
SUPERIOR COURT OF
NEW JERSEY
APPELLATE DIVISION
Docket No. A-001592-23T4
AM-000069-23T4

THE STATE OF NEW JERSEY,

Plaintiff-Respondent,

vs.

Criminal Action
On Appeal from an Interlocutory
Order of the Superior Court,
Law Division, Morris County

TYRELL S. LANSING,

Defendant-Appellant.

Sat Below:
Hon. Stephen J. Taylor, P.J.Cr.

BRIEF AND APPENDIX ON BEHALF OF THE STATE OF NEW JERSEY

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COUNTER-STATEMENT OF FACTS AND PROCEDURAL HISTORY¹

On August 18, 2021, at approximately 1:05 a.m., patrol officers from the Morristown Bureau of Police (*hereinafter* “MBP”) responded to Clyde Potts Drive on a report of gunshots fired. The victim, Raijah Scott, was located face down on the roadway near Building 28. Gunshot wounds were observed on his chest, stomach, and upper arms, and he did not appear to be breathing or have a pulse. The victim was transported to Morristown Medical Center, where he was pronounced deceased at approximately 1:48 a.m.

Through the course of the investigation, it was determined that surveillance video maintained by the Morristown Housing Authority captured the area of 28 Clyde Potts Drive. A review of the surveillance video revealed that there was a social gathering in the parking lot and roadway of Clyde Potts Drive on the evening of August 17 and into the early morning hours of August 18. The video further revealed that the shooting occurred at approximately 1:01 a.m., on the passenger side of a white Land Rover Discovery. The

¹ The Counter-Statement of Facts and Procedural History have been combined for clarity and are derived from the submissions filed in the Trial Court.

“Db” refers to defendant’s brief.

“Da” refers to defendant’s appendix.

“Sa” refers to the State’s appendix.

Transcripts were ordered by defendant but not referenced by defendant in his brief.

“1T” refers to the transcript dated September 12, 2023.

“2T” refers to the transcript dated October 2, 2023.

shooter can be seen walking to the passenger side of the Land Rover approximately three minutes prior to the shooting. At that time, he can be observed wearing a white tank top, pants, a dark colored baseball cap with a light-colored insignia on the front, shoes, and holding his front pants pocket while walking. The shooter is observed talking to the operator of the Land Rover, Myles Dacres, and another individual, Kyaire Pettiway, minutes before the shooting. Following the shooting, Dacres can be observed exiting the driver's seat of his Land Rover and walking away from the vehicle as his Land Rover is driven away from the scene.

On August 18, 2021, in response to an All-Points Bulletin seeking information, Patrolman Andrew Danielsen of the Livingston Police Department, contacted the MBP to provide information that he believed may be relevant to the ongoing investigation. Specifically, Patrolman Danielsen provided a video and photograph that had been uploaded onto Instagram by the user “@king_recc.” The photograph had been posted on Instagram on August 17, 2021, at approximately 10:18 p.m., and the video had been posted on August 18, 2021, at approximately 12:18 a.m. The photograph depicts Tyrell Lansing seated on top of a white Land Rover Discovery parked on Clyde Potts Drive. In the photograph, Lansing is wearing a white tank top, jeans with orange striping, a dark blue Yankees baseball cap, and orange and white high-top

sneakers. The video depicts Lansing, Dacres, and Pettiway inside of a vehicle. A review of other photographs and videos posted by Instagram user “@king_recc,” as well as other subscriber information associated with the account, revealed that the account was maintained by Lansing.

Dacres’ Land Rover was located at approximately 3:44 p.m. on August 18, at the corner of Burnham Road and Condict Street in Morris Township and a search of the vehicle was conducted. Apparent bullet defects were observed on the exterior rear passenger area. Ballistic evidence, a cellular telephone, and a white tank top were recovered from the vehicle. In addition, the vehicle was processed for fingerprints. Several fingerprints of evidential value were developed, including a fingerprint matching Lansing, which was lifted from the center of the front hood.

As part of the investigation, contemporaneous and historical phone records were obtained for Lansing’s cell phone number. These records revealed that Lansing’s phone was in the Morristown area at the time of the shooting. The records further revealed that at approximately 1:20 a.m. and 1:24 a.m., his phone was used to place two phone calls to a cell phone utilized by Dequan McDaniel, lasting 22 seconds and one minute and six seconds, respectively. At approximately 2:00 a.m., Lansing’s phone departed the Morristown area, traveled south to North Carolina, and then in a northwest

direction. A cross-comparison of Lansing's phone locations and Automatic License Plate Recognition records was conducted, which yielded a possible vehicle in which Lansing was traveling. This vehicle was a black Hyundai Elantra belonging to McDaniel.

On August 19, 2021, at approximately 12:37 p.m., phone records revealed that Lansing's phone was traveling westbound on Interstate Highway 44 (*hereinafter* I-44) near Tulsa, Oklahoma. Officers from the Oklahoma Highway Police (*hereinafter* OHP) located McDaniel's Hyundai traveling on I-44. At approximately 1:00 p.m., a motor vehicle stop was conducted. At the time of the motor vehicle stop, Lansing was driving the vehicle and McDaniel was seated in the front passenger seat. Both individuals were removed from the vehicle and taken into custody by the OHP.

At the time of arrest, Lansing was wearing the same jeans and shoes as depicted in the Instagram photograph from August 17, 2021. He also had in his possession a dark blue Yankees baseball cap and a metal Land Rover card.

On December 15, 2021, a grand jury returned Indictment No. 21-12-895-I, charging defendant with one count of first-degree Murder, in violation of N.J.S.A. 2C:11-3a(1)(2); one count of second-degree Possession of a Weapon for an Unlawful Purpose, in violation of N.J.S.A. 2C:39-4a(1); one count of second-degree Unlawful Possession of a Weapon, in violation of N.J.S.A.

2C:39-5b(1); one count of fourth-degree Possession of a Prohibited Weapon or Device, in violation of N.J.S.A. 2C:39-3f(1); and one count of second-degree Certain Persons Not to Have Weapons, in violation of N.J.S.A. 2C:39-7b(1).

Indictment No. 21-12-0895-I also charges co-defendant McDaniel with two counts of third-degree Hindering Apprehension or Prosecution of Another, in violation of N.J.S.A. 2C:29-3a(2) and (7) and charges co-defendant Dacres with one count of third-degree Hindering Apprehension or Prosecution of Another, in violation of N.J.S.A. 2C:29-3a(7).²

On or about December 15, 2022, the State provided defense counsel with an expert report authored by Angelos Leiloglou. Leiloglou conducted an analysis of the available evidence in the instant case to reconstruct the event of the shooting. The State identified Leiloglou as an anticipated expert witness, should this matter proceed to trial.

On May 1, 2023, defendant filed a motion to exclude the trial testimony of Leiloglou or, alternatively, for an Olenowski³ hearing.

² The facts underlying the charges against McDaniel and Dacres are not relevant to this appeal and as such, for brevity, have not been included in the Statement of Facts and Procedural History.

³ State v. Olenowski, 253 N.J. 133 (2023).

On May 17, 2023, defendant retained Robert Sanderson to review Leiloglou's report and to issue his own findings in connection with the event of the shooting.

On August 15, 2023, defendant filed a Notice of Motion for an Order Permitting Sanderson to Testify Virtually. (Sa1-Sa2).⁴

On September 18, 2023, the Hon. Stephen J. Taylor, P.J.Cr., denied defendant's motion and issued a corresponding written decision. (Da1-Da16).

On October 10, 2023, defendant filed a Notice of Motion for Leave to Appeal. (Sa3).

On October 27, 2023, this Court denied defendant's Motion for Leave to Appeal. (Da28).

On November 20, 2023, defendant filed an Amended Notice of Motion for Leave to Appeal before the New Jersey Supreme Court. (Sa4-Sa5).

On January 23, 2024, the New Jersey Supreme Court granted defendant's Motion for Leave to Appeal and summarily remanded the matter to this Court on the merits. (Da29).

The State's response is made due by March 21, 2024. (Da30).

⁴ At the time of the original filing, no report by Sanderson had been furnished. On or about January 15, 2024, a report authored by Sanderson was provided to the State.

LEGAL ARGUMENT

POINT I

AS A MATTER OF LAW, DEFENDANT’S EXPERT IS NOT PERMITTED TO TESTIFY REMOTELY. (Addressing Point I of defendant’s brief)

The New Jersey Supreme Court has the authority to “make rules governing the administration of all courts in the State, and, subject to the law, the practice and procedure in all such courts.” N.J. Const. art. VI, §2, ¶3. This “[r]ule-making authority may be exercised by the promulgation of formal rules to be included in the published Rules of Court . . . It may also be exercised in the form of general directives or specific orders” or “through judicial decisions.” Matter of Yaccarino, 101 N.J. 342, 351 (1985); State v. Clark, 162 N.J. 201, 205 (2000).

