

2007 WL 8429835 (Conn.Super.) (Trial Motion, Memorandum and Affidavit)
Superior Court of Connecticut.
Tolland County

STATE OF CONNECTICUT,

v.

Kathleen LAVIGNE.

No. CR050085072.
May 25, 2007.

State's Sentencing Memorandum

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I. Introduction

Under [Connecticut Practice Book § 43-11](#), the prosecuting authority shall do the following at sentencing:

1. "inform the judicial authority of the offenses for which the defendant is to be sentenced"
2. "...give a brief summation of the facts relevant to each offense"
3. "...disclose to the judicial authority any information in the files of the prosecuting authority that is favorable to the defendant and relevant to sentencing" and
4. "shall state the basis for any recommendation which it chooses to make as an appropriate sentence."

The "State's Sentencing Memorandum" is respectfully submitted under [Connecticut Practice Book § 43-11](#) to fulfill the prosecutors obligation in the felony sentencing of criminal defendant, Kathleen Lavigne.

II. Summary of the Offense for Which the Defendant Stands Convicted

On March 27, 2007, the jury found the defendant, Kathleen Lavigne, guilty of Count Ten of the Amended Information dated January 23, 2007. Count Ten was charged as a felony crime of larceny in the second degree with the victim, Cleopatra (Pat) Matlis, aged eighty-eight, being over the age of sixty.

The trial of this case lasted approximately five weeks and the jury deliberated for three partial days on all ten counts. The foreperson submitted a note to the court that the jury was divided five to one regarding the first nine larceny counts. The nine counts resulting in a mistrial involved five larceny in the first degree charges and four larceny in the second degree charges. The nine larceny crimes in which the jury was unable to render a unanimous verdict totaled approximately \$212,000 in assets that the defendant took from her elderly aunt during a nine month time period.

The crime upon which the jury rendered a guilty verdict (Count Ten), stemmed from the defendant stealing \$3,307 in cash from her eighty-eight year old physically and mentally infirm aunt via two jointly held bank accounts. The theft of the funds

occurred between October 10, 2002 and October 22, 2002 while Ms. Matlis was staying in the Rockville Hospital and suffering from acute pancreatitis.

III. Factual Summary

Evidence was presented at trial that eighty-eight year old victim, Pat Matlis, who lived in Nashua, New Hampshire, was experiencing a significant decline in her mental acuity and physical health starting in the Fall of 2001. Ms. Matlis became increasingly forgetful, focused on the past, and began dressing inappropriately for the cold weather conditions.

Ms. Matlis was a widow who had no children. She had worked as a seamstress in a sweater factory and had lived through the Great Depression and World War II. Pat Matlis was the executor of her father's estate and had inherited two Nashua family homes and various stock certificates and other assets. Through many years of saving, investing, and a fairly frugal lifestyle, Ms. Matlis had saved enough money for her long-term care.

Pat Matlis lived at 130 Ledge Street in Nashua and was surrounded by a strong support network of family and friends. Pat's sister-in-law, Evelyn Loulakis, whom she saw daily, lived across the street. Pat was very close to Evelyn and thought of her as a sister. Evelyn started assisting Pat with her finances in 2000 and Pat held multiple joint certificate of deposit accounts with Evelyn.

Pat was extremely hard of hearing and wore a hearing aid. Pat couldn't drive a car and relied upon family and friends to take her grocery shopping, to the doctor, and to have her hair styled. Pat was an active member in the local Greek church and included a bequest to the church in her earlier wills.

Pat was fond of her sister, Georgia's four daughters (referred to at trial as "the Michigan nieces") and traveled to Michigan to visit with them. Every summer, the Michigan nieces would visit Pat in Nashua. Pat was also very fond of Evelyn Loulakis and her three children, Cynthia Kakalamos, Mark Loulakis, and Mike Loulakis. Pat Matlis was the aunt of the defendant, Kathleen Lavigne and the godmother of Ms. Lavigne's sister, Vyctoria Ullah.

