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IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

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COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS,

) CRIM. CASE NO. 17-0012R

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Plaintiff,

) ORDER GRANTING THE
) COMMONWEALTH'S MOTION TO
) RECONSIDER AS NMI RULE OF

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v.

) EVIDENCE 702 ALLOWS AN EXPERT
) TO OFFER GENERAL, EDUCATIVE

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MELVIN MARATITA MANGLONA,

) TESTIMONY TO HELP THE TRIER OF
) FACT UNDERSTAND OR RESOLVE

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Defendant.

) FACTUAL ISSUES IF (1) THE EXPERT
) IS QUALIFIED; (2) THE TESTIMONY

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) ADDRESSES A SUBJECT MATTER ON
) WHICH THE EXPERT CAN ASSIST THE

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) TRIER OF FACT; (3) THE TESTIMONY
) IS RELIABLE; (4) THE TESTIMONY IS

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) RELEVANT TO THE FACTS OF THE
) CASE; AND (5) THE TESTIMONY IS

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) NOT BARRED BY NMI RULE OF
) EVIDENCE 403.

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I. INTRODUCTION

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This matter came before the Court on June 20, 2017 in Courtroom 220A of the Saipan

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Courthouse on the Commonwealth's Motion to Stay Proceedings or in the Alternative Reconsider

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and Request for Expedited Ruling. The Defendant, Melvin Maratita Manglona, was present and

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represented by Attorney Brien Sers Nicholas. The Commonwealth was represented by Assistant

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Attorney General Teri Tenorio.

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The Court hereby makes the following order.

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1 **II. BACKGROUND**

2 The Defendant is accused of engaging in sexual penetration with an alleged minor victim.
3 Information at 1-2. The Defendant is charged with two counts of sexual abuse of a minor in the first
4 degree, in violation of 6 CMC § 1306(a)(2). Information at 1-2. The Defendant is also charged with
5 disturbing the peace in violation of 6 CMC § 3101(a). Information at 2.

6 This matter is presently set for a jury trial on June 26, 2017 in the Rota Courthouse. On June
7 14, 2017, the Court conducted the *Daubert* hearing¹ regarding whether to certify Rosemarie
8 Camacho (“Ms. Camacho”) as an expert. After hearing Ms. Camacho’s testimony and the
9 arguments of the parties, the Court ordered that Ms. Camacho did not qualify as an expert in this
10 case because she has not reviewed the file or interviewed the alleged victim and, therefore, did not
11 meet the requirements of specialized knowledge as applied to this case. *Commonwealth v.*
12 *Manglona*, Crim. No. 17-0012 (NMI Super. Ct. June 13, 2017) (Minute Order at 2).

13 The Commonwealth filed its Motion to Stay Proceedings or in the Alternative Reconsider
14 and Request for Expedited Ruling on June 20, 2017. The Commonwealth argues that the exclusion
15 of Ms. Camacho as an expert in Child Abuse Accommodation Syndrome and in psychology of
16 child abuse victims was clearly erroneous. The Commonwealth contends that expert testimony
17 regarding general behavior of victims of sexual abuse without testimony as to the specific facts of
18 the case or the victim in question is admissible under NMI R. Evid. 702 and, moreover, that if an
19 expert called for such testimony did review the facts of the case and give opinion as to the specific
20 victim in question, the testimony would become inadmissible. The Commonwealth also argues,
21 should the Court decline to reconsider its prior ruling, the Court should instead stay the proceedings
22 pending appeal.

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¹See *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).

1 The Defendant did not file a written response and instead chose to reply orally at the June
2 20, 2017 hearing. The Defendant contends that the Court properly excluded the testimony of Ms.
3 Camacho as an expert because she lacks expertise and her testimony would be irrelevant.