The Court has addressed the issue of virtual testimony through adoption of R. 1:2-1(b) and promulgation of its companion Order Regarding the Future of Court Operations, dated October 27, 2022 (*hereinafter* “Court Order”).⁵ (Da21-Da27). See also State in the Interest of T.W., 2023 WL 6117953 at *5 (App. Div. Sept. 19, 2024) (holding that the Order remains in effect today).⁶

⁵ See Notice and Order Dated October 27, 2022.

⁶ Pursuant to R. 1:36-3, this unpublished decision is appended to the State’s brief. (Sa6-Sa10).

R. 1:2-1(b) states that “[u]pon application in advance of appearance, unless otherwise provided by statute, the court may permit testimony in open court by contemporaneous transmission from a different location for good cause and with appropriate safeguards.” The Court Order “updates the framework for those court events that are to be conducted in person and those that in general will proceed in a virtual format.” (Da22). As relevant to the present application, the Order states:

1. Criminal jury trials shall continue to proceed in person.
 2. The following matters will generally proceed in person but may proceed virtually with the consent of all parties [. . .]:
 - a. CRIMINAL: [. . .] evidentiary hearings [. . .]
- [(Da23).]

The State submits that while R. 1:2-1(b) permits the contemporaneous transmission of testimony, its companion Order of the Court limits a trial court’s discretionary authority as set forth in the Order. As such, should this matter proceed to trial, the State respectfully submits that judicial authority does not exist to permit Sanderson to testify virtually at trial. At a pre-trial hearing, the court may only consider permitting Sanderson to testify virtually with the consent of the State. As will be discussed further in Point II, the State

cannot and does not consent to virtual testimony. For the reasons discussed further in Point II, the withholding of consent is reasonable and measured.

Contrary to defendant's argument that section 7 of the Order allows for judicial discretion, the plain language of section 7 does not allow for Sanderson's testimony. Section 7 of the Order allows a court "discretion to grant an attorney or party's reasonable request . . . to participate virtually in a matter being conducted in person." (Da26-Da27). However, what is at issue here is not "an attorney or party's" request to appear virtually, but instead a witness' request to appear and testify virtually. Same does not fall under the ambit of section 7 by its plain language.

POINT II
SHOULD CONSIDERATION OF GOOD CAUSE AND APPROPRIATE
SAFEGUARDS BE NECESSARY, THE TRIAL COURT PROPERLY
DENIED DEFENDANT'S MOTION TO PERMIT HIS EXPERT TO
TESTIFY REMOTELY.

(Addressing Point I of defendant's brief)

Should the Court find that the Order is not dispositive of this issue, the trial court properly considered whether virtual testimony was permissible under R. 1:2-1(b), which requires "good cause" and "adequate safeguards." (Da10). A body of case law exists to assist in the determination of whether these standards have been met.

In State v. Santos, 210 N.J. 129, 141 (2012), our Supreme Court ruled that testimony may be taken by telephone where: (1) there is a special circumstance compelling the taking of telephonic testimony; and (2) the court is satisfied with the witness' identity and credentials. Santos involved a post-conviction relief action wherein the defendant sought to appear telephonically from Mexico during an evidentiary hearing since he had been deported following his conviction. The State opposed the motion, arguing that the telephonic testimony would deny the court the opportunity to evaluate the defendant's demeanor and assess his credibility. The State also argued that the court would have no way of verifying the identity of the person providing the telephonic testimony. Id. at 119. The trial court granted the defendant's motion, finding the circumstances required that the defendant be afforded an opportunity to testify telephonically at the evidentiary hearing. The Appellate Division denied the State's motion to review the order, and the State moved for leave to appeal, which was granted.

Our Supreme Court ultimately remanded the matter to the trial court to reassess whether defendant was entitled to an evidentiary hearing. If so, the trial court could then consider "when, and how, valid testimony, if required, could be properly obtained from Santos in Mexico." Id. at 143.

The Court explained:

Suffice it to say that the demonstration must come from the applicant seeking to introduce remote testimony . . . by telephone or other video-communication . . . means and the trial court’s determination to allow use of remote testimony must explain how the essential integrity of the testimony will be preserved for factfinding purposes.

[Id. at 142-43.]

The Court also remarked that out-of-court testimony was viewed “with some skepticism and [had] been approved for use in only limited circumstances, chiefly due to the obstacles it creates for the factfinder in verifying the identity and assessing the demeanor of witnesses and rendering credibility determinations.” Id. at 132.

