

4. During the investigation, Ralph Candelario was questioned by the Pueblo Police Department, and passed a polygraph test indicating that he had nothing to do with Dena Candelario's disappearance. It was discovered that Dena Candelario had been corresponding with numerous men online, including some with lengthy criminal histories, and there were indications that Dena Candelario had gone to visit one of these men and never returned. She has never been found. Mr. Candelario was never charged with anything involving Dena Candelario. The Pueblo Police Department's investigation is attached as Exhibit A.
5. After her disappearance, Ralph Candelario sought a legal divorce from Dena Candelario. During this time, he began a relationship with Dana Franklin that continued for several years. Near the end of their relationship, Ralph Candelario was also seeing Pamela Candelario (nee Palmer); Ralph ultimately left Dana Franklin for Pamela Candelario and married her.
6. Dana Franklin was extremely angry when Ralph Candelario left her for Pamela, and reported the fact of Ralph's simultaneous relationship with two women (her and Pamela Candelario) to the church elders. Notably, she also slashed all of his tires.
7. Ralph was sanctioned for the cheating; however Pamela Candelario, also a Jehovah's Witness, stood by him until they were able to work their way back into the church's good graces. Ralph and Pamela Candelario were legally married. Eventually the church also recognized their marriage.

**THE EVIDENCE REGARDING DENA CANDELARIO IS 404(B) EVIDENCE,
NOT *RES GESTAE* EVIDENCE**

1. C.R.E. 404(b) prohibits the introduction of "other crimes, wrongs or acts" introduced to prove the defendant's character and conformity therewith. The concept of *res gestae*, separate and apart from C.R.E. 404(b), nonetheless allows introduction of other acts provided they are "inextricably intertwined" with the offense charged. *People v. Workman*, 885 P.2d 298 (Colo. App. 1994). To be considered *res gestae* evidence, the proposed evidence must be "incidental to the main fact...so closely connected therewith as to constitute a part of the transaction" and must be contemporaneous with the main facts at issue. *People v. Asberry*, 172 P.3d 927 (Colo. App. 2007); *People v. Rollins*, 892 P.2d 866 (Colo. 1995).
2. For example, in *Rollins*, the Colorado Supreme Court found that three uncharged incidents of sexual assault by the defendant, occurring in the several months before the charged offense, against the same named victim, was not admissible as *res gestae* evidence, noting that the fact that the proposed evidence was not contemporaneous with the charged offense and were not illustrative of the

- charged offense – even though they were committed against the same victim – caused the evidence to fall under the rubric of C.R.E. 404(b) instead of *res gestae*.
3. When the events sought to be admitted are not entirely contemporaneous with the charged offense, the facts of the other acts are typically so intertwined that it is impossible to “tell the story” of the case without them; they are unquestionably incorporated into the narrative of the charged offenses.
 4. For example, in *People v. Fears*, 962 P.2d 272 (Colo. App. 1997), in which the defendant was charged with murder, the court addressed the admissibility of a prior robbery in which the defendant allegedly participated. The victim of the homicide (Frank Magnuson) was also a victim of the prior robbery; he escaped the robbery by fleeing and was briefly chased by the two robbers, one of whom was Mr. Fears. Roy Young was charged with the robbery after being found with the other victim’s necklace. The night before Mr. Young’s robbery trial was to begin, Mr. Magnuson’s roommate and his friend returned home and were held at gunpoint by intruders demanding to know which man was “Frank”. The two men explained that Frank Magnuson was not there, but the intruders shot both men. Mr. Magnuson’s roommate, who survived, heard Frank Magnuson enter the house as the intruders were leaving, and then heard numerous gunshots. He called the police after the intruders left and after finding that both his friend and Frank Magnuson were dead.
 5. Similarly, in *People v. Williams*, 724 P.2d 1279 (Colo. 1986) the court allowed introduction of the defendant’s prior drug involvement because “The prosecution’s theory of the case was that the defendant, Lloyd and Shaughnessy knew each other from prior drug dealings; that the defendant and Lloyd had a common interest in the August 20, 1980 searching of their residences for drugs; that while in jail on drug charges the two discussed the likelihood of an informant; that in the drug culture to which all three belonged, informants were despised; that the defendant suspected the victim of being the informant; that the victim went to the defendant’s house on the day of the murder to buy drugs; that the opportunity to get more drugs was used as a pretext to lure the victim to the site of his death; and that the defendant killed the victim because of the defendant’s belief that the victim had informed police officials about the defendant’s drug-related conduct.”
 6. In contrast, the assertion that the evidence sought to be admitted in this case is somehow “inextricably intertwined” and clearly illustrates the defendant’s motive to murder his wife is purely speculative; there is no actual evidence that Mr. Candelario’s missing first wife had anything to do with or animated any actions on the part of Mr. Candelario. There is not a single witness or piece of evidence tying Dena Candelario or her disappearance to Pamela Candelario’s murder; there is not even a witness that opines or suggests that the prosecution’s theory – that Mr. Candelario murdered Pamela Candelario and then claimed a break-in so that she could be declared legally dead and he would be free to date or marry some unnamed, unspecified woman in the future – could be true.

