

<p>District Court, Huerfano County, Colorado</p> <p>Court Address: 401 Main St. Room 304 Walsenburg, CO 81089</p>	<p style="text-align: right;">DATE FILED: June 12, 2015 9:06 AM</p> <p style="text-align: center;">σ COURT USE ONLY σ</p>
<p>THE PEOPLE OF THE STATE OF COLORADO Plaintiff</p> <p>v.</p> <p>RALPH CANDELARIO, Defendant</p>	
<p>Douglas Wilson, Colorado State Public Defender Dariel Weaver, Reg. No. 40567 Deputy State Public Defender 134 W. Main St. Ste. 32 Trinidad, CO 81082 Phone: (719) 846-9278 Fax: (719) 846-2089</p>	<p>Case Number: 14CR106</p>
<p>RESPONSE TO PROSECUTION’S “MOTION IN LIMINE: EXCLUSION OF IMPROPER ‘OPPORTUNITY AND/OR MOTIVE’ EVIDENCE/ALLEGATIONS AT TRIAL”</p>	

Mr. Candelario, through counsel, hereby submits the following response to the prosecution’s motion in limine to exclude evidence of Mr. Candelario’s defense and alternate suspects:

FACTUAL BACKGROUND AND EVIDENCE OF ALTERNATE SUSPECTS

1. On the morning of Jan. 16, 2014, Ralph Candelario ran from his home and flagged down his neighbors for help before collapsing onto the sidewalk in front of the house. Before he collapsed, Mr. Candelario asked that someone check on his wife, Pamela, who was still inside. Upon law enforcement’s arrival, Pamela Candelario was found dead in the couple’s kitchen of blunt-force trauma to the head.
2. In an interview with law enforcement that day, and in every statement thereafter, Mr. Candelario stated that intruders had broken into his home and hit him in the

head, knocking him unconscious and killing Pamela during the burglary. Several items were taken from the home, including a television, a computer, and jewelry. Mr. Candelario was diagnosed with a concussion.

3. At his initial interview, Mr. Candelario, at a loss for who could have committed the burglary and murder, gave law enforcement a number of names of people with whom he had had issues in the past. Specifically, Mr. Candelario mentioned a number of local individuals, known to Walsenburg law enforcement, including Johnny Duran, a local man who frequently tried to get Mr. Candelario to buy items from him and would get angry when Mr. Candelario refused; John Chadil, who Mr. Candelario had reported for illegal burning, who had been upset with him for the report; a man at the tattoo parlor down the street from Mr. Candelario's store who had been trafficking drugs out of the tattoo parlor and stealing sheet metal from behind Mr. Candelario's antique shop. Neither Walsenburg Police Department nor the Colorado Bureau of Investigations ever followed up with any of these individuals.
4. After his initial interview, Mr. Candelario gave a statement in which he was able to give a general description of the intruders, stating that one was tall and dark-skinned with short curly hair, a wide nose, and large lips and yellow glasses. The other man was shorter. Both men were speaking Spanish. A few weeks later, Mr. Candelario told officers that one of the men had sexually assaulted him in the bathroom of the home during the burglary.
5. During the investigation of this case, on March 13, Lt. Liebchen with the Walsenburg Police Department interviewed a local parolee named Toby Martinez. Lt. Liebchen had received information from Mr. Martinez's parole officer, John VanZant, that Mr. Martinez had information about the Candelario murder. Mr. Martinez related that he had been involved in gangs both in- and outside of the Department of Corrections, and that the Candelario murder had been a burglary gone wrong committed by Ramon Baros, a member of a Walsenburg gang deeply in debt to the Mexican mafia. In the recorded interview, the name Jose Ninahualpa was also mentioned. Mr. Martinez related that Mr. Baros and Mr. Ninahualpa had committed the burglary to pay off a drug debt, and that Ms. Candelario had been killed in the process. Mr. Martinez also noted that he had overheard Vanessa Montez, the girlfriend of Ramon Baros, speaking to Mr. Baros about the Candelario murder, and that Mr. Baros had told her to be quiet about it. At this time Ms. Montez and Mr. Baros had a large amount of money and drugs.
6. Ramon Baros is, indeed, a local gang member known to law enforcement who is known to be involved with drugs and a number of thefts around Walsenburg. Mr. Baros has in the past been charged with:
 - a. Case 12CR103: charged with Burglary (F4) and Theft (M2), convicted of Theft-Receiving (M2). In this case, Mr. Baros was suspected of breaking

into the Silver Dollar Bar and stealing a television, and selling it to a friend name Arey Ortiz.