More recently, in Pathri v. Kakarlamath, 462 N.J. Super. 208, 212 (App. Div. 2020), our Appellate Division considered “how a judge should assess a party’s request to appear at trial and present testimony by way of contemporaneous video transmission.”

In Pathri, the plaintiff filed for divorce from his wife and soon after returned to his home country of India. When the matrimonial action was later scheduled for trial, the plaintiff filed a motion in limine to appear virtually, by contemporaneous video transmission, claiming he lacked a visa to enter the country and appear in person. The trial court denied the request, finding such a procedure would inhibit the court’s ability to assess the plaintiff’s testimony

and credibility. The Appellate Division stayed the trial and granted leave to appeal.

The Appellate Division reversed the trial court's decision, citing to Santos and Federal Rule of Civil Procedure 43(a), which permits trial testimony via contemporaneous video transmission from a different location “[f]or good cause in compelling circumstances and with appropriate safeguards.” The Appellate Division also set forth factors to be considered by trial courts in determining an application for contemporaneous video testimony. Those factors include:

[(1)] the witness' importance to the proceeding; [(2)] the severity of the factual dispute to which the witness will testify; [(3)] whether the factfinder is a judge or a jury; [(4)] the cost of requiring the witness' physical appearance in court versus the cost of transmitting the witness' testimony in some other form; [(5)] the delay caused by insisting on the witness' physical appearance in court versus the speed and convenience of allowing the transmission in some other manner; [(6)] whether the witness' inability to be present in court at the time of trial was foreseeable or preventable; and [(7)] the witness' difficulty in appearing in person.

[Pathri, 462 N.J. Super. at 216.]

The Appellate Division ultimately remanded the matter to the trial court to apply these factors and determine whether the factors favor allowing the plaintiff to testify from India via video transmission.

The Court explained:

We do not foreclose the judge’s right to impose appropriate conditions on the manner of transmission. We also . . . do not foreclose the judge’s exercise of discretion in denying relief if important conditions cannot be met. The judge, for example, may require a particular size monitor or multiple monitors in the courtroom for the transmission, as well as insist on a particular framing of what the video transmits (in other words, whether the image is not just of the witness’ face but also enough of his body so that the judge could . . . better appreciate his overall demeanor). The judge has the right to expect a clear video and audio, and that the remote witness testify from a place suitable to the solemnity of the proceeding. Copies of documents that the parties expect to show the witness should be forwarded to that location in advance.

[Id. at 220-21.]

Judge Taylor correctly found that defendant’s arguments did not meet the requirements set forth in R. 1:2-1(b) nor the factors outlined in Pathri.

Judge Taylor acknowledged that the facts here were “markedly different” than the facts in Santos and Pathri. (Da10). In those cases, both of the parties were outside of the United States and unable to return, due to deportation and lack of a visa, respectively.

Here, the defense expert witness resides in Poughkeepsie, New York, which Judge Taylor properly described as a “a relatively short one-and-a-half-hour commute to the Morris County Courthouse.” Rather than the difficulty or impossibility of a witness entering the United States to attend trial, without valid process for entry into the country, the alleged “good cause” here is the

health of the defense expert's wife who is purportedly immunocompromised due to treatment for cancer, as well as the defense expert's own health issues. As Judge Taylor indicated in his written decision, defendant has not provided any documentation regarding the health of the defense expert or his wife apart from defense counsel's certification. (Da10-Da11). No certifications, affidavits, or testimony have been proffered to establish that there exists a bona fide medical need for the expert to shelter himself completely and indefinitely from the public domain.

Turning to the Pathri factors, Judge Taylor addressed the first two Pathri factors in conjunction with each other. The first Pathri factor is the witness' importance to the proceeding. Id. at 216. In Pathri, the Appellate Division held that "[t]he greater the witness' importance to the dispute, the heavier the burden of excusing in-person testimony." Id. "[I]f the witness is merely conveying some information of relatively minor importance, or if the witness is a custodian of records, or the like, . . . the burden ought not be onerous." Id.

The second Pathri factor considers "the severity of the factual dispute to which the witness will testify." Id. "[T]he second [factor] suggests that the judge should consider whether the witness – even if a party – is offered to address a sharply disputed question of fact, something that goes to the heart of the matter." Id.

Judge Taylor correctly found that the defense expert's testimony appears to be at "the heart of the matter," as it pertains to the anticipated testimony from the State's expert. The State's expert was retained to "evaluate the available evidence and reconstruct the events of the shooting incident." The State's expert produced visualizations and graphics depicting the reconstruction and analysis, which the State intends to admit at trial. The State's expert used forensic video analysis, photogrammetry and bullet trajectory analysis, among other sciences, to create the visualization.

