury with a Deadly Weapon (Count 4), and Aggravated Assault-Attempt to Cause Serious Bodily Injury (Count 13) and "guilty" of the remaining ten charges (Counts 2, 3, 5-12).[12] On January 18, 2024, the Court sentenced Defendant to an aggregate term of incarceration at a State Correctional Institution for an indeterminate period, the

[6] 18 Pa. C.S. § 3503(a)(1)(ii) ("A person commits an offense if, knowing that he is not licensed or privileged to do so, he … breaks into any building or occupied structure or separately secured or occupied portion thereof"). "Breaks into" means "[t]o gain entry by force, breaking, intimidation, unauthorized opening of locks, or through an opening not designed for human access." 18 Pa. C.S. § 3503(a)(3). An "occupied structure" is "[a]ny structure, vehicle or place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present." 18 Pa. C.S. § 3501. This is a felony of the second degree. 18 Pa. C.S. § 3503(a)(2).

[7] 18 Pa. C.S. § 2702(a)(4) ("A person is guilty of aggravated assault if he … attempts to cause or intentionally or knowingly causes bodily injury to another with a deadly weapon"). This is a felony of the second degree. 18 Pa. C.S. § 2702(b).

[8] 18 Pa. C.S. § 2706(a)(3) ("A person commits the crime of terroristic threats if the person communicates, either directly or indirectly, a threat to … otherwise cause serious public inconvenience, or cause terror or serious public inconvenience with reckless disregard of the risk of causing such terror or inconvenience"). This is a felony of the third degree. 18 Pa. C.S. § 2706(d).

[9] 18 Pa. C.S. § 3304(a)(1) ("A person is guilty of criminal mischief if he … damages tangible property of another intentionally, recklessly, or by negligence in the employment of fire, explosives, or other dangerous means listed in section 3302(a) of this title (relating to causing or risking catastrophe)"). *See*, *supra*, n.5 for a list of the "other dangerous means." This is a felony of the third degree "if the actor intentionally causes pecuniary loss in excess of $5,000…." 18 Pa. C.S. § 3304(b). The jury here found pecuniary loss in excess of $5,000. Verdict Slip, filed November 13, 2023.

[10] 18 Pa. C.S. § 2705 ("A person commits a misdemeanor of the second degree if he recklessly engages in conduct which places or may place another person in danger of death or serious bodily injury").

[11] 18 Pa. C.S. § 2702(a)(1) ("A person is guilty of aggravated assault if he … attempts to cause serious bodily injury to another, or causes such injury intentionally, knowingly or recklessly under circumstances manifesting extreme indifference to the value of human life"). This is a felony of the first degree. 18 Pa. C.S. § 2702(b).

[12] Verdict Slip; Order, entered November 13, 2023. The jury found Defendant guilty to one felony of the second degree, three felonies of the third degree, and six misdemeanors of the second degree. *See*, *supra*, nn. 5, 6, 8-10.

minimum of which is seventy-two (72) months and the maximum of which is forty-three (43) years.[13]

Defendant filed her Motion for Post Sentence Relief on January 23, 2024.[14] Defendant complains: (1) that the Court erred by admitting evidence of the Defendant's prior bad acts, including a number of voicemail messages which, while capable of being redacted, were not redacted to remove offensive content; (2) that the Commonwealth failed to prove Risking Catastrophe (Count 2), Criminal Trespass (Count 3) and Terroristic Threats (Count 5) by not presenting sufficient evidence to establish one or more of the elements of each offense beyond a reasonable doubt; (3) that assuming sufficient evidence was introduced concerning Risking Catastrophe, Criminal Trespass and Terroristic Threats, the verdict was against the weight of the evidence as to each of these charges; and (4) that the Court erred in imposing sentence (a) because the six counts of Recklessly Endangering Another Person should merge into Risking Catastrophe, (b) because the Court considered improper factors, and (c) imposing consecutive sentences at the top of the aggravated range of the sentencing guidelines for the minimum and consecutive statutory maximums for all offenses was excessive.[15]

The Court heard argument on the Motion on April 11, 2024. Counsel for the Commonwealth and the Defendant were present and made argument in support of

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[13] Sentencing Order, dated and entered January 18, 2024. The Court imposed the following terms of incarceration for the Defendant's various crimes and directed that they be served consecutively: Count 2 (F3), six (6) months to seven (7) years; Count 3 (F2), six (6) months to ten (10) years; Count 5 (F3), twelve (12) months to seven (7) years; Count 6 (F3), twelve (12) months to seven (7) years; Counts 7 through 12, six (6) months to two (2) years for each count.

[14] Motion for Post Trial Relief, filed January 23, 2024. Defendant's trial counsel filed the Motion subsequent to having filed a motion to withdraw from representation of the Defendant. The Court granted the motion to withdraw in part; however, the Court required trial counsel to file post sentence motions prior to withdrawal. *Id.*, ¶ 4. As such, trial counsel reserved for her client the right to file additional post sentence motions within a reasonable time after assignment of new counsel. *Id.*, ¶ 5. New counsel was duly appointed, but Defendant did not elect to file any additional motions.

[15] *Id.*

their respective positions, and the Defendant was present *via* video conference. Accordingly, the Motion is now ripe for resolution.

II. LAW AND ANALYSIS.

A. The Court did not err by admitting evidence of the Defendant's prior bad acts or by declining to redact certain voicemail messages to remove offensive content.

Before trial, the Commonwealth provided notice that it intended to introduce evidence of Defendant's prior bad acts.[16] Included among that evidence were a number of voicemail messages that the Defendant left on the answering machine at Little League headquarters. The messages requested a meeting with the CEO of Little League and the name of Little League's new legal counsel. They also included "offensive comments of a personal nature directed at the CEO of Little League."[17]

Defendant filed an objection to admission of the evidence[18] and also objected at trial.[19] The messages at issue contain a number of slurs by the Defendant implying that the CEO of Little League is a homosexual.[20] The Commonwealth sought to introduce the voicemails,[21] along with other evidence, to show that over a period of twenty-one years prior to the Incident, Defendant had a vendetta against Little League.[22] Defendant contends that her communications "do[] not constitute threatening or aggressive behavior" and "needlessly invite[] the jury to opine on the viability of the parties' respective positions," while disparaging Defendant's

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[16] Commonwealth's Notice of Intent to Offer Testimony of Defendant's Prior Bad Acts, filed May 11, 2023 (the "Notice of Prior Bad Acts").
[17] Motion, ¶ 6.
[18] Defendant's Motion in Limine, filed July 7, 2023.
[19] Transcript of proceedings in chambers immediately prior to commencement of testimony, Nov. 7, 2023, at pp. 1-7; Transcript of proceedings during trial, Nov. 8, 2023, at p. 124.
[20] *Id.*, pp. 2-3, 5.
[21] Defendant left seven voicemails beginning on the day before the Incident. She left four messages on July 2, 2023 and three messages on July 3, 2023. Notice of Prior Bad Acts, ¶¶ 8-10.
[22] Notice of Prior Bad Acts, ¶¶ 4-17.

character.[23] Ultimately, she contends that the Commonwealth sought to introduce the evidence for an inappropriate reason and that the prejudicial effect of this evidence outweighs its probative value.[24] She further argues that the messages were capable of redaction to remove the offensive content.[25]

Evidence is admissible if it is relevant, *i.e.*, 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,"[26] and if its probative value outweighs potential unfair prejudice.[27] The admissibility of evidence of prior bad acts depends upon the purpose for which admission of the evidence is sought: it is not admissible to show that on a particular occasion the person acted in accordance with her prior bad acts;[28] however, it is admissible for other purposes, such as to prove "motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident."[29]

Prior to trial, the Court issued an Opinion and Order concerning the evidence proffered by the Commonwealth.[30] While excluding some of the evidence, the Court specifically allowed the voicemails at issue here to be introduced as evidence:

> The Court has some concern that the longstanding history could tend to swallow up the rest of the case by going back many years in time.