7. Instead, the prosecution is simply attempting to insert a curious fact – the disappearance of Mr. Candelario’s first wife – to unfairly raise the suspicions of the jury as to the murder of his second wife. Although the prosecution does not seek to elicit any of the investigation or the fact that Mr. Candelario was ever suspected of any involvement in Dena Candelario’s disappearance, the clear effect of the evidence will be to cause the jury to wonder if, if Mr. Candelario is alleged to have murdered his second wife, perhaps he had something to do with his first wife’s disappearance as well.
8. The defense would then be in the position of either remaining silent in the face of this evidence, allowing the jury to wonder and speculate as to Mr. Candelario’s involvement in Dena Candelario’s disappearance, or presenting evidence completely unrelated to the actual case at bar concluding that Mr. Candelario was in fact *not* involved, which may or may not allay the jury’s concerns about the disappearance and which would take up an extraordinary and unnecessary amount of time.
9. The disappearance of Dena Candelario, because of the accompanying inevitable insinuation that Mr. Candelario was involved, and because of its tenuous factual ties to this case, is best evaluated under C.R.E. 404(b). Under that standard, the evidence must be excluded.

THE PROPOSED EVIDENCE IS INADMISSIBLE UNDER C.R.E. 404(B)

10. As a threshold matter, under C.R.E. 404(b), before proceeding to the analysis required under *People v. Spoto*, 795 P.2d 1314 (Colo. 1990), the court must find by a preponderance of the evidence that the alleged acts actually occurred. *People v. Garner*, 806 P.2d 366 (Colo. 1991). While it is undisputed that Dena Candelario did disappear in 2004 and has never been found, there is no evidence that Mr. Candelario had anything to do with it. As shown in Exhibit A, Mr. Candelario was not considered a suspect and passed a polygraph test regarding his involvement with Dena Candelario’s disappearance or knowledge of her whereabouts.
11. Further, under *Garner*, it has not and cannot be shown by preponderant evidence that the prosecution’s theory of relevance for the proposed evidence is actually true. Even if Mr. Candelario did cause Pamela Candelario’s death, there is no evidence whatsoever that the circumstances of Dena Candelario’s disappearance were at all involved. The prosecution’s theory is entirely speculative and unsupported by any evidence.
12. The proposed evidence also fails under the *Spoto* analysis itself. *Spoto* requires that (a) the evidence must relate to a material fact; (b) the evidence must be logically relevant; (c) the logical relevance must be independent of the prohibited intermediate inference that the defendant committed the crime charged because of

