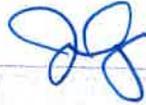


2013 NOV 29 PM 3: 21

BY:   
CLERK OF COURT

1 FOR PUBLICATION

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4  
5 **IN THE SUPERIOR COURT**  
6 **FOR THE**  
7 **COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

8	<b>COMMONWEALTH OF THE</b>	)	<b>CRIM. CASE NO. 13-0142</b>
9	<b>NORTHERN MARIANA ISLANDS,</b>	)	
10		)	
11	<b>Plaintiff,</b>	)	
12		)	<b>PRETRIAL ORDER RE EVIDENCE OF</b>
13	<b>v.</b>	)	<b>OTHER ACTS OF DEFENDANT</b>
14		)	
15	<b>MELVIN MONKEYA,</b>	)	
16		)	
17	<b>Defendant.</b>	)	

*AGU - McField  
J. Dockter*

18 **I. INTRODUCTION**

19 This matter came before the Court on November 14, 2013 at 10:00 a.m. in Courtroom 220A.  
20 Defendant Melvin Monkeya was present and represented by Jennifer Dockter. The Commonwealth  
21 was represented by Assistant Attorney General Chemere McField.

22 On October 29, 2013, the Commonwealth filed Government's Notice of Intent to Introduce  
23 Evidence of Other Sexual Assault Acts and Other Bad Acts, Pursuant to NMI R. Evid. 413 &  
24 404(b). On November 7, 2013, Defendant Monkeya filed an "Opposition to the Government's  
Motion to Introduce Evidence Pursuant to NMI Rules of Evidence 413 and 404(b)." At hearing on  
November 14, 2013, defense counsel acknowledged that the opposition was procedurally improper,  
and moved to amend the filing to a motion to exclude. On November 18, 2013, the Court issued an  
Order Directing Supplemental Briefing on this matter. The Defendant filed supplemental briefing  
on November 21, 2013. The Commonwealth filed a written opposition to the Defendant's Motion to

1 Exclude on November 22, 2013. Based on a review of the filings, oral argument at hearing, the  
2 facts of this case and applicable law, the Court grants in part, and withholds pretrial determination  
3 in part, on Defendant's Motion to Exclude.

4 Defendant Monkeya is charged with one count of Sexual Abuse of a Minor in the First  
5 Degree in violation of 6 CMC § 1306(a)(3)(B). This case involves allegations of penetration of the  
6 alleged victim's vagina and genital area by Defendant's mouth and penis. At the time of the alleged  
7 offense, Defendant was a DPS detective. The alleged victim is his niece who was fourteen years old  
8 and was facing a truancy charge at the time of the alleged offense. The allegation is that Defendant  
9 Monkeya first offered to assist the alleged victim by dismissing her truancy charge if she would  
10 allow him to enact the sexual acts detailed in the criminal investigations he was working on. The  
11 Commonwealth alleges that when the alleged victim resisted, Defendant Monkeya threatened to  
12 prosecute her. The alleged sexual assault occurred in Defendant Monkeya's DPS office, and  
13 Defendant Monkeya allegedly offered the victim a gift certificate in exchange for engaging in  
14 sexual acts.

15 Defendant Monkeya moves to exclude evidence of other acts that the Commonwealth seeks  
16 to introduce under Commonwealth Rules of Evidence, Rules 404(b) and 413. The Defendant argues  
17 that this evidence should be excluded because the Commonwealth has not complied with discovery  
18 deadlines, and also that the risk of undue prejudice outweighs the probative value of the proposed  
19 testimony. The Defendant seeks to exclude five different types of evidence.

20 Defendant first seeks to exclude the testimony of Elizabeth Cruz concerning an alleged  
21 sexual assault perpetrated by Defendant on Elizabeth Cruz, Defendant Monkeya's niece, when she  
22 was fifteen years old.<sup>1</sup> Ms. Cruz is expected to testify that Defendant Monkeya threatened to  
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24 <sup>1</sup> Elizabeth was born in 1989, so this event is alleged to have occurred in 2004 or 2005.