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[23] Motion in Limine, filed July 7, 2023, ¶¶ 6-10.
[24] *Id.*; Transcript of proceedings in chambers, Nov. 7, 2023, at pp. 1-7; Motion, ¶¶ 8-10.
[25] Motion, ¶ 8.
[26] Pa. R. Evid. 401.
[27] Pa. R. Evid. 403.
[28] Pa. R. Evid. 404(b)(1) ("Evidence of any other crime, wrong, or act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character").
[29] Pa. R. Evid. 404(b)(2) ("This evidence [of any other crime, wrong, or act] may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident"). "In a criminal case this evidence is admissible only if the probative value of the evidence outweighs its potential for unfair prejudice." *Id.*
[30] Opinion on Commonwealth's "Notice of Intent to Offer testimony of Defendant's Prior Bad Acts" and Defendant's "Motion in Limine," entered September 5, 2023. These matters were heard by Hon. Kenneth D. Brown, Senior Judge of this Court, who rendered the aforementioned decision.

> However, while saying we have a concern, we cannot ignore the relevance of some of the history, in putting context to the Defendant's animosity and hostility toward [Little League Baseball ("LLB")]. There also appears to be significant relevance to the motive and intent of the Defendant and to negate the possibility that the conduct was simply an accident or mistake in driving by the Defendant.
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> We will thus indicate admissibility of some of the evidence which the Commonwealth would seek to present at trial. We are attempting to allow the Commonwealth to place into evidence what appears to be the most relevant information which goes to motive, intent, hostility toward LLB, and lack of accident or mistake, while not allowing the case to drift into many incidents of what appears to be a 20-year feud. With this in mind, we would allow the following evidence:
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> …
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> We clearly believe the voicemails made by the Defendant to LLB on July 2 and July 3, 2022, are clearly relevant and admissible. The last voicemail was made on July 3 at 11:14am, just about an hour and 46 minutes before her vehicle rammed into the LLB Museum at 1:00pm. There were 4 messages on July 2 ending after 9:00pm. Three voicemails occurred July 3, starting at 10:30am. The Defendant, as on earlier occasions, claimed she is the sole registered executrix of LLB (9:02pm on July 2). In the July 3 voicemails the Defendant seems to complain that she is not on the payroll.
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> The voicemails, so close to the criminal offenses, support a pattern of anger and hostility very close to her actions of ramming her car into the museum at 1:00pm on July 3, 2022.
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> …
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> Finally, we note the ruling in this Opinion offers only a roadmap[FN] as to other incidents' admissibility and the trial judge, depending on what occurs at trial, may widen or narrow the scope of the proffered incidents.
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> > [FN] We do not in any way want to usurp the Trial Judge's ability to react to developments as the trial progresses. While we have concern about the trial getting inundated with prior history, the Trial Judge may allow additional information as he sees fit.[31]

Immediately before trial, Defendant again raised the issue of the voicemails.[32] Defendant expressed concern about the potentially inflammatory nature of the slurs

[31] *Id.*, at 5-8.
[32] *See* Transcript of proceedings in chambers, Nov. 7, 2023.

involved and contended they were highly prejudicial.[33] The Commonwealth responded that the messages were left immediately prior to the Incident and that they show Defendant's escalating angry, volatile, irrational and "unhinged" behavior and state of mind toward the victim(s) immediately prior to the Incident.[34] After hearing the parties, the Court agreed with the Commonwealth that the Defendant's statements, including the derogatory slurs directed to the CEO of Little League Baseball, in context, illustrate her increasingly angry, volatile, irrational and unhinged behavior leading up to the Incident:

> [A]s part of the larger picture, it's relevant…. [I]t could be potentially prejudicial, so I'm not insensitive to that. So it's something that you should certainly choose to address in voir dire.
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> And if at the conclusion of the Commonwealth playing that … we've gotten to that point of the trial and it's part of a larger picture of evidence, if you wish me to give some kind of cautionary instruction to the jury, I'll be happy to entertain that at that time.[35]

For prior bad acts evidence to be admissible pursuant to the Pennsylvania Rules of Evidence to prove some other relevant fact, such as motive, opportunity, intent, preparation, plan, knowledge, identity, and absence of mistake or accident,[36] "there must be a specific 'logical connection' between the other act and the crime at issue which establishes that 'the crime currently being considered grew out of or was in any way caused by the prior set of facts and circumstances.'"[37] Here, there

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[33] *Id.*, at 2-3, 5-7.
[34] *Id.*, at 3-6.
[35] *Id.*, at 5-6.
[36] *See* Pa. R. Evid. 404(b)(2), *supra*, n. 29.
[37] *Com. v. Ross*, 57 A.3d 85, 100 (Pa. Super. 2012) (quoting *Com. v. Martin*, 387 A.2d 835, 838 (Pa. 1978) (quoting *Com. v. Schwartz*, 445 515, 522, 285 A.2d 154, 158 (Pa. 1971))). In explaining this, the Superior Court pointed out that "[i]n *Martin*, … thirteen days prior to his murder, the victim had struck the appellant with a chair when the appellant was attempting to rob others. Our Supreme Court determined that this incident constituted a possible motive for the subsequent murder, as 'the killing grew out of or was in some way caused by the prior incident.'" *Id.* (citing *Martin*, *supra*, 387 A.2d at 838). In *Ross*, on the other hand, prior bad acts merely identified similarities with the crime and did not show any specific connection to it. Thus, the Superior Court found that there it was error to admit the evidence, as was no basis for concluding that the crime "grew out of or was in any way caused by the prior set of facts and circumstances." *Id.* at 101.

definitely is a "logical connection" between the voicemails and the Incident, since the voicemails come at the culmination of the Defendant's more than twenty-year-long vendetta against the victims and illustrates her motive, intent, preparation and absence of mistake or accident.[38] Indeed, evidence of prior bad acts may be admissible where, as here, those prior acts "became part of the history of the case and form[] part of the natural development of facts."[39]

