

APPENDIX B-1

Declaration of Barbett Brashear, MSW

December 4, 2018

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I. Qualifications

1. Since November 2010, I have served as the Executive Director of the Harris County Domestic Violence Coordinating Council. I hold a master's in social work from the University of Houston, and a bachelors of science in social work from Indiana University. I have served as a presenter and trainer at local and statewide conferences on domestic and sexual violence for the past 15 years. I presently serve as an adjunct faculty member at the University of Houston Graduate College of Social Work.

2. Since obtaining my master's degree, I have consulted on numerous criminal and civil cases involving allegations of domestic violence. Details of my qualifications, including my training and professional experience is attached as Appendix B-2.

3. I have not been assisted in my work or evaluation in this matter. I am being compensated at my normal hourly rate of \$150.00 and I estimate I have spent about 30 hours on this matter. My compensation is in no way contingent on the outcome of this matter.

II. Assignment

4. I have been asked by counsel of Mr. Carlos Guimaraes and Mrs. Jemima Guimaraes to analyze documents that were provided to offer my expert opinion as a professional in the domestic violence field. The documents reviewed are listed as Appendix B-3. Items not previously reviewed by this Court are attached in Appendix B-4.

5. The process for conducting a report such as this normally includes, interview and examination of client and any relevant family as requested by contracting attorney, review of any material provided by attorney, research, and preparation of a report.

6. Usually I interview the client involved in the cases where I have been asked to provide an expert opinion. This interview includes: 1) a family social history, 2) a history of all

interpersonal relationships, 3) a history of the violence that has occurred through the lifespan of the client, and 4) a history of the intimate relationship with the alleged perpetrator and account of the types of violence that have occurred. The interview also includes conducting a lethality assessment.

7. This report relies only on the review of materials provided by the attorney. Because of this the completion of the lethality assessment was a conservative estimate of answers to the 20 questions based on the reviewed texts, emails, and court testimony. When questions on the assessment form were unclear as to the answer, the default answer was a “no” – this response generates 0 points to the total score. The lethality assessment score is included as part of this report and the score is included as well. A discussion of the tool is contained within this declaration. Also included, as part of this declaration is a copy of the power and control wheel. This is a tool used to assess the tactics used within abusive relationships for the primary aggressor to maintain power in that relationship. An account of some of the tactics used by Dr. Brann against Ms. Guimaraes are included.

III. Overview

8. I reviewed various documents provided by counsel that consisted of emails, texts, voice messages, and court testimony from US and from Brazil. This documentation informed the historical background of the relationship including domestic violence history and background. According to the provided information and reviewed, Ms. Guimaraes and Dr. Brann married in 2008 and their child was born in 2009. In 2010, episodes of violence and an escalation of violence occurred in the marriage with Ms. Guimaraes as the victim, and Dr. Brann acknowledging the use of physical, emotional, and destructive violence as evidenced by text messages and email messages (specific message reviewed from August 4, 2012). I reviewed documents where Dr. Brann apologized for incidents and behaviors, admitted to destruction of

property, admitted to outburst with the therapist, and continuously apologized for things said and done to Ms. Guimaraes. According to the documents, the couple separated in February 2012.

9. Also reviewed was a medical record that documented Ms. Guimaraes disclosing an incident of domestic violence to a physician and her receiving treatment on 2/23/12 at Midtown Family Medicine for a blow to the face. I reviewed texts and emails that included Dr. Brann using verbally abusive behaviors including a message from Dr. Brann saying “I hate you” to Ms. Guimaraes. The documents show Ms. Guimaraes being afraid with a specific text where Ms. Guimaraes asks Dr. Brann to go away she is afraid of him (9/3/12), one email discussing the purchase of guns by Dr. Brann, Dr. Brann begging Ms. Guimaraes to not divorce, Ms. Guimaraes’ father being concerned for his daughter via an email to a therapist about his daughter, an email with Dr. Brann acknowledging he called Ms. Guimaraes 20 times, and a text exchange about the son shared by the couple and Ms. Guimaraes requesting to speak with her son but Dr. Brann giving various reasons why she cannot. This last document shows Dr. Brann texting to her that he was advised not to return her son until the lawyers meet and Ms. Guimaraes pleading for her son.