At the time of defendant's earlier appeal, Sanderson had not yet rendered an expert report and thus the extent of the factual dispute was not readily apparent. However, Judge Taylor found that the defense expert's anticipated testimony would be offered to address sharply disputed facts, that is, whether the State's expert's testimony is admissible at trial, and if so, the reliability of that evidence. He found that the defense expert would not be conveying information of minor importance, but rather would attack the foundation of the State's expert's report and hence its admissibility. Similarly, at the pre-trial hearing, the defense expert would be a key witness, and thus pivotal in determining the admissibility of evidence for trial. (Da12).

Defendant has filed a corresponding Motion to Expand the Record to include the expert report of Sanderson. (Db11-Db13; Da35-Da54). Defendant

argues that the trial court's decision in denying his motion to permit Sanderson to testify virtually was, in large part, based on the fact that Sanderson had not yet rendered his expert report. (Db11).

Defendant is wrong and the State's position remains the same despite receipt of Sanderson's expert report. In terms of the pre-trial hearing, Sanderson is central to the proceedings. He is not a tertiary witness, such as a business records custodian or an uncontested chain of custody witness. Defendant filed a motion to bar the State's expert witness from testifying in this murder trial and Sanderson provides the sole support for defendant's argument and position. Similarly, at trial, a central focus of defendant's pretrial strategy has been to question the Morristown Housing Authority surveillance video and any inferences that can be reasonably drawn from same. It is apparent that Sanderson's proffered testimony is defendant's attempt to lend credibility to that strategy.

Regarding the testimony of a witness seeking to appear virtually, the Appellate Division in Pathri stated:

A judge asked to consider the propriety of a witness' testimony by contemporaneous video transmission should inquire into the scope and substance of that testimony, and whether that testimony is actually in dispute, before determining whether that witness should testify in person. The court should ascertain the significance of the witness' . . . credibility and demeanor and whether the factfinder is better served in its truth-finding function by . . . having testimony in person rather . . . than by contemporaneous video transmission."

[Pathri, 462 N.J. Super at 217-18.]

Judge Taylor initially found that the anticipated testimony of the defense expert here is likely to be “extensive, highly technical, and significantly disputed,” given the nature of the State’s expert’s report, which indicates the expert used, among other techniques, 3D laser technology, 3D aerial mapping, and 3D modeling software in his photogrammetric analysis. The introduction of Sanderson’s expert report confirms Judge Taylor’s finding. In Sanderson’s report, he references and provides commentary regarding still frame images, video clips, and reconstruction renderings created by Leiloglou. (Da52-Da61). Sanderson purports to have relied on surveillance video, body worn camera video, cloud point data, and a review of other electronic media and data in reaching his opinion. (Da65-Da70). He produced his own enhanced version of the surveillance video. (Da63). To effectively cross-examine the witness utilizing all of this electronic and media data, the witness must appear in person.

Thus, Judge Taylor correctly concluded that the two Pathri factors weighed “heavily” towards requiring in-person testimony by the defense expert. Judge Taylor found that the facts are clearly disputed and the defense expert will seek to undermine the testimony and opinion of the State’s expert. The credibility of both experts will be assessed by the court in the first

instance, and both experts will likely provide highly technical testimony regarding photogrammetry and associated methodologies. Judge Taylor found that it was reasonable to assume that both experts will be extensively cross-examined regarding their reports and opinions and allowing the defense expert to appear virtually “may hinder the ability of the State to zealously cross-examine the witness.” (Da13).

Judge Taylor explained that although certain material can be forwarded to the defense expert in advance, it is difficult to anticipate every potential area of cross-examination prior to hearing direct testimony. If certain material has not been previously provided to the expert, cross-examination may be limited. It is also true that uploading certain material in advance may serve to alert the witness of potential areas of cross-examination and place the State at a disadvantage. (Da13).

The third Pathri factor addresses whether the factfinder is a judge or jury. In Pathri, the Appellate Division recognized that “[i]n many instances a judge would likely overcome whatever barrier to ascertaining the witness’ credibility and demeanor is created by contemporaneous video transmission than would a jury of laypersons not accustomed to weighing testimony in any form.” Pathri, 462 N.J. Super. at 218. Judge Taylor noted that although generally a judge may be better able to ascertain the credibility of a witness

appearing virtually, in the case of an expert providing highly technical information, that task becomes more daunting. He also noted that the State would remain in a less advantageous position for purposes of cross-examination, and that asking a jury to determine the credibility of an expert witness providing highly technical testimony via contemporaneous video transmission “makes a difficult task considerably problematic.” (Da13).

After having reviewed Sanderson’s report, these findings only bear more weight. The State takes issue with Sanderson’s qualifications, ultimate opinions, and the underlying basis for same. Assuming his testimony is deemed admissible, in order to render a full and fair assessment of the witnesses, the factfinder should have all available evidence, which requires an in-person examination of his appearance, demeanor, manner, and intent. See Model Jury Charges (Criminal), Credibility of Witnesses (rev. Sept. 1, 2022). (Sa11-Sa16).

Thus, since both the court and a jury will be asked to judge the credibility of the defense expert, Judge Taylor appropriately concluded that this factor also weighed against allowing the defense expert to testify via contemporaneous video transmission. (Da13-Da14).

The fourth Pathri factor weighs the cost of requiring the witness’ physical appearance in court against the cost of contemporaneous video

transmission from a different location. “That would not only include the travel and lodging expenses necessarily incurred but other costs, such as the impact on a party’s income caused by a loss of time from work.” Id. Judge Taylor appropriately found that traveling from Poughkeepsie, New York to Morristown, New Jersey for a day of testimony was not an unreasonable burden to place on a witness. He found that the expenses would be minimal, especially considering that, unlike a lay witness, the defense expert would likely be paid for his travel time, commuting expenses, time spent testifying in court, and any lodging needed. Thus, Judge Taylor concluded that the cost of insisting on the defense expert’s in-person appearance is minimal, especially when compared with the “impact on the factfinder’s assessment of the witness.” Id. at 219. (Da14).

The fifth Pathri factor is the delay caused by insisting on the witness’ physical appearance in court versus the speed and convenience of allowing remote testimony. Judge Taylor found that requiring the defense expert to travel to court to testify will not cause a delay in the proceedings, given the relatively short distance between the defense expert’s home and the Morris County Courthouse. (Da14).

Judge Taylor also considered that defense counsel advised that insisting on the defense expert’s in-court appearance may require defendant to retain a

new expert. Judge Taylor found that if that were to occur, there may very well be some delay in the trial, but he found that this should result in a “minimal delay, if any.” (Da14-Da15). Ultimately, Judge Taylor concluded that the fifth factor weighed “slightly” in favor of allowing contemporaneous video transmission. (Da15).

Turning to the sixth Pathri factor, foreseeability and preventability, Judge Taylor accurately concluded that any delay in hiring a new expert is “partially, if not fully, attributable to the defense.” He found the defense expert’s unwillingness to be present in court to be both foreseeable and preventable. Specifically, Judge Taylor noted that the defense expert’s inability to be present in court at the time of trial was “clearly foreseeable,” as the witness was aware of his wife’s medical condition and needs, as well as his own limitations, at the time he was retained by defendant. The health issues which create the basis for the defense expert’s reluctance to testify have existed since 2021. (Da15).

Defendant indicated to the court that he was aware of Sanderson’s personal choice not to appear in person prior to retaining him as an expert. As such, defendant could have vetted the issue of virtual testimony prior to formal retention or elected to hire a different expert. Sanderson is a purported expert in the field of audio and video enhancement and analysis. Ample alternative

experts in this field exist. No credible information regarding diligent but unsuccessful efforts to secure an alternative witness has been provided.

The seventh and last Pathri factor requires assessing the witness' difficulty of appearing in person. Judge Taylor acknowledged the concerns of the defense expert but reasonably found that accommodations could be made to lessen the risk of the defense expert contracting an infection while at court. As examples, Judge Taylor stated that the defense expert could certainly wear a mask at the courthouse, that clear screens could be put up around the defense expert while he was testifying, and that the trial court could be moved to a larger courtroom while the defense expert was testifying to ensure greater distance between the witnesses, jurors, and the court. Moreover, the defense expert's testimony could even be scheduled to limit his time at the courthouse. (Da15-Da16).

In sum, the Pathri factors militate against granting defendant's motion. Judge Taylor correctly concluded that the importance of the defense expert's testimony requires an in-person appearance.

Thus, Judge Taylor properly denied defendant's motion.

CONCLUSION

WHEREFORE, the State respectfully submits that this Court AFFIRM
the Order of the Hon. Stephen J. Taylor, P.J.CR.

Respectfully submitted,
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Dated: March 12, 2024

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