Where evidence of a defendant's prior bad acts is admitted, the defendant is entitled to a cautionary jury instruction that the evidence is admissible only for a limited purpose.[40] At the request of counsel for the Defendant,[41] the Court gave a cautionary instruction approved by counsel:[42]

> THE COURT: Ladies and gentlemen, I wish to give you a cautionary instruction. The Commonwealth has played for you several voice mail recordings from July 2nd and July 3rd of 2022.
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> In these voice mails, you heard the Defendant make what can fairly be described as homophobic statements. I have allowed you to hear these voice mails because they are the Defendant's own words, and they were made close in time to the incident.
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> These voice mails should be considered with all of the other evidence you have heard about the ongoing and longstanding animosity between Ms. Salazar and Little League Baseball and, if you choose, as a reflection of the Defendant's state of mind close in time to the incident.
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> You shall not in any way allow the Defendant's remarks to cause you to hold any bias or ill will toward her. The voice mail recordings were

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[38] The Defendant asserted at trial that the Incident actually was a mere accident. Proof of prior bad acts, motive or intent is often inextricably intertwined with negation of a claim of accident. *See*, *e.g.*, *Com. v. Billa*, 555 A.3d 835, 840-41 (Pa. 1989).

[39] *Com. v. Ivy*, 146 A.3d 241, 250-52 (Pa. Super 2016) (finding that the victim's PFA order against the defendant and the defendant's violation of it in an attempt to persuade the victim not to press charges were admissible to show the defendant's consciousness of guilt). This exception to general inadmissibility of prior bad acts testimony is commonly referred to as the *res gestae* [Latin: "things done"] exception. *Id.*, 146 A.3d at 251.

[40] *Billa*, *supra*, 555 A.2d at 842.

[41] Transcript of proceedings at trial, Nov. 8, 2023, at 124.

[42] *Id.*, at 137-38.

> not admitted for that purpose, and you may not use them for that purpose. Understood? Very good.[43]

In short, the voicemails were relevant to show Defendant's motive, intent, state of mind and lack of accident and were integral to demonstrating the sequence of events leading up to the Incident, which are proper exceptions to the general prohibition against prior bad acts testimony. The probative value of the voicemails outweighed the prejudicial effect of the derogatory language that formed a mere portion of the messages as a whole, and the Court delivered a proper cautionary instruction that was approved by the Defendant.

Accordingly, the Court did not improperly admit testimony of the Defendant's prior bad acts.

B. There was sufficient evidence to establish each element of the offenses beyond a reasonable doubt.

Sufficient evidence supports a criminal conviction if "the evidence admitted at trial and all reasonable inferences drawn therefrom, viewed in the light most favorable to the Commonwealth as verdict winner, … [was] sufficient to prove every element of the offense beyond a reasonable doubt."[44] The Commonwealth need not preclude every possibility of innocence, and it may sustain its burden entirely with circumstantial evidence.[45] "Evidence will be deemed to support the verdict when it establishes each element of the crime charged and the commission thereof by the accused, beyond a reasonable doubt."[46]

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[43] *Id.*, at 141-42.
[44] *Com. v. Keister*, 292 A.3d 1138, 1141 (Pa. Super. 2023) (quoting *Com. v. Palmer*, 192 A.3d 85, 89 (Pa. Super. 2018)).
[45] *Id.*
[46] *Com. v. Teems*, 74 A.3d 142, 144 (Pa. Super. 2013) (quoting *Com. v. Toland*, 995 A.2d 1242, 1245 (Pa. Super. 2010) (citations omitted)), alloc. denied 79 A.3d 1098 (Pa. 2013).

1. There was sufficient evidence to establish each element of Risking Catastrophe (Count 2) beyond a reasonable doubt.

A person is guilty of Risking Catastrophe if she recklessly creates a risk of catastrophe in the employment of fire, explosives, flood, avalanche, collapse of building, release of poison gas, radioactive material or other harmful or destructive force or substance, or by any other means of causing potentially widespread injury or damage.[47] Risking Catastrophe involves conduct "capable 'of causing . . . widespread injury or damage'"[48] and can apply where there is widespread property damage without personal injury.[49]

Defendant argues that "[t]he Commonwealth failed to prove that the Defendant's actions risked catastrophe by any of the enumerated means in the statute, or that they risked potentially widespread injury or damage by other dangerous means."[50] She further argues that "[t]he incident was limited in time and location to the entrance and gift shop of the Little League Museum" and that "[w]hile the Commonwealth argued that there was risk to the individuals in or near the museum gift shop, this cannot be considered risk of damage or injury that would be widespread for purposes of Risking a Catastrophe."[51]

Initially, the legislature obviously did not intend the crime of Risking a Catastrophe to be limited to situations where the defendant employed means enumerated in the statute. This is confirmed by the plain language of the statute itself, which, in addition to the means enumerated in the statute, makes the crime

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[47] 18 Pa. C.S. § 3302(b).
[48] *Com. v. Hughes*, 364 A.2d 306, 312 (Pa. 1976) (quoting 18 Pa. C.S. § 3302).
[49] *See*, *e.g.*, *Com. v. Scatena*, 498 A.2d 1314 (Pa. 1985) (holding that conduct of service station owner in discharging inadequately treated industrial wastes into an abandoned mine and ultimately into a major river, causing contamination of the water for 60 miles downstream was conduct that risked a catastrophe).
[50] Motion, ¶ 12.
[51] *Id.*

applicable to “any other means of causing potentially widespread injury or damage.”[52]

Where use of a means not specifically listed in the statute is at issue, the means used must be one that “is capable of causing widespread devastation” when it is improperly handled by the actor.[53] The risk at issue must arise from “the use of dangerous means by one who consciously disregards a substantial and unjustifiable risk and thereby unnecessarily exposes society to an extraordinary disaster.”[54] Thus, “the forces and substances intended to be regulated are those which are capable of causing ... widespread injury or damage.”[55] The fact that an actual catastrophe did not occur is irrelevant to a finding of liability for Risking Catastrophe.[56]

In *Commonwealth v. Karetny*,[57] the operators of a nightclub were charged with risking a catastrophe and failing to prevent a catastrophe, following collapse of a pier upon which the nightclub was situated. The defendants leased a pier on the Delaware River in Philadelphia between 1994 and 2000. In 1994, a portion of the pier collapsed, and the defendants hired engineers to evaluate the damage. The engineers concluded that the pier was in generally fair condition but that there were a number of deficient piles. As such, they recommended a comprehensive maintenance and repair plan, as well as a comprehensive survey to identify and detail the nature and extent of required repairs. The portion that had collapsed in 1994 was repaired, but the defendants ignored the recommendation to evaluate the

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[52] 18 Pa. C.S. § 3302.
[53] *Com. v. Simkins*, 443 A.2d 825, 827 (Pa. Super. 1982) (quoting *Hughes*, *supra*, 364 A.2d 306, 311 (Pa. 1976)).
[54] *Hughes*, *supra*, 364 A.2d at 311 (emphasis and internal quotation marks omitted).
[55] *Id.*, 364 A.2d at 306.
[56] *Com. v. Salamone*, 897 A.2d 1209, 1213 (Pa. Super. 2006) (citation omitted).
[57] *Com. v. Karetny*, 880 A.2d 505 (Pa. 2005).

remainder of the pier. In 1995 new cracks were discovered and became "very serious very quickly." Engineers recommended that the pier be rebuilt, but the defendants instead elected to stabilize it due to cost considerations. Stabilization was completed in 1996. In 1999 the engineers retuned to the pier when a barge slipped its moorings and became wedged under the pier. The engineers became alarmed at a large crack in the nightclub building which indicated to them that the pier was shifting. They again recommended precautionary measures, which the defendants rejected. During 1999 and 2000 various contractors and workers noted cracks that were growing in the structure and other indications that it was shifting. A construction contractor called to the site on May 18, 2000 admonished the defendants that the pier was "in a state of failure" and would probably collapse that night on the tide. Defendants made cosmetic repairs to cover up the cracks but did not conduct systematic repairs or close their club. [58]

The pier subsequently collapsed while the club was occupied by employees and patrons, causing three fatalities and a number of injuries. The *Karetny* defendants were indicted by a grand jury and held over for trial on a number of charges, including Risking Catastrophe. The defendants moved to quash, which the trial court granted, finding that "the Commonwealth [must] show a particular type of an **act**" to make out its *prima facie* showing of risking a catastrophe. A divided panel of the Superior Court affirmed.[59] In reversing the Superior Court, the Supreme Court addressed whether the defendants' admittedly reckless conduct involved "employment" of "dangerous means."

> The Superior Court panel majority misapprehended the controlling facts, for purposes of *prima facie* evidence review, when it concluded that appellees "merely ignored the natural forces and age of the pier

[58] *Id.*, 880 A.2d at 507-11.
[59] *Id.*, 880 A.2d at 511-12.

> and failed to prevent it from collapsing." The actual evidence, which we have been careful to set forth at the beginning of this Opinion, tended to show that, for approximately five and one half years, appellees allowed the structural soundness of their pier to steadily decline in large part because of the cost to repair it satisfactorily….
>
> [T]he Commonwealth adduced substantial evidence indicating that appellees, after having been made specifically aware of the imminent danger that the pier posed to human life, took affirmative measures to keep that knowledge to themselves and, at the same time, took affirmative steps that exposed others to the risk. The evidence of appellees' conduct in this case was sufficient to warrant a jury in finding the reckless creation of a risk of catastrophe…. While appellees can offer contrary evidence at trial and/or argue to the jury that they were guilty only of "inaction," the jury is not obliged to accept such position in the face of the above-referenced evidence. Instead, the totality of the aforementioned factors would support a jury in finding that appellees' conduct and response amounted to "employment" of a means and created the risk.[60]

Thus, the question here is not whether the Defendant employed any of the means itemized in the statute; rather, the question is whether she engaged in any act or omission employing any means "capable of causing widespread devastation." The jury found that the Defendant deliberately, or at least recklessly, rammed her motor vehicle into a business establishment when it was open to the public. As in *Karetny*, the facts are important here: in both instances, the defendants committed acts that put large numbers of people at risk of death or serious bodily injury and that caused substantial property damage.[61] A motor vehicle, when operated

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[60] Id., 880 A.2d at 517-18.

[61] The "orbit of danger" is a key consideration. For example, in *Hughes*, *supra*, prosecution could proceed where an employee of an ink manufacturing plant in Philadelphia who worked around highly flammable substances and was repeatedly warned against smoking on the premises caused "a conflagration punctuated by several explosions" while lighting a cigarette. The resulting fire caused numerous injuries and killed two firemen, in addition to causing neighboring homes to be evacuated and extensive property damage. *Hughes*, *supra*, 364 A.2d at 306. On the other hand, in *Simpkins*, *supra*, the defendant used leased property in rural York County to manufacture amphetamines. In connection with that, he procured and stored highly volatile chemicals. A fire ensued, and the defendant was charged with various offenses. The Commonwealth contended he had risked a catastrophe because he improperly stored the chemicals, but the Superior Court concluded that the Commonwealth failed to prove reckless conduct which risked a catastrophe, because there was expert testimony that the "orbit of danger" included only the defendant and the dwelling in which he stored the chemicals. *Simpkins*, *supra*, 443 A.2d at 825.

inappropriately, is capable of causing death or serious bodily injury or property damage on a widespread scale. A motor vehicle is not an instrument that can cause catastrophe under all circumstances, but it is entirely reasonable that the jury found it to be capable of causing widespread risk of injury or property damage under these circumstances. When one deliberately or recklessly propels two tons of metal and related materials at speed into an occupied business during normal business hours on a holiday weekend, when it may very well be occupied by many people, widespread injury to persons and damage to property is a possible, if not a probable, outcome.[62]

Accordingly, there was sufficient evidence to establish each element of Risking Catastrophe (Count 2) beyond a reasonable doubt.

2. There was sufficient evidence to establish each element of Criminal Trespass (Count 3) beyond a reasonable doubt.

A person commits the offense of Criminal Trespass if, knowing that she is not licensed or privileged to do so, she breaks into any building or occupied structure or separately secured or occupied portion of the same.[63] "Breaks into" means "[t]o gain entry by force, breaking, intimidation, unauthorized opening of locks, or through an opening not designed for human access."[64] An "occupied structure" is "[a]ny structure, vehicle or place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present."[65]

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[62] *See also Salamone*, *supra*, 897 A.2d at 1209 (holding that defendant's conduct in piloting of airplane for four hours around major urban international airport and surrounding populated areas under the influence of alcohol and valium constituted "means" required for causing potentially wide spread injury or damage, as would support conviction for risking a catastrophe), abrogated on other grounds by *Com. v. Irland*, 193 A.3d 370 (Pa. Super. 2018).
[63] 18 Pa. C.S. § 3503(a)(1)(ii).
[64] 18 Pa. C.S. § 3503(a)(3).
[65] 18 Pa. C.S. § 3501.

