

Docket No. 2020-02485
Dutchess County Court Ind. No. 74/2018

Supreme Court of the State of New York
APPELLATE DIVISION – SECOND DEPARTMENT

THE PEOPLE OF THE STATE OF NEW YORK

Respondent,

– against –

NICOLE ADDIMANDO

Defendant-Appellant.

BRIEF OF *AMICI CURIAE* SANCTUARY FOR FAMILIES, DAY ONE NEW YORK, NATIONAL NETWORK TO END DOMESTIC VIOLENCE, SAFE HORIZON, INC., HER JUSTICE, URBAN RESOURCE INSTITUTE, URBAN JUSTICE CENTER, EMPIRE JUSTICE CENTER, LEGAL MOMENTUM, NEW YORK LEGAL ASSISTANCE GROUP, NEW YORK CITY ALLIANCE AGAINST SEXUAL ASSAULT, AND LAWYERS COMMITTEE AGAINST DOMESTIC VIOLENCE, IN SUPPORT OF THE BRIEF OF DEFENDANT-APPELLANT NICOLE ADDIMANDO

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OTHER AUTHORITIES

Michael A. Anderson et al., “ <i>Why Doesn’t She Just Leave?</i> ”: A Descriptive <i>Study of Victim Reported Impediments to Her Safety</i> , 18 J. FAM. VIOLENCE 151 (2003)	17
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Matthew J. Carlson et al., <i>Protective Orders and Domestic Violence: Risk Factors for Re-Abuse</i> , 14 J. FAM. VIOLENCE 205 (1999)	15
CASA DE ESPERANZA: NATIONAL LATIN@ NETWORK & NO MORE, THE NO MÁS STUDY: DOMESTIC VIOLENCE AND SEXUAL ASSAULT IN THE U.S. LATIN@ COMMUNITY 11 (2015).....	17
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Max Ehrenfreund & Elahe Izadi, <i>The Scientific Research Shows Reports of Rape Are Often Murky, but Rarely False</i> , WASH. POST (Dec. 11, 2014), www.washingtonpost.com/news/wonk/wp/2014/12/11/the-scientific-research-shows-reports-of-rape-are-often-murky-but-rarely-false	21
Guy Enosh & Eli Buchbinder, <i>Strategies of Distancing from Emotional Experience</i> , 4 QUALITATIVE SOC. WORK 9 (2005)	20-21
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Jim Hopper, <i>How Reliable Are the Memories of Sexual Assault Victims</i> , SCI. AM. (Sept. 27, 2018), https://blogs.scientificamerican.com/observations/how-reliable-are-the-memories-of-sexual-assault-victims	5, 22
Pierre Janet, <i>L'Amnesie et la Dissociation Dessouvenirs par L'emotion</i> , 1 J. PSYCHOL. 417 (1904)	18
Melissa Jenkins et al., <i>Learning and Memory in Rape Victims with Posttraumatic Stress Disorder</i> , 155 AM. J. PSYCHIATRY 278 (1998).....	19
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Loring Jones et al., <i>Post-Traumatic Stress Disorder (PTSD) in Victims of Domestic Violence: A Review of the Research</i> , 2 TRAUMA VIOLENCE & ABUSE 99 (2001)	5
Margaret H. Kearney, <i>Enduring Love: A Grounded Formal Theory of Women's Experience of Domestic Violence</i> , 24 RES. NURSING & HEALTH 270 (2001)	12
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Tamara L. Kuennen, <i>Love Matters</i> , 56 ARIZ. L. REV. 977 (2014)	7

Annie S. Lemoine, Note, <i>Good Storytelling: A Trauma-Informed Approach to the Preparation of Domestic Violence-Related Asylum Claims</i> , 19 LOY. J. PUB. INT. L. 27 (2017).....	19, 23
Martha R. Mahoney, <i>Legal Images of Battered Women: Redefining the Issue of Separation</i> , 90 MICH. L. REV. 1 (1991)	16
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Joan S. Meier, <i>Domestic Violence, Child Custody, and Child Protection: Understanding Judicial Resistance and Imagining the Solutions</i> , 11 AM. U. J. GENDER SOC. POL'Y & L. 657 (2003)	17
J. Reid Meloy et al., <i>Domestic Protection Orders and the Prediction of Subsequent Criminality and Violence Toward Protectees</i> , 34 PSYCHOTHERAPY 447 (1997)	15
Stephen Paskey, <i>Telling Refugee Stories: Trauma, Credibility, and the Adversarial Adjudication of Claims for Asylum</i> , 56 SANTA CLARA L. REV. 457 (2016).....	20, 22
Darrell Payne & Linda Wermeling, <i>Domestic Violence and the Female Victim: The Real Reason Women Stay!</i> , 3 J. MULTICULTURAL, GENDER & MINORITY STUD. 1 (2009).....	15-16
Affidavit of Chitra Raghavan, <i>People v. Szlekovics</i> , Ind. No. 96-0915 (N.Y. Sup. Ct. Monroe Cty. Feb. 14, 2020).....	11
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EVAN STARK, COERCIVE CONTROL: HOW MEN ENTRAP WOMEN IN PERSONAL LIFE (2007).....	14, 16

Evan Stark, <i>Coercive Control</i> , in <i>VIOLENCE AGAINST WOMEN: CURRENT THEORY AND PRACTICE IN DOMESTIC ABUSE, SEXUAL VIOLENCE AND EXPLOITATION</i> 17 (Nancy Lombard & Lesley McMillan eds., 2013).....	7-8
Evan Stark, <i>Looking Beyond Domestic Violence: Policing Coercive Control</i> , 12 <i>J. POLICE CRISIS NEGOTS.</i> 199 (2012).....	7-9, 14-15
John G. Taylor, <i>Behind the Veil: Inside the Mind of Men Who Abuse</i> , <i>PSYCHOL. TODAY</i> (Feb. 5, 2013), www.psychologytoday.com/us/blog/the-reality-corner/201302/behind-the-veil-inside-the-mind-men-who-abuse	12
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Julia R. Tolmie, <i>Coercive Control: To Criminalize or not to Criminalize?</i> , 18 <i>CRIMINOLOGY & CRIM. JUST.</i> 50 (2018).....	20
Bessel A. van der Kolk & Rita Fisler, <i>Dissociation and the Fragmentary Nature of Traumatic Memories: Overview and Exploratory Study</i> , 8 <i>J. TRAUMATIC STRESS</i> 505 (1995).....	19
Bessel A. van der Kolk, <i>The Body Keeps the Score: Memory and the Evolving Psychobiology of Posttraumatic Stress</i> , <i>HARV. REV. PSYCHIATRY</i> 253 (1994).....	18
Suraji R. Wagage, Note, <i>When the Consequences Are Life and Death: Pretrial Detention for Domestic Violence Offenders</i> , 7 <i>DREXEL L. REV.</i> 195 (2014).....	15
WASHINGTON STATE INSTITUTE FOR PUBLIC POLICY, <i>RECIDIVISM TRENDS OF DOMESTIC VIOLENCE OFFENDERS IN WASHINGTON STATE</i> (Aug. 2013), https://www.wsipp.wa.gov/ReportFile/1541/Wsipp_Recidivism-Trends-of-Domestic-Violence-Offenders-in-Washington-State_Full-Report	16
April M. Zeoli et al., <i>Post-Separation Abuse of Women and their Children: Boundary-setting and Family Court Utilization among Victimized Mothers</i> , 28 <i>J. FAM. VIOLENCE</i> 547 (2013).....	17