- the likelihood that he acted in conformity with his bad character; and (c) the probative value of the evidence must substantially outweigh the danger of unfair prejudice.
13. First, the offered evidence of Dena Candelario's disappearance does not relate to a material fact. Put simply, there is no evidence whatsoever that Dena Candelario's disappearance had anything to do with Pamela Candelario's murder, even assuming *arguendo* that Mr. Candelario did commit it. Dena Candelario disappeared nearly a decade prior to Pamela Candelario's death. The only suggestion that the circumstances of Dena Candelario's disappearance informed any aspect of Pamela Candelario's murder is the prosecution's tortured argument that, because of his religion, Mr. Candelario's primary motivation in painting the murder as a home invasion gone wrong was not to avoid spending the rest of his life in prison, but to be able to remarry some unnamed woman in the future with the church's approval.
 14. For the same reasons, the long-ago disappearance of Dena Candelario, and any difficulties it may have caused him in the church, are not logically relevant. To begin with, any difficulties caused by the fact that Dena Candelario was never found and thus not considered deceased for the purposes of the church appears to have had no impact on Mr. Candelario's subsequent actions whatsoever.
 - a. First, Mr. Candelario was not shunned from the church and prohibited from marrying within the church due to Dena's status as alive or deceased; he was shunned because of his simultaneous relationship with two women (Dana Franklin and Pamela Candelario).
 - b. Second, the Jehovah's Witness Church allows for remarriage in two situations: where the former spouse is deceased, *or* in the case of adultery. There is ample evidence that Dena Candelario was carrying on an affair with at least one man (see Exhibit A); thus, the assertion that Mr. Candelario was prohibited from remarriage because Dena Candelario's body had never been found is factually false.
 - c. Finally, in fact, Mr. Candelario did marry Pamela Candelario while he was not in good standing with the church; the church ultimately condoned this marriage after Pamela and Ralph Candelario worked their way back into the church's good graces. Ultimately, he was *not* prohibited from remarriage and *not* permanently excommunicated from the church. Thus, the logical relevance proposed by the prosecution fails.
 15. Given that the prosecution's theory of relevance and admissibility of this evidence is simply untrue, as noted above, the only possible probative value depends on the inevitable inference – whether stated or not – that Mr. Candelario was somehow involved in Dena Candelario's disappearance *and* Pamela Candelario's death. The evidence does nothing but encourage the jury to draw a conclusion that Mr. Candelario is simply a man who kills his wives when he no longer wishes to be married.

16. The interplay of the tenets of Mr. Candelario's religion are particularly problematic, as the prohibition on remarriage could be seen to favor death of a spouse over divorce (notwithstanding the consensus among all major religions that murder is, in fact, wrong). A major pitfall of other acts evidence is that it is unfair to require a defendant to defend not only against the charged crime but also to disprove the prior acts or explain his or her personality. *Kaufman v. People*, 202 P.3d 542 (Colo. 2009). In this case, admission of this evidence would first require Mr. Candelario to show that he in fact had nothing to do with Dena Candelario's disappearance, and also to explain his faith and what the church's (and his) positions really are on remarriage, adultery, and murder.
17. Finally, any possible probative value independent of the prohibit inference of bad character is substantially outweighed by the danger of unfair prejudice in this case. The balancing test required under this prong is essentially a C.R.E. 403 analysis, and

“contemplates the consideration of such factors as the importance of the fact of consequence for which the evidence is offered, the strength and length of the chain of inferences necessary to establish the fact of consequence, the availability of alternative means of proof, whether the fact of consequence for which the evidence is offered is being disputed, and, if appropriate, the potential effectiveness of a limiting instruction.”

Yusem v. People, 210 P.3d 458, 467-468 (Colo. 2009), citing *Vialpando v. People*, 727 P.2d 1090, 1096 (Colo. 1986).

18. In this case, the prosecution seeks to admit evidence of Dena Candelario's disappearance to show, apparently, *not* any motive on the part of Mr. Candelario to murder Pamela Candelario, but rather his motive to characterize her death as a home invasion gone wrong. There are plenty of other, more rational reasons for this than wanting to remarry at some point in the future with the church's blessing (which, as noted above, ultimately was resolved in his favor after Dena Candelario's disappearance anyway), for example: the difficulty of disposing of a body, questions from friends and family members, avoiding the inevitable suspicion cast upon the husband when a wife disappears, not wanting to face prosecution.
19. The argument that Mr. Candelario staged this murder to be a burglary gone wrong in order to preserve his good standing and ability to remarry within the church is simply so tortured, relying on such a weak and lengthy chain of inferences (some of which are factually false), that its probative force is nil. The prejudicial value, however, is extremely high, as noted above; the jury's natural inclination will be to use this evidence not as part of some far-fetched argument about Mr.

Candelario's motivation to blame burglars for Pamela Candelario's death, but to draw the conclusion that when a man's first wife is missing and second wife is mysteriously murdered, he must be responsible for both.