In September of 2001, the defendant, Kathleen Lavigne stopped paying rent at her duplex on 11 Joel Drive in Ellington, Connecticut. Ms. Lavigne admitted to her landlord, Bruce Bissonette that the income from her home-based daycare business had declined significantly. Ms. Lavigne initially told her landlord that she would be procuring money from her rich aunt (Pat Matlis) in New Hampshire to pay the rent. However, five months passed and Ms. Lavigne still had not made any rental payments. As a result, Mr. Bissonette began eviction proceedings.

On February 1, 2001, Ms. Lavigne signed an eviction agreement with her landlord to vacate the duplex by March 31, 2001. At that time, Ms. Lavigne, her boyfriend, Thomas MacNamee, and two of her three children were all residing at 11 Joel Drive.

At trial, State witness, Evelyn Loulakis, testified that she hadn't seen Ms. Lavigne in many years and the defendant rarely saw Aunt Pat. She stated that the only time Ms. Lavigne ever contacted Ms. Matlis was to ask her for money. State witnesses, Priscilla Betses and Gail Dionne also testified that the defendant seldom saw her aunt and when she did she repeatedly asked her for money. Ms. Dionne, Ms. Matlis' hairdresser, testified that Pat Matlis disliked her niece Kathleen Lavigne and did not trust her.

On the verge of being evicted and of losing her only source of income as an in-home daycare provider, the defendant went to Nashua, New Hampshire to see her aunt, Cleopatra Matlis on February 16, 2002 Ms. Lavigne stayed in Nashua for three days and testified under oath in a 2003 deposition that she never discussed the topic of money with Pat Matlis during that visit. Ms. Lavigne further claimed in her deposition that she had never asked her aunt for money despite testimony from several state's witnesses to the contrary.

Pat Matlis was quite ill when Ms. Lavigne visited her. At trial, Dr. Peter Liao from Nashua testified that he had diagnosed Pat with congestive heart failure on February 15, 2002, which is the day before Ms. Lavigne came to New Hampshire.

State witness, Priscilla Betses testified that she went to lunch with Pat Matlis and Evelyn Loulakis on February 15th after Pat's doctor appointment. Ms. Betses said that Pat was very upset that "Kathy" (the defendant) was coming to visit her the next day and told her that she wanted to "bolt the door" of her home to prevent Ms. Lavigne from coming in.

On February 19, 2002, the defendant and Pat abruptly left Nashua without telling anyone. This was very unusual for Pat as she normally told her sister-in-law, Evelyn Loulakis or her next door neighbor, Irene Pelletier if she was going out of town. Additionally, Pat had a large number of house plants that she fondly referred to as her "babies" that were simply left to die unattended.

Evelyn Loulakis testified that a box containing Pat's financial data, including all of her bank accounts, stock certificates, and tax returns, was on the kitchen counter when Ms. Lavigne came to Nashua. The box was taken with Pat Matlis when the two women left town to travel to Connecticut for what was to be a short visit.

Before leaving Nashua, Ms. Matlis and Ms. Lavigne stopped at Citizen's Bank and emptied the entire contents of Pat's safety deposit box. The box held stock certificates worth over \$134,000 that had special sentimental value for Pat because they had been given to her by her late father. Some of the stocks had been held for over forty years. Pat Matlis and Kathleen Lavigne also made a second stop at Fleet Bank in Nashua where Pat withdrew \$10,000 in cash in Ms. Lavigne's presence. Incredibly, Ms. Lavigne stated in her deposition that despite seeing an eighty-eight year old woman obtain \$10,000 in cash and empty her safety deposit box of stocks for just a short visit, there was no discussion of these transactions! The defendant further stated that there was no conversation about the \$144,000 in assets they had in the car during the entire two hour ride to Connecticut.

According to Ms. Lavigne's deposition introduced during trial, when the defendant and Ms. Matlis arrived in Connecticut, they made a third stop to yet another bank before going to Ms. Lavigne's residence. Pat Matlis redeposited \$5,000 in cash to the Fleet account that she had just taken \$10,000 from two hours earlier.