PRELIMINARY STATEMENT

Amici Curiae respectfully submit this Brief to bring the Court's attention to the widely recognized and well-documented body of research that provides critical insight into the devastating psychological and neurological impacts of domestic violence.¹ This research, as well as the experiences of *Amici*, provide requisite, foundational understandings of domestic violence that, in *Amici*'s view, are essential to New York courts' analysis of cases like those of Appellant Nicole Addimando under the recently enacted Domestic Violence Survivors Justice Act (the "DVSJA").

This was not a close case. There is no question that Ms. Addimando was a victim of domestic violence at the hands of her boyfriend, Christopher Grover. The record before the sentencing court contained clear and extensive evidence that Grover physically, sexually, and emotionally abused Ms. Addimando for years. The seemingly incontrovertible evidence presented during trial and sentencing not only revealed Grover's repeated, horrific physical and sexual abuse, but also demonstrated the severe psychological harm that resulted from his attempts to achieve total control over Ms. Addimando—harm and trauma that fundamentally altered Ms. Addimando's cognition, memory, and decision-making. Despite this overwhelming evidence, the sentencing court reached an unfounded conclusion in denying Ms. Addimando relief under the DVSJA: that the persistent and severe

¹ *Amici* do not address the legal issues in the case, which the parties have fully briefed.

domestic abuse she suffered was not a “significant contributing factor” in the crime.²

The court’s denial of relief simply cannot be reconciled with the widely accepted understandings of the destructive psychological and neurological impacts of domestic abuse. The scientific community, academia, numerous courts, as well as entities charged with providing services to survivors, recognize that domestic abuse profoundly alters a victim’s sense of self, decision-making, and memory, among other psychological effects. Decades of research and experience confirm that a victim’s altered cognition causes her to behave in ways that may seem counterintuitive to an outside observer.

Amici maintain that courts must integrate these understandings of the psychological and cognitive impacts of domestic abuse into their analysis under the DVSJA if the statute is to have any meaning. For instance, courts should not discredit the testimony of a victim like Ms. Addimando because her memory of abuse may be occasionally inconsistent. In fact, the research into traumatic memory and the experience of *Amici* supports the exact opposite conclusion: an inconsistent memory *is actually an indication of* severe abuse. So too must courts appreciate that

² More specifically, the court suggested that Ms. Addimando should have left the abusive relationship, that her testimony was not credible, and that Ms. Addimando was not in imminent danger on the night of the crime. *People v. Addimando*, 67 Misc. 3d 408, 438-41 (N.Y. Sup. Ct. Dutchess Cty. 2020).

victims of abuse, like Ms. Addimando, are often subjected to tactics of coercive control by their abusers and rendered powerless to leave.

Ms. Addimando is the ideal candidate for reduced sentencing under the DVSJA. This reduced sentencing scheme recognizes that victims of abuse like Ms. Addimando are less culpable for crimes related to their abuse because of their altered cognition from (often years of) abusive control by their abusers; its aim is to ensure that punishments for victims of abuse are not “unduly harsh.”³ However, the DVSJA cannot achieve this end when sentencing courts—like the court that sentenced Ms. Addimando—overlook the recognized psychological effects of domestic violence in their analysis. If Ms. Addimando cannot obtain relief under the DVSJA based on the abuse she suffered and a voluminous record of evidence supporting her story, *Amici* fear no victim’s claim will ever merit relief, rendering hollow decades of advocacy and the DVSJA itself.

As scholar Deborah Epstein aptly states, “[G]atekeepers within the justice system often lack information about the effects of violence-based neurological and psychological trauma on information processing and memory. . . . The best way to cure these knowledge gaps is—of course—improved understanding.”⁴ The aim of

³ N.Y. Penal Law § 60.12(1) (Consol. 2019).

⁴ Deborah Epstein & Lisa A. Goodman, *Discounting Women: Doubting Domestic Violence Survivors’ Credibility and Dismissing Their Experiences*, 167 U. PA. L. REV. 399, 453 (2019) (citation omitted).

Amici is precisely this: to address the knowledge gap inherent in the sentencing court’s analysis of Ms. Addimando’s abuse, and to provide an overview of the decades of scientific research into the far-reaching cognitive effects of coercive control, trauma bonding, and traumatic memory in order to improve understanding. By recognizing Ms. Addimando as an ideal candidate for relief under the DVSJA, this Court can ensure that her abuse—and the abuse of victims like Ms. Addimando—is given the more-informed consideration that the New York Legislature intended and that is essential to proper adjudication under the DVSJA.

ARGUMENT

The sentencing court wrongly denied Ms. Addimando’s application for an alternative sentence under the DVSJA based on its finding that: (1) “the nature of the alleged abusive relationship between [Ms. Addimando] and [Grover] is undetermined”; (2) Ms. Addimando “had a tremendous amount of advice, assistance, support, and opportunities to escape her alleged abusive situation”; (3) “the abuse history presented by [Ms. Addimando] is undetermined and inconsistent” due to “the inconsistent statements by [Ms. Addimando] regarding her life-long abuse by [Grover] and others”; and (4) “most importantly, the specific facts of the homicidal act . . . reveal a situation where . . . [Ms. Addimando] had a path to escape through the front door.”⁵

⁵ *Addimando*, 67 Misc. 3d at 439-40.