10. Another document from 11/23/12 shows Ms. Guimaraes talking about being choked (strangulation) by Dr. Brann. One of the most serious and deadly forms of domestic violence is strangulation and it is a high lethality indicator on the danger assessment (stangulationtraininginstitute.com). Court testimony from Brazil accounts multiple acts of physical and emotional violence, including violence during Ms. Guimaraes pregnancy. The reviewed documents provide evidence of the continued pursuit of Ms. Guimaraes by Dr. Brann after separation, including an incident in December of 2012 where Dr. Brann attempted to break into Ms. Guimaraes home when her parents are there to witness the event (review of police report

– DX015). My review of documents showed Dr. Brann moving out of the couples shared home in February of 2012 and in September of 2012, Ms. Guimaraes filed for divorce.

11. Materials reviewed show evidence of physical, emotional, and destructive abuse as well as the employ of tactics of power and control by Dr. Brann. Domestic violence can be defined as a pattern of assaultive and coercive behaviors that includes physical, emotional, financial, and destructive abuse. Power and control tactics are used by someone who systematically works to keep the victim in the relationship and maintain control in the relationship. Tactics include emotional abuse, coercion and threats, intimidation, isolation, minimizing, denying and blaming, using children, economic abuse, and male privilege (www.ncadv.org, power and control). A person will employ these tactics in a way that instills continuous threats of future violence to the abused partner. For Ms. Guimaraes, these tactics did not end when Dr. Brann moved out of the shared home. In my professional opinion, based on the documents provided and reviewed, Ms. Guimaraes is a victim of domestic violence and the use of physical violence coupled with tactics of power and control create the pattern of coercive and assaultive behaviors that define a relationship that is based on power and control. This pattern continued even after the separation and filing of divorce.

12. I have reviewed email messages provided by defense counsel and the testimony from court transcripts (May 5, 2018) where Dr. Brann states that Ms. Guimaraes was physically aggressive toward him. I find this testimony to be contradictory to the email messages reviewed where Dr. Brann repeatedly apologizes and acknowledges his abusive behavior toward his wife.

13. I have reviewed messages from Dr. Brann to Ms. Guimaraes that describe the tactics of power and control that have been used by Dr. Brann in the relationship. The use of these tactics can create feelings of helplessness, hopelessness, and isolation for victims. Such

tactics can lead victims to not know how to make change, as well as create a system where the abused wants to help the abusive partner change. The abused partner is in a constant state of fear, not knowing when or how the next abusive tactic will be used. There is a continual threat of some form of violence. I felt that Ms. Guimaraes had no time without the threat of some form of power and control being exerted by Dr. Brann. I have reviewed documentation that shows that the threat of violence continued well after the relationship ended when Dr. Brann left a voice mail on Ms. Guimaraes' phone stating he will destroy her and fuck her up.

14. The review of numerous emails contradicts court transcripts where Dr. Brann testifies that Ms. Guimaraes is the physically aggressive person. In domestic violence, there is always a primary aggressor. In many relationships there are times when the victim fights back in the relationship as a defensive mechanism. This fighting back is on the part of the person who is the victim in the relationship. This person may resort to using violence, however they are not the primary aggressor, they do not have the power in the relationship, and fighting back often makes the violence worse in the end. When there is a primary aggressor, and a pattern of assaultive and coercive behavior, the primary aggressor is ultimately responsible for the violence. There was no mention in any of the emails detailed below where Dr. Brann is asking Ms. Brann to acknowledge any behaviors on her part. In fact, there are two emails where Dr. Brann clearly acknowledges his use of physical violence (8/4/12 and 8/5/12).

15. Having worked with and interviewed hundreds of victims, I have heard women detail accounts where their partners tried to blame their abusive behavior and control tactics on the woman. This would be consistent with the testimony given by Dr. Brann. Many of Dr. Brann's email messages sent during the marriage focused on him apologizing, which is often part of the honeymoon phase of the cycle of violence. This phase occurs after a violent episode and

the batterer attempts to reconcile and apologize for behavior on his part. This, in my experience is often the attempt to manipulate someone into forgiveness and not to leave the relationship, which is the fear Dr. Brann expresses in several of the messages where he is begging Ms. Guimaraes not to leave. None of the evidence that I reviewed led me to believe that Dr. Brann feared Ms. Guimaraes. The only information for him expressing fear of her was during his testimony on May 8, 2018, which I again find contradictory to the words he uses in all of the emails and recordings that I have reviewed.