4 III. LEGAL STANDARD

5 A court may reconsider its earlier ruling when there is “an intervening change of controlling
6 law, the availability of new evidence, or the need to correct a clear error or prevent manifest
7 injustice.” *Commonwealth v. Eguia*, 2008 MP 17 ¶ 7 (quoting *Camacho v. J.C. Tenorio*
8 *Enterprises, Inc.*, 2 NMI 408, 414 (1992)).² This standard applies in both civil and criminal
9 cases. *Id.* “To be clearly erroneous . . . a decision must strike [the Court] as more than just maybe or
10 probably wrong; it must . . . strike [the Court] as wrong with the force of a five-week-old,
11 unrefrigerated dead fish.” *United States v. Bussell*, 504 F.3d 956, 962 (9th Cir. 2007) (citation and
12 internal quotation marks omitted).

13 Reconsideration may not be used “to repeat old arguments previously considered and
14 rejected, or to raise new legal theories that should have been raised earlier.” *National Metal*
15 *Finishing Co. v. BarclaysAmerican/Commercial, Inc.*, 899 F.2d 119, 123 (1st Cir. 1990).
16 Commonwealth law favors the finality of court decisions, to “maintain consistency and avoid
17 reconsideration of matters once decided during the course of a single continuing lawsuit.” *Cushnie*
18 *v. Arriola*, 2000 MP 7 ¶ 14. Motions to reconsider “[serve] the narrow purpose of allowing a party
19 to correct manifest errors of law or fact or to present newly discovered evidence.” *Templet v.*
20 *Hydrochem Inc.*, 367 F.3d 473, 479 (5th Cir. 2004) (quoting *Waltman v. Int’l Paper Co.*, 875 F.2d
21 468, 473 (5th Cir. 1989)).

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24 ² Although the Commonwealth filed the motion first as a motion to stay, procedurally, the Court considers the motion to
reconsider first, as a reconsideration of its ruling would obviate the need to address the stay.

1 IV. DISCUSSION

2 The Commonwealth argues that the Court’s decision not to qualify Ms. Camacho as an
3 expert was clearly erroneous in light of the case law³ that spans several jurisdictions of the United
4 States and the comments to the Federal Rules of Evidence regarding the admissibility of expert
5 testimony regarding general behavioral characteristics under Fed. R. Evid. 702.⁴

6 The United States Supreme Court determined that a court's “basic gatekeeping obligation . .
7 . applies to all expert testimony.” *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 147 (1999).
8 When determining the admissibility of expert testimony, a court may consider the factors set forth
9 in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*: (1) whether a “theory or technique . . . can be
10 (and has been) tested”; (2) whether it “has been subjected to peer review and publication”; (3)
11 whether, with respect to a certain technique, there is a high “known or potential rate of error” and
12 whether there are “standards controlling the technique's operation”; and (4) whether the theory or
13 technique enjoys “general acceptance” within a “relevant scientific community.” 509 U.S. 579,
14 592-595 (1993). However, these factors “may or may not be pertinent in assessing reliability,
15 depending on the nature of the issue, the expert's particular expertise, and the subject of his [or her]
16 testimony.” *Kumho Tire Co.*, 526 U.S. at 150. “[T]he trial judge must have considerable leeway in
17 deciding in a particular case how to go about determining whether particular expert testimony is
18 reliable.” *Id.* at 152.

19 “Cold” expert testimony is “general, educative testimony” offered “to help the trier of fact
20 understand evidence or resolve fact issues”⁵ that may not require the expert’s review of the case

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22 ³ The Commonwealth’s initial arguments only briefly touched upon the cases at issue.

23 ⁴“When our rules are patterned after the federal rules, it is appropriate to look to federal precedent for guidance.”
Commonwealth v. Reiong, 2015 MP 13 ¶ 19 n.4 (citing *Ishimatsu v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 60).