These findings demonstrate that the sentencing court misunderstood the nature of domestic abuse and its impacts on victims. Widely accepted research and the decades of collective experience of *Amici* in working with victims of domestic abuse show that the abuse can result in profound psychological trauma to victims.⁶ Specifically, experts explain abusive behaviors using the well-accepted theory of “coercive control,” in which an abuser’s actions simultaneously cripple a victim’s ability to make autonomous decisions and solidify the victim’s attachment to him.⁷ This can make it exceedingly difficult, if not impossible, for a victim to leave her abusive partner. Even when a domestic violence victim decides to leave, resources available to her often provide inadequate support and protection, in part because they are designed to protect victims from—and punish perpetrators for—discrete acts of violence as opposed to ongoing patterns of abuse. Exposure to cumulative trauma

⁶ See, e.g., Mary Ann Dutton, *Pathways Linking Intimate Partner Violence and Posttraumatic Disorder*, 10 TRAUMA VIOLENCE & ABUSE 211, 211 (2009) (“It is now well recognized that intimate violence victimization can lead to adverse mental health effects such as PTSD . . . , depression, and anxiety.”); Loring Jones et al., *Post-Traumatic Stress Disorder (PTSD) in Victims of Domestic Violence: A Review of the Research*, 2 TRAUMA VIOLENCE & ABUSE 99, 100 (2001) (collecting dozens of peer-reviewed articles demonstrating that symptoms exhibited by women who experience domestic violence “are consistent with the major indicators of” PTSD); see also Jim Hopper, *How Reliable Are the Memories of Sexual Assault Victims*, SCI. AM. (Sept. 27, 2018), <https://blogs.scientificamerican.com/observations/how-reliable-are-the-memories-of-sexual-assault-victims> (discussing the neurological impacts of experiencing a traumatic event, including a sexual assault, on memory based on decades of research).

⁷ See Margaret E. Johnson, *Redefining Harm, Reimagining Remedies, and Reclaiming Domestic Violence Law*, 42 U.C. DAVIS L. REV. 1107, 1121 (2009) (“The notion of domestic violence as the operation of power and control has largely become part of mainstream consciousness.”); Jeffrey R. Baker, *Enjoining Coercion: Squaring Civil Protection Orders with the Reality of Domestic Abuse*, 11 J. L. & FAM. STUD. 35, 47-48 (2008) (“The theory of ‘coercive control’ . . . has gained common approval among domestic abuse scholars and activists.”).

can also significantly hinder a victim's memory processes, causing a victim's recollection of her abuse during interviews or sworn testimony to appear inconsistent.

An examination of Ms. Addimando's history of abuse within the context of these established principles demonstrates that the sentencing court should have granted Ms. Addimando's DVSJA application.

I. TRAUMA-COERCED ATTACHMENT AND INSUFFICIENT RESOURCES PREVENTED MS. ADDIMANDO FROM LEAVING GROVER

A. Trauma-coerced Attachment

One example of the deleterious psychological effects of domestic violence is trauma-coerced attachment. Trauma-coerced attachment occurs when abusers subject their victims to tactics designed to intimidate, isolate, degrade, and ultimately control them. This trauma causes many victims to lose their sense of self and autonomy while, counterintuitively, strengthening their emotional attachments to their abusive partners. These effects can make it impossible for a victim to leave her abusive partner, even when a physical path to do so exists.

1. Coercive Control Tactics

The coercive control model explains that domestic abuse typically involves an ongoing pattern of acts involving physical, emotional, and psychological abuse that an abuser uses to gain control over his partner and dominate her "autonomy,

liberty, and personhood.”⁸ Evan Stark, a renowned sociologist who has been influential in developing this model for understanding domestic violence,⁹ divides coercive control tactics into acts designed to hurt or intimidate (coercion) and acts used to isolate or regulate (control).¹⁰ As Professor Stark explains, the exact combination of tactics that an abuser uses varies because “[p]erpetrators adapt these tactics through trial and error based on their relative benefits and costs.”¹¹

Coercive tactics involve frequent physical and sexual violence as well as threats of violence. While some assaults can be mild, such as shoving or slapping, extreme violence is not uncommon: many abusers choke, strangle, cut, stab, and rape their victims.¹² Abusers also threaten their partners with assaults, both explicitly and in subtle ways that cannot be detected as a threat by others.¹³ Some of the most effective abusers are able to undermine a victim’s ability to resist to such an extent

⁸ Tamara L. Kuennen, *Love Matters*, 56 ARIZ. L. REV. 977, 1000 (2014); *see also* Evan Stark, *Looking Beyond Domestic Violence: Policing Coercive Control*, 12 J. POLICE CRISIS NEGOTS. 199, 201, 206 (2012); Connie J. A. Beck & Chitra Raghavan, *Intimate Partner Abuse Screening in Custody Mediation: The Importance of Assessing Coercive Control*, 48 FAM. CT. REV. 555, 556-57 (2010).

⁹ *See* Marilyn McMahon & Paul McGorrery, *Criminalising Coercive Control: An Introduction*, in CRIMINALISING COERCIVE CONTROL: FAMILY VIOLENCE AND THE CRIMINAL LAW 3, 4 (Marilyn McMahon & Paul McGorrery eds., 2020).

¹⁰ Stark, *supra* note 8, at 207.

¹¹ Evan Stark, *Coercive Control*, in VIOLENCE AGAINST WOMEN: CURRENT THEORY AND PRACTICE IN DOMESTIC ABUSE, SEXUAL VIOLENCE AND EXPLOITATION, 17, 21 (Nancy Lombard & Lesley McMillan eds., 2013); *see also* Joan B. Kelly & Michael P. Johnson, *Differentiation Among Types of Intimate Partner Violence: Research Update and Implications for Interventions*, 46 FAM. CT. REV. 476, 481 (2008).

¹² *See, e.g.*, Stark, *supra* note 8, at 207; Tania Tetlow, *Criminalizing “Private” Torture*, 58 WM. & MARY L. REV. 183, 191 (2016).

