

DISTRICT COURT, LA PLATA COUNTY, COLORADO 1060 East Second Avenue Durango, Colorado 81301	DATE FILED: September 20, 2018 12:56 PM FILING ID: 9D1758725998D CASE NUMBER: 2017CR343
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff, v. MARK REDWINE, Defendant	σ COURT USE ONLY σ
Douglas K. Wilson, Colorado State Public Defender John Moran, Attorney No. 36019 Justin Bogan, Attorney No. 33827 Deputy Public Defender 175 Mercado Street, Suite 250, Durango, CO 81301 Phone: (970) 247-9284 Fax: (970) 259-6497 E-Mail: Justin.Bogan@coloradodefenders.us Email: John.Moran@coloradodefenders.us	Case Number: 17CR343 Division: 1
<p>[D 25]</p> <p>OBJECTION TO ENDORSEMENT OF KATHLEEN FETHERSTON DEMAND FOR DISCOVERY DEMAND FOR SCHRECK HEARING</p>	

Mr. Redwine moves the Court for an Order suppressing all evidence pertaining to the testimony of Kathleen Fetherston, as the prosecution’s endorsement is deficient, vague and violative of CRCP 16.

I. Facts

1. Mr. Redwine is currently charged with Second Degree Murder F2, Child Abuse Knowingly/Recklessly Causing Death F2.

2. The prosecution has endorsed:

Kathleen Fetherston
 Colorado Bureau of Investigations
 6000 W. 54th Ave.
 Arvada, Colorado 80002
 Expert in Forensic Biology and DNA Analysis

3. The endorsement is vague and deficient in that the field the witness is an “expert” in is too broadly described to put defense on notice of what the witness will actually testify about. Defense demands the “expert’s” curriculum vitae, written summary of the proposed testimony, actual contact information including phone number, data relied upon in all conclusions, list of cases the witness has testified in as an expert, and training materials, texts, articles relied upon in all conclusions.
4. Defense also demands a Shreck Hearing on the pro-offered testimony.

II. Law and Analysis

5. The Due Process Clauses of the United States and Colorado Constitutions guarantee every criminal defendant the right to a fair trial. ~~See~~ U.S. Const. amends. V, VI, XIV; Colo. Const. art. II, §§ 16, 23, 25. An impartial jury is a fundamental part of the constitutional right to a fair trial. ~~People v. Harlan~~, 8 P.3d 448, 459 (Colo. 2000), overruled on other grounds in ~~People v. Miller~~, 113 P.3d 743, 748-750 (Colo. 2005). The admission of evidence results in the deprivation of a defendant’s federal and state constitutional right to due process of law where it violates principles of fundamental fairness and necessarily prevents a fair trial by an impartial jury due to its prejudicial quality. ~~See eg~~, U.S. Const. amends. V, VI, XIV; Colo. Const. art. II, §§ 16, 23, 25; ~~Lisiba v. California~~, 314 U.S. 219, 236 (1941); ~~Harris v. People~~ 888 P.2d 259, 263-64 (Colo. 1995); ~~Oaks v. People~~ 150 Colo. 64, 68, 371 P.2d 443, 446-47 (1962).
6. The Colorado Supreme Court has “channeled a trial court’s discretion” to admit expert testimony through the test announced in ~~People v. Shrek~~, 22 P.3d 68, 77-79 (Colo. 2001): (1) the principles underlying the expert testimony must be reasonably reliable; (2) the expert must be qualified to opine on such matters; (3) the expert testimony must be helpful to the jury; and (4) the evidence must satisfy CRE 403. ~~Martinez~~, 74 P.3d at 322.
7. As part of its gatekeeping function, district courts must determine whether proffered expert testimony is reliable, relevant, helpful to the jury, and not unfairly prejudicial. ~~See~~ CRE 401-403, 702; ~~Shrek, supra~~; ~~Salcedo v. People~~ 999 P.2d 833 (Colo. 2000); ~~Brooks v People~~ 975 P.2d 1105, 1114 (Colo.1999). Regardless of whether the expert’s specialized knowledge is based on scientific or

technical principles, or is simply grounded in experience, the focus of the inquiry is the same: namely, whether the proffered evidence is both reliable and relevant. **Shrek**, 22 P.3d at 77-79 (addressing scientific evidence); **Salcedo**, 999 P.2d at 838 (addressing experience-based specialized knowledge); **Brooks**, 975 P.2d at 1114 (addressing scent tracking by a trained police dog in hot pursuit of a suspect who left footprints in the snow, which the court considered experience-based testimony). In either case, the trial court must consider the criteria of CRE 702 and determine that (1) testimony on the subject would be useful to the jury, and (2) the witness is actually qualified to render an opinion on the subject. *See eg*, **Shrek**, 22 P.3d at 77; **Salcedo**, 999 P.2d at 838; **Brooks**, 975 P.2d at 1114.

8. “In determining whether the proposed testimony would be useful to the jury, the trial court must consider both whether the proposed testimony would be logically relevant and whether its probative value would not be ‘substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by the consideration of undue delay, waste of time, or needless presentation of cumulative evidence.’” **Salcedo**, 999 P.2d at 838 (quoting CRE 403). Any “determination that experience-based specialized knowledge is admissible under CRE 702 is inherently intertwined with a finding that the expert’s proposed testimony is both relevant under CRE 402 and not unfairly prejudicial under CRE 403.” *Id*; ~~see also~~ **Martinez**, 74 P.3d at 322-323 (CRE 403, in conjunction with CRE 702, tempers broad admissibility by giving courts discretion to exclude expert testimony unless it passes more stringent standards of reliability and relevance).

9. WHEREFORE, Mr. Redwine makes this motion pursuant to the Due Process, Trial by Jury, Right to Counsel, Equal Protection, Cruel and Unusual Punishment, Confrontation, Compulsory Process, Collateral Estoppel, Double Jeopardy, Right to Remain Silent and Right to Appeal Clauses of the Federal and Colorado Constitutions, and the First, Fourth, Sixth, Eighth, Ninth, Tenth, and Fourteenth Amendments to the United States Constitutions and Article II, Sections 3, 6, 7, 10, 11, 16, 18 20, 23, 25 and 28 of the Colorado Constitution.

Respectfully submitted,

/s/ John Moran

John Moran, No. 36019
Deputy State Public Defender
Dated: September 20, 2018

/s/ Justin Bogan

Justin Bogan, No. 33827
Deputy State Public Defender
Dated: September 20, 2018

Certificate of Service

I hereby certify that on Sept. 20,
2018, I served the foregoing
document by e-filing same to all
opposing counsel of record.

/s/ John Moran

/s/ Justin Bogan