1 prosecute her upon finding out that she had used a fake identification card. She is expected to testify  
2 that Defendant Monkeya took Ms. Cruz to a hotel room in Saipan, where he told Ms. Cruz that he  
3 would send her to jail unless she performed sexual acts detailed in a sexual assault case that  
4 Defendant Monkeya was investigating. Ms. Cruz is expected to testify that Defendant Monkeya  
5 then performed oral sex on Ms. Cruz.

6 Second, Defendant Monkeya seeks to exclude testimony of R.C.P., also Defendant  
7 Monkeya's niece, concerning an alleged sexual assault perpetrated by Defendant Monkeya on  
8 R.C.P. in May of 2012, when R.C.P. was sixteen years old. The Commonwealth expects that  
9 R.C.P. will testify that Defendant Monkeya asked her to perform sexual acts with Defendant and  
10 report how they made her feel in order to help Defendant Monkeya pass a class and become a  
11 detective in Guam. R.C.P. is expected to testify that after she refused to engage in sexual activity,  
12 Defendant touched her private parts several times while placing a cake on her lap and removing it.

13 Third, Defendant Monkeya moves to exclude the testimony of Regina Cruz Palacios. The  
14 Commonwealth expects Ms. Cruz Palacios to testify that between January, 2007 and April, 2010  
15 Defendant raped and performed oral sex on her about twenty times. Defendant allegedly began  
16 assaulting Ms. Cruz Palacios after she drove intoxicated, and that Defendant threatened to prosecute  
17 her and place her in jail unless she performed the sex acts described in the criminal cases he was  
18 investigating. The assaults allegedly took place in Defendant Monkeya's DPS office and motels in  
19 Saipan and Tinian.

20 Fourth, Defendant seeks to exclude testimony of Jennifer Cruz, the alleged victim in this  
21 case, concerning an incident in October, 2011. The Commonwealth's notice indicates that this  
22 alleged incident involves Defendant Monkeya visiting Ms. Cruz's apartment in Guam, offering to  
23 buy groceries for her, driving her to his apartment in Guam, describing sex acts at issue in criminal  
24 cases he was investigating, and requesting that Ms. Cruz perform those sex acts. When Ms. Cruz

1 refused, Defendant allegedly locked her in his bedroom for about an hour and attempted to  
2 blindfold her.<sup>2</sup>

3 Finally, Defendant Monkeya moves to exclude the testimony of J.U.S. concerning an  
4 incident in 2009, when J.U.S. was sixteen or seventeen years old. J.U.S. is expected to testify that  
5 she was picked up by a different police officer and informed that Defendant Monkeya needed to  
6 discuss a case with her. While she was in Defendant Monkeya's vehicle, he forced her to lay on the  
7 floor of the vehicle and told her that she had a truancy case, and that he would help her with the  
8 case if she would help him with his sex cases. J.U.S. escaped from the vehicle when it was parked  
9 at the DPS Tinian office.

## 10 **II. ANALYSIS**

### 11 **A. Timing of Discovery**

12 Defendant originally brought his request to exclude the above-described evidence in a filing  
13 titled "Opposition to the Government's Motion to Introduce Evidence Pursuant to NMI Rules of  
14 Evidence 413 and 403(b) [sic]." In that filing, Defendant argued that the Commonwealth untimely  
15 filed its "motion" to introduce evidence of other acts of Defendant.