¹³ Stark, *supra* note 8, at 208.

that repeated physical violence becomes unnecessary: the mere threat of violence and the knowledge of what could occur if she disobeys is enough to control a victim.¹⁴ Abusers also use shaming tactics, such as coercing or forcing their partner to participate in degrading sexual acts.¹⁵

Control tactics enforce obedience both directly and indirectly.¹⁶ Methods of control include isolating a woman¹⁷ from her family and friends by forbidding visits or communication, refusing to give a woman money for travel costs, or forcing her “to choose between ‘them’ and ‘me.’”¹⁸ Some abusers deprive their partners of basic necessities, such as food, sleep, money, and health care. This deprivation increases a victim’s dependence on her abuser, which increases the abuser’s level of control over her.¹⁹ An abuser can also exert control over his partner by microregulating her everyday life, including how she dresses, cooks, cleans, socializes, cares for their children, or performs sexually.²⁰

¹⁴ See, e.g., *id.*; Beck & Raghavan, *supra* note 8, at 562 (noting that “once the perpetrator has established that he is a legitimate source of threat, he is unlikely to need to use high levels of physical abuse to induce compliance”); Tetlow, *supra* note 12, at 192 (“The threat of violence, whether explicit or implicit, may do as much work as its actual infliction.”).

¹⁵ See, e.g., Tetlow, *supra* note 12, at 195.

¹⁶ Stark, *supra* note 11, at 26-27.

¹⁷ Partner violence can be committed against all individuals, not just women. However, because women are disproportionately the victims of domestic violence, we refer to victims here as women. See DOMESTIC SHELTERS, *More About Coercive Control* (Oct. 16, 2015), <https://www.domesticshelters.org/articles/identifying-abuse/more-about-coercive-control>.

¹⁸ Stark, *supra* note 8, at 210.

¹⁹ Stark, *supra* note 8, at 211.

²⁰ See *id.*; Baker, *supra* note 7, at 47.

The record makes clear that Grover frequently engaged in extreme acts of coercive violence against Ms. Addimando: he strangled her with her bathrobe belt (TT²¹ 664-65); on numerous occasions, he heated a metal spoon in the flame of their gas stove, and burned her breasts, inner thighs, buttocks, and the interior and exterior of her vagina²² (TT 654-57, 697); and he slammed her face on the kitchen counter, into a wall, and onto the top of a dresser, including while she was pregnant (TT 647, 677, 705, 711). Grover raped Ms. Addimando (TT 648-50, 664-65, 712); he sexually assaulted her, penetrating her anally and vaginally with objects including fake knives he made using PVC piping and foam, a wooden spoon, a wine bottle, and even a gun (TT 700-02, 705-07, 1019-20). Grover further tortured and degraded Ms. Addimando by recording himself binding her with twine or fabric, raping her, and then leaving her in restraints, sometimes for hours. (TT 667-68, 687-88.) Dr. Dawn Hughes, a clinical and forensic psychologist who specializes in trauma and interpersonal violence (TT 1579), testified that this sexual violence fell in “the top 10 percent of cases” of the “hundreds and hundreds and hundreds of individuals” she has evaluated over her career (TT 1630).

Grover also used control tactics, like isolation and deprivation. When Ms. Addimando asked Grover if she could visit a friend without him, he responded

²¹ All references to the trial transcript are denoted as “TT.”

²² As Professor Tania Tetlow observed, domestic violence abusers often “focus on vulnerable parts of the body, like breasts and genitals.” Tetlow, *supra* note 12, at 191.

by saying that no one respected him and slammed Ms. Addimando's face into the wall. (TT 677.) He controlled their joint finances, forcing her to ask for permission to buy groceries (TT 1633, 1707); he prohibited her from using birth control (TT 1633); he decided what she could watch on Netflix (TT 1633); and he told her she should not waste time talking to her "little mommy friends" and forced her to watch porn instead (TT 844). Dr. Hughes concluded that Ms. Addimando's "report of intimate partner violence in her relationship with Christopher Grover was consistent with what we know as severe intimate partner violence with physical, sexual, emotional, and psychological abuse" (TT 1629), and his tactics were "absolutely coercive control" (TT 1634).

2. Trauma-coerced Attachment

Coercive control tactics reframe victims' perspectives of themselves and their abusers. Counterintuitively, victims of abuse commonly experience increased feelings of attachment to their abusers. This phenomenon, dubbed "trauma-coerced attachment" or "trauma bonding," occurs when persistent, cyclical abuse triggers a shift in a victim's reality, causing the victim to feel increased affection for the abusive partner and to believe she deserves the abuse.²³ This "paradoxical

²³ Chitra Raghavan & Kendra Doychak, *Trauma-coerced Bonding and Victims of Sex Trafficking: Where Do We Go from Here?*, 17 INT'L J. EMERGENCY MENTAL HEALTH & HUM. RESILIENCE 583, 584 (2015); see also Don Dutton & Susan Lee Painter, *Traumatic Bonding: The Development of Emotional Attachments in Battered Women and Other Relationships of Intermittent Abuse*, 6 VICTIMOLOGY 139, 150 (1981); Affidavit of Chitra Raghavan, *People v. Szlekovics*, Ind. No. 96-0915 (N.Y. Sup. Ct. Monroe Cty. Feb. 14, 2020).

idealization of the abuser” is strikingly similar to Stockholm Syndrome, where victims develop bonds of affection with their captors or kidnappers, and helps explain why women like Ms. Addimando frequently report remaining in an abusive relationship because of “love” for their partners.²⁴

Two common features of abusive relationships contribute to trauma-coerced attachment: a power imbalance between victim and abuser and intermittent periods of abuse and calm.²⁵

First, a power imbalance can amplify a victim’s sense of helplessness, causing her to feel helpless, vulnerable, and worthy of abuse.²⁶ She often comes to believe that *her* behavior—not that of her partner—is unreasonable and must be corrected.²⁷ As a result, a victim “idealizes her abuser” and “strives to please him.”²⁸

Second, intermittent periods of abuse and relative calm reinforce feelings of

²⁴ Chris Cantor & John Price, *Traumatic Entrapment, Appeasement and Complex Post-Traumatic Stress Disorder: Evolutionary Perspectives of Hostage Reactions, Domestic Abuse and the Stockholm Syndrome*, 41 AUSTL. & N.Z. J. PSYCHIATRY 377, 377 (2007) (observing “both Stockholm and post-traumatic stress disorder . . . characteristics in victims of domestic abuse”).

²⁵ Dutton & Painter, *supra* note 23, at 147-48.

²⁶ *Id.* at 147, 151.

²⁷ See Judith Lewis Herman, *Complex PTSD: A Syndrome in Survivors of Prolonged and Repeated Trauma*, 5 J. TRAUMATIC STRESS 377, 385 (1992) (explaining that victims’ thought patterns shift as a result of abuse); see also Raghavan & Doychak, *supra* note 23, at 583-84; Donald G. Dutton & Susan Painter, *Emotional Attachments in Abusive Relationships: A Test of Traumatic Bonding Theory*, 8 VIOLENCE & VICTIMS 105, 107-08 (1993); Dutton & Painter, *supra* note 23, at 151.