Pat Matlis called Evelyn Loulakis when they arrived at Ms. Lavigne's home in Connecticut and told her that she was only staying there for "a few days." Ms. Matlis, who was a lifelong resident of New Hampshire, never returned to live in her family home at 130 Ledge Street in Nashua.

On February 25, 2002, the defendant took Pat to her long-time physician, Dr. Ian Tucker. Pat listed no previous medical history or medical conditions despite being diagnosed with congestive heart failure by her doctor (Dr. Liao) a mere ten days earlier. Ms. Lavigne, admitted in her deposition that she knew Pat was ill and that Pat had told her before she visited that she might even go into the hospital. Despite knowing her aunt was sick, the defendant failed to tell Dr. Tucker anything at all about Pat's prior health history.

On March 4, 2002, (thirteen days after Pat arrived in Connecticut), the defendant set up a joint Fleet Bank account with Pat Matlis. Almost immediately, Evelyn Loulakis observed heavy automated teller (ATM) activity and unusually large withdrawals from Pat's Fleet account. Ms. Loulakis and others testified at trial that Pat Matlis never used an ATM card and was relatively frugal in her personal spending habits. A review of Ms. Matlis' previous banking history confirms Pat's lack of ATM use and conservative personal spending patterns.

On March 7, 2002, Pat was admitted into the Rockville Hospital emergency room (ER) at 2:05 p.m. for a transient ischemic attack (ministroke). Ms. Matlis told Dr. Dennis Barlow that she started experiencing numbness in her left arm at 11:45 a.m. that morning. Despite the victim being in the throes of a ministroke, the defendant first took Pat Matlis to the Savings Bank of Manchester to set up two joint bank accounts totaling over \$134,000 before taking her to the ER for medical treatment.

On March 12, 2002, just five days after Pat's ministroke, the defendant took Pat to long-time attorney and "buddy," Seymour Rothenberg. Seymour Rothenberg prepared a new will for Pat Matlis that evenly divided all of Pat's assets to the defendant and her sister, Vyctoria Ullah. Ms. Matlis' prior two wills were both consistent in the bequests and differed dramatically from the new will. In Ms. Matlis' 1986 and 1992 wills, the defendant and her sister were left a token bequest of \$1,000 each. The primary beneficiaries under the 1992 will were Ms. Matlis' four nieces from Michigan, her niece, Cynthia Kaklamanos, and her nephews, Mike and Mark Loulakis.

Sometime in March or April of 2002, the defendant's landlord, Bruce Bissonnette testified that Ms. Lavigne told him that she was going to buy a house. Mr. Bissonnette testified that he was surprised that the defendant was purchasing a house since she couldn't even afford to pay her rent. Ms. Lavigne told her landlord that she was going to get the money from her "rich, senile, decrepit, old aunt." and that is precisely what she did.

On April 15, 2002, Pat Matlis moved to 3 Crescent Circle in Ellington with Ms. Lavigne. This was eighty-eight year old Ms. Matlis' second move in as many months. By the end of April, Ms. Lavigne had already spent a substantial sum of Pat Matlis' life savings on the following items: a Harley Davidson motorcycle - \$19,000, a down payment on her home - \$44,000, deposit on the home - \$10,000, and furniture - \$5,200.

On April 24, 2002, Pat Matlis' nephew from Virginia, Michael Loulakis, came to Connecticut to visit Pat and check on her well-being. After learning from his mother, Evelyn Loulakis, that Pat's Fleet bank accounts were being depleted at an alarming rate, Mr. Loulakis became worried that his elderly aunt was being financially exploited. Michael Loulakis took his aunt to lunch out of the presence of the defendant and discovered that Pat was quite confused and unsure how much money she even had. When he asked his aunt about her finances, she had no clue that almost \$40,000 had been depleted from her Fleet accounts in only two short months. Michael Loulakis further testified that Ms. Matlis had specifically told him that she had *not* given any gifts to Ms. Lavigne.

Ms. Matlis' lack of knowledge about her financial status greatly concerned her nephew. Additionally, Pat exhibited a marked decline in her mental capabilities and was unable to even recall the names of the defendant's children, two of whom she had been living with for over two months. This was very disconcerting for Michael Loulakis who knew his aunt well, loved her, and had always had a close relationship with her. When Mr. Loulakis asked his aunt if the defendant was taking money from her she said, "I don't think that's happening but I trust Kathy."