24 ⁵The terms “trier-of-fact,” “trier of fact,” “fact finder,” and “factfinder” are used in various courts and jurisdictions, but
all have the same meaning. This terminology refers to the jury in those cases in which a defendant is entitled to a jury
trial pursuant to 7 CMC § 3101 (such as felonies carrying a sentence of more than five years) or to the judge in all other

1 file. *State v. Salazar-Mercado*, 325 P.3d 996, 997-998 (Ariz. 2014).⁶ “Cold” testimony may be
2 admitted if “(1) the expert [is] qualified; (2) the testimony address[es] a subject matter on which the
3 factfinder [sic] can be assisted by an expert; (3) the testimony [is] reliable; (4) the testimony ‘fit[s]’
4 the facts of the case;” and (5) the testimony is not barred by Rule of Evidence 403. *Id.* at 999, 1001
5 (citing Fed. R. Evid. 702, Advisory Committee Notes, 1972 Proposed Rules; *United States v.*
6 *Bighead*, 128 F.3d 1329, 1330-31 (9th Cir. 1997) (upholding the admission of generalized, “cold”
7 expert testimony about “general behavioral characteristics” of child victims, such as “delayed
8 disclosure” and “script memory” in child sexual abuse cases)). “This ‘test’ simply rephrases the
9 requirements of Federal Rule 702(a)-(c) and does not require an expert to relate principles to the
10 particular facts of the case or even to be aware of the facts.” *Id.* at 999. The proponent of the “cold”
11 testimony must prove its admissibility by a preponderance of the evidence. *Id.* at 1000.

12 Under this application of Rule 702, an expert may testify about the general behavioral
13 characteristics of victims of abuse based upon the expert’s professional experience, without
14 testimony on the facts of the case at hand. *Salazar-Mercado*, 325 P.3d at 1000. However, the expert
15 may not improperly buttress the victim’s credibility by testifying about his or her opinion of the
16 credibility of the victim in the particular case. *Id.*

17 The Court previously ruled that Ms. Camacho could not testify as an expert because her
18 testimony would go to general behavior characteristics of child victims and not to the facts of the
19 case at hand and, thus, she could not meet the requirements of NMI R. Evid. 702(d). NMI R. Evid.
20 702(d) provides “the expert has reliably applied the principles and methods to the facts of the case.”

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22 cases (such as misdemeanors and felonies carrying a sentence of less than five years). For the purposes of this order, the
Court uses the term “trier-of-fact.”

23 ⁶The expert in *Salazar-Mercado* was “both a ‘cold’ expert, meaning she would only educate the jury about [the
24 syndrome], and a “blind” expert, meaning she had no knowledge about the victims in this case and would not offer any
opinions specific to them.” 325 P.3d at 997. The parties did not provide the Court with any CNMI Supreme Court case
law on “cold” experts or “blind” experts.

1 In its original arguments on June 13, 2017, the Commonwealth argued that “cold” expert
2 testimony, which does not apply expert knowledge to the facts of the case, is admissible and
3 provided legal arguments without the more detailed citations and explanation for this counter-
4 intuitive area of law. However, the Commonwealth has since provided in more detail and greater
5 clarity the legal authority demonstrating that such expert testimony may be permissible and
6 appropriate where the five factors enumerated in *Salazar-Mercado* are met. *See Salazar-Mercado*
7 325 P.3d at 1001. Accordingly, the Court must reconsider its previous ruling and will analyze each
8 factor in turn.

9 **1. The expert is qualified.**

10 Under the plain language of Rule 702, expert status may be based on “knowledge,
11 skill, experience, training, or education.” NMI R. Evid. 702. Indeed, courts have held that a witness
12 may qualify as an expert based upon the expert's “professional experience.” *Bighead*, 128 F.3d at
13 1330 (finding expert qualification in the field of Child Abuse Accommodation Syndrome and child
14 victim behavior was appropriate based upon the witness’s interviews with over one thousand
15 children who claimed to have suffered sexual abuse and degrees relating to nursing and behavior,
16 though the witness was not a psychologist or psychiatrist) (citing *United States v. Cordoba*, 104
17 F.3d 225 (9th Cir. 1996)); *see also Commonwealth v. Crisostomo*, Crim. No. 13-0049 (NMI Super.
18 Ct. Mar. 13, 2014) (Order Granting In Part Motion to Exclude Mitochondrial DNA Test Results and
19 Expert Testimony at 7) (finding a witness qualified as an expert in DNA analysis because she had
20 “obtained advanced degrees in marine biology, and ha[d] several years of experience performing
21 mitochondrial DNA analysis procedures on whales and other wildlife,” had published two papers
22 on mitochondrial DNA, and worked with the FBI using the standardized DNA analysis procedures
23 for 4 years); *People v. McAlpin*, 53 Cal.3d 1289, 1298 (Cal. 1991) (finding a police officer who
24 used 350 hours of training in “such topics as juvenile and adolescent psychology, physical, sexual