²⁸ Raghavan & Doychak, *supra* note 23, at 583.

affection for the abusive partner. When the physical assault ends,²⁹ the victim experiences an “emotional collapse” accompanied by an increased feeling of helplessness.³⁰ An abuser, on the other hand, often attempts to “make amends” after a violent event by being particularly loving toward the victim.³¹ This continued pattern of abuse followed by reconciliation leads women like Ms. Addimando to “focus[] on surviving each episode of violence for the sake of the hoped-for relationship” glimpsed during the periods of relative calm.³² Abusers also are often skilled at appearing “charming” in public,³³ which reinforces a victim’s belief that her partner is a fundamentally loving and supportive individual who occasionally slips up.

The evidence reveals these dynamics were at play in Ms. Addimando and Grover’s relationship. Grover repeatedly assaulted Ms. Addimando. But Ms. Addimando also testified that, at times, Grover was affectionate and kind and could be “involved and supportive” (TT 779-81)—attempting to apologize for the abuse (TT 706), calling Ms. Addimando pet names, and planning family activities (TT 727). Even on the day Grover died, Ms. Addimando contemplated leaving him but

²⁹ Dutton & Painter, *supra* note 23, at 150.

³⁰ *Id.*

³¹ *Id.*

³² Margaret H. Kearney, *Enduring Love: A Grounded Formal Theory of Women’s Experience of Domestic Violence*, 24 RES. NURSING & HEALTH 270, 275 (2001).

³³ John G. Taylor, *Behind the Veil: Inside the Mind of Men Who Abuse*, PSYCHOL. TODAY (Feb. 5, 2013), www.psychologytoday.com/us/blog/the-reality-corner/201302/behind-the-veil-inside-the-mind-men-who-abuse.

refrained from doing so because he reassured her “that everything was going to be okay.” (TT 728.) Dr. Hughes explained that there was an “imbalance of power and control” in the relationship. (TT 1633-34.) She testified that she had given Ms. Addimando a series of tests which showed that Ms. Addimando was “dependent and conforming and submissive” (TT 1636) and Ms. Addimando felt she was “somewhat not deserving, somewhat unworthy” (TT 1638).

Trauma bonding also helps explain Ms. Addimando’s reluctance to tell some individuals that Grover was abusing her despite being willing to disclose the identity of other abusers. Ms. Addimando’s intense connection to Grover—her romantic partner and the father of her children—drove her to protect him and to conceal his abuse. (TT 720.)

When one accounts for the well-accepted research and *Amici*’s experience, the evidence shows that Grover’s abuse created a traumatic bond that made it impossible for Ms. Addimando to leave permanently despite her attempts to do so.³⁴ Ms. Addimando is not alone: eighty percent of victims leave their abusive relationships at least once—often with the help of community resources, including counselors, healthcare professionals, women’s shelters, or the police—but many

³⁴ Ms. Addimando tried to leave Grover at least once. She packed bags and left while Grover was at work (TT 929-30; ST 213-14), but ultimately returned out of fear (ST 214).

then return to the relationship.³⁵ Those who lack the foundational understanding of the impacts of trauma-coerced attachment may believe that victims who persistently seek help, but always return to the abusive relationship, are crying wolf and that the relationship is not as abusive as the victim claims. In actuality, this cycle more often signals the existence of trauma bonding stemming from ongoing abuse.³⁶ The sentencing court’s decision evidences a failure to appreciate traumatic bonding.³⁷

B. External Resources

Many of the resources available to victims of domestic violence are structured in a manner that assumes abuse is a discrete violent act, rather than a pattern of physical and psychological abuse calculated to control the victim. As a result, even when a victim attempts to free herself from her trauma-coerced bonds and take advantage of resources available to her, she still may face insurmountable barriers to leaving.

As one example, the government’s ability to protect women by prosecuting

³⁵ See EVAN STARK, COERCIVE CONTROL: HOW MEN ENTRAP WOMEN IN PERSONAL LIFE 115-16 (2007).

³⁶ See Stark, *supra* note 8, at 204-05.

³⁷ In contrast, other courts in New York have recognized the impact of trauma bonding and coercive control. See, e.g., *People v. Abdur-Razzaq*, 77 N.Y.S.3d 842, 852 (N.Y. Sup. Ct. Bronx Cty. 2018) (recognizing that “trauma bonding and coercive control are scientific theories that provide the most logical persuasive explanation for often paradoxical behaviors of victims of sex trafficking”); *Grano v. Martin*, No. 19-CV-6970 (CS), 2020 WL 1164800, at *24 (S.D.N.Y. Mar. 11, 2020) (recognizing that coercive control is “undoubtedly a serious form of domestic abuse”); *L.M.L. v. H.T.N.*, 2017 N.Y. Slip Op. 51333(U), 2017 WL 4507541, at *5 (N.Y. Sup. Ct. Monroe Cty. Oct. 3, 2017) (recognizing “coercive control” as a form of violence).

their abusers is limited by this erroneous assumption. Prosecutors charge only a fraction of cases referred, and in the small numbers of cases when prosecutors bring charges, they often classify assaults that cause serious injury as misdemeanors.³⁸ As a result, in states where arrest for domestic assault is mandatory, only one to five percent of those arrested are convicted or serve any jail time,³⁹ and the vast majority of abusers are quickly released after arrest—creating a dangerous situation for victims.⁴⁰ While protective orders can provide some measure of safety, they are not a failsafe because, for many abusers, violation of a court order is no more a deterrent than the criminal laws they violated in their initial assaults.⁴¹ Indeed, 32 percent of victims are re-victimized within six months of a criminal justice intervention.⁴²

³⁸ See Tetlow, *supra* note 12, at 198 n.71 (“If a victim seeks help from the criminal justice system, at best, it will respond with a misdemeanor prosecution of the perpetrator with no offer of protection for her.”); Darrell Payne & Linda Wermeling, *Domestic Violence and the Female Victim: The Real Reason Women Stay!*, 3 J. MULTICULTURAL, GENDER & MINORITY STUD. 1, 3 (2009).

³⁹ Stark, *supra* note 8, at 205.

⁴⁰ See Suraji R. Wagage, Note, *When the Consequences Are Life and Death: Pretrial Detention for Domestic Violence Offenders*, 7 DREXEL L. REV. 195, 219-22 (2014) (advocating for mandatory pretrial detention in domestic abuse cases because the gap between arrest and prosecution leaves victims vulnerable).

⁴¹ Matthew J. Carlson et al., *Protective Orders and Domestic Violence: Risk Factors for Re-Abuse*, 14 J. FAM. VIOLENCE 205, 214-15 (1999) (explaining study in which issuing a protective order was associated with a decrease in number of women reporting physical violence after protective order, but no change in the number of reported incidents for women who experienced violence after protective order); J. Reid Meloy et al., *Domestic Protection Orders and the Prediction of Subsequent Criminality and Violence Toward Protectees*, 34 PSYCHOTHERAPY 447, 450 (1997) (discussing study where even after issuance of protective orders, 18% of abusers were subsequently arrested for victim-related offenses); Payne & Wermeling, *supra* note 38, at 3.

⁴² See Payne & Wermeling, *supra* note 38, at 3; see also WASHINGTON STATE INSTITUTE FOR PUBLIC POLICY, RECIDIVISM TRENDS OF DOMESTIC VIOLENCE OFFENDERS IN WASHINGTON

Thus, for many victims, the criminal justice system offers, at best, an incomplete solution for the abuse they continue to suffer.

Women also may stay in abusive relationships out of well-founded fear that it could be even more dangerous to leave. Statistics show that women are at the highest risk of severe or fatal injury when they try to leave an abusive relationship.⁴³ Of the approximately 4,000 women killed by a domestic partner each year, about 75 percent of victims were killed as they attempted to leave the relationship or after the relationship had ended.⁴⁴

Abused mothers face yet another obstacle when trying to leave their abusive relationships: if the abuser is the father of their children, they likely will be required to litigate child custody issues and may find themselves subject to court orders that require them to co-parent with a former abuser, thereby “provid[ing] opportunities for continued abuse.”⁴⁵ Women also risk losing their children in a custody battle

STATE (Aug. 2013), https://www.wsipp.wa.gov/ReportFile/1541/Wsipp_Recidivism-Trends-of-Domestic-Violence-Offenders-in-Washington-State_Full-Report (reporting that for offenders with a current domestic violence offense, 18 percent were convicted for a new domestic violence felony or misdemeanor within 36 months of conviction).

⁴³ See Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 5-6 (1991).

⁴⁴ DOMESTIC ABUSE SHELTER, INC., DOMESTIC VIOLENCE STATISTICS, <https://domesticabuseshelter.org/domestic-violence>; see also Sarah M. Buel, *Fifty Obstacles to Leaving, A.K.A., Why Abuse Victims Stay*, 28 COLO. LAW. 19, 19 (1999); STARK, *supra* note 35, at 115 (“Almost half the males on death row for domestic homicide killed in retaliation for a wife or lover leaving them.”).

⁴⁵ April M. Zeoli et al., *Post-Separation Abuse of Women and their Children: Boundary-setting and Family Court Utilization among Victimized Mothers*, 28 J. FAM. VIOLENCE 547, 547 (2013); see also Joan S. Meier, *Domestic Violence, Child Custody, and Child Protection:*

with an abuser.⁴⁶ Ms. Addimando confided in her therapist that Grover told her he would “get the kids” if she ever left, preying on her existing fear that any revelation of Grover’s abuse could lead to losing her children. (TT 838; ST⁴⁷ 261-62.) For victims who are mothers, abuse in the form of threats to take children away can be incredibly effective in achieving dominance and control. For many mothers, including Ms. Addimando, this risk is too great to make leaving an option.⁴⁸

II. MS. ADDIMANDO’S TESTIMONY AT TRIAL REVEALED THE FAR-REACHING IMPACTS OF TRAUMA ON MEMORY

The trauma associated with physical, sexual, and psychological violence committed by a domestic partner can have long-lasting impacts on the ability of a victim to form and to relate memories. Trauma causes neurobiological and psychological changes: the brain often reconstructs, fragments, or altogether deletes memories of abuse.⁴⁹ These neurological effects alter the way in which a trauma

Understanding Judicial Resistance and Imagining the Solutions, 11 AM. U. J. GENDER SOC. POL’Y & L. 657, 679-80 (2003).

⁴⁶ See Tetlow, *supra* note 12, at 193-94 (describing how abusers routinely seek and gain custody of their children as a form of punishment after victims successfully leave).

⁴⁷ All references to the sentencing transcript are denoted as “ST.”

⁴⁸ See CASA DE ESPERANZA: NATIONAL LATIN@ NETWORK & NO MORE, THE NO MÁS STUDY: DOMESTIC VIOLENCE AND SEXUAL ASSAULT IN THE U.S. LATIN@ COMMUNITY 11 (2015) (citing fear of losing their children as one of the top three reasons domestic violence victims do not seek help); Michael A. Anderson et al., “*Why Doesn’t She Just Leave?*”: A Descriptive Study of Victim Reported Impediments to Her Safety, 18 J. FAM. VIOLENCE 151, 154 (2003) (finding that 24.4% of victims reported “[f]ear that I might lose my children” as a reason to stay with their abuser); Buel, *supra* note 44, at 20 (noting that custody battles can become “yet another weapon for the abuser”).

⁴⁹ This is not a new theory: researchers have investigated trauma’s effect on memory for over a hundred years. See Pierre Janet, *L’Amnesie et la Dissociation Dessouvenirs par L’Emotion*, 1 J. PSYCHOL. 417 (1904); Bessel A. van der Kolk, *The Body Keeps the Score*:

victim recalls her experience, and the untrained listener—with no understanding of how trauma impacts memory—may perceive her testimony as vague, nonlinear, or inconsistent.

A. Neurological and Psychological Impacts of Trauma

When an individual perceives a serious current threat, the body triggers certain stress hormones intended to lower the perceived threat and distress in the short term.⁵⁰ As a result, the brain often does not process the traumatic memory like a typical memory: either the event is not encoded at all, or peripheral details, rather than the central event, are encoded.⁵¹ The memory disconnects from certain times or places of the trauma, and aspects of an individual’s consciousness, thoughts, emotions, and sensory perceptions dissociate from one another.⁵² The victim therefore may recall “the sensory and emotional elements of the traumatic experience” but lack the “linguistic/contextual factors.”⁵³

Memory and the Evolving Psychobiology of Posttraumatic Stress, HARV. REV. PSYCHIATRY 253, 258 (1994) (referencing Janet’s seminal research on traumatic memory).

