

**COURT OF COMMON PLEAS OF MONROE COUNTY  
FORTY-THIRD JUDICIAL DISTRICT  
COMMONWEALTH OF PENNSYLVANIA**

**COMMONWEALTH OF PENNSYLVANIA** : **NO. 2259 CR 2016**  
**vs.** :  
**JAMES BIDWELL** :

**BRIEF IN SUPPORT OF COMMONWEALTH’S MOTION IN LIMINE**

Now comes the Commonwealth of Pennsylvania by and through Michael Mancuso, Esquire, First Assistant District Attorney, and files the following brief in support of the Commonwealth’s Motion in Limine to wit:

**I. Background**

This is a cold case homicide involving the death of a young woman named Kristin Wagner, whose body was found hanging inside a broken refrigerated trailer located in a scrap yard on property of the defendant at Crowe Road, East Stroudsburg, Monroe County. Ms. Wagner’s body was found on Thursday, June 2, 2011 by employees of the defendant’s trash hauling business, known as ‘Christian Waste’. A perfunctory and limited investigation was undertaken by the local authorities. The investigation did not involve any attempt to interview the defendant despite the fact that he was the last person known to be with the victim, the body was found on his property, the victim had cooperated with police against him in an ongoing drug trafficking investigation, and his whereabouts at the time of her death were unaccounted for. The manner of death was determined by the coroner to be a suicide as a result of hanging.

Several years later, in 2014, Richard Gerber reached out to police officers of both Pocono Mountain Regional Police and Stroud Area Regional Police Departments. Detectives David

Thomas from Stroud Area Regional Police Department and Lucas Bray from Pocono Mountain Regional Police Department interviewed Mr. Gerber. Gerber had contacted Detective Bray because he was the affiant in a meth trafficking case filed against the defendant and one of his employees, a man named Chase Argot. Bray knew the victim had given incriminating information against the defendant in a taped statement recorded several months before her death. In that Statement, the victim maintained she was afraid and could be hurt 'real bad' if her cooperation was discovered. Indeed, during the several days following Kristin's death, Bray filed the meth trafficking charges against the defendant.

Mr. Gerber advised that he had known the defendant from serving prison time together. Mr. Gerber also provided proof of an ongoing business relationship between the defendant and himself with reference to the operation of the scrap yard on Crowe Road. Mr. Gerber provided background information on the defendant, including his abuse of methamphetamines and steroids, drug trafficking, sexual addiction, and frequenting prostitutes. The defendant told Gerber he was having a sexual relationship with the victim. The defendant told Gerber that the victim was threatening to expose their affair to the defendant's wife. The defendant told Gerber that he decided to get rid of her. The defendant told Gerber that he "choked her out", that is strangled her, in an office trailer and then hung her body in a "reefer trailer" to make it seem like a suicide.

Gerber's information prompted the authorities to reach out to the District Attorney, review the investigative file, review the photographs taken of the scene, and as a result a Grand Jury investigation was started. After a lengthy Grand Jury investigation, a presentment was issued by the Investigating Grand Jury, duly accepted by the Supervising Judge, and recommending that the defendant be charged for the homicide of Kristin Wagner. A Preliminary

Hearing was held before the Honorable Magisterial Judge Daniel Higgins, following which the charges were held for Court. Subsequently, a Scheduling Order was issued by this Honorable Court scheduling the matter for jury trial commencing on or about October 17, 2017. The Commonwealth filed a Motion in Limine seeking the admission into evidence of various bad acts of the defendant, including evidence of drug trafficking, drug use and its effect on defendant, defendant's tumultuous and violent relationships with females including, but not limited to, the victim, Kristin Wagner, the defendant's current spouse, Jennifer Bidwell, defendant's former spouse, Denise Bidwell, and Danielle Sickle. At hearing on the Motion in Limine the Commonwealth introduced as Exhibit #1 a compact disc containing the following folders:

1. A folder marked 'Alyssa Benak' which contains her recorded interview and transcript of February 28, 2017;
2. A folder marked 'Danielle Sickle' which contains a report of the interview of January 30, 2017, and her audiotaped interview, a Pennsylvania State Police incident report, and a Stroud Area Regional Police incident report involving Danielle;
3. A folder marked 'Denise Bidwell' which contains her interview of August 23, 2016, a transcript of the same, and her St. Mary's medical records from March 13, 2006;
4. A folder marked 'Jennifer Bidwell' which contains her audio interview of February 5, 2016, a transcript of the interview of the same date, and a note to the file dated September 19, 2017;
5. Pocono Mountain Regional Police domestic incident report of June 13, 2010, a Yahoo Mail message from the defendant dated January 16, 2011, a Yahoo Mail from the defendant dated June 1, 2011, and a complaint in support from January 26, 2011;
6. A folder marked 'Kristin Wagner' which contains various clips of telephone conversations between victim and defendant, Facebook pictures from victim's Facebook account, Kristin Wagner's statement to Pocono Mountain Regional Police dated November 17, 2010, victim's Facebook messages with the defendant, and a transcript of the telephone clips;
7. Research pertaining to the Motion in Limine, including the recent strangulation bill and materials;
8. A file containing various solicitations by the defendant for on-line prostitution;
9. Docket statements in Commonwealth v. Bidwell, Case #993 Criminal 2015 (prostitution);

10. Commonwealth v. Bidwell, Case #2816 Criminal 2011, possession with intent to deliver and conspiracy (methamphetamine);
11. Report of an interview with Kenya Hadlock January 20, 2015;
12. Report of an interview with Clarke Kitchell, March 10, 2015;
13. Report of an interview with Nancy Reinacher, dated January 6, 2015;
14. Transcript of the interview with Richard Gerber, June 5, 2014.

The Court set up a briefing schedule for the parties and other business was discussed including the defendant's non-objection to the various social media evidence in the case. These include the victim's, the defendant's, and Jennifer Bidwell's Facebook records, Yahoo emails, telephone records, and the medical records of Denise Bidwell. The defense indicated at hearing that no keeper of the record would be required for those items to be introduced. Additionally, the Commonwealth had requested that an allowance be made for the testimony of Michael Lucas, a Forensic Knot Examiner from the United Kingdom to testify by live feed as opposed to personally appearing here in the United States. The reasons given for the request include the fact that Mr. Lucas's wife and daughter are extremely ill and require his presence in the United Kingdom. As of the date of the writing of this brief we have not heard from the defense concerning whether they oppose the testimony of Michael Lucas occurring via live feed. Therefore, this brief will also address that issue. Finally, the Commonwealth filed a motion to compel defendant's expert reports. The defense indicated that they had been in consultation with a forensic pathologist and would be providing a report to the Commonwealth. This brief is in support of the Commonwealth's Motion in Limine, and motion for testimony via live feed.

## **II. Discussion**

It is helpful to start with the basics. Evidence which is relevant is admissible unless otherwise provided by law. Evidence that is not relevant is not admissible. Pa. R.E.402. It has been held that "[t]he admission of evidence is a matter vested within the sound discretion of the trial court, and such a decision shall be reversed only upon a showing that the trial court abused

its discretion. In determining whether evidence should be admitted, the trial court must weigh the relevant and probative value of the evidence against the prejudicial impact of that evidence. Evidence is relevant if it logically tends to establish a material fact in the case or tends to support a reasonable inference regarding a material fact. Although a court may find that evidence is relevant, the court may nevertheless conclude that such evidence is inadmissible on account of its prejudicial impact. See Commonwealth v. Weakley, 972 A.2d 1182, 1188 (Pa. Super 2009). In other words, if evidence of a defendant's bad acts help to establish some element of an offense, e.g. identity or intent, or helps to establish facts which support or establish evidentiary facts, e.g. motive, opportunity, preparation, or aids in rebutting a defense theory, e.g. accident, mistake; or, as in this case, the claim of suicide, then the evidence is relevant. See for example, Scott v. State of Texas, 2007 W.L. 1159681 (Court of Appeals Texas 2007).