16 The Court first notes that the Commonwealth did not file a motion, rather it filed a notice  
17 that it intends to introduce evidence of Defendant's other acts pursuant to Rules 404(b) and 413 of  
18 the Commonwealth Rules of Evidence. Rule 413 of the Commonwealth Rules of Evidence allows  
19 the introduction of evidence of the defendant's commission of other offenses of sexual assault. Rule  
20 413(b) provides the procedure the Commonwealth must follow to comply with the rule:

21 [T]he attorney for the Government shall disclose the evidence to the defendant,  
22 including statements of witnesses or a summary of the substance of any testimony

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23 <sup>2</sup> The Commonwealth's Notice also notifies Defendant that the Commonwealth intends to introduce testimony of  
24 Jennifer Cruz concerning a series of phone calls from 2008 to 2011 in which Defendant Monkeya allegedly called Ms.  
Cruz and informed her that he worked for the Attorney General's Office in Guam and asked Ms. Cruz to assist him with  
his work on sex cases. Defendant does not request exclusion of this testimony.

1 that is expected to be offered, at least fifteen days before the scheduled date of trial  
2 or at such later time as the court may allow for good cause.

3 Rule 404(b) establishes that evidence of other acts of the defendant are not admissible “to prove the  
4 character of a person in order to show action in conformity therewith,” but allows such evidence to  
5 be admitted for other purposes. Under Rule 404(b), “upon request by the accused, the prosecution  
6 in a criminal case shall provide reasonable notice in advance of trial, or during trial if the court  
7 excuses pretrial notice on good cause shown, of the general nature of any evidence it intends to  
8 introduce at trial.” NMI R. Evid. 404(b). Rule 404(b) does not set the time for disclosure. Instead,  
9 the Court sets the deadline for disclosure. *See* 25-616 MOORE’S FEDERAL PRACTICE – CRIMINAL  
10 PROCEDURE § 616.04 (a deadline 7-10 days before trial is generally considered reasonable notice).  
11 In this case, the Pretrial Order required the exchange of discovery materials no later than one month  
12 before trial.

13 The trial in this case is scheduled for December 2, 2013. The Commonwealth filed its notice  
14 and provided witness statements to Defendant Monkeya on October 29, 2013, more than one month  
15 before trial. Thus, the notice and accompanying discovery materials were timely filed in accordance  
16 with the requirements of Rule 404(b) (“in advance of trial”); Rule 413 (“at least fifteen days before  
17 the scheduled date of trial”); and the Pretrial Order (“no later than one (1) month before trial”).  
18 There is no reason to exclude the proposed evidence based on the time the Commonwealth filed its  
19 notice.

20 The Defendant raises a second argument concerning the timing of discovery in his  
21 November 21, 2103 response to Court’s order directing supplemental briefing. In that filing,  
22 Defendant argues that the above-described evidence should be excluded because the  
23 Commonwealth, by providing notice of its intent to introduce evidence of other acts of defendant  
24

1 and associated discovery on October 29, 2013, violated Rule 12 and Rule 16 of the Commonwealth  
2 Rules of Criminal Procedure.

3 Defendant argues that Rule 12(d)(2) requires the Commonwealth to provide notice as soon  
4 after the arraignment as is practicable, and that the Commonwealth did not provide notice as soon  
5 as was practicable. However, the clause “at the arraignment or as soon thereafter as is practicable”  
6 speaks to when the defendant may request the notice:

7 At the arraignment or as soon thereafter as is practicable the defendant may, in order  
8 to afford an opportunity to move to suppress evidence under subdivision (b)(3) of  
9 this rule, request notice of the government’s intention to use (in its evidence in chief  
at trial) any evidence which the defendant may be entitled to discover under Rule 16  
subject to any relevant limitations prescribed in Rule 16.

10 NMI R. Crim. Pro 12(d)(2). Rule 12(d)(2) imposes no deadline on the Commonwealth. Thus, the  
11 Commonwealth has not violated the rule by providing notice more than one month before trial of its  
12 intent to introduce evidence of other acts of Defendant.

