

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY,  
PENNSYLVANIA**

<b>COMMONWEALTH OF PENNSYLVANIA</b>	:	
	:	
v.	:	<b>CR-1546-2024</b>
	:	
<b>ANGELA GARDNER,</b>	:	
<b>Defendant</b>	:	

**OPINION AND ORDER**

In the above captioned matter, the Defendant is charged with the Financial Exploitation of an Older Adult, or a Care-Dependent Person, a felony of the third degree and related charges. On August 29, 2024, the Defendant was arrested and preliminarily arraigned by a Magisterial District Judge. At that time, the Defendant was released on bail and signed a bail bond.

It is alleged that on September 20, 2024, the Defendant’s daughter went to the personal care home where the alleged victim resided. The Defendant’s daughter is married to the alleged victim. The Defendant’s daughter allegedly showed the alleged victim a text on her phone from a person identified on the phone as “Mom.” The alleged victim was observed copying something down from the text message into a notebook. An employee of the personal care home noticed the alleged victim’s actions and observed the text message contained language relating to the Defendant being authorized to utilize the alleged victim’s financial accounts. The employee intervened and advised the alleged victim that he should not write anything more down.

On November 5, 2024, the Defendant’s preliminary hearing was held before Magisterial District Judge Christian Frey. At the preliminary hearing, the Commonwealth raised the issue of the Defendant’s daughter’s visit with the alleged victim. Magisterial District Judge Frey addressed the issue and clarified to the Defendant that she was not to

have any direct or indirect contact with the alleged victim in this matter as a condition of her bail release. Magisterial District Judge Frey added this language to the bail release conditions.

On December 20, 2024, the Commonwealth filed a Motion to Revoke bail. The hearing on the bail revocation was held on January 6, 2024. The parties requested leave to file post hearing briefs on the matter. The Court granted the request and each party submitted their briefs timely. The matter is now before the Court.

The Commonwealth seeks to revoke the Defendant's bail for failure to obey her conditions of bail as stated in the bail bond and in Pennsylvania Rule of Criminal Procedure, Rule 526. The Commonwealth cites *Commonwealth v. Talley*, 265 A.3d 485, 525 (Pa. 2021), for the proposition that a bail revocation is the equivalent to a right to bail hearing and that the same standards apply. The Commonwealth asserts that its burden is to establish that it is "substantially more likely than not" that the Defendant has violated the terms of her bail. *Commonwealth v. Talley*, 265 A.3d 485, 525 (Pa. 2021). To meet this burden, the Commonwealth again cites to *Talley* that it is not entirely barred at a bail hearing from using evidence that otherwise may be inadmissible. *Id.*

The Defendant cites to *Talley* for the proposition that the Commonwealth cannot sustain its burden on hearsay or otherwise legally incompetent evidence. The Defendant objected, on hearsay grounds, to testimony of the personal care home employee regarding the text message he observed on the Defendant's daughter's cell phone. The Commonwealth countered this argument on the basis that the content of the text message met an exception to hearsay. In particular, the Commonwealth argued that the text message should be considered a statement of the opposing party, the Defendant, and admissible under Pennsylvania Rules of Evidence, Rule 803(25)(A). The Court agrees with the Commonwealth. The testimony of

the personal care home employee establishes that the message was on the phone of the Defendant's daughter and from a sender identified as "Mom." Thus, it is reasonable to conclude that the sender of the message was in fact the Defendant. The fact that the Defendant's daughter was showing the message to the alleged victim and he was copying it down verbatim supports the Defendant's daughter was acting as her agent. Therefore, the testimony regarding the text message meets the definition to an exception to hearsay and is admissible.