After meeting with Pat, Mr. Loulakis determined that his aunt had lost her mental acuity. He told his brother, Mark Loulakis that "Pat was out of it" and that his mother, Evelyn should withdraw the \$300,000 in jointly held certificate of deposit accounts. Ms. Loulakis testified that she did in fact take \$240,000 of the funds and place them in a Virginia trust to protect Pat from Ms. Lavigne's relentless financial predation.

On April 29, 2002, the evidence showed that the defendant neglected to take her aunt to Dr. Tucker for a scheduled appointment. Pat Matlis had previously been diagnosed with pneumonia and this was a follow-up visit. Instead of taking Ms. Matlis to her doctor, Ms. Lavigne took her to Nashua to meet with Attorney Daniel Marr. Attorney Marr was hired to attempt to get the \$240,000 back from Evelyn Loulakis.

During the course of their discussions regarding Ms. Matlis' assets, Attorney Marr learned that Ms. Matlis had just made a new will leaving everything to Kathleen Lavigne and her sister. Attorney Marr also knew that Seymour Rothenberg was Ms. Lavigne's long-time attorney and that Ms. Lavigne described Attorney Rothenberg as very "aggressive." After learning of the circumstances of Ms. Matlis' March 2002 will, Attorney Marr expressed legitimate concerns that Ms. Lavigne was unduly influencing her aunt. He referred Ms. Matlis to a local estate attorney named Warren Johnson.

Attorney Johnson asked both Ms. Lavigne and Ms. Matlis to provide a copy of the March 2002 will and accompanying documents. Attorney Johnson also asked Ms. Lavigne to give him a list of the “gifts” that Pat Matlis had allegedly given her. None of these documents were ever provided to Attorney Johnson.

On May 7, 2002, Attorney Steven Shadallah and Mike Loulakis sent a letter to Attorney Marr asking that Pat Matlis be evaluated for Alzheimer's Disease by an independent doctor approved by both sides. Per Attorney Marr, Ms. Matlis did not want a psychiatric evaluation and one was not done until October 4, 2002, which is after Ms. Matlis was admitted to the Rockville Hospital.

Richard Cousineau, a contractor who built a \$33,000 addition to Ms. Lavigne's home, saw Ms. Matlis daily and said that “she wasn't in her right mind.” Mr. Cousineau further testified that he saw Ms. Lavigne pretend she was a judge and repeatedly coach Pat Matlis as to what she should say in the upcoming probate court competency hearing.

On June 6, 2002, Pat Matlis wrote a Fleet Bank check payable to “Kathleen Lavigne” for \$50.00. This is the *sole* gift check actually signed by Ms. Matlis and made out to the defendant during 2002. Evidence at trial showed that Ms. Lavigne's birthday was ^{XX/XX/} and that Ms. Matlis had given similar birthday checks to the defendant in the past.

By June 6, 2002, Ms. Lavigne had taken over \$150,000 of Ms. Matlis' assets. The defendant's major purchases with Ms. Matlis' money included the following: 1) \$44,000 house down payment, 2) \$19,000 for a Harley Davidson motorcycle, 3) \$23,000 for an in-ground pool, 4) \$5,000 for a privacy fence, and 5) \$33,000 for a house addition. Ms. Lavigne was unable to account for over \$26,000 of Ms. Matlis' money when asked to provide an accounting of expenditures by the Rockville Probate court.

Evidence introduced at trial revealed that Ms. Matlis hated motorcycles and did not like swimming pools. This cast serious doubt on the defendant's position that Pat Matlis' had knowingly and willingly provided the funding for these particular expenditures.

The large sum of the victim's money taken by the defendant as an alleged “gift” was a radical departure in Ms. Matlis' well-established past gifting patterns. Evidence was introduced at trial that Pat Matlis was aware of the tax consequences of gifting over \$10,000 to any one person and always avoided it. Gift checks signed by Pat Matlis were introduced into evidence in amounts well below \$10,000. The defendant and her sister, Vyctoria Ullah were two relatives that were conspicuously omitted in any gift checks exceeding \$1,000 that Pat Matlis had approved, signed, and generously given to her close family members.

On June 20, 2002, evidence was presented at trial that Ms. Matlis missed a second scheduled medical appointment with Dr. Tucker. Ms. Matlis, who couldn't drive, relied solely upon the defendant for all of her transportation needs. Dr. Tucker testified that when Ms. Matlis did come for her next visit in July of 2002, very strong antibiotics were prescribed in an effort to combat her pneumonia, which had worsened. Throughout Ms. Matlis' nine month stay in Connecticut, her health declined dramatically. She suffered recurrent bouts of pneumonia, incurred a ministroke, and obtained a second degree burn on her back.

Pat Matlis was admitted to the Rockville General Hospital on September 22, 2002 for acute pancreatitis. Geriatric psychiatrist, Dr. Hira Jain diagnosed Ms. Matlis with primary degenerative dementia on October 4, 2002. Dr. Jain, who testified for the State during the trial, requested an emergency conservator for Ms. Matlis because she was unable to make any decisions on her own and incapable of managing her personal and financial affairs. Dr. Jain testified that Ms. Matlis specifically told him that the money she had given Ms. Lavigne was to be used for Pat's *own benefit*. Dr. Harry Morgan, a geriatric psychiatrist, who testified on behalf of the State, indicated that in his opinion, Ms. Matlis had dementia as early as 2001.

Pat Matlis was appointed an emergency conservator on October 10, 2002. Her conservator was Attorney Steven Allen. Attorney Allen testified at trial that he asked Ms. Lavigne to turn over any of Ms. Matlis' assets to him. Ms. Lavigne failed to disclose any of the three jointly held bank accounts she held with Ms. Matlis. The joint accounts, one Fleet account and two Savings Bank of Manchester accounts, contained funds emanating solely from Ms. Matlis. Attorney Allen acquired access to the Fleet

account. However, Ms. Lavigne closed out both the Savings Bank of Manchester accounts on October 22, 2002, taking a total of \$3,307, Ms. Matlis died at Rockville Hospital less than one month later on November 18, 2002.

Dr. Uphoff testified that his post-mortem neuroanalysis of Pat Matlis' brain indicated that she had Alzheimer's Disease given the fact that she had been previously diagnosed with dementia. He also stated that Ms. Matlis' brain had a significant loss of neurons in the hippocampus, which causes short term memory loss. Further, Dr. Uphoff testified that Ms. Matlis' brain had atrophied by approximately 10 % below the normal range in size. The physiological manifestations in the victim's brain confirmed the testimony of numerous friends and family members that Pat Matlis had lost much of her mental capabilities.

After victim, Pat Matlis' death, probate proceedings were commenced regarding whether the March 2002 will of Ms. Matlis was valid or the 1992 will. The defendant was deposed three times. Portions of her testimony in the 2003, 2004, and 2005 depositions were introduced into evidence at trial.

Ms. Lavigne's sworn testimony conflicted with numerous State witnesses. Ms. Lavigne testified that she never lied to Fleet Bank officer, Maria Economou and pretended she was Pat Matlis over the telephone. Ms. Economou testified that the defendant did in fact identify herself as Ms. Matlis and ask for information about Pat Matlis' bank accounts. Ms. Lavigne testified that she was initially looking for apartments and then started looking for a house at Pat Matlis' suggestion in February of 2002. Realtor, Tami MacDonald testified that the defendant started looking for houses in the Fall of 2001.

IV. State's Recommended Sentence

A. The Law

The State is cognizant of the well-established fact that a sentencing judge “has very broad discretion in imposing any sentence within statutory limits and in exercising that discretion he may and should consider matters that would not be admissible at trial” *State v. Anderson*, 212 Conn. 31, 47 (1989), citing *United States v. Sweig*, 454 F. 2d 181, 183-184 (2d Cir. 1972). The Connecticut Supreme Court case of *State v. Huey*, 199 Conn. 121,126-127, 505 A. 2d 1242 (1986), outlines the myriad of information the trial judge can consider in fashioning an appropriate sentence and provides as follows:

To arrive at a just sentence, a sentencing judge may consider information

that would be inadmissible for the purpose of determining guilt; evidence of crimes for which the defendant was indicted but neither tried nor convicted; evidence bearing on charges for which the defendant was acquitted; and evidence of counts of an indictment which has been dismissed by the government.... Generally, due process does not require that information considered by the trial judge prior to sentencing meet the same high procedural standard as evidence introduced at trial. Rather, judges may consider a wide variety of information... [as long as] it has some minimal indicium of reliability. *Id.* at 126-127.

[Connecticut Practice Book § 43-28](#) lists the factors a reviewing court should consider in determining whether a sentence is appropriate. These factors include “the nature of the offense, the character of the offender, the protection of the public interest, and the deterrent, rehabilitative, isolative, and denunciatory purposes for which the sentence was intended.”

B. Analysis

In analyzing the nature of the offense, it is readily apparent that while the larceny was accomplished by the non-violent method of fraud and deceit, this crime and the circumstances leading up to it undoubtedly had a violent impact upon the life of eighty-eight year old victim, Pat Matlis. Ms. Matlis was very apprehensive of the defendant's upcoming visit in February of 2002. Her

fears were well-founded. Once Ms. Matlis left her home on February 19th and stepped into Ms. Lavigne's car, her life as she had known it for the past eighty-seven years changed dramatically.

Ms. Matlis loved her home and her many Nashua relatives and friends. When she traveled to Connecticut with Ms. Lavigne, Pat Matlis believed she would be back in Nashua after only a few days. The defendant took Pat Matlis from her home during a time when Ms. Matlis was particularly weak and vulnerable due to physical and mental illnesses. When Pat was taken away from her beloved home, she lost the companionship of her best friend and trusted care giver, Evelyn Loulakis. The court saw and heard the testimony of Evelyn Loulakis over two days. The State respectfully asks the court to make its own assessment of their relationship based upon the testimony and the obvious impact this crime has had. While Pat Matlis was the actual victim for legal purposes, Pat's family and friends were also victimized, as their time with Pat was stolen. This is most notable and has had the greatest impact on her closest friend, relative, and companion, Evelyn Loulakis. Mrs. Loulakis, despite serious health issues of her own, insisted on testifying in this trial to pursue justice for Pat.

Ms. Lavigne successfully alienated Pat Matlis from her life in Nashua by suddenly uprooting her from her home and separating her, both geographically and emotionally, from concerned family members. Even before they left town, Ms. Lavigne began isolating her aunt from others. Pat's niece, Beth Lamothe, phoned several times that weekend to talk to Pat. Ms. Lamothe was never able to speak with her aunt and was repeatedly told by the defendant that Pat was "resting." Not only did the defendant successfully separate the victim from many loving family members and friends, the defendant rapidly spent much of Pat Matlis' lifelong savings within a few short weeks after bringing her to Connecticut. Despite already spending well over \$200,000 of her elderly aunt's savings, the defendant continued taking the very last of Pat Matlis' liquid assets even while Ms. Matlis was helpless in the Rockville Hospital and on her death bed.

The defendant was convicted of stealing \$3,307 of the victim's money. The theft occurred in October of 2002, which is one month before Ms. Matlis passed away. While the amount taken in the larceny conviction was smaller than most of the other nine charged larcenies, the circumstances surrounding this particular theft are undeniably the most egregious.

At the time of the theft, Ms. Lavigne knew that the victim had been diagnosed with dementia and that an emergency conservator had been appointed to protect Pat Matlis from future financial predation. Despite knowing that her aunt was incapable of handling her financial affairs and would die soon, the defendant, in an act of pure avarice, stole the only remaining money of the victim that she could via the jointly held bank accounts. Ms. Matlis' conservator, Steve Allen told Ms. Lavigne to relinquish all of her aunt's assets. The defendant deliberately concealed the fact that she had two jointly held Savings Bank of Manchester accounts containing Pat Matlis' funds. Instead, she quickly closed out both of these accounts and took the remaining money to prevent Attorney Allen from acquiring it.