- b. Case 14M124: charged with Assault 3, Violation of Protection Order, Harassment, and Violation of Bond Conditions; convicted of Violation of Protection Order. Mr. Baros was placed on probation for this offense in Jan. 2015, and is currently awaiting resentencing after a probation violation. Mr. Baros's girlfriend was identified Vanessa Montez – the same girlfriend referenced in the interview with Mr. Martinez – and told police that they were both drug addicts.
 - c. Case 14M22: Mr. Baros was charged and convicted of theft (M3) for stealing a number of items including lighters, a cell phone charger, cigarettes, and sunglasses from the Western Convenience Store.
 - d. Case 12CR76: Theft (F4)
 - e. Case 13CR61: Charged with various drug offenses, including felony possession.
 - f. Case 14CR20: Charged with drug possession (DF4) and F6 Violation of Bond Conditions
 - g. Case 14M112: Charged with Assault 3 and Harassment, again against girlfriend Vanessa Montez.
 - h. Case 14M127: Charged with Violation of Bond Conditions (M3).
7. After being appointment to Mr. Candelario's case, the defense received a statement by a cellmate of Jose Ninahualpa ("Witness A") at the Huerfano County Jail. This statement said Mr. Ninahualpa told Witness A that Pamela Candelario's murder had been in the course of a robbery by himself and someone named Ramon, and that some of the silver and jewelry from the robbery had been pawned at the local pawn shop the Black Dog. Mr. Ninahualpa had told Witness A that they (he and "Ramon") would never be caught for the murder.
 8. Jose Ninahualpa had been incarcerated in the Huerfano County Jail from May 13, 2014 until approximately July 29, 2014 on case 09M234. The witness giving this statement had been incarcerated in the same jail intermittently from April 29, 2014 until Dec. 11, 2014.
 9. Mr. Ninahualpa also made statements that his associates (presumably Mr. Baros) also participated in a burglary at the Eccher house on 10th St. Upon defense investigation, the defense learned there was in fact a burglary at the home of Bruce Eccher, 130 W. 10th St., on May 30, 2014.
 10. As part of its investigation, the defense interviewed another witness ("Witness B"), a local Walsenburg man, who was involved in the Walsenburg drug scene and knew Ramon Baros. Witness B had been brought merchandise by Ramon Baros and another individual, Mike Montano, to "fence" (sell or pawn stolen items), specifically a gun and items of jewelry that were missing from the Candelario home. Ramon Baros had a pair of yellow sunglasses. The same people had brought Witness B items from the Eccher house to fence as well.

11. Ramon Baros came to Witness B to fence the items from the Candelario home the next day, during the time that the Candelario home was still roped off as a crime scene. Mr. Baros told Witness B that he possibly killed someone in the course of the Candelario robbery, and was extremely shaken up, consistent with having participated in a very violent event. Witness B told the defense that it was “clear that [Mr. Baros] had never killed anyone before.” Witness B stated that he had a lot of experience with people who had hurt people or maybe killed people, especially the first time, and that that was what Mr. Baros looked like.
12. The defense also contacted a third witness (“Witness C”) who had been in C-Pod at the Huerfano County Jail during April and May of 2014. Jose Ninahualpa and Jimmy Bellah were also in C-Pod. Witness C stated that Mr. Ninahualpa had bragged about robbing Mr. Candelario’s house and stated on a few occasions that he “did her”. Witness C specifically remembered Mr. Ninahualpa and Mr. Bellah discussing fencing the items from the Candelario robbery.
13. Mr. Ninahualpa also has a lengthy criminal history, including:
 - a. 05M219: charged with theft (M3); pled guilty and completed a deferred judgment and sentence.
 - b. 07CR56: Charged with Sexual Assault – overcome victim’s will (F4), Menacing (F5), and various other offenses; pled guilty to Assault 3
 - c. 09M234: Charged and convicted of Indecent Exposure (M1), for exposing himself to a Department of Human Services worker at the courthouse;
 - d. 09M267: charged with Indecent Exposure;
 - e. 12M173: charged with Indecent Exposure and convicted of Public Indecency, for allegedly masturbating and exposing himself to a staff member in the Huerfano County Jail;
 - f. 11CR45: charged with Sexual Assault – causing submission by force of threat (F3), pled to Sexual Assault (attempt) – overcome victim’s will (F4). Mr. Ninahualpa was alleged to have forcibly raped an acquaintance, leaving injuries.
14. Mr. Ninahualpa’s history of violent sexual assaults and deviant sexual behavior, including exposing himself to bystanders, is particularly relevant in light of Mr. Candelario’s statements regarding the sexual assault that occurred during the burglary. In addition, Mr. Ninahualpa matches Mr. Candelario’s general description of the taller aggressor; upon information known to the defense, Mr. Ninahualpa is approximately 6’1”, Hispanic, with dark wavy hair.