Extraneous evidence, also known as bad acts evidence, is regulated by Pennsylvania Rule of Evidence 404. The relevant portion of the rule reads as follows: "Evidence of a crime, wrong or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character. ... [However], this evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. In a criminal case this evidence is admissible only if the probative value of the evidence outweighs its potential for unfair prejudice. (Pa. R.E. 404(b)(1) and (2)).

The list of exceptions is also non-exhaustive. (See comment to Rule 404.) Indeed, the exceptions include rebutting allegations of suicide and to show the natural development or *res gestae* of the case and its investigation. See Commonwealth v. Schirmer, 2107 Criminal 2010 (Common Pleas Monroe County) affirmed 2644 EDA 2013, holding that the evidence of the

suicide of Joseph Musante was relevant and admissible to show the timeline of the events in question and allow for the presentation of a logical sequence of events in context and thus, avoiding juror confusion. *Id* at p. 14.

One category of evidence that the Commonwealth seeks to introduce at trial is the violent conduct of the defendant toward women. These violent acts include attacking women with his bare hands, while facing them; attacking them from the front, clutching their throat and neck areas, choking and strangling them. All the women were involved in either sexual relationships or situations with the defendant. The triggering events vary only in insignificant details but have as common elements the defendant's apparent need for control, submission to his desires, and viewing any challenge to his authority as a threat to his masculinity.

The starting point for the analysis at hand is similar to that in the recent plurality opinion of the Pennsylvania Supreme Court Commonwealth v. Hicks, 156 A.3d 1114 (Pa. 2017). With respect to the Rule 404(b) analysis in that case, Justice Dougherty wrote the Judgment of the Court. With two justices concurring and another two concurring separately, this Court's allowance into evidence of Hicks' prior violence against other women was affirmed. The Supreme Court found that evidence of Hicks' prior relationships with and assaults on women were logically connected to circumstances surrounding the defendant's relationship with the victim, her injuries, and her death. The court noted that the defendant was introduced to drug dependent women in which he showed a sexual interest, inflicted injuries on each woman by targeting the neck area with his bare hands, sharp objects, or both, and verbally threatened to kill each woman. (*id* at p. 1124-1125).

Consistent Pennsylvania case law is in accord with Hicks. In Commonwealth v. Elliott, 700 A.2d 1243 (Pa. 1997), abrogated on other grounds by Freeman 827 A.2d 385 (Pa. 2003), the

State Supreme Court found a logical connection between the defendant's conduct of killing the victim by strangulation, along with evidence of a sexual assault, and the testimony of three (3) other females who suffered unrelated sexual and physical assaults upon them by the appellant. Each victim was a white female in their twenties and suffered similar physical violence at the hands of the appellant. Justice Dougherty in Hicks Supra noted the logical connection between the three women, all in their twenties, who were choked, beaten or both during the early morning hours while alone with the perpetrator. Similarly, in Commonwealth v. Miller, 664 A.2d 1310 (Pa. 1995) a prosecution for rape and murder the Court noted that in order to admit the other crimes under the common scheme or design exception to Rule 404, a "comparison of the crimes must establish a logical connection between them. Miller Supra citing Commonwealth v. Hughes, 555 A.2d 1264 (Pa. 1989). The court in Miller found that logical connection where the defendant lured women of similar appearance into his vehicle, took them to a remote location, raped and beat them in a similar manner. Also, in Commonwealth v. May, 656 A.2d 1335 (Pa. 1995) the prosecution involved a cold case homicide. The skeletal remains of the victim were identified upon their discovery in 1988. The victim had gone missing several years prior in 1982. From an examination of the bones it appeared that the victim had suffered sharp force trauma. The Court found a logical connection between the cold case murder and two stabbings committed in 1982 upon separate females. The logical connection existed because the victims were physically similar to each other, the attacks were of a similar nature, and the body was found in close proximity to where the other assaults had taken place. Also instructive is Commonwealth v. Rush, 646 A.2d 557 (Pa. 1994). The prosecution involved a horrific murder of a woman eight (8) months pregnant who was found beaten and then stabbed multiple times. There was evidence she was sexually assaulted. The crime took place in her apartment. The

