

DISTRICT COURT, LA PLATA COUNTY, COLORADO 1060 East Second Avenue Durango, Colorado 81301	<div style="border: 2px solid black; padding: 5px; text-align: center;"> <p>ORIGINAL FILED / REC'D IN COMBINED COURT LA PLATA COUNTY, COLORADO</p> <p style="font-size: 1.5em; font-weight: bold;">APR 19 2010</p> <p><input type="checkbox"/> COURT USE ONLY <input type="checkbox"/></p> <p style="font-weight: bold;">DEPUTY CLERK</p> </div>
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff, v. MARK REDWINE, Defendant	
Megan Ring, 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-113]</p> <p>OBJECTION TO ENDORSEMENT OF DOCTOR MULHERN, DEMAND FOR DISCOVERY DEMAND FOR SCHRECK HEARING</p> <p style="text-align: right;">PUBLIC ACCESS</p>	

Mr. Redwine moves the Court for an Order prohibiting all evidence pertaining to the testimony of Dr. Dawn Mulhern, 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 and Child Abuse Knowingly/Recklessly Causing Death F2.
2. The prosecution has endorsed:
 - Dr. Dawn Mulhern
 - Department of Anthropology
 - Fort Lewis College
 - 1000 Rim Drive
 - Durango, CO 81301
 - Expert in Forensic Anthropology

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. Forensic Anthropology is a broad field of study that draws upon forensic pathology, zoology, ecology, anthropology, physical anthropology, ballistics, tool mark analysis, meteorology, geography, crime scene investigation, human evolution, and other fields. Simply endorsing an expert in the field of physical anthropology is akin to endorsing an expert in “science.” Therefore the prosecution’s endorsement is too broad to put defense counsel on notice as to: (a) what subgenres of forensic anthropology Dr. Mulhern is qualified as an expert, (b) what she will specifically testify about, (c) what her specific opinions will be at trial, (d) what fields of science she draws her opinions from, (e) what data she is relying upon in forming her opinions, (f) what specific articles, books, treatises, and other materials she is drawing from when forming her opinions.
4. Dr. Mulhern was contracted by law enforcement and the Prosecution to examine skeletal remains believed to belong to Dylan Redwine. She examined femora, a tibia, a clavicle, a scapula, and a partial cranium at the behest of law enforcement. Defense Counsel is in possession of Dr. Mulhern’s reports regarding those examinations and photographs she took during her examinations of skeletal remains. Defense Counsel is also in possession of written summaries of interviews Dr. Mulhern has done with law enforcement and the Prosecution. Defense Counsel has interviewed Dr. Mulhern about her examinations of the skeletal remains.
5. However, Defense Counsel’s efforts at investigating this witness do not relieve the Prosecution from their duty, pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963) and CRCP 16(I)(a) to provide the following to Defense Counsel:
 - a. A written summary specifying exactly what Dr. Mulern will testify to;
 - b. The data upon which she is relying upon in forming her opinions – specifically, when she received the skeletal remains, what condition they were in, and what changes they underwent during her examination;
 - c. The materials and training she relies on in opining that some of the damage to the remains is from animal scavenging;
 - d. All materials and training and other experts opinions she relies on in opining about tool marks on the remains;

- e. All materials and training she relies on in opining that scavenging marks form a “u” shaped groove while tool marks form a “v” shaped groove;
 - f. All materials, training and other experts’ opinions she relies on in opining that two “kerf” marks on the right zygoma of the partial cranium are indicