**STATE’S MOTION TO INTRODUCE OTHER CRIMES EVIDENCE**

##### Commonwealth of Pennsylvania

TO THE HONORABLE, THE JUDGE OF THE SAID COURT:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, District Attorney of Philadelphia, by and through his Assistant, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, respectfully represents as follows:

1. The defendant stands charged with Aggravated Assault, Endangering the Welfare of Children, and related offenses pertaining to injuries sustained by the minor complainant, C.K.
2. The Commonwealth’s evidence will establish the following at trial:
3. On Friday, June 23, 1999, C.K. was rushed to E. Hospital, by the defendant (her natural mother) and B.K., her natural father. C.K. was then transported to H. Hospital where she was found to have fractures on the left and right sides of her skull, bleeding in the skull, and a 1-1/2 inch bruise above her left eye.
4. As a result of her injuries, C.K. remained in a coma for several days and was hospitalized at Children’s Hospital for approximately two months.
5. The severity and pattern of the injuries are indicative of head trauma, not likely to be self-inflicted or accidental in nature.
6. At the time the injuries were discovered, C.K. was 29 days old. C.K., the defendant, and C.K.’s natural father B.K. all lived at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the home of the defendant’s father.
7. The defendant was with C.K. several nights prior to the hospital admission. At that time, the defendant had an argument with B.K. The defendant handled C.K. roughly, causing B.K. to bring C.K. to her natural grandfather who was downstairs in the home.
8. B.K. then left the household, returning to his parents’ home.
9. From that time (approximately Tuesday night) through Wednesday late afternoon, C.K. was cared for by the defendant in their home at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
10. Upon his return to the home late Wednesday afternoon, B.K. noticed a bruise on C.K.’s head and consulted neighbors about their opinions as to whether it was serious.
11. On Thursday, C.K.’s symptoms worsened, including vomiting and crying.
12. On Friday, June 23, 1999, in the late morning, C.K. was taken to E. Hospital.
13. The defendant initially denied any knowledge of the cause of C.K.’s injuries.
14. The defendant indicated to the initial examining doctors that C.K. had vomited and stopped breathing. The defendant said she had merely shaken C.K. slightly to get her to breathe.
15. The defendant later told Officer J.H. and doctors and social workers at H. Hospital that C.K. had fallen off a couch prior to hospitalization. The defendant denied further knowledge of the cause of the injuries.
16. The injuries were totally inconsistent with the proffered explanations of accident and were not self-inflicted.
17. C.K., due to her tender years, is incompetent to testify.
18. The Commonwealth’s case is primarily circumstantial and dependent, in part on the “exclusive custody” doctrine.
19. By way of “other crimes” evidence, the Commonwealth seeks to introduce the following:
20. On the morning of September 6, 1997, the defendant had an argument with her father at their home at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.
21. Shortly thereafter, the defendant took C.J., her other three-year-old daughter, upstairs alone. Hitting and thumping noises were heard from the bedroom; C.J. was screaming. Neighbors called the police.
22. Police Officer S., in response to the radio call, went immediately to the home. The officer found the defendant seated on her bed. Next to her, the defendant’s daughter, C.J., was crying. C.J. had bruises on her head and face and was bleeding from the mouth. The police officer rushed C.J. to St. C.’s Hospital. C.J. told the police officer that “Mommy did it.”
23. The defendant told Officer S. that C.J. fell off her bed.
24. At St. C.’s Hospital, C.J. was found to have bruises of the face, particularly on the left side of the head and forehead, bleeding from the gums, and a fracture to the eighth right rib. C.J. was hospitalized for two days.
25. The injuries were found to be non-accidental in nature and could not have been self-inflicted.
26. The defendant pled guilty on December 16, 1997 to Aggravated Assault, Recklessly Endangering Another Person and Endangering the Welfare of a Child with regard to her daughter C.J.
27. It is well settled that evidence of another crime, albeit generally inadmissible, may be introduced to prove: (1) motive; (2) intent; (3) identity; (4) absence of mistake of accident; or (5) common plan, scheme and design. *Commonwealth v. Green*, 505 A.2d 321 (Pa. Super. Ct. 1986); *Commonwealth v. Vedam*, 402 A.2d 1383 (Pa. Super. Ct. 1985); *Commonwealth v. Travaglia*, 467 A.2d 288 (Pa. 1983).
28. When, as here, the defendant has raised the defense that the injuries were sustained as result of accident, other similar incidents of child abuse may by admitted to show the absence of mistake or accident. *United States v. Leight*, 818 F.2d 1297 (7th Cir. 1987) (collecting cases); *Commonwealth v. Donahue*, 549 A.2d 121 (Pa. 1988); *Commonwealth v. Kasko*, 469 A.2d 181 (Pa. Super. Ct. 1983) (evidence inadmissible where defendant did not raise defense of accident).
29. The similarities in the prior case and the case at bar, which compel introduction of the earlier crime, include the following:
30. Both complainants are the natural daughters of the defendant;
31. Both complainants were infants (C.J.—age 3, C.K.—age 29 days) at the time their respective injuries were sustained;
32. Each child sustained a similar combination of injuries—bruising and fractures;
33. In each case, the defendant harmed the child at her home while the child was in her case;
34. In each case, the defendant harmed the child after an argument with another person, in effect “taking it out on the baby”;
35. In each case, the child had to be taken to a hospital due to the severity of her injuries.
36. Given the substantial similarities as set forth above, the two-year and nine-month hiatus between the two crimes does not bar the admissibility of the other crime or render it unduly remote. *See United States v. Cuch*, 842 F.2d 1173 (10th Circ. 1988) (seven and one-half year-old sexual assault admissible to show intent); *United States v. Burkett*, 821 F.2d 1306 (8th Cir. 1987) (seven-year gap between crimes does not render original crime too remote); *United States v. Feldman*, 761 F.2d 380 (7th Cir. 1985) (six-year hiatus between crimes); *United States v. Martino*, 759 F.2d 996 (N.Y. 1985) (11-year-old drug conviction admissible in current druge case where defendant claimed mere presence and mere association); *United States v.Engleman*, 648 F.2d 473 (8th Cir. 1981) (13-year gap between prior and current homicide; *Donahue*, 549 A.2d 121 (three-year hiatus etween prior and current assaults); *Commonwealth v. Stafford*, 416 A.2d 570 (Pa. Super. Ct. 1979) (11-year-old *crimen falsi* conviction admissible; *Commonwealth v. Patskin*, 93 A.2d 704 (Pa. 1953) (17-year-old assault admissible in homicide trial to show motive and malice).
37. Indeed, it is now firmly established that *crimen falsi* evidence is *per se* admissible, without exception, for crimes occurring within ten years of the offense for which the defendant is on trial, and that such evidence *may be* admissible, at the discretion of the court, when the crime occurred more than ten years before the offense on trial. *Commonwealth v. Randall*, 528 A.2d 1326 (Pa. 1987). The same logic and considerations underlying *Randall* are applicable by analogy to the “other crimes” evidence presented here.
38. Admissibility of other crimes evidence is not dependent upon the defendant having been convicted of the other crime of even charged with its commission. *Donahue*, 549 A.2d 121; *Commonwealth v. Smith*, 467 A.2d 1120 (Pa. 1983). In this case, however, the defendant actually pled guilty to the prior crime sought to be introduced into evidence.
39. The probative value of the “other crimes” evidence far outweighs the prejudicial impact of such evidence.

WHEREFORE, it is respectfully requested that the Commonwealth be permitted to introduce evidence relating to the assault of C.J. in the case at bar.

Respectfully submitted,

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Assistant District Attorney

Child Abuse Unit