Pennsylvania Supreme Court found a logical connection between that attack and two other attacks on females. The others were also attacked, raped and stabbed in their apartments. Similarly, in Commonwealth v. Hughes, 555 A.2d 1264 (Pa. 1989) the Supreme Court found a sufficient logical connection between a gruesome sexual assault, murder and burning of a female victim which had gone unsolved for nearly a year. The cause of death was determined to be manual strangulation. The Supreme Court upheld the trial court's decision to allow the testimony of another female victim who alleged that she was attacked by the appellant, taken to a vacant home, sexually assaulted, beaten and choked until she passed out. The Court held that both crimes were sufficiently and logically connected for the admissibility of the assault and attempted murder at the defendant's murder trial. Both involved young females, both victims were non-Caucasian, both crimes occurred during daytime, both crimes occurred in a four block radius, both crimes involved luring the victims off the street, assaults occurred in vacant buildings, involved sexual assaults, manual strangulation, and both had previously been acquainted with the appellant.

A very helpful case in deciding the admissibility of the evidence in question as well as its scope is found in Justice Baer's majority Opinion in Commonwealth v. Arrington, 86 A.3d 631 (Pa. 2014). Arrington was convicted following a jury trial of Murder in the First Degree and sentenced to death. On automatic review before the Pennsylvania Supreme Court one of the key issues concerned the admissibility of Arrington's prior abuse and assaults, not only against the victim, but also several girlfriends, and some of their family members. The defense maintained that the evidence was merely an attack on the defendant's character and, therefore, violated the propensity rule. The Commonwealth countered by pointing out that due to the circumstantial nature of the case the Commonwealth needed to rely upon evidence of the defendant's prior bad

acts and that they were relevant to show a common scheme. The Pennsylvania Supreme Court agreed noting: “[I]n order for evidence of other criminal activity to be admissible to establish a common scheme, two conditions must be satisfied; (1), the probative value of the evidence must outweigh its potential for prejudice against the defendant ... and (2) a comparison of the crimes must establish a logical connection between them. See Arrington Supra at p. 526 citing Commonwealth v. Miller Supra.

The Court noted that Arrington’s violence against the victim was characterized by repeated stalking, prior beatings; the results of which were seen by her friends, and extreme acts of jealousy. Eventually, the victim filed a complaint against Arrington for domestic violence. However, the victim refused to go forward with Arrington’s State Parole violation and in the absence of evidence he was released from prison. Approximately ten (10) days later the victim was murdered.

The main defense was that of alibi. Arrington claimed that he was in the City of New York throughout the time period of the murder. Therefore, establishing that the defendant acted in accordance with a common plan or scheme i.e., that there was a logical connection between the other criminal acts and his treatment of the victim, the alibi would be weakened as the jury would see a connection between the defendant’s treatment of the women that would point to him as the perpetrator. “The testimony concerning appellant’s treatment of other girlfriends demonstrated repeated efforts to preserve intimate relationships through harassment, intimidation, and physical violence culminating in the use of a deadly weapon. In each instance, appellant: 1) monitored his girlfriend’s daily activities; 2) resorted to violence when his partner wanted to end a relationship or interacted with other men; 3) inflicted head or neck injuries with his fists, a handgun, or an edged weapon; and 4) harmed or threatened to harm members of his

girlfriend's family or male acquaintances that he viewed as romantic rivals. Given the shared characteristics of each relationship, the evidence fell within the purview of Pa. R.E. 404(b)(2).” Arrington at 528.<sup>1</sup>

The Court in Arrington noted that “...Although details of the crimes committed in the course of other relationships were undoubtedly harmful to the defense, those events were significant because they prove that appellant would use deadly force to prevent a woman from leaving him. These considerations, coupled with the fact that comprehensive limiting instructions were issued at trial, lead us to conclude that the probative value of the testimony exceeded its prejudicial impact...” Arrington Supra citing Commonwealth v. Boczkowski, 846 A.2d 75 (Pa. 2004). In that regard, the Court also emphasized that the facts at trial showed that the case was highly circumstantial and, thus, the Commonwealth's need for the evidence was a key factor in finding that the probative value outweighed any prejudicial impact. Arrington, Supra.