The Court now must consider whether or not the Commonwealth has established that it is substantially more likely than not that the Defendant has violated the terms of her bail, and if so, whether the violation warrants the revocation of her bail. The Defendant's bail was set on August 29, 2024, and the non-monetary conditions consisted of six separate conditions. Only conditions number 4 or 5 could be applied to the Commonwealth's allegations of a bail violation in this matter. Condition 4 states that "the Defendant must neither do, nor cause to be done, nor permit to be done on his or her behalf, any act as proscribed by Section 4952 of the Crimes Code (relating to intimidation of witnesses or victims) or by Section 4953 (relating to retaliation against witnesses or victims)." Condition number 5 states "the Defendant must refrain from criminal activity." As the Commonwealth did not present any testimony that the Defendant has been charged with a crime regarding the incident that occurred on September 20, 2024, the Court will focus on whether or not the behavior violates the terms of condition number 4.

The Commonwealth claims the Defendant attempted to intimidate the alleged victim in this matter. Title 18 Pa.C.S.A. Section 4952 defines intimidation of a witness to include a person acting, with the intent to or with the knowledge that his or her conduct will obstruct, impede, impair, prevent or interfere with the administration of criminal justice, he or she

intimidates or attempts to intimidate any witness or victim to give any false or misleading information or testimony relating to the commission of any crime from any law enforcement officer. The testimony presented by the Commonwealth demonstrated it is substantially more likely than not that the Defendant took actions to intimidate the alleged victim. The Commonwealth presented credible testimony that the Defendant's daughter met with the alleged victim at the personal care home he resided at and presented him a text message that would vindicate the Defendant of the charges against her. The Defendant's daughter is married to the alleged victim, and thus, someone who has a close personal relationship and potential influence over him. Further, the alleged victim is alleged to be a Care-Dependent Person whose condition currently requires living in a personal care home. These facts further support that the alleged victim would be susceptible to influence, especially from someone he trusted, such as his wife. The Defendant is familiar with the alleged victim and would know that he is likely susceptible to influence from her daughter. Thus, it is substantially more likely than not that the Defendant had her daughter meet with the alleged victim with the intent and purpose of influencing his testimony in a way that would vindicate her of these allegations. Therefore, the Court holds the Defendant has violated the terms of her bail as established on August 29, 2024.

A person who violates a condition of the bail bond is subject to a revocation of release or a change in the conditions of the bail bond by the bail authority. *Pa.R.Crim.P. 536 (A)(1)(a)*. Thus, the Court must turn its attention to determining if the Defendant's bail violation in this matter warrants the revocation of her release or a change in the conditions of the bail bond. The Court must consider the totality of the circumstances and the purpose of bail release when making the determination of the proper sanction for the Defendant's violation of her bail. The basis for the bail violation was known to the parties at the time of

the Preliminary Hearing before Magisterial District Judge Frey on November 5, 2024. While there is no transcript of exactly what was discussed that day, it is clear from the hearing on January 5, 2024, that the Commonwealth raised that the Defendant had violated her bail. Pursuant to Pennsylvania Rule of Criminal Procedure, Rule 529, Modification of Bail Order Prior to Verdict, the Defendant's bail could have been modified at the time of her preliminary hearing. Based upon the exhibit provided by the Commonwealth, it appears that Magisterial District Judge Frey did exactly that by adding language in the Release Conditions of the Defendant's bail bond that:

“Defendant shall have no contact with David Anderson, Elizabeth Anderson or any other potential witnesses. Bail conditions are being modified today to clarify the previously imposed condition set forth above: defendant shall have no contact whatsoever, with victim, either directly or indirectly.”

This Court concludes that the Defendant's violation of her bail conditions that occurred on September 20, 2024 has already been addressed by a Court with competent jurisdiction to address the violation at that stage of the proceedings. Further, the Commonwealth did not put forth any accusations that the Defendant has violated her bail conditions since September 20, 2024, let alone after her bail conditions were modified at the preliminary hearing on November 5, 2024. Although this Court finds that the Defendant violated her conditions of her bail bond on September 20, 2024, those violations were already adjudicated by the Magisterial District Judge at the preliminary hearing on November 5, 2024 and there are no violations for the current Court to address through a revocation or further modification of the Defendant's conditions of release. Therefore, the Commonwealth's Motion to Revoke Bail is **DENIED**.

By the Court,

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Ryan M. Tira, Judge

RMT/asw

CC: DA

Kyle Rude, Esquire

Gary Weber, Esquire-Lycoming Reporter