⁵⁰ Anke Ehlers & David M. Clark, *A Cognitive Model of Posttraumatic Stress Disorder*, 38 BEHAV. RES. & THERAPY 319, 320 (2000).

⁵¹ Yochai Ataria, *Traumatic Memories as Black Holes: A Qualitative-Phenomenological Approach*, 1 QUALITATIVE PSYCHOL. 123, 123-25, 137 (2014). See generally Ehlers & Clark, *supra* note 50, at 331-33.

⁵² Charlotte Bishop & Vanessa Bettinson, *Evidencing Domestic Violence, Including Behaviour that Falls Under the New Offense of ‘Controlling or Coercive Behaviour’*, 22 INT’L J. EVID. & PROOF 3, 15 (2017); Ataria, *supra* note 51, at 123-24.

⁵³ Ataria, *supra* note 51, at 124-25; see also Bessel A. van der Kolk & Rita Fisler, *Dissociation and the Fragmentary Nature of Traumatic Memories: Overview and Exploratory Study*, 8 J. TRAUMATIC STRESS 505, 518 (1995) (“[I]t is in the very nature of traumatic memory to be . . . stored as sensory fragments without a coherent semantic component.”); cf. Ehlers & Clark, *supra* note 50, at 331 (noting that “[s]ome trauma victims describe that their thinking was

The failure to recall key features of a traumatic event, and the inability to integrate the event with other experiences, “lies at the very core of PTSD pathology.”⁵⁴ Prolonged, repeated exposure to traumatic events increases the likelihood of these biological changes: the more cumulative the trauma, the more significant the symptoms.⁵⁵ A victim like Ms. Addimando, who has experienced decades of abuse at the hands of multiple perpetrators, is particularly susceptible to experience complex symptoms of PTSD.⁵⁶

Given these biological changes, trauma hinders an individual’s ability “to recount an event in a coherent, consistent and sufficiently detailed way.”⁵⁷ Traumatic memory may lack context or a linear narrative, and inconsistencies—an otherwise normal feature of human memory—in a victim’s recollections are

extraordinarily clear . . . whereas others report confusion and overwhelming sensory impressions”).

⁵⁴ Ataria, *supra* note 51, at 125; *see also* Epstein & Goodman, *supra* note 4, at 411 n.40; Melissa Jenkins et al., *Learning and Memory in Rape Victims with Posttraumatic Stress Disorder*, 155 AM. J. PSYCHIATRY 278, 278 (1998).

⁵⁵ *See* Bishop & Bettinson, *supra* note 52 at 11-12; Marylene Cloitre et al., *A Developmental Approach to Complex PTSD: Childhood and Adult Cumulative Trauma as Predictors of Symptom Complexity*, 22 J. TRAUMATIC STRESS 399, 404-05 (2009).

⁵⁶ Bishop & Bettinson, *supra* note 52, at 11; Cloitre et al., *supra* note 55, at 404-05; *see also* Annie S. Lemoine, Note, *Good Storytelling: A Trauma-Informed Approach to the Preparation of Domestic Violence-Related Asylum Claims*, 19 LOY. J. PUB. INT. L. 27, 38 (2017).

⁵⁷ Bishop & Bettinson, *supra* note 52, at 15; *see also* Ehlers & Clark, *supra* note 50, at 324 (“Their intentional recall is fragmented . . . details may be missing and they have difficulty recalling the exact temporal order of events.”).

exacerbated.⁵⁸ The victim may recall one strong memory without a story,⁵⁹ or may only have vague recollections of trauma—“blurred and generalized memories of traces of violence”—rather than the memory of discrete actions.⁶⁰

If a victim publicly testifies about the abuse she suffered, these imprecise traumatic memories can impede her ability to paint a clear picture of the abuse. The experience of being subjected to adversarial cross-examination, in particular, tends to heighten these inconsistencies because the examining attorney’s primary strategy is often “to challenge the applicant’s credibility and highlight discrepancies—or even induce them.”⁶¹ For instance, research into memory has revealed that, when another individual—like a police officer or a lawyer—directly asks a victim to recall a traumatic experience, the victim’s narrative is often fragmented or “disorganised, showing variability and errors in recall across time.”⁶²

Other times, because the brain does not encode and process central details of a traumatic event, a testifying victim might “narrate events at various levels of

⁵⁸ Ataria, *supra* note 51, at 123; Ehlers & Clark, *supra* note 50, at 324 at 325; Bishop & Bettinson, *supra* note 52, at 15.

⁵⁹ See Ataria, *supra* note 51, at 131 (“The traumatic memory is reduced to one specific fragmented moment, a moment without a story.”).

⁶⁰ Guy Enosh & Eli Buchbinder, *Strategies of Distancing from Emotional Experience*, 4 QUALITATIVE SOC. WORK 9, 19-20 (2005).

⁶¹ Stephen Paskey, *Telling Refugee Stories: Trauma, Credibility, and the Adversarial Adjudication of Claims for Asylum*, 56 SANTA CLARA L. REV. 457, 495 (2016). Abuse survivors who are women face particular “credibility obstacles” when testifying in court. Julia R. Tolmie, *Coercive Control: To Criminalize or not to Criminalize?*, 18 CRIMINOLOGY & CRIM. JUST. 50, 55 (2018).

⁶² Bishop & Bettinson, *supra* note 52, at 15; see also Ataria, *supra* note 51, at 124.

distance, taking the position of an outsider or of an observer witnessing the experience.”⁶³ Her testimony may contain gaps in time or focus on seemingly insignificant details.⁶⁴ A victim may therefore describe an attack with little detail or emotional distress, defying stereotypic societal expectations that a victim testify with “perfect clarity”⁶⁵ even though “scientific evidence does not support [this] belief[.]”⁶⁶

B. Ms. Addimando’s Trial Testimony Was Consistent with Research on Trauma-affected Memory

The sentencing court’s finding that Ms. Addimando’s testimony was inconsistent, and therefore less reliable, fails to appreciate the impact of abuse on her memory. Certain portions of her testimony revealed telltale signs of a trauma-affected memory. For example, she recalled only having “partial memory” of certain events, referring to years of her abuse as “blurry,” and at times she struggled to articulate a linear timeline of the abuse she suffered. (TT 804, 819.) In discussing Grover’s abuse with Dr. Hughes, she testified she had “many fragmented memories and that I only remember partial pieces of certain things and that I can’t connect

⁶³ Enosh & Buchbinder, *supra* note 60, at 14, 25-26; see Ataria, *supra* note 51, at 124; Richard J. McNally, *Psychological Mechanisms in Acute Response to Trauma*, 53 *BIOLOGICAL PSYCHIATRY* 779, 783 (2003) (“Attention narrows, enabling only certain aspects of the experience to get encoded” when experiencing a traumatic event).