1 or emotional abuse of children, intervention in family crisis situations, investigation of child abuse
2 charges, behavioral responses of child abuse victims, and the dynamics of child abuse offenders”
3 and used his training as a police investigator in over 100 cases in 4 years was qualified as an expert
4 in child victim behavior); *Unites States v. Frazier*, 387 F.3d 1244, 1263 (11th Cir. 2004) (finding
5 qualification as an expert in the field of forensic investigation appropriate for a former investigating
6 police officer of over ten years and current forensic investigation consultant who received training
7 from a county police department, the University of Georgia, and the University of Virginia though
8 he did not have a degree in said field).

9 Moreover, specialized knowledge may be in the form of an expert’s specialized
10 observations, the specialized translation on those observations into theory, a specialized theory
11 itself, or the application of such a theory in a particular case. *See Kumho Tire Co.*, 526 U.S. at 148-
12 149. The requirement for specialized knowledge does not mean that the proffered expert must be a
13 specialist in a given field; the expert need only possess the knowledge of the subject matter upon
14 which he or she is called to testify as an expert. *See e.g., McDowell v. Brown*, 392 F.3d 1283, 1296
15 (11th Cir. 2004) (holding that doctors may testify as experts regarding the standard of care for
16 nurses). Specialized knowledge “is knowledge not possessed by the average trier of fact who lacks
17 the expert’s skill, experience, training, or education.” *In the Interest of Doe*, 981 P.2d 723, 734
18 (Haw. Ct. App. 1999) (citing *State v. Batangan*, 799 P.2d 48, 51 (Haw. 1990)).

19 Here, Ms. Camacho is a board certified therapist with a master’s degree in counseling and
20 ongoing work toward a master’s degree in social work. She currently works full-time as a
21 psychological health coordinator at the Guam Army National Guard, performs group therapy for the
22 Superior Court of Guam, runs a counseling group for men arrested for family violence, and has
23 been a therapist with Healing Hearts assisting victims of sexual assault since 2006. Further, Ms.
24 Camacho received training in sexual assault and Child Abuse Accommodation Syndrome and

1 facilitated training seminars in these areas. Since 2003, Ms. Camacho has worked with child
2 victims of sexual assault with Healing Hearts and has handled over 100 cases involving child
3 victims of sexual assault, which has given her the ability to observe and study the general behavior
4 patterns of child victims of sexual assault for 14 years. Ms. Camacho's education and training,
5 coupled with her 14 years of professional experience working with child victims of sexual assault
6 and perpetrators of sexual assault, have given her specialized knowledge of the behavior of child
7 victims of sexual assault and Child Abuse Accommodation Syndrome. Accordingly, the Court finds
8 Ms. Camacho is qualified in the areas of the psychology of child abuse victims and Child Abuse
9 Accommodation Syndrome and this prong is met.