20. In *Yusem, supra*, the defendant, an off-duty sheriff's deputy was charged with menacing his apartment's maintenance technician with his duty pistol, and claimed self-defense; the trial court admitted a prior act in which Yusem had menaced the apartment manager while wearing his gun in its holster. The Colorado Supreme Court, in finding reversible error due to the admission of improper prior act evidence, found that even if the evidence *was* admissible for some narrow purpose independent of the inference of bad character, the potential for unfair prejudice was still overwhelming given the weak and lengthy chain of evidence, the other available evidence to show mental state and rebut self-defense, and the evidence's injection of collateral issues that were likely to confuse and lead the jury astray. *Id.* at 468-469.
21. Thus, a simple assertion that the evidence *may* have some relevance independent of the inference of bad character is not sufficient. A court should also consider how a jury is likely to interpret the evidence, and note that juries may be unable to separate the prior evidence from an inference of bad character. *Kaufman v. People*, 202 P.3d 542 (Colo. 2009); *Yusem v. People*, 210 P.3d 458 (Colo. 2009).
22. The same concerns the court had in *Yusem* are applicable in this case. Any possible minimal probative value is outweighed by the jury's like *actual* use of this evidence, and the fact that this evidence will inject unnecessary, confusing, and time-consuming collateral issues into this case, including Mr. Candelario's actual lack of involvement in Dena Candelario's disappearance; the actual effect of her disappearance on Mr. Candelario's status and ability to marry in the church; the fact that Dena Candelario's disappearance actually did not cause Mr. Candelario to be in bad standing with the church; the additional "bad acts" on Mr. Candelario's part of being in a relationship with two different women and leaving Dana Franklin for Pamela Candelario; Dana Franklin's bias against Mr. Candelario and mischaracterization of their relationship; and the actual beliefs of Jehovah's Witnesses, just to name a few.
23. Given the minimal probative value (if any) of the evidence, the likelihood that the jury will misuse it, and the collateral issues it will inject and time that will be needed to properly address it (note that the investigation by Pueblo Police Department encompasses almost 30 pages and involves numerous witnesses that would be necessary if this evidence were admitted), the evidence should be excluded.

**THE PROPOSED EVIDENCE IS INADMISSIBLE UNDER C.R.E. 401, 402 AND
403**

24. Even if the court views this evidence as *res gestae* evidence, it is still inadmissible under C.R.E. 401 *et seq.* *Res gestae* evidence must still be relevant, and its prejudicial value must not substantially outweigh the danger of unfair prejudice. C.R.S. 401, 402, 403; *People v. Jimenez*, 217 P.3d 841 (Colo. App. 2008).
25. As noted above, the proffered evidence's relation to the case at bar is minimal as to be virtually nil. The prosecution's argument as to the effect of Dena Candelario's disappearance on Mr. Candelario's standing in the church, and ability to remarry, is undermined by the fact that:
- a. Mr. Candelario was "shunned" and prohibited from remarrying not because the church still considered Dena Candelario to be alive, but because Mr. Candelario had been carrying on a simultaneous relationship with Dana Franklin and Pamela Candelario (reported to the church by a scorned Dana Franklin after Mr. Candelario chose to end their relationship in favor of Pamela Candelario);
 - b. Because Dena Candelario had engaged in romantic and/or sexual relationships while still married to Ralph Candelario, under the rules of the church allowing for divorce and remarriage *either* when the former spouse died or engaged in adultery, Ralph Candelario could have divorced her within the church and still been in good standing and allowed to remarry within the church;
 - c. Ralph and Pamela Candelario did in fact remarry, and within a year or two of doing so were back in good standing with the church and their marriage recognized by the church;
 - d. There is no indication that Mr. Candelario had any intent or desire to leave Pamela Candelario or pursue a relationship with any other woman, which could have been hindered by Pamela Candelario's body not being found;
 - e. The myriad *other* reasons why Mr. Candelario may have stated that Pamela Candelario's murder was the result of a home invasion gone wrong, including (a) the difficulty of disposing of a body; (b) the inevitable questions and investigation that would inevitably occur if Pamela Candelario had simply vanished; (c) not wanting to be suspected or convicted of a homicide, and (d) the possibility that Pamela Candelario's murder may have, indeed, been the result of a home invasion.
26. There is no evidence supporting the prosecution's tortured theory of how Dena Candelario's disappearance nearly ten years prior to Pamela Candelario's murder is relevant to the case at bar; no witness or actual evidence suggests that Dena Candelario's disappearance was a factor. The prosecution's argument, far from establishing any link between the two, is plainly a back-door attempt to raise the jury's suspicions about what actually happened to Dena Candelario, and thus make them suspicious about Mr. Candelario's involvement in Pamela Candelario's murder.