Defendant does not appear to contest that the Little League Museum is an "occupied structure" for purposes of Criminal Trespass.[66] Rather, she contends that the Museum was open to the public at the time she entered, and there was evidence at trial showing that she was not given notice against trespass by Little League or barred from their property.[67] Accordingly, she contends that there was not sufficient evidence that she was not licensed or privileged to enter the Little League Museum.[68]

It is not necessary for the Commonwealth to prove that the Defendant had been given notice against trespass by Little League or that she was barred from their property. While the Commonwealth must prove entry without license to obtain conviction under 18 Pa. C.S. Section 3503(a)(1)(ii), it need not prove that Defendant received prior notice against trespass.[69] The scienter requirement for criminal trespass is knowledge by the defendant that her presence in the occupied structure in question is not privileged or licensed.[70]

In the instant case, the Little League Museum was open to the public at the time of Defendant's entry into it. The jury found that the Defendant entered the Museum by crashing her vehicle through the front door, which constitutes entry by

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[66] Defendant concedes that the Little League Museum was "open to the public" at the time of her entry. Motion, ¶ 16. Further, the Museum is "[a] structure … adapted for … carrying on business therein." Plainly, it is an "occupied structure" within the meaning of 18 Pa. C.S. § 3503(a)(1)(ii).
[67] Motion, ¶¶ 16-17.
[68] Defendant contends in her Motion that she was convicted of Criminal Trespass under 18 Pa. C.S. § 3503(a)(1)(i); however, she was convicted under § 3503(a)(1)(ii).
[69] *See*, *e.g.*, *Com. v. Goldsborough*, 426 A.2d 126 (Pa. Super. 1981) (holding that the jury could reasonably find that the defendant knew he had no permission to enter the building where he entered an apartment that had been temporarily vacated due to a fire, when the occupant testified that she did not know the defendant and the owner testified that he did not give the defendant permission to enter);
[70] *Com. v. Carter*, 393 A.2d 660, 661 (Pa. 1978) ("evidence of such a belief [that defendant's presence in a building or occupied structure was privileged or licensed] could provide a basis for an acquittal of a charge of criminal trespass"); *see also Com. v. Hagen*, 654 A.2d 541 (Pa. 1995) (finding criminal trespass where the defendant broke and entered into a secured and fenced commercial storage facility for the purpose of removing valuable items).

force and fits into the definition of “breaks into” within the meaning of the statute.[71] Further, Defendant had privilege or license to enter into the Museum only under the conditions imposed by the owner. The jury found, not unreasonably, that these conditions did not involve entry by driving a vehicle through two sets of closed doors and into a lobby intended for patrons visiting the Museum.

Accordingly, there was sufficient evidence to establish each element of Criminal Trespass (Count 3) beyond a reasonable doubt.

3. There was sufficient evidence to establish each element of Terroristic Threats (Count 5) beyond a reasonable doubt.

A person who communicates, either directly or indirectly, a threat to cause serious public inconvenience, or cause terror or serious public inconvenience with reckless disregard of the risk of causing such terror or inconvenience, commits the crime of Terroristic Threats.[72] The Superior Court “ha[s] explained that the purpose of the terroristic threats statute ‘is to impose criminal liability on persons who make threats which seriously impair personal security or public convenience.’”[73] “As such, ‘neither the ability to carry out the threat nor a belief by the person threatened that it will be carried out is an essential element of the crime.’”[74]

Defendant alleges that the Commonwealth presented evidence that after her vehicle entered the Little League Museum, Defendant stated, “Do you know who I am? I am Theresa Salazar. You should be scared.”[75] Defendant contends that “[t]his statement is not overtly a threat, and there is a lack of evidence of Defendant’s

[71] 18 Pa. C.S. § 3503(a)(3) (“Breaks into” means “[t]o gain entry by force, breaking, intimidation, unauthorized opening of locks, or through an opening not designed for human access”).
[72] 18 Pa. C.S. § 2706(a)(3).
[73] *Interest of E.L.W.*, 273 A.3d 1202, 1206 (Pa. Super. 2022) (quoting *Com. v. Kline*, 201 A.3d 1288, 1290 (Pa. Super. 2019) (cleaned up)).
[74] *Id.*
[75] Motion, ¶ 19.

intent or recklessness to cause serious public inconvenience or terror by the statement."[76]

Under the Terroristic Threats statute, the term "communicates" "conveys in person or by written or electronic means, including telephone, electronic mail, Internet, facsimile, telex and similar transmissions."[77] Communication need not use words and may consist entirely of non-verbal actions.[78] Thus, the Defendant's action in driving her vehicle through the front entrance of the Little League Museum can constitute a "communication" for purposes of Terroristic Threats.

Furthermore, words that may not be inherently threatening can support a conviction of terroristic threats, depending on the context in which they are uttered.[79] Here, the Defendant intentionally crashed her vehicle through the front entrance of an occupied structure, and then announced to a nearby employee of the museum, Melissa Mull, who she was and that "you should be scared." Hearing that threat, Melissa Mull immediately directed everyone to vacate the premises. Under the circumstances, the Court has little difficulty concluding that this constitutes communication of a threat to cause serious public inconvenience, or cause terror or serious public inconvenience with reckless disregard of the risk of causing such terror or inconvenience.

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[76] *Id.*, ¶ 20.
[77] 18 Pa. C.S. § 2706(e).
[78] *Kline*, *supra*, 201 A.3d at 1288 (holding that evidence was sufficient to establish that defendant communicated a threat to commit crime of violence with intent to terrorize victim using gesture of a shooting gun recoiling, so as to support conviction for terroristic threats).
[79] See, e.g., *In re B.R.*, 732 A.2d 633 (Pa. Super. 1999) (affirming adjudication of delinquency where juvenile told friends in a conversational tone unmotivated by a hostile encounter or circumstance that he would spray paint the security cameras in the school and bring a gun to school); *Com. v. Butcher*, 644 A.2d 174 (Pa. Super. 1994) (affirming conviction for making a terroristic threat where defendant repeatedly demanded a ride from young woman victim who was alone in parking lot late in evening, while defendant forcibly grabbed her arm, pushed victim against car, pressed his body against hers and told her not to make him get physical), alloc. denied 652 A.2d 835 (Pa. 1994); *Com. v. Griffin*, 456 A.2d 171 (Pa. Super. 1983) (affirming conviction for making a terroristic threat where defendant stated, "I ought to kill you," during the course of a robbery by defendant who was brandishing a gun and kicking the person to whom the statement was made).

Accordingly, there was sufficient evidence to establish each element of Terroristic Threats (Count 5) beyond a reasonable doubt.

C. The Verdict was not against the weight of the evidence.

"[T]he finder of fact while passing upon the credibility of witnesses and the weight of the evidence produced, is free to believe all, part or none of the evidence."[80] A claim by the Defendant that the verdict is against the weight of the evidence is addressed to the discretion of the court.[81] A court may not find that the verdict was against the weight of the evidence "because of a mere conflict in the testimony or because the judge on the same facts would have arrived at a different conclusion."[82] Rather, a challenge to the weight of the evidence should be granted only where "the trial judge … determine[s] that 'notwithstanding all the facts, certain facts are so clearly of greater weight that to ignore them or to give them equal weight with all the facts is to deny justice.'"[83] "[A] new trial should be awarded [only] when the jury's verdict is so contrary to the evidence as to shock one's sense of justice and the award of a new trial is imperative so that right may be given another opportunity to prevail."[84]

1. ***The Verdict was not against the weight of the evidence as to Risking Catastrophe (Count 2).***

Defendant contends that

> [e]ven assuming sufficient evidence to convict of Risking Catastrophe, the verdict was against the weight of the evidence because the finder of fact failed to adequately consider evidence regarding the scope of potential damage or injury. Although serious injury or damage was at risk, the jury did not consider the lack of structural damage to the