Here, evidence shows that the defendant used violence when he did not get his way or the women with whom he was in sexual situations questioned him, or otherwise did not comply with his desires. He was seen by one witness grabbing the victim by the throat while facing her and threatening to kill her.<sup>2</sup> He engaged in a pattern of controlling and jealous behavior toward women with whom he was in a relationship. All the women were choked from the front by the defendant who became violent when they would not comply with his wishes. Like Arrington and the other cases, a sufficient logical connection exists between the violence and other bad acts demonstrated by the defendant towards the proffered women and the murdered Kristin Wagner.

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<sup>1</sup> The facts concerning the violence toward the prior girlfriends and their families included stalking, threats to harm family members, setting fire to one girlfriend's apartment, physical violence against the girlfriends and family members, including pistol whipping, beatings, attacking a family member with an axe and shooting at another family member.

<sup>2</sup> Clarke Kitchell

A review of the case and its investigation reveal its circumstantial nature. Indeed, there is no direct evidence in the case. Therefore, the Commonwealth's need for the evidence is great and the probative value outweighs any potential prejudicial effect. Further, this Court can, as it has done in the past, in cases such as Hicks and Schirmer Supra give appropriate cautionary instructions. The logical connection consists of; 1) that the victims were all women with whom the defendant was in an intimate relationship, or sexual situation. For example, in the case of Danielle Sickle, the defendant desired to have sex with Ms. Sickle; 2) all the women in question opposed, thwarted or disagreed with something the defendant wanted; 3) the defendant used his bare hands to assault all three women, grabbing each of them by the throat - while facing them - and applying pressure; thereby cutting off their ability to breathe and otherwise choking them; 4) despite suffering violent assaults upon their neck areas none of the women showed bruising, scratching, or other obvious signs of injury<sup>3</sup>; 5) the victim and two of the proffered women had been financially dependent upon the defendant;<sup>4</sup> and 6) the victim and several of the women (Alyssa Benek, Danielle Sickle, and Denise Bidwell) were given drugs by the defendant.

We would be remiss if we weren't to also mention the analysis employed by the Pennsylvania Superior Court in Commonwealth v. Einhorn, 911 A.2d 960 (Pa. Super 2006). Einhorn was charged with killing his girlfriend, Helen (Holly) Maddux. The two had shared an apartment in Philadelphia. However, they separated with Maddux moving to New York. Einhorn had threatened to throw away Maddux's remaining belongings unless she traveled to

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<sup>3</sup> Indeed, as stated by Denise Bidwell, defendant's first wife, the defendant frequently struck her in locations that would not leave bruising readily observable by her friends and family. In the case of Denise Bidwell the defendant would repeatedly hit her in, for instance, the thigh area knowing that any bruising could easily be concealed. And although after being choked to near unconsciousness by the defendant Denise Bidwell sought medical attention at St. Mary's Medical Center there were no observable signs of trauma. She had the feeling that a pill or some other object remained stuck in her throat.

<sup>4</sup> With respect to Danielle Sickle although that was the first and only time that she had met the defendant, following her assault at the hands of the defendant she was able to retrieve her vehicle several days later. She noted that in an envelope under the windshield wiper a sum of money was left for her.

Philadelphia to see him. Einhorn and Maddux went to a movie with another couple. Later that evening the person who rented the apartment underneath Einhorn's apartment "...recalled hearing a woman's screams and repeated loud thumps, which he thought originated from Einhorn's apartment. Maddux was never again seen or heard from by her friends or family." Einhorn Supra at p. 964. It was only approximately eighteen (18) months later that the police armed with a search warrant of Einhorn's apartment located in a rear closet a "locked steamer trunk". Id at 964. Evidence of human decay and fluid damage was located within the trunk and buried beneath several layers of air freshener, plastic bags and foam peanuts were the remains of Holly Maddux. After an extensive and complex pretrial history, which included a trial in absentia which had to be voided in order to effectuate extradition from France, Einhorn was brought to trial in September 2002, fifteen (15) years after the murder. Following his conviction for first degree murder Einhorn challenged the admissibility of certain bad act evidence that demonstrated his past violence against women. In affirming the trial court the Superior Court held that the prosecution evidence was admissible as an exception to the propensity rule to prove a common scheme. In that regard the court noted that "a common scheme may be relevant to establish any element of a crime, or intent may be shown through a pattern of similar acts." Einhorn at p. 967 citing Commonwealth v. Strong, 825 A.2d 658 (Pa. Super 2003), appeal denied 577 Pa. 702, 847 A.2d 59 (2004), cert. denied, 544 U.S. 927 (2005).