27. Thus, the proffered evidence is wholly irrelevant and should be excluded under C.R.E. 401 and 402.
28. Even if the court does find some minimal probative value, as noted above, an analysis of admissibility under C.R.E. 403 “contemplates the consideration of such factors as the importance of the fact of consequence for which the evidence is offered, the strength and length of the chain of inferences necessary to establish the fact of consequence, the availability of alternative means of proof, whether the fact of consequence for which the evidence is offered is being disputed, and, if appropriate, the potential effectiveness of a limiting instruction.” *Vialpando v. People*, 727 P.2d 1090, 1096 (Colo. 1986).
29. The prosecution’s theory of relevance to this evidence depends on inference upon inference, weak link after weak link. In addition to the actual flaws in the prosecution’s argument noted in Paragraph 25 above, (a) Dena Candelario disappeared nearly a decade before Pamela Candelario’s death; (b) the evidence relates not to any motive on Ralph Candelario’s part for the actual murder, but rather his motive to report her murder as the result of a home invasion; (c) the fact that there are many other possible motives for him to so report, including that the murder was actually a home invasion; and (d) who actually killed Pamela Candelario is very much in dispute, and in fact identity is the main issue in this case; if it was not Ralph Candelario who committed the murder, then anything at all involving Dena Candelario is completely irrelevant.
30. The issue in this case is one of identity. Mr. Candelario has always maintained that he did not kill Pamela Candelario. Dena Candelario’s disappearance has no relevance to issue of identity, and the prosecution does not claim that it does; rather, it is argued to be relevant only to Mr. Candelario’s actions after the fact *if in fact* he did kill Pamela Candelario. If he didn’t, which he maintains he did not, the entire issue of Dena Candelario’s disappearance becomes nothing more than a sideshow.
31. As noted above, the fact that Dena Candelario, Mr. Candelario’s first wife, went missing ten years ago and has never been found – regardless of any additional information – is extremely prejudicial. The natural tendency of the jury will be to view with extreme suspicion any man with two wives who disappeared or died under suspicious circumstances; they will not be able to limit this information to a chain of inferences and arguments making this fact somehow collaterally relevant to a murder that Mr. Candelario maintains he did not commit at all. A limiting instruction would be insufficient to limit this information to the extremely narrow, attenuated purpose proposed by the prosecution.
32. Moreover, admission of this evidence would open the door to a whole host of other issues, collateral to the actual issue of who murdered Pamela Candelario. To rebut the natural inference that the jury would draw – that Mr. Candelario was

involved in both – the defense may seek to introduce the full circumstances of her disappearance, the investigation clearing Mr. Candelario, Dena Candelario’s online relationships with other men, the church’s actual beliefs about divorce, adultery, and murder, etc. Essentially, the trial would be forced down a rabbit hole about Dena Candelario, instead of focusing on the actual issue at bar: who killed Pamela Candelario?

33. The prosecution’s argument for admissibility in this case is factually flawed, tenuous at best, and merely an attempt to divert the jury from a fair consideration of who actually killed Pamela Candelario by underhandedly painting Mr. Candelario as a suspicious figure whose wives tend to mysteriously and conveniently disappear or pass away, and thereby cast doubt on his assertion that he had nothing to do with either. The actual effect of this evidence is unfairly prejudicial, not at all or only minimally relevant in a meaningful way, and threatens to overwhelm the entire trial with collateral matters, and should be excluded under C.R.E. 401, 402, and 403.

THEREFORE, the defense requests that the court DENY the prosecution’s motion.

<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></p> <p>_____ SIGNATURE</p>
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