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[80] *Com. v. Jones*, 271 A.3d 452, 457-58 (Pa. Super. 2021) (quoting *Com. v. Brockman*, 167 A.3d 29, 38 (Pa. Super. 2017) (quoting *Com. v. Antidormi*, 84 A.3d 736 (Pa. Super. 2014))).
[81] *Com. v. Widmer*, 744 A.2d 745, 751–52 (Pa. 2000); *Com. v. Brown*, 648 A.2d 1177, 1189 (Pa. 1994).
[82] *Widmer*, *supra*, 744 A.2d at 752 (citing *Thompson v. City of Phila.*, 493 A.2d 669, 673 (Pa. 1985).
[83] *Id.* (citation omitted).
[84] *Brown*, *supra*, 648 A.2d at 1189 (citing *Thompson*, *supra*, 493 A.2d at 672).

building or the limited area of the building impacted by the vehicle when determining if the potential damage or injury was widespread.[85]

Risking Catastrophe does not require an actual catastrophe: “The fact that an actual devastating catastrophe was averted is of no moment in assessing [the defendants'] conduct in terms of [Risking Catastrophe].”[86] By its very definition, an actor is guilty when she creates a risk of catastrophe in employment of a means capable of causing potentially widespread injury or damage.[87] Indeed, causing a catastrophe is a separate offense chargeable against an actor who actually causes widespread injury or damage utilizing means capable of causing potentially widespread injury or damage.[88]

In *Commonwealth v. Salamone*,[89] the Superior Court affirmed the defendant’s convictions for risking a catastrophe and recklessly endangering another person. There, the defendant piloted an airplane for four hours around a major urban international airport and surrounding populated areas, during which time he moved the plane erratically and unpredictably, caused multiple near collisions, and refused contact with air traffic control. A state police helicopter began following the defendant, and upon landing safely he was taken into custody, at which point a blood test revealed a blood alcohol level of 0.15% and the presence of valium.[90] Under the circumstances, even though there was no physical injury to persons or damage to property, the Superior Court found “that Appellant's intoxicated condition and reckless operation of his aircraft falls within the meaning of ‘other means of

[85] Motion, ¶ 21.
[86] *Scatena*, *supra*, 498 A.2d at 1317.
[87] 18 Pa. C.S. § 3302(b).
[88] 18 Pa. C.S. § 3302(a).
[89] *Salamone*, *supra*, 897 A.2d at 1209.
[90] *Id.*, at 1211-12.

causing potentially wide-spread injury or damage'" and upheld the conviction for Risking Catastrophe.[91]

Here, the testimony of multiple witnesses established that the Defendant drove her vehicle into the Little League Museum, at a time when it was open to the public. The jury could have concluded very reasonably that the Defendant's conduct created a risk of catastrophe using a means capable of causing potentially widespread injury to persons or damage to property. Whether the jury considered "the lack of structural damage to the building or the limited area of the building impacted by the vehicle" is known only to the jury; however, since the scope of injury or damage actually caused is not material to a finding of guilt for Risking Catastrophe, they were not wrong to discount those matters if, in fact, they did.

Accordingly, the Verdict was not against the weight of the evidence as to Risking Catastrophe (Count 2).

2. ***The Verdict was not against the weight of the evidence as to Criminal Trespass (Count 3).***

Defendant contends that

> [e]ven assuming sufficient evidence to convict of Criminal Trespass, the verdict was against the weight of the evidence because the jury did not give adequate weight to the lack of a non-trespass notice being provided to Ms. Salazar and the fact that the building was open to the public.[92]

The crime of Criminal Trespass does not require that "a non-trespass notice be[] provided to [the Defendant]." Instead, it requires that a person who knows she is not licensed or privileged to enter or remain in a building or occupied structure enters or remains therein by subterfuge or force.[93] Our Courts do not require

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[91] *Id.*, at 1215 (citing 18 Pa. C.S. § 3302; *Karetny*, *supra*).
[92] Motion, ¶ 22.
[93] 18 Pa. C.S. § 3503(a).

issuance of a non-trespass notice in order to determine that a person entered or remained in a place knowing she was not privileged or licensed to do so.[94]

By convicting the Defendant of Criminal Trespass, the jury here found beyond a reasonable doubt that the Defendant knew she did not have privilege or license to crash into the Little League Museum by driving her vehicle through two sets of doors and coming to a stop against an interior wall of the building. The finding that she did not have privilege or license to enter is reasonable under the circumstances and is not so contrary to the evidence as to shock one's sense of justice.

Accordingly, the Verdict was not against the weight of the evidence as to Criminal Trespass (Count 3).

3. *The Verdict was not against the weight of the evidence as to Terroristic Threats (Count 5).*

Defendant contends that

> [e]ven assuming sufficient evidence to convict of Terroristic Threats, the verdict was against the weight of the evidence because the jury did not consider other possible explanations for the Defendant's statement, such as a natural reaction to the fear from the collision occurring and [the Defendant's] statement regarding her own fear that she experienced.[95]

The crime of Terroristic Threats occurs when a person communicates, either directly or indirectly, a threat to cause serious public inconvenience, or cause terror or serious public inconvenience with reckless disregard of the risk of causing such

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[94] *See*, *e.g.*, *Hagen*, *supra*, 654 A.2d at 541 (finding criminal trespass where the defendant broke and entered into a secured and fenced commercial storage facility for the purpose of removing valuable items); *Goldsborough*, *supra*, 426 A.2d at 126 (holding that the jury could reasonably find that the defendant knew he had no permission to enter the building where he entered an apartment that had been temporarily vacated due to a fire, when the occupant testified that she did not know the defendant and the owner testified that he did not give the defendant permission to enter). *See also Com. v. Thomas*, 561 A.2d 699, 705 (Pa. 1989) (affirming conviction for, *inter alia*, burglary [which contains the same element of unprivileged entry as criminal trespass] and finding that "from th[e] evidence [that the victim was significantly impaired by alcohol] the jury could conclude that the victim was not in a position to make an intelligent and knowing decision to permit [the defendant] to enter the apartment and could conclude that the entry was without permission").

[95] Motion, ¶ 23.

terror or inconvenience.[96] In convicting Defendant of this crime, the jury found beyond a reasonable doubt that the Defendant's communication[97] caused serious public inconvenience, or caused terror or serious public inconvenience with reckless disregard of the risk of the same. It is impossible to know what, if any, weight the jury gave to the "other possible explanations" favored by the Defendant; however, the jury's finding, under the circumstances here, that the Defendant's words and actions constituted a communication that was a terroristic threat is not so contrary to the evidence as to shock one's sense of justice.

Accordingly, the Verdict was not against the weight of the evidence as to Terroristic Threats (Count 5).