16. Summary of emails:

- 2/22/10 – Dr. Brann writes that that he is so sorry and threatens to kill himself if she doesn't do what he wants
 - Power and Control Tactic: Coercion and Threats – threatening suicide
- 3/8/10 – Dr. Brann writes that he is sorry and admits to looking at divorce lawyers on line to try to scare Ms. Guimaraes
 - Power and Control Tactic: Intimidation – making her afraid by his actions
- 4/19/10 – Ms. Guimaraes writes she is able to salvage pictures from the phone Dr. Brann broke
 - Power and Control Tactic: Intimidation – destruction of property
- 12/2/10 – Dr. Brann writes to apologize – “I won't betray your trust again” “I'm sorry” “Please forgive me” – he acknowledges his disease (sexual addiction and use of porn) and claims it is a result of years of bad habits and being programmed that way – “I don't blame you if you want to leave me”
 - Power and Control Tactic: Minimizing Denying and Blaming – his disease is why he acts the way he does

- 2/18/11 – Dr. Brann writes to apologize – “I will never curse you again”
 - Power and Control Tactic: Emotional Abuse – put downs making her feel guilty, humiliating her
- 4/26/11 – Dr. Brann writes to apologize – pleading her, “I am the biggest challenge you have ever faced”
 - Power and Control Tactic: Emotional Abuse – making her feel guilty
- 5/20/11 – Dr. Brann writes to apologize for breaking the television
 - Power and Control Tactic: Intimidation – destruction of property
- 5/23/11 – Dr. Brann writes to apologize to Dr. Magness, the couple’s first therapist, for his outburst at the office – “...I was rude, inappropriate, and disrespectful to you and to my wife”
 - Power and Control Tactic: Emotional Abuse
- 6/8/11 – Dr. Brann writes to apologize – “I am sorry for everything. I have traumatized my family with my acting out. I am sorry for that day. I am sorry I got out of hand. I’m sorry for what I said and for what I did.”
 - Power and Control Tactic: Intimidation
- 7/10/11 – Dr. Brann writes and admits to manipulating Ms. Guimaraes in the past
 - Power and Control Tactic: Intimidation and emotional abuse
- 8/25/11 – Ms. Guimaraes writes to Dr. Brann with a long list of boundaries that includes her asking him to not engage in the following: verbal abuse, name calling, physical violence to her, no manipulation or gas lighting, no lies, and many other items related to his use of porn, and triggering activities

- This email demonstrates the use of many tactics of Power and Control that she is asking him to no longer engage in – intimidation, emotional abuse, minimizing, denying, blaming
- 10/28/11 – Dr. Brann writes to apologize and Ms. Guimaraes acknowledges that she can't believe he said "those things"
 - Power and Control Tactic: Emotional Abuse – name calling, making her feel bad about herself
- 2/23/12 – Note from Physician at Midtown Family Medicine that denotes Ms. Guimaraes seeking treatment for Dr. Brann hitting her in the face – she declines to contact the police
 - Evidence of Physical Abuse
- 8/4/12 – Dr. Brann writes to admit to incident of physical violence
 - Power and Control Tactic: Emotional abuse making her feel bad and manipulation
- 8/5/12 – Dr. Brann writes to swear that he did the following:
 - Yelled and called names
 - Power and Control Tactic: Emotional Abuse
 - Withheld personal items
 - Power and Control Tactic: Emotional Abuse
 - Obstructed Ms. Guimaraes exit
 - Power and Control Tactic: Emotional Abuse
 - Pushed Ms. Guimaraes
 - Physical Violence
 - Hit Ms. Guimaraes in the face/head with his hand

- Physical Violence

Pulled her hair

- Physical Violence

Hit two chairs against the table

- Power and Control Tactic: Destructive Abuse

Tried to take Nico out of the room

- Power and Control Tactic: Using the Child

Dr. Brann states in e-mail, “I feel horrible. I was wrong”

17. Dr. Brann claimed in court testimony that with this email, he was using a therapeutic process in communicating his accountability for his actions. I am unfamiliar with such a therapeutic process.