10 **2. The testimony addresses a subject matter on which the expert can assist the trier-of-**
11 **fact.**

12 Expert testimony on a relevant subject matter is admissible if it will assist the trier-of-fact
13 and "will be excluded only when it would add nothing at all to the jury's common fund of
14 information, i.e., when 'the subject of inquiry is one of such common knowledge that men of
15 ordinary education could reach a conclusion as intelligently as the witness.'" *McAlpin*, 53 Cal. 3d at
16 1300 (quoting *People v. McDonald*, 37 Cal. 3d 351, 367 (Cal. 1984) (overruled on other grounds by
17 *People v. Mendoza*, 23 Cal. 4th 896, 914 (2000)). Where experts have knowledge that goes beyond
18 what the average person would know, such as the general behavioral patterns of child sexual abuse
19 victims, their testimony is admissible to assist the fact finder. *See e.g., Salazar-Mercado*, 234 Ariz.
20 590 at 1000; *United States v. Young*, 623 Fed. Appx. 863, 865-866 (9th Cir. 2015). Moreover,
21 courts across the United States have held that expert testimony regarding the behavioral patterns of
22 child victims of abuse "is needed to disabuse jurors of commonly held misconceptions about child
23 sexual abuse, and to explain the emotional antecedents of abused children's seemingly self-

1 impeaching behavior.” *McAlpin*, 53 Cal. 3d at 1301 (quoting Myers, et al., *Expert Testimony in*
2 *Child Sexual Abuse Litigation*, 68 Neb. L. Rev. 1, 89 (1989)).

3 Here, the trier-of-fact will be tasked with interpreting the behavior of a child alleged to be
4 the victim of sexual abuse when deciding whether the Defendant is guilty of sexually abusing the
5 child. Ms. Camacho’s education, training, and 14 years of professional experience have given her
6 specialized knowledge on the general behavior of child victims of sexual abuse and Child Abuse
7 Accommodation Syndrome that the normal trier-of-fact would not possess, and Ms. Camacho’s
8 specialized knowledge would add to the trier-of-fact’s common fund of knowledge about how child
9 abuse victims generally behave. Accordingly, Ms. Camacho’s testimony would be on a subject
10 matter that would assist the trier-of-fact and this prong is met.

11 **3. The testimony is reliable.**

12 In determining reliability of an expert’s testimony, the court considers the soundness of the
13 principles and methodologies employed by the expert and whether the expert reliably applies those
14 principles and methods in his or her testimony. NMI R. Evid. 702; *see also Daubert*, 509 U.S. at
15 595. The court may consider one or more of some specific factors, such as:

16 Whether a “theory or technique . . . can be (and has been) tested”;
17 Whether it “has been subjected to peer review and publication”;
18 Whether, in respect to a particular technique, there is a high “known or potential
19 rate of error” and whether there are “standards controlling the technique's
operation”; and
Whether the theory or technique enjoys “general acceptance” within a “relevant
scientific community.”

20 *Kumho Tire Co.*, 526 U.S. at 149-150 (citing *Daubert*, 509 U.S. at 592-594). An expert’s testimony
21 is not inherently unreliable because it does not rely on scientific methodology. *Bighead*, 128 F.3d at
22 1330 (citing *Cordoba*, 104 F.3d 225). Such non-scientific expert testimony may be reliable based
23 upon the expert’s own observations or reference to outside sources of information such as studies or
24 literature or a combination thereof. *Id.* (finding the expert’s testimony sufficiently reliable based

1 solely upon her observations interviewing child victims with only passing reference to any outside
2 sources of information).

3 Here, Ms. Camacho's testimony is based upon her training in the field of sexual assault and
4 Child Abuse Accommodation Syndrome, and her own observations over 14 years of working with
5 child victims of sexual assault. Ms. Camacho testified that the training and education that underlay
6 her opinions are based upon the same research done in the area of Child Abuse Accommodation
7 Syndrome that has been published, is generally relied upon by professionals in this discipline, and
8 is widely accepted among the social science community. Further, Ms. Camacho has had 14 years of
9 professional experience in which she has applied and tested the results of existing studies, as well as
10 made her own observations regarding the general behavior child victims and Child Abuse
11 Accommodation Syndrome. Accordingly, Ms. Camacho's testimony is sufficiently reliable as it is
12 based upon and applies sound principles and methods of psychology and social science used in both
13 her professional observations and in the education and training she received within the relevant
14 disciplines.⁷