D. The Court did not impose an excessive sentence.

The Court imposed a minimum sentence at the top of the aggravated range, with each count running consecutively, and a maximum sentence of the statutory maximum for each offense, also running consecutively. In her Motion, Defendant claims the sentence imposed was excessive and asks the Court to reconsider it.[98]

"Sentencing is a matter vested in the sound discretion of the sentencing judge."[99] A sentencing court has broad discretion when sentencing a defendant because "the sentencing judge … is in the best position to view the defendant's character, displays of remorse, defiance, or indifference, and the overall effect and nature of the crime."[100] A reviewing court will only reverse a sentence when there

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[96] 18 Pa. C.S. § 2706(a)(3).
[97] The Defendant's "communication" was her words and her actions taken separately or together in whatever combination the jury saw fit to find beyond a reasonable doubt. *See*, *supra*, Part II.B.3.
[98] Motion, ¶¶ 24-40.
[99] *Com. v. Bowen*, 55 A.3d 1254, 1263 (Pa. Super. 2012) (quoting *Com. v. Cunningham*, 805 A.2d 566, 575 (Pa. Super. 2002)), alloc. denied 64 A.3d 630 (Pa. 2013); *see also Com. v. Barnes*, 167 A.3d 110, 122 n.9 (Pa. Super 2017) (en banc).
[100] *Com. v. Allen*, 24 A.3d 1058, 1065 (Pa. Super. 2011) (citing *Com. v. Fish*, 752 A.2d 921, 923 (Pa. Super. 2000)).

has been a manifest abuse of discretion,[101] which will be found only when "the record discloses that the judgment exercised was manifestly unreasonable, or the result of partiality, prejudice, bias, or ill-will."[102]

When sentencing a defendant, a court must consider "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."[103] The sentencing court must also consider applicable sentencing guidelines and, when the court sentences for a felony or misdemeanor or modifies a sentence, the court must make a part of the record and disclose in open court at the time of sentencing a statement of the reasons for the sentence imposed.[104]

At the time of sentencing, the Court stated the basis for its sentence as follows:

> Miss Salazar … by its verdict the jury has clearly rejected your absurd claim that this catastrophe was a mere accident and the result of having a sneezing attack. And the Court rejects this ludicrous claim as well.
>
> Miss Salazar, you have an absolute right to proceed to trial, as all defendants do. What right you do not have, however, is the right to take the stand and lie under oath in your own defense. The Court believes that your choice to commit perjury at your trial, which is exactly what you did, by itself would justify a sentence in the aggravated range of the sentencing guidelines.
>
> Additionally, and in many ways more importantly, the Court shares the Commonwealth's concern that you have failed to acknowledge, and in fact have refused to treat what appears to be both an underlying alcohol problem and serious mental health issues, and the Court is convinced that both of these will remain unaddressed through your incarceration and your ultimate parole.

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[101] *Com. v. Hermanson*, 674 A.2d 281, 283 (Pa. Super. 1996) (citing *Com. v. Koren*, 646 A.2d at 1205, 1208 (Pa. Super. 1994); *Com. vs. Hlatky*, 626 A.2d at 575, 584 (Pa. Super. 1993)).
[102] *Barnes*, *supra*, 167 A.3d at 122 n.9 (quoting *Bowen*, *supra*, 55 A.3d at 1263 (quoting *Cunningham*, *supra*, 805 A.2d at 575)).
[103] 42 Pa. C.S. § 9721(b).
[104] *Id.*

> These criminal acts are the result of a 20-year obsession that will continue, and likely escalate, and the Court is convinced that the day that you are released is the day that you will pose a very real threat to the safety and lives of those persons associated with Little League Baseball. And that the only way this Court can protect those persons, and the public at large, is to ensure that you are confined for as long as possible.
>
> Additionally, the Court agrees that it is only by the grace of God that no patrons or employees of the Little League Museum were seriously hurt or killed, and that any lesser sentence than the sentence the Court imposes would depreciate the risk of harm in which … your conduct placed so many.
>
> The Court finds that any lesser sentence than the sentence the Court imposes will fail to account for the callousness with which you undertook your criminal behavior, and the Court finds that any lesser sentence than the sentence the Court imposes would fail to account for your utter lack of remorse or acceptance of responsibility….[105]

As the sentence imposed is not manifestly unreasonable, under the circumstances, or the result of partiality, prejudice, bias or ill-will, the Court declines to reconsider it.

1. ***The six counts of Recklessly Endangering Another Person should not merge into Risking Catastrophe.***

Two offenses merge for sentencing when the crimes arise from a single criminal act and all of the statutory elements of one offense are included in the statutory elements of the other offense.[106] Thus, "'[t]he only way two crimes merge for sentencing is if **all** elements of the lesser offense are included within the greater offense.'"[107] As the Superior Court has explained:

> "To determine whether offenses are greater and lesser-included offenses, we compare the elements of the offenses. If the elements of the lesser offense are all included within the elements of the greater

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[105] Transcript of Proceedings at sentencing, January 18, 2024, at 31-33.
[106] 42 Pa. C.S. § 9765 ("No crimes shall merge for sentencing purposes unless the crimes arise from a single criminal act and all of the statutory elements of one offense are included in the statutory elements of the other offense. Where crimes merge for sentencing purposes, the court may sentence the defendant only on the higher graded offense").
[107] *Com. v. Watson*, 228 A.3d 928, 941 (Pa. Super. 2020) (quoting *Com. v. Coppedge*, 984 A.2d 562, 564 (Pa. Super. 2009) (emphasis in original)).

> offense and the greater offense has at least one additional element, which is different, then the sentences merge. If both crimes require proof of at least one element that the other does not, then the sentences do not merge."[108]

While Risking Catastrophe and Reckless Endangerment both broadly apply to reckless conduct that creates a risk of harm, a person is guilty of Risking Catastrophe when she recklessly creates a risk of catastrophe in the employment of fire, explosives or other dangerous means,[109] whereas she is guilty of Reckless Endangerment when she recklessly engages in conduct which places or may place another person in danger of death or serious bodily injury.[110] Risking Catastrophe involves conduct "capable 'of causing . . . widespread injury or damage'"[111] and can apply where there is widespread property damage without personal injury.[112] Reckless endangerment, on the other hand, entails potential death or serious bodily injury to a person and does not apply to property damage. Furthermore, Risking Catastrophe occurs when a person employs fire, explosives or other dangerous means, and no such means are necessary to prove Reckless Endangerment.

Because Risking Catastrophe and Reckless Endangerment each requires proof of at least one element that the other does not, the sentences do not merge.