13 Defendant Monkeya also argues that the Commonwealth violated Rule 16 because the  
14 prosecution did not “promptly notify” the Defendant of the existence of material he requested on  
15 May 29, 2013. *See* NMI R. Crim. Pro. 16(c). Rule 16 does not govern the Commonwealth’s  
16 obligations to provide notice of its intent to introduce evidence of other acts of the defendant. *See*  
17 NMI R. Crim. Pro. 16. The notice requirements are governed by Rule 404(b) and Rule 413 of the  
18 Commonwealth Rules of Evidence. As detailed above, the Commonwealth complied with those  
19 requirements. The Court notes, however, that once the discovery deadline set in a pretrial order has  
20 passed, the Commonwealth is under a continuing duty to provide prompt notice of any additional  
21 newly-discovered evidence of other acts of a defendant that it intends to introduce. *See United*  
22 *States v. Barnes*, 49 F.3d 1144, 1148 (6th Cir. 1995) (“Although Fed. R. Crim. P. 16(c) refers to  
23 evidence or material ‘subject to discovery or inspection under this rule,’ we believe that for reasons  
24

1 of efficiency and fairness, a similar continuing obligation to disclose applies to Fed. R. Evid.  
2 404(b).”).

3 The Court finds that there was no discovery violation concerning the evidence at issue in  
4 this motion.<sup>3</sup> Thus, the Court need not consider whether exclusion of the evidence is an appropriate  
5 sanction.

## 6 **B. Admissibility of Proposed Evidence**

### 7 **i. Legal Standard**

8 Prior acts of a defendant in a case in which sexual assault is alleged may be admissible  
9 under Rule 404(b) of the Commonwealth Rules of Evidence (“Rule 404(b)”), Rule 413 of the  
10 Commonwealth Rules of Evidence (“Rule 413”), or 6 CMC § 1320(a). Generally “evidence of  
11 other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show  
12 action in conformity therewith.” NMI R. Evid. 404(b). However, such evidence is admissible for  
13 many other purposes. *Id.* For example, such evidence can be introduced to prove “motive,  
14 opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.” *Id.*

15 Rule 413 supersedes the prohibition on propensity evidence in sexual assault cases.  
16 *Commonwealth v. Rios*, Crim. No. 12-0110 (NMI Super. Ct. Mar. 6, 2013) (Pretrial Order  
17 Regarding Rule 413 Evidence at 2). In cases where the defendant is accused of a sexual assault

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19 <sup>3</sup> The Court reviewed all of the cases cited by Defendant in support of the argument that evidence should be excluded  
20 due to alleged discovery violations. Notably, the facts of each case cited by Defendant are far more severe than the  
21 situation at issue here, where the notice and discovery were provided to Defendant more than one month before trial, in  
22 compliance with the Pretrial Order. *See State v. Parson*, 6 Ohio St. 3d 442, 444 (1983) (defendant’s and codefendant’s  
23 statements to law enforcement were never provided to defendant, but prosecution attempted to introduce testimony  
24 concerning statements at trial); *United States v. Wicker*, 848 F.2d 1059, 1059 n.1 (10th Cir. 1988) (prosecution  
produced lab report six and two days before trial was scheduled to begin, in direct violation of court order requiring its  
production about three weeks before trial); *United States v. Fernandez*, 780 F.2d 1573, 1375 (11th Cir. 1986) (names of  
co-conspirators known to the government were provided to defense counsel the day before trial, and at lunch recess  
during trial, in violation of discovery order); *United States v. Euceda-Hernandez*, 768 F.2d 1307, 1308 (11th Cir. 1985)  
(post-arrest statements of defendants were provided to defense counsel three days before trial); *United States v. Peveto*,  
881, F.2d 844, 862 (10th Cir. 1989) (discovery material including photos, two pistols, papers, handwritten notes, a  
notebook, narcotic paraphernalia, homemade bombs, amphetamines and other items were produced on the day of trial);  
*United States v. Baum*, 482 F.2d 1325, 1332 (2d Cir. 1973) (identity of witness not disclosed to defendants until witness  
was presented at trial).

1 offense, “evidence of the defendant’s commission of another offense or offenses of sexual assault is  
2 admissible, and may be considered for its bearing on any matter to which it is relevant.” NMI R.  
3 Evid. 413(a). The other sexual assault offenses need not result in criminal charges or conviction to  
4 be admissible under this rule. *See United States v. Guidry*, 456 F.3d 493, 503 (5th Cir. 2006).