⁶⁴ Enosh & Buchbinder, *supra* note 60, at 14.

⁶⁵ Max Ehrenfreund & Elahe Izadi, *The Scientific Research Shows Reports of Rape Are Often Murky, but Rarely False*, *WASH. POST.* (Dec. 11, 2014), www.washingtonpost.com/news/wonk/wp/2014/12/11/the-scientific-research-shows-reports-of-rape-are-often-murky-but-rarely-false.

⁶⁶ Bishop & Bettinson, *supra* note 52, at 15-16.

them anymore.” (TT 823.)

Ms. Addimando at times could testify to certain details of violence but not to the central act itself. When prompted to recall a particularly violent rape by an abuser, she could not recall the physical violence: “My memory is driving down [the road] with my wrists zip tied together, and I asked [someone] to come cut them apart.” (TT 820.) Regarding another heinous act of abuse—sexual assault with a power tool—Ms. Addimando only recalled the sound and smell of the tool used, not the assault itself. (TT 824-25.) This is consistent with research into the sensory nature of traumatic memories⁶⁷ and *Amici*’s collective experience interviewing and working with countless domestic violence and sexual assault survivors.

That the testimony of a trauma survivor like Ms. Addimando may at times be fragmented or vague “tells us nothing about the reliability of the details they do recall, and nothing about their credibility.”⁶⁸ The sentencing court appeared to believe that a clear, coherent narrative of abuse indicates witness credibility, but scientific evidence suggests the opposite.⁶⁹ Instead, disconnected testimony from a

⁶⁷ See Ataria, *supra* note 51, at 132 (noting intrusive memories are usually experienced through victim’s senses (*e.g.*, taste, smell)).

⁶⁸ Hopper, *supra* note 6; *cf.* Paskey, *supra* note 61, at 494-95 (noting, in the context of reviewing applications for asylum, that “nearly all of the criteria used to assess credibility are unreliable when applied to the stories told by trauma survivors”).

⁶⁹ See Bishop & Bettinson, *supra* note 52, at 16. See generally Hopper, *supra* note 6.

victim may evidence the truth of her narrative to a trauma expert.⁷⁰ When applying the science and psychology of trauma, the way victims like Ms. Addimando tell their story—at times disjointed—makes their testimony about the abuse they suffered all the more plausible.⁷¹

Even though victims often are unable to corroborate their testimony with other evidence due to the private nature of domestic abuse,⁷² Ms. Addimando’s testimony was corroborated by extensive photographic, video, and testimonial evidence. *See, e.g.*, Trial Exhibits HH, II, JJ, LL, MM, NN, OO, QQ, FFF, HHH, LLL. *Amici* fear that if this documented record can nonetheless result in a finding that the “nature of the alleged abusive relationship . . . is undetermined,”⁷³ a victim will never be able to convince the court that she was a victim of domestic violence.

III. THE SENTENCING COURT’S FINDINGS ARE THE RESULT OF A KNOWLEDGE GAP

The sentencing court based its decision on an interpretation of the evidence that lacks any support in the scientific research on domestic violence. The sentencing court’s finding that “the nature of the alleged abusive relationship” was “undetermined” is irreconcilable with the evidence of extreme physical and sexual

⁷⁰ *See* Epstein & Goodman, *supra* note 4, at 411 (“[D]isconnected, inconsistent testimony is in fact evidence of the truth of [the victim’s] narrative; to the untrained ear, however, it makes her story suspect.”).

⁷¹ *Id.* at 410-11.

⁷² *See* Lemoine, *supra* note 56, at 38.

⁷³ *Addimando*, 67 Misc. 3d at 439.

violence Grover committed against Ms. Addimando and shows it did not understand that cyclical patterns of abuse followed by periods of relative calm are a key feature of abusive relationships, not an anomaly. The sentencing court's decision similarly evidences a failure to acknowledge the impact of trauma on memory. Inconsistent statements about the extent of abuse are telltale signs of a trauma-affected memory that make Ms. Addimando's testimony more credible, not less.

The sentencing court's finding that Ms. Addimando had ample opportunities to leave Grover, both before and on the night of September 27, 2017, makes clear that the court also failed to acknowledge the devastating impact of coercive control tactics on a victim's autonomy and decision-making ability. The cumulative impact of Grover's abuse created a traumatic bond that made it impossible for Ms. Addimando to leave Grover before the night of September 27, 2017. As a result of her traumatic bond, Ms. Addimando was left with no viable options⁷⁴ to protect herself and her young children when, for the first time, Grover threatened to end her life with his gun.⁷⁵ (TT 1020.)

⁷⁴ The sentencing court's conclusion that Ms. Addimando had "a myriad of non-lethal options" (Order at 46) because "she had a path to escape through the front door of her apartment" (*id.* at 43) is astounding to *Amici*, as this "escape" would have required a mother to abandon her two young children and leave them alone with a man threatening murder.

⁷⁵ Grover made explicit threats to shoot (TT 732), paralyze (TT 731-32), and kill (TT 730-31) Ms. Addimando, including threatening "I'm going to kill you, I'm going to kill myself, and then your kids have no one" (TT 1116).

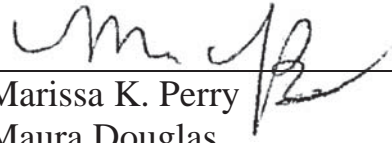
When the knowledge gap is closed and the evidence of Ms. Addimando and Grover's relationship is properly understood against the backdrop of the widely accepted scientific research on coercive control, trauma bonding, and traumatic memory, there can be no doubt that Ms. Addimando "was a victim of domestic violence subjected to substantial physical, sexual or psychological abuse" inflicted by Grover, and that "such abuse was a significant contributing factor to [her] criminal behavior." Penal Law § 60.12(1). By recognizing that Ms. Addimando has shown she is entitled to relief under the DVSJA, this Court can ensure that domestic abuse victims are not forced to meet an impossible standard, and that the DVSJA can protect victims from punishments that are "unduly harsh," as the New York Legislature intended.

CONCLUSION

For the foregoing reasons, *Amici* respectfully urge the Court to take the well-documented research on coercive control and trauma-impacted memory, which we believe support Ms. Addimando's appeal, into account when considering the application of the DVSJA to this case.

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