2. *The Court did not consider improper factors in rendering its sentence.*

The Defendant contends that the Court improperly considered alcohol use and/or dependency by the Defendant at the time of sentencing. Specifically, she states that, at the time of sentencing, (i) the Commonwealth referenced that there

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[108] *Id.* (quoting *Com. v. Johnson*, 874 A.2d 66, 70 (Pa. Super. 2005), alloc. denied, 899 A.2d 1122 (Pa. 2006) (internal citations omitted)).
[109] 18 Pa. C.S. § 3302(b).
[110] 18 Pa. C.S. § 2705.
[111] *Hughes*, *supra*, 364 A.2d at 312.
[112] *See*, *e.g.*, *Scatena*, *supra*, 498 A.2d at 1314.

were alcohol containers in Defendant's vehicle at the time of the Incident; (ii) the Commonwealth stated that the Defendant "sounded" like she was intoxicated when leaving voicemail messages for Little League; and (iii) the Court referenced that the Defendant had an untreated alcohol problem. She asserts these are problematic because (i) a discovery photo disclosed only a single unopened beer can in the Defendant's vehicle and the Commonwealth did not present evidence concerning it at trial; (ii) there was no evidence at trial to establish that Defendant was intoxicated at any material time; and (iii) there is no evidence of record to establish problematic drinking behavior by the Defendant.[113]

The Court did not consider the unopened can of beer found in the Defendant's vehicle in determining that she had an untreated alcohol problem. Rather, the Court considered the voicemail messages she left just prior to ramming her vehicle through the doors of the Little League Museum. Any reasonable listener would have concluded that the Defendant was intoxicated at the time. Also, during an earlier bail hearing in the case, the bail officer testified that he would not recommend the Defendant's release because, when told that she would not be permitted to consume alcohol while out on bail, the Defendant stated that her alcohol consumption was not the court's business and that she would not stop drinking wine.

To the extent that the Court considered the Defendant's possible untreated alcohol problem, that consideration was not given great weight with regard to the sentence imposed. As the Court indicated, the primary factors considered by the Court were Defendant's lies during her testimony, her refusal to take accountability for her actions, the callousness with which she acted, and, most importantly, the

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[113] Motion, ¶¶ 30-36.

protection of the victims and the public. As the Court based its sentence on factors that it was appropriate for the Court to consider, the Court declines to reconsider its sentence.

3. The Court did not err in imposing consecutive sentences at the top of the aggravated range of the sentencing guidelines for the minimum and consecutive statutory maximums for all offenses.

A claim that a sentence is too harsh under the circumstances is a challenge to the discretionary aspects of sentencing.[114] The standard of review on appeal is as follows:

> 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.[115]

A sentence within the standard range of the guidelines is appropriate under the Sentencing Code and, absent more, cannot be excessive or unreasonable.[116] A sentence in the aggravated range is justified where "the individual circumstances of [the] case are atypical of the crime for which [the Defendant] was convicted, such that a more severe punishment is appropriate."[117] "A sentencing court may consider any legal factor in determining that a sentence in the aggravated range should be imposed…, [and] the sentencing judge's statement of reasons on the record must

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[114] *See*, *e.g.*, *Com. v. Simpson*, 829 A.2d 334, 337 (Pa. Super. 2003).
[115] *Bowen*, *supra*, 975 A.2d at 1122 (quoting *Com. v. Rodda*, 723 A.2d 212, 214 (Pa. Super. 1999) (en banc) (quotations and citations omitted)).
[116] *Com. v. Moury*, 992 A.2d 162, 171 (Pa. Super. 2010) (citing *Com. v. Cruz–Centeno*, 668 A.2d 536 (Pa. Super. 1995) (stating combination of PSI and standard range sentence, absent more, cannot be considered excessive or unreasonable), alloc. denied, 676 A.2d 1195 (Pa. 1996)).
[117] *Com. v. Fullin*, 892 A.2d 843, 848 (Pa. Super. 2006).

reflect this consideration."[118] The sentencing judge's decision regarding aggravation will not be disturbed absent a manifest abuse of discretion.[119]

When a court imposes a sentence that is outside the guidelines, a reviewing court will vacate the sentence only if it finds the sentence to be "unreasonable."[120] A sentence is "unreasonable" when it is "a decision that is 'irrational' or 'not guided by sound judgment.'"[121] In determining whether a sentence is unreasonable, a reviewing court must consider the factors listed in Section 9781(d)[122] and whether the sentencing court properly considered the factors outlined in Section 9721(b).[123] It must also determine whether the trial court abused its discretion,[124] which has occurred only when "the record discloses that the judgment exercised was manifestly unreasonable, or the result of partiality, prejudice, bias, or ill-will."[125]

The Court stated clearly on the record the reasons for its sentencing decision[126] and believes it was justified in imposing a lengthy period of incarceration followed by parole for the balance of the Defendant's lifetime. Although the Court cited a number of justifications for the length of sentence imposed, the most important of those reasons was that

> the Court is convinced that the day that you are released is the day that you will pose a very real threat to the safety and lives of those

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[118] *Bowen*, *supra*, 975 A.2d at 1122 (quoting *Com. v. Stewart*, 867 A.2d 589, 592–93 (Pa. Super. 2005)).
[119] *Id.*
[120] 42 Pa. C.S. § 9781(c)(3) ("The appellate court shall vacate the sentence and remand the case to the sentencing court with instructions if it finds … the sentencing court sentenced outside the sentencing guidelines and the sentence is unreasonable.").
[121] *Com. v. Walls*, 926 A.2d 957, 963 (Pa. 2007) (citations omitted).
[122] 42 Pa. C.S. § 9781(d) ("In reviewing the record the appellate court shall have regard for: (1) The nature and circumstances of the offense and the history and characteristics of the defendant. (2) The opportunity of the sentencing court to observe the defendant, including any presentence investigation. (3) The findings upon which the sentence was based. (4) The guidelines promulgated by the commission.").
[123] *Walls*, *supra*, 926 A.2d at 964.
[124] *Id.*, at 962.
[125] *Barnes*, *supra*, 167 A.3d at 122 n.9 (quoting *Bowen*, *supra*, 55 A.3d at 1263 (quoting *Cunningham*, *supra*, 805 A.2d at 575)).
[126] *See*, *supra*, Part II.D.

> persons associated with Little League Baseball. And that the only way this Court can protect those persons, and the public at large, is to ensure that you are confined for as long as possible.[127]

Under the circumstances, the Court does not believe that its sentence is manifestly unreasonable or the result of prejudice, bias, or ill-will. To the contrary, the Court's decision is designed, among other things, to protect the victims and the public from the Defendant. These are reasons that are squarely within the Court's remit at sentencing[128] and are driven by the nature and circumstances of the offense and the history and characteristics of the Defendant.[129]

Accordingly, the Court declines to reconsider its sentence.

III. CONCLUSION.

For the reasons sent forth at length above, the Defendant's Post Sentence Motion filed January 23, 2024 is DENIED in its entirety.

IT IS SO ORDERED.

BY THE COURT,

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Eric R. Linhardt, Judge

ERL/bel

cc: Matthew Diemer, Esq.
Matthew Welickovitch, Esq.
Theresa Salazar, #PE7170
c/o SCI Muncy, P.O. Box 180, Rte. 405, Muncy PA 17756
Gary Weber, Esq. (Lycoming Reporter)

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[127] Transcript of Proceedings at sentencing, January 18, 2024, at 32.
[128] *See* 42 Pa. C.S. § 9721(b).
[129] *See* 42 Pa. C.S. § 9781(d).