The evidence used by the Commonwealth was actually documented by Einhorn himself in a diary. They involved his violence and violent designs against prior girlfriends. For instance, with reference to a physical assault on a prior girlfriend Einhorn wrote in his diary "to kill what you love when you can't have it seems so natural that strangling Rita last night seemed so right." Einhorn Supra at p. 968 or with reference to a second girlfriend Einhorn wrote "where am I now

after having hit Judy over the head with a ... bottle – blood on my jacket and pants – then making some feeble attempts to choke her. She wanted to live. That has been established. Now she will leave Phila. for good. I'll be able, if she does not have me arrested, to go back to living a normal life. Violence always marks the end of a relationship – it is the final barrier over or through which no communication is possible.” Id at p. 968.

In finding the logical connection in the case to establish the common scheme, the Court noted that “all three attacks were motivated by a woman ending a relationship with Einhorn ... Einhorn choked his first girlfriend by the throat with his hands; struck his second girlfriend with a bottle and choked her; and ultimately administered at least eight violent blows to Maddux, with a blunt instrument, resulting in Maddux’s death.” Id at p. 968. The court also approved of the cautionary instructions issued during trial and recognized that a jury is presumed as a matter of law to follow instructions. Id at p. 969.<sup>5</sup>

A well recognized exception to the propensity rule is that evidence of a defendant’s bad acts are admissible to help establish a motive for the crime. (Pa. R.E. 404(b)(2)). Although motive is not a required element of any criminal offense it is a very important consideration for a jury. “...knowledge of human nature tells us that an ordinary person is more likely to commit a crime if he or she has a motive than if he or she has none. You should weigh and consider the

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<sup>5</sup> Concerning the purpose and background of House Bill 1581 P.N. 3089, the strangulation bill, the crime of strangulation was defined and made a felony. Strangulation was defined as knowingly or intentionally impeding the breathing or circulation of blood of another person by applying pressure to the throat or neck, or blocking the nose and mouth of a person. The actual infliction of physical injury to a victim is not an element of the offense and the lack of physical injury cannot be a defense to prosecution. In the background it was noted that “last year in Pennsylvania there were 146 domestic violence related fatalities; of the 113 victims killed, 8 were strangled. While some victims were strangled to death, countless others endured nonfatal strangulation as their abusive partners proved the victim’s life is in their hands. One study has shown the odds of becoming a homicide victim increase by 800% for women who have been strangled by their partner. The occurrence of strangulation has been reported in over half of women who are being assessed for intimate partner violence, and an alarming number of victims have reported being strangled multiple times by their abusive partner.” Pennsylvania Coalition Against Domestic Violence with citations attached. Under the ‘Doctrine of Chances’ analysis employed by Judge Saylor concurring in the Hicks decision the odds reported in the aforementioned publication i.e., 800% certainly favors the admissibility of the evidence in question.