18. I have reviewed all testimony that was provided which included testimony offered by Dr. Brann and by his mother, Ms. Betty Brann (May 8, 2018, May 9, 2018, May 10, 2018 and May 17, 2018). Both parties, Dr. Brann and his mother, provided information claiming that Ms. Guimaraes was the instigator of domestic violence against Dr. Brann that included her slapping him and jumping on his back. I have also reviewed testimony provided before Judge Duarte (2013.11.07, 2013.11.13, 2013.11.14), where Ms. Guimaraes’ details many acts of physical abuse including pulling hair, slapping, pushing her down, pushing her down while pregnant, strangling her on two occasions, pushing her into a wall and onto the bed; emotional and verbal abuse including calling her a whore, and keeping the phone from her and holding it above his head so that she cannot call 911; and destructive abuse including destroying property, a television, several computers, cell phone, holes in walls. While both parties have provided testimony regarding the other as abusive, as discussed above, when domestic violence is present it is not uncommon for victims to fight back. In the testimony provided by Ms. Guimaraes, she

details many instances of abuse and expressed fear of Dr. Brann (testimony from 2013 before Judge Duarte). This testimony is consistent with a definition of domestic violence that is a pattern of coercive and assaultive behavior that is intended to exert power and control over another person. I did not find testimony where Dr. Brann expressed any fear of Ms. Guimaraes. In further testimony provided by the cousin of Ms. Guimaraes, a Renata Torzillo, she described a verbal altercation in Brazil that left Ms. Torzillo fearful of Dr. Brann's behavior toward Ms. Guimaraes.

19. Children are often a primary factor for decision making related to the relationship as well as a tactic used by the controlling partner to maintain power in the relationship. A victim of domestic violence must often make decisions and employ strategies deemed in the best interest of the child. In the review of the information and the texts from November of 2012, it appears that Ms. Guimaraes had fear of losing her child and fear related to the violence her child was exposed to. She also feared for her own safety and endured constant conflict in the relationship with Dr. Brann. When there is presence of constant fear and trauma, it can have negative impacts on a person's ability to make decisions. The documents reflect a continual pursuit of Ms. Guimaraes with apologies in the beginning changing to hate messages that included Dr. Brann threatening to fuck her up. This seems to occur when Dr. Brann loses control in the relationship. Victims of domestic violence are faced with many difficult choices for themselves and their children. When the relationship has power and control tactics present, reinforced by physical violence, these choices become even more difficult for victims. Victims must consider safety on many levels, physical safety, emotional safety, financial safety, and children's safety. This means victims must consider the possibilities they have to increase their safety physically, emotionally,

and financially for their children. For Ms. Guimaraes this could include moving away to increase her emotional, physical and financial safety.

20. In relation to the parents of Ms. Guimaraes/grandparents of the son, I have reviewed court transcripts along with other materials. For many victims of domestic violence the first person they disclose the violence to is a friend or family member. In almost every tool used by advocates when safety planning with victims of domestic violence, one strategy includes letting family members know of what is happening, creating a safety signal with family members to let them know help is needed. Another critical safety planning strategy includes advocates stressing to survivors that if and when the decision is made to leave the violent relationship, victims should not tell the abusive partner of that plan. When a victim is leaving a violent relationship, it is the most dangerous time. It must be done with as much attention to gaining access to safety for the victim and the victim's children as possible. One pathway to support and safety from the violence is employing the assistance of family to help keep them safe.

21. On August 5, 2012, Dr. Brann writes an email confessing to a list of things that he has done. Ms. Guimaraes forwards this email to her family, father, mother, and brother on 11/22/12.

22. In testimony and in documents provided, evidence shows that Ms. Guimaraes reached out to her parents and disclosed her fears and concerns, as evidenced above from an email she forwarded to her family. In December of 2012, Dr. Brann attempted to break into Ms. Guimaraes's home, her parents were home when this occurred. This reinforces evidence for Mr. and Mrs. Guimaraes believe that their daughter and grandchild are in danger. A family member would believe that Ms. Guimaraes was in a violent and unhealthy relationship after receiving an email with Dr. Brann's own words admitting that he did these things, as well as being present

when Dr. Brann attempted to break into the house. After the incident, Ms. Guimaraes family had good reason to believe she was in distress and in need of safety. Family members who have loved ones in violent relationships often do not know what to do or what steps to take. In my experience, family members have urged their loved ones to leave the relationship as a step toward safety.