In the last few remaining months of Pat Matlis' life, a veritable firestorm of litigation ensued between the defendant and the Loulakis family concerning her personal and financial affairs. Ms. Loulakis, who was merely trying to protect her sister-in-law from the defendant's **financial exploitation**, suffered tremendously from the defendant's actions. Although the trial was an extremely emotional ordeal for her, Ms. Loulakis eloquently and poignantly testified about the victim's life and Ms. Matlis' declining mental status. Immediately afterward, Ms. Loulakis was hospitalized for four days for a heart related condition. The extensive pain and suffering that Ms. Lavigne's conduct has caused the entire Loulakis family is readily apparent. Further, Ms. Lavigne's illegal actions have created a pernicious effect on all of the victim's relatives and friends.

[Practice Book § 43-28](#) lists the "character of the offender" as a factor to be considered in sentencing. Ms. Lavigne's extremely poor character is amply reflected in the statement she made to her landlord that she was getting money for a house from her "rich, senile, decrepit aunt." For the defendant to admit taking money from a mentally infirm, elderly, weak relative is tantamount to admitting stealing candy from a baby. The theft of Ms. Matlis' last remaining assets when Ms. Matlis' was hospitalized and near death established that Ms. Lavigne is a greedy, dishonest, predator. Further, the defendant, who was already under investigation for violations associated with her daycare business, failed to disclose her felony conviction to the Department of Public Health, which was required.

Another factor under § 43-28 that a reviewing court considers in evaluating the appropriateness of a sentence is “the protection of the public interest.” Every society is judged by how we treat our more vulnerable members. The legislature enacted a special law to protect persons over the age of sixty from larceny. In doing this, legislators recognized that older people can be more vulnerable to financial predation because of deteriorating physical and mental health. Additionally, senior citizens, unlike younger members of our society, have no way to recover from the theft of their life savings because they can no longer work. The defendant caused irreparable damage to the victim by shamelessly depleting the assets Ms. Matlis had accumulated over a long lifetime of working and saving.

The defendant engaged in a well-planned scheme to separate her aunt from loving family members and take her assets via jointly held bank accounts. This was not an isolated event but an intricate course of conduct that took place over a nine month period. Given the fact that Ms. Lavigne chose to exploit her very vulnerable, elderly aunt purely for financial gain, it is in the public's best interest to impose a significant incarceration period to prevent her from further abuses. Additionally, an incarceration period would protect other vulnerable members of the public that Ms. Lavigne sees on a daily basis; specifically, children in her daycare business.

A final factor articulated in § 43-28 of the Practice Book regarding sentencing justifications is the “deterrent, rehabilitative, isolative, and denunciatory purposes for which the sentence is intended.” The State firmly contends that an incarceration period is the only truly viable deterrent for Ms. Lavigne's crime. Ms. Lavigne took her aunt's money with impunity. She has shown absolutely no remorse for her reprehensible actions in preying upon her aunt who was a senior citizen with serious mental and physical problems.

Dr. Harry Morgan indicated that Ms. Matlis was susceptible to undue influence due to both mental and physical infirmity. The defendant, who exercised complete control over the defendant, knew better than anyone that Ms. Matlis' mental health had greatly declined. Ms. Matlis' poor mental and physical health provided the opportunity for Kathleen Lavigne to manipulate her aunt into opening joint accounts and revising her will. In applying the denunciatory purpose as a sentencing factor, Ms. Lavigne needs to understand that her conduct was seriously wrong and that there are consequences for her actions.

Based upon the serious nature of crime, which involved elder **financial exploitation**, the dishonest character of the defendant, and the protection of the public, the State respectfully submits that a significant incarceration period for this defendant is warranted. The State urges the court to impose the following sentence: Ten years execution suspended after five years incarceration and a five year probationary period. The State further asks the court to order restitution for Count Ten in the amount of \$3,307 to the victim's estate.

Respectfully submitted,

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