5 And in prosecutions for sexual assault of a minor, “evidence of other acts by defendant  
6 toward the same or another child is admissible if the prior conduct (i) occurred within the 10 years  
7 preceding the date of the offense charged; (ii) is similar to the offense charged; and (iii) was  
8 committed upon persons similar to the prosecuting witness.” 6 CMC § 1320(a).

9 Evidence admissible under Rule 404(b) or 413 “may be excluded if its probative value is  
10 substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading  
11 the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative  
12 evidence.” NMI R. Evid. 403; *Rios*, Crim. No. 12-0110 at 3. The Court has never before addressed  
13 the issue of whether evidence admissible under 6 CMC § 1320 is subject to the balancing test of  
14 Rule 403. Nor did the findings of the Legislature in passing PL 12-82 address this issue. In  
15 comparing the rule set forth in 6 CMC § 1320 with Rule 413, the Court notes that both rules use the  
16 phrase “is admissible” to describe the effect of the rule on the evidence covered by it. *Compare*  
17 NMI R. Evid. 413(a) *with* 6 CMC § 1320(a). Without a clear directive to the contrary, the Court  
18 finds that evidence admissible under 6 CMC § 1320 is also subject to the balancing test of Rule  
19 403.

20 This Court has previously applied the non-exclusive factors set forth by the Ninth Circuit  
21 Court of Appeals to determine whether the probative value of evidence is outweighed by the risk of  
22 unfair prejudice. *See Rios*, Crim. No. 12-0110 at 6. These factors are:

23 (1) the similarity of the prior acts to the acts charged, (2) the closeness in time of the  
24 prior acts to the acts charged, (3) the frequency of the prior acts, (4) the presence or

1 lack of intervening circumstances, and (5) the necessity of the evidence beyond the  
2 testimonies already offered at trial.

3 *Id.* (quoting *United States v. LeMay*, 260 F.3d 1018, 1027-28 (9th Cir. 2001) (applying factors  
4 under Rule 414)).

5 **ii. Application of Rule 404(b), Rule 413, and 6 CMC § 1320**

6 Before applying the balancing test of Rule 403, the Court first considers whether each of the  
7 areas of proposed evidence is admissible under Rule 404(b), Rule 413 or 6 CMC § 1320.

8 The proposed testimony of Ms. Elizabeth Cruz fits squarely within the scope of Rule 413 or  
9 6 CMC § 1320, as it pertains to an alleged sexual assault (forced oral copulation) perpetrated by  
10 Defendant in 2004 or 2005 against a teenage niece.<sup>4</sup>

11 The proposed testimony of R.C.P. is not within the scope of Rule 413. The Commonwealth  
12 has not explained with sufficient detail whether the alleged acts are an “offense of sexual assault”  
13 for the purposes of Rule 413. Specifically, the Commonwealth has not explained how the acts  
14 constitute a crime under the law of the Commonwealth, federal or state/territory of the United  
15 States. *See* NMI R. Evid. 413(d). Nor is R.C.P.’s proposed testimony covered by 6 CMC § 1320,  
16 because it occurred after the events at issue in this case. *See* 6 CMC § 1320(a)(i) (evidence  
17 admissible if it “occurred within the 10 years preceding the date of the offense charged).

18 R.C.P.’s testimony is admissible under Rule 404(b). While the Commonwealth did not  
19 address this issue specifically as to each proposed witness, the Commonwealth’s general argument  
20 is that these additional witnesses demonstrate that Defendant has a modus operandi, in that he  
21 allegedly repeatedly approached teenage girls and female relatives and asked them to engage in acts  
22 with him to assist him in his capacity as a law enforcement officer. The Commonwealth argues that

23 \_\_\_\_\_  
24 <sup>4</sup> Defendant argues that this alleged offense is time-barred. However, Defendant appears to have confused Ms. Cruz’s  
date of birth with the date of the offense.

1 this pattern establishes the existence of preparation and a plan in the instant case. Given that Rule  
2 404(b) is one of inclusion rather than exclusion, the Court makes a preliminary finding that the  
3 proposed testimony of R.C.P. is admissible under Rule 404(b). *See United States v. Ayers*, 924 F.2d  
4 1468, 1472-73.

5 The proposed testimony of Regina Cruz Palacios meets the requirements of Rule 413, as it  
6 concerns other sexual offenses perpetrated by Defendant (non-consensual penetration and oral  
7 copulation).

8 The proposed testimony of Jennifer Cruz concerning other acts of Defendant is offered by  
9 the Commonwealth under Rule 404(b). Defendant argues that the Commonwealth has not described  
10 what proper purpose this testimony would serve. However, as described above, the Commonwealth  
11 argues that the Defendant has a particular and identifiable pattern of operating that involves  
12 requesting teenage girls and female relatives to assist him in his capacity as a law enforcement  
13 officer by performing sexual acts, and making promises/or threats to enforce those demands. The  
14 Commonwealth argues that this evidences the existence of preparation and a plan in the instant  
15 case. As above, the Court makes a preliminary finding that the proposed testimony of Jennifer Cruz  
16 is admissible under Rule 404(b).

17 Finally, the proposed testimony of J.U.S. concerning other acts of Defendant also falls  
18 within the scope of Rule 404(b) as evidence that Defendant has a modus operandi of offering  
19 assistance with criminal cases or threatening prosecution if a teenage girl assists him with his sex  
20 cases. Thus, the Court makes a preliminary finding that the proposed testimony of J.U.S. may be  
21 admissible under Rule 404(b).

### 22 **iii. Rule 403 Balancing Test**

23 The Defendant argues that the testimony of all of these witnesses as to other acts of the  
24 Defendant should be excluded because it is more unfairly prejudicial than probative. In determining

1 whether the proposed evidence is unfairly prejudicial, the Court addresses each of the factors  
2 outlined in *LeMay*. See *LeMay*, 260 F.3d at 1027-28.

3 *a. Similarity of the Acts*

4 The Commonwealth argues that all of the acts described in its notice of intent to introduce  
5 other acts of Defendant are strikingly similar. The Court agrees. Each allegation involves Defendant  
6 using his authority as a law enforcement officer to threaten or make promises in an effort to engage  
7 in sexual acts described his professional investigations or training. Defendant points out that there  
8 are some differences between the alleged acts, for example there are variances in location of act,  
9 whether alleged victim was a relative, exact age of alleged victim, whether the alleged victim was  
10 actually assaulted in addition to being threatened, and the number of times each alleged victim was  
11 assaulted. However, the Court finds these differences to be insignificant when compared with the  
12 overarching similarities between the acts that tend to indicate a modus operandi.

13 In particular, the Court finds the proposed testimony of Elizabeth Cruz and Regina Cruz  
14 Palacios to be very similar to the events at issue in this case. As in the instant case, the alleged acts  
15 against Elizabeth Cruz and Regina Cruz Palacios both involve the Defendant threatening criminal  
16 prosecution and the Defendant referring to sex acts contained within criminal files that he was  
17 investigating in his capacity as DPS detective. The alleged assault against Elizabeth Cruz involves  
18 forced oral copulation. And the alleged assaults against Regina Cruz Palacios involve both forced  
19 oral copulation and vaginal penetration. Thus, as to the proposed testimony of Elizabeth Cruz and  
20 Regina Cruz Palacios, this factor weighs strongly against exclusion. The Court also notes that the  
21 testimony of these two witnesses is admissible under Rule 413, so such testimony is admissible for  
22 any relevant purpose, including corroboration of the testimony of the victim in the instant case. See,  
23 e.g., *LeMay*, 260 F.3d at 1028. However, in an effort to prevent unfair prejudice, because the act at  
24

1 issue in this case in an isolated event, evidence of the number of times that Defendant allegedly  
2 assaulted Regina Cruz Palacios shall be excluded.

3 *b. Closeness in Time*

4 The event underlying the charge in this case allegedly occurred in November 2008. The  
5 other acts evidence concerns events that occurred between 2004 and 2012: Elizabeth Cruz in 2004  
6 or 2005; R.C.P. in May 2012; Regina Cruz Palacios from January 2007 until April 2010; Jennifer  
7 Cruz in October 2011; and J.U.S. in 2009. Thus, all of the other acts evidence occurs within about  
8 four years of the event at issue. The Court finds that this timeline weighs against excluding the  
9 proposed evidence. *Cf. LeMay*, 260 F.3d at 1029 (not error to admit evidence of acts occurring 11  
10 years prior to the act charged).

11 *c. Frequency of the Acts*

12 The other acts evidence proposed by the Commonwealth is not one isolated event, but is  
13 instead many similar acts, evidencing a particular modus operandi, spanning a period of  
14 approximately nine years. In *LeMay*, the Ninth Circuit found that evidence suggesting that the other  
15 act evidence was not an isolated event weighed in favor of admitting that evidence. *LeMay*, 260  
16 F.3d at 1029. The Court finds that, even if only some of the evidence of other acts is admitted, the  
17 frequency of the acts weighs against excluding the proposed evidence.

18 *d. Presence or Lack of Intervening Circumstances*

19 Neither party has indicated the presence or lack of intervening circumstances. Thus, this  
20 factor is neutral.

21 *e. Necessity of Evidence Beyond the Testimonies Already Offered at Trial*

22 Defendant Monkeya argues that this factor weighs in favor of excluding all of the other acts  
23 evidence because the victim in this case is a reliable adult, and the Defendant's wife and son are  
24 both expected to testify about Defendant's confession. The Court will make a determination as to

1 this factor during trial, after hearing the opening statements and assessing the evidence and  
2 testimony offered by the Commonwealth concerning the events underlying the charge in this case.

3 *f. Preliminary Finding*

4 Accordingly, the Court makes a preliminary finding that the similarity, closeness in time,  
5 and frequency of the acts weigh against excluding the evidence. The fourth factor, the existence or  
6 absence of intervening circumstances is neutral. The necessity of evidence will be determined at  
7 trial, and will be determined as to each individual witness as the time for that witness' proposed  
8 testimony arises.

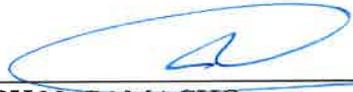
9 **III. CONCLUSION**

- 10 1. The Court finds no discovery violations by the Commonwealth concerning the  
11 Government's Notice of Intent to Introduce Evidence of Other Sexual Assault Acts and  
12 Other Bad Acts, Pursuant to NMI R. Evid. 413 & 404(b) and the production of related  
13 discovery on October 29, 2013.
- 14 2. The Court finds that as to each of the proposed witnesses, the proposed testimony  
15 concerning other acts of Defendant is admissible under Rule 413, 6 CMC § 1320 or Rule  
16 404(b).
- 17 3. The Court finds that the danger of unfair prejudice outweighs the probative value of  
18 testimony concerning the number of alleged assaults by Defendant against Regina Cruz  
19 Palacios, and grants the Defendant's motion to exclude such testimony. However, the  
20 Court does not at this time make a ruling on Defendant's request to exclude Regina Cruz  
21 Palacios' testimony concerning all other aspects of Defendant's other acts.
- 22 4. The Court withholds ruling on the admissibility of other acts evidence until trial, so that  
23 the Court can assess the need for such evidence beyond the testimony and evidence  
24 already offered.

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5. At trial, the Commonwealth is ordered to first present witness(es) testifying about the offense charged in this case.

**IT IS SO ORDERED** this 29<sup>th</sup> day of November, 2013.

  
\_\_\_\_\_  
JOSEPH N. CAMACHO  
Associate Judge