15 **4. The testimony is relevant to the facts of the case.**

16 Expert testimony is relevant if it is "sufficiently tied to the facts of the case [so] that it will
17 aid the jury in resolving a factual dispute." *Salazar-Mercado*, 325 P.3d at 999 nt.1 (citing
18 *Daubert*, 509 U.S. at 591). In *Salazar-Mercado*, the child victims exhibited some of the five
19 common behavioral characteristics that define Child Abuse Accommodation Syndrome. *Id.* at 1000.
20 The government introduced an expert who testified about the general behavioral characteristics of
21 child victims of sexual abuse and Child Abuse Accommodation Syndrome. *Id.* The Arizona
22 Supreme Court found that the expert's testimony was sufficiently relevant to the facts of the case to

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24 ⁷ The Court notes that this finding of reliability goes only to admissibility under NMI R. Evid. 702 and does not alter the Defendant's right or ability to cross-examine and question reliability for the purposes of determining the weight the trier-of-fact should give Ms. Camacho's testimony.

1 aid the trier-of-fact in resolving the ultimate issue of whether the victim had or had not been
2 sexually abused by the defendant because it “might have helped the jury to understand possible
3 reasons for the delayed and inconsistent reporting in [the] case.” *Id.*

4 Here, the Defendant is charged with sexually abusing a child and the child has allegedly
5 recanted her testimony and/or delayed reporting the abuse. Ms. Camacho testified that two
6 behavioral characteristics of Child Abuse Accommodation Syndrome are recanting the reported
7 abuse and/or delayed reporting and Ms. Camacho was able to testify, generally, why these
8 behaviors are common to child victims. As there is an issue with the inconsistency in the alleged
9 child victim’s words and actions and these inconsistencies align with common behavioral
10 characteristics of child victims of sexual abuse and Ms. Camacho’s expert testimony would help the
11 trier-of-fact understand and interpret these behaviors, the testimony is relevant to the facts of this
12 case.

13 **5. The testimony is not barred by NMI R. Evid. 403.**

14 Evidence is barred by NMI R. Evid. 403 when its probative value is substantially
15 outweighed by dangers such as “unfair prejudice, confusing the issues, misleading the jury, undue
16 delay, wasting time, or needlessly presenting cumulative evidence.” Here, the probative value of
17 Ms. Camacho’s testimony is to aid the trier-of-fact in interpreting the behavior of the alleged child
18 victim. As previously mentioned, child victims often behave in ways that are counter-intuitive to
19 the common person’s ideas on how a victim would react and may lead the trier-of-fact to
20 misinterpret the meaning of a child victim’s behavior. Therefore, the testimony has substantial
21 probative value to assist the trier-of-fact in determining the weight and meaning of the alleged
22 victim’s actions and words in the case at hand. Based upon the information currently presented to
23 the Court, there does not appear to be a substantial risk of any “unfair prejudice, confusing the
24 issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative

1 evidence” as contemplated in NMI R. Evid. 403. Accordingly, the probative value is not
2 substantially outweighed by any unfair prejudice. Any further issues as to NMI R. Evid. 403 may
3 be addressed as they arise at trial; however, at this juncture, the testimony is not barred.

4 Therefore, based upon the clarifying information provided by the filings and oral arguments,
5 the Court reconsiders its previous order. The Commonwealth may call Ms. Camacho as an expert in
6 Child Abuse Accommodation Syndrome and in the psychology of child abuse victims at trial.

7 **V. CONCLUSION**

8 Accordingly, the Commonwealth’s motion to reconsider is **GRANTED**. As the final pretrial
9 conference has passed, the parties should be prepared to discuss what jury instructions may be
10 appropriate and to provide any proposed jury instructions they may wish to include regarding the
11 use of this type of expert testimony.

12 As the motion to reconsider is granted, the Court need not address the Commonwealth’s
13 motion to stay.⁸

14 **IT IS SO ORDERED** this 22nd day of June, 2017.

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18 **JOSEPH N. CAMACHO**
19 **Associate Judge**

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⁸The motion was styled as a motion to stay or in the alternative a motion to reconsider.