23. Ms. Guimaraes parents were forwarded Dr. Brann's August email where he admits to violence in November. Prior to receiving that email, Ms. Guimaraes' father attempted to discuss with the family therapist the situation and explore information for helping his daughter to keep safe (email dated 8/12/12). There was already a concern from the family for Ms. Guimaraes' father to attempt to discuss with the therapist. If Mr. Guimaraes had only partial knowledge of the violence or did not know the extent of the violence when he reached out to the therapist for advice, and then he received the email in November 2012 where Dr. Brann admits to the violence, followed by witnessing Dr. Brann trying to break into the house, Ms. Guimaraes fathers' concern and need to keep his daughter safe could only intensify.

24. I have worked more than 10 years answering hotline calls from family members who sought ways to help their loved ones. It was not uncommon to hear from those family members that they were housing their loved one and the children after they had fled from a violent situation in order to keep them physically, emotionally, and financially safe. I have also heard from hundreds of domestic violence victims that they fled to their parents and family members' homes to be safe physically, emotionally, and financially from the violence. It is my professional opinion that for many survivors and victims, family members are the strongest support system and often the best and only pathway to safety for victims and their children. It appears that Ms. Guimaraes' father and family sought to keep their daughter and her son safe. Mr. and Mrs.

Guimaraes reasonably believed that their daughter was fleeing from domestic violence and they wanted to keep her safe.

IV. Conclusion

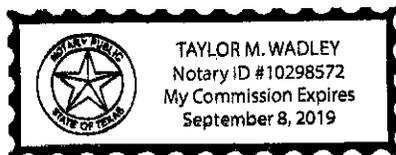
25. I used the documents provided and completed a danger assessment tool. This tool is used as an assessment to help victims understand the level of risk and to help them identify how they feel about the relationship. The Danger Assessment is an instrument that helps to determine the level of danger an abused woman has of being killed by her intimate partner. Jacquelyn Campbell (1986) originally developed the tool with consultation and content validity support from battered women, shelter workers, law enforcement officials, and other clinical experts on battering. There are two parts to the tool: a calendar and a 20-item scoring instrument. For the purposes of this case, I was able to use the provided information to conservatively determine what a potential score would be for Ms. Guimaraes. If this tool had been conducted in person, it would be followed with a detailed safety plan to include referrals to supportive services.

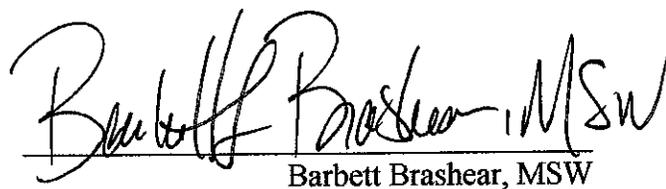
26. Without having the opportunity to interview and discuss with Ms. Guimaraes, it is difficult to know the real number. I conservatively assessed using the lowest of indicators for the tool. The score was reached based on the testimony as well as the emails that were reviewed. Having not had the opportunity to meet directly with the victim, I answered the questions based on the provided information. The tool depicts a score of 17. This score indicates severe danger for Ms. Guimaraes. This tool is a predictor for lethality/homicide. When working with a victim and using this tool, an advocate develops a safety plan to address increasing access to services and safety for the victim. The tool helps the advocate to discuss all possible opportunities for increasing safety based on the victim's choice. These opportunities include safety planning for when victims chose to stay in the relationship and safety planning for when the victim chooses

to leave the relationship. One of the most important factors in safety planning includes advising a victim never to inform or tell their partner of any plans to leave. When a victim leaves the abusive relationship, there is a significant increase in the danger and possibility for homicide to occur. According to research, when the survivor decides to leave the abusive relationship the potential for physical assault and/or homicide increases by 75% (Wilson & Daly, '93; Campbell et. al. '01). The tool is included for review.

27. I find that physical, emotional, and destructive abuse occurred in the relationship between Dr. Brann and Ms. Guimaraes, with Dr. Brann as the primary aggressor. The use of strangulation, the increased pursuit of Ms. Guimaraes, the increase in violence and aggression throughout the relationship and after the separation, Ms. Guimaraes disclosing the violence to a physician and her family, and the fear that Ms. Guimaraes had of Dr. Brann led her to seek physical and emotional safety for herself and child. I find that Ms. Guimaraes' father and family were working to keep their daughter and grandson safe. I find that Mr. and Mrs. Guimaraes reasonably believed that their daughter was the victim of Dr. Brann.

Executed this 4 day of December, 2018.




Barbett Brashear, MSW

DANGER ASSESSMENT

Auimaraes

ESCAPE NOW 

DANGER ASSESSMENT
Jacquelyn C. Campbell, PhD, RN, FAAN
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Several risk factors have been associated with increased risk of homicides (murders) of women and men in violent relationships. We cannot predict what will happen in your case, but we would like you to be aware of the danger of homicide in situations of abuse and for you to see how many of the risk factors apply to your situation.

Using the calendar, please mark the approximate dates during the past year when you were abused by your partner or ex partner. Write on that date how bad the incident was according to the following scale:

1. Slapping, pushing; no injuries and/or lasting pain
2. Punching, kicking; bruises, cuts, and/or continuing pain
3. "Beating up"; severe contusions, burns, broken bones
4. Threat to use weapon; head injury, internal injury, permanent injury, miscarriage, choking
5. Use of weapon; wounds from weapon

(If any of the descriptions for the higher number apply, use the higher number.)

Mark Yes or No for each of the following.

("He" refers to your husband, partner, ex-husband, ex-partner, or whoever is currently physically hurting you.)

1. Yes No Has the physical violence increased in severity or frequency over the past year?

2. Yes No Does he own a gun?

3. Yes No Have you left him after living together during the past year?

If you have never lived with him, check here.

4. No Yes Is he unemployed?

5. No Yes Has he ever used a weapon against you or threatened you with a lethal weapon?

If yes, was the weapon a gun?

6. No Yes Does he threaten to kill you?

7. Yes No Has he avoided being arrested for domestic violence?

8. No Do you have a child that is not his?

9. No Has he ever forced you to have sex when you did not wish to do so?

10. Yes Does he ever try to choke you?

11. No Does he use illegal drugs? By drugs, I mean "uppers" or amphetamines, Meth, speed, angel dust, cocaine, "crack", street drugs or mixtures.

12. No Is he an alcoholic or problem drinker?

13. No Does he control most or all of your daily activities? (For instance: does he tell you who you can be friends with, when you can see your family, how much money you can use, or when you can take the car?
 If he tries, but you do not let him, check here.

14. No Is he violently and constantly jealous of you?
 For instance, does he say "If I can't have you, no one can."

15. Yes Have you ever been beaten by him while you were pregnant?
 If you have never been pregnant by him, check here.

16. Yes Has he ever threatened or tried to commit suicide?

17. No Does he threaten to harm your children?

18. No Do you believe he is capable of killing you?

19. Yes Does he follow or spy on you, leave threatening notes or messages, destroy your property, or call you when you don't want him to?

20. No Have you ever threatened or tried to commit suicide?

Total "Yes" Answers: 8

Thank you. Please talk to your nurse, advocate or counselor about what the Danger Assessment means in terms of your situation.

Extreme Danger

18 and over

Severe Danger

14 - 17

Your Score

17

Increased Danger

8 - 13

Variable Danger

Less than 8

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Or, is your relationship based on power and control?

Physical and sexual assaults, or threats to commit them, are the most apparent forms of domestic violence and are usually the actions that allow others to become aware of the problem. However, regular use of other abusive behaviors by the batterer, when reinforced by one or more acts of physical violence, make up a larger system of abuse. Although physical assaults may occur only once or occasionally, they instill threat of future violent attacks and allow the abuser to take control of the woman's

life and circumstances.

The Power & Control diagram is a particularly helpful tool in understanding the overall pattern of abusive and violent behaviors, which are used by a batterer to establish and maintain control over his partner. Very often, one or more violent incidents are accompanied by an array of these other types of abuse. They are less easily identified, yet firmly establish a pattern of intimidation and control in the relationship.