LEGAL ARGUMENT

15. A defendant has a constitutional right to present a complete defense, including evidence that another person may have committed the charged offense. *Holmes v.*

South Carolina, 547 U.S. 319 (2006); *People v. Flowers*, 644 P.2d 916 (Colo. 1982).

16. In the cases cited by the prosecution where exclusion of alternate suspect evidence was upheld, the proffered evidence was much more vague than what is offered in this case. In *Mulligan, Armstrong, and Owens*, none of the possible alternate suspects were identified by name; the evidence consisted primarily of the presence of unidentified persons near or around the time of the crime.
17. In contrast, the evidence in this case shows a direct link between Mr. Ninahualpa and Mr. Baros – named and identified individuals living in Walsenburg and with criminal histories appearing to support their involvement in drugs, gang activity, burglaries and sexual assaults – to the break-in at the Candelario home, as possessing property stolen from the Candelario home, and as having admitted to caused injury and possibly death to Pamela Candelario.
18. In *People in Interest of R.L.*, 660 P.2d 26 (Colo. App. 1983) the defendant was charged with the arson of an apartment building. A witness testified to seeing a truck, later found to be registered to the former owner of the building (who still had a security interest), leaving the scene at high speeds with its lights off. The court refused to allow the defense to call the former owner to testify about his financial records, insurance proceeds he received, and a fire in another building he owned nearby. The Court of Appeals found this exclusion of evidence to be reversible error, holding that the proposed evidence was probative of identity, not merely the motive or opportunity of the former owner.
19. Likewise, in *People v. Muniz*, 190 P.3d 774 (Colo. App. 2008), the Court of Appeals held that where identification evidence suggested the alternate suspect (E.F.) was at the scene and his own statements to investigators connected him to the witness – even where the evidence did not conclusively establish E.F.’s involvement and DNA found at the scene did not match E.F. – it was reversible error not to admit it. The court found that the relevance of such evidence should be determined by the totality of the circumstances, and the “direct connection test is not applicable where, as here, the contested issue is identity, not merely motive or opportunity. And the ‘signature’ test [allowing evidence of an alternate suspect having committed similar crimes] is not applicable because a prior offense is not the only evidence allegedly linking the alternate suspect to the crime with which defendant was charged.”
20. In this case, both *R.L.* and *Muniz* are instructive, as the alternate suspects raise both the question of identity and of having committed similar offenses in the past. The case at bar is unquestionably more comparable to *R.L.* and *Muniz*, and excluding this evidence would be reversible error.
21. As to the other witnesses mentioned at the preliminary hearing, while the defense does not intend to present those individuals as alternate suspects in the typical sense, their involvement in this case is relevant to the completeness of the

investigation in this case. These individuals were identified very early on, by name, by law enforcement – as early as Mr. Candelario’s first interview. Yet law enforcement made no attempts to follow up on these individuals. There was no attempt to interview them or determine their whereabouts, which would have been relatively easy to do given that (in particular) the Walsenburg Police Department is well-acquainted with this individuals and they both live in Walsenburg.

22. The utter neglect and thoughtlessness with which these individuals were discarded as possible suspects, even before the investigation was 48 hours old, speaks to law enforcement’s single-minded focus on Mr. Candelario as not only the primary suspect, but the only possible suspect. Other possibilities were never even considered. The tunnel vision with which law enforcement zeroed in on Mr. Candelario casts doubt on the accuracy of the entire investigation as biased and incomplete. Given the nature of this evidence and its relevance, the defense would have no objection to referring to these individuals simply by their initials or other pseudonyms.
23. The exclusion of this evidence would violate Mr. Candelario’s right to present a defense, and to due process, confrontation, and effective assistance of counsel under the U.S. and Colorado Constitutions.

THEREFORE, the defense requests that the prosecution’s Motion in Limine be DENIED.

<p>Douglas K. Wilson Colorado State Public Defender</p> <p></p> <p>_____ Darrel Weaver, #40567 Deputy Public Defender</p>	<p style="text-align: center;"><u>CERTIFICATE OF SERVICE</u></p> <p>I certify that on <u> 6 </u> - <u> 12 </u> - <u> 2015 </u>, the foregoing document was served to opposing counsel by: <input type="checkbox"/> hand delivery <input type="checkbox"/> mail <input type="checkbox"/> fax <input checked="" type="checkbox"/> ICCES <input type="checkbox"/> other method _____.</p> <p style="text-align: center;"></p> <p>_____ SIGNATURE</p>
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