evidence tending to show motive along with all the other evidence in deciding whether the defendant is guilty or not guilty. It is entirely up to you to determine what weight should be given the evidence concerning motive.” Pa. S.J.I. (Crim) 3.13 Motive. To show motive, the 404(b) evidence must give sufficient grounds for believing the prior acts caused the crime at trial, or the crime at trial grew out of the prior facts and circumstances. See Commonwealth v. Schwartz, 285 A.2d 154, 158 (Pa. 1971), abrogated on other grounds by Commonwealth v. DeMarco, 809 A.2d 256 (Pa. 2002). The defendant was involved at the time of the murder in drug trafficking. Specifically methamphetamines from the Philadelphia area to the Poconos. The victim had given a statement to Detective Daniel Jones of the Pocono Mountain Regional Police Department several months prior to the murder. In her statement the victim identified the defendant as a drug trafficker and also expressed fear for her safety where her identity as an informant become known. Additionally, Jennifer Bidwell, the defendant’s wife at the time of the murder, will testify that the defendant believed that Kristin was an informant and involved in arranging for the stop of his truck whereupon he and Chase Argot were found in possession of a quantity of methamphetamine. That incident would later form the drug trafficking charges against the defendant which ultimately led to his conviction. Additionally, the victim’s mother, Kathleen Jones, indicated that the victim had told her she wanted to get away from the defendant because she had been cooperating with the police involving his drug trafficking. The mother also indicated that it is highly likely, because she didn’t believe her daughter, that she would have relayed to the defendant that the victim had claimed that she had been in cooperation with the police in some manner. It is up to the jury to determine what weight to give to this evidence. But certainly under the circumstances it can be rationally relayed to the jury that the defendant’s

drug trafficking and the victim's cooperation with the authorities provide him with one motive for murder.

Finally, the Commonwealth is seeking to have Michael Lukas, a royal know examiner and forensic knot specialist to testify via live feed. Mr. Lukas, is unable to travel outside of the United Kingdom because close family members of his, his wife and daughter, are very ill and in need of his presence in the United Kingdom and care. Commonwealth v. Atkinson, 987 A.2d 743 (Pa. Super 2009) is instructive. Atkinson involved a challenge based on the confrontation clause to the testimony of a Commonwealth witness at a suppression hearing. The testimony occurred by use of a two-way video conferencing system. Atkinson ruled that in order to overcome the confrontation clause strong preference for live in-person testimony a compelling need must be established. Matters of convenience and cost saving alone are not sufficient reasons. The defense has not raised any argument in its brief contrary to the admissibility of Mr. Lukas's testimony by video conferencing. Therefore, the Commonwealth believes the Court could accept the factual predicate for the request. The circumstances as set forth in this brief and earlier during the Commonwealth's statement to the court at the hearing demonstrates special circumstances sufficient to allow the court to grant the Commonwealth's request. The Superior Court in Atkinson approved of the 11<sup>th</sup> Circuit's analysis in United States v. Yates, 438 F.3d 1307 (11<sup>th</sup> Cir. 2006) where the court determined that there must be an important public policy and reliability to permit the use of video testimony. In Atkinson the court noted a Wyoming Supreme Court case Bush v. Wyoming, 193 P.3<sup>rd</sup> 203 (Wy 2008) which recognized both a witness who suffered from numerous ailments to have arrangements made to testify from a local District Attorney's Office as well as the witness's wife who was also called to testify. She was granted leave to testify at the office because of the stress she would suffer from having to leave

her sickly husband. The court noted that the preference for face to face confrontation must occasionally give way to the considerations of public policy and the necessities of the case. In what is being proposed the witness would be sworn in visible to the jury and subject to contemporaneous cross-examination. This testimony would occur live at that moment in the trial. The only difference would be he would be seated in a location in the United Kingdom and his image displayed to the jury here in Monroe County.

In light of the facts and circumstances particular to this witness the Commonwealth believes that the testimony by live feed should be allowed.

### **CONCLUSION**

For the reasons set forth above it is respectfully requested that this Honorable Court grant the Commonwealth's Motion in Limine and Motion for Testimony Via Live Feed.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Michael Mancuso, First Assistant District Attorney of Monroe County, hereby certify that I am this day serving a true and correct copy of the Commonwealth's Brief in Support of Motion in Limine upon the persons and in the manner indicated below, which service satisfies the requirements of Pennsylvania Rules of Appellate Procedure:

Service in person as follows:

Honorable Margherita P. Worthington  
President Judge  
Monroe County Courthouse  
Stroudsburg, PA. 18360

Service via First Class Mail as follows:

Brian J. McMonagle, Esquire  
1845 Walnut St., 19<sup>th</sup> Floor  
Philadelphia, PA 19103

DATE: \_\_\_\_\_

By: \_\_\_\_\_  
Michael Mancuso, Esquire  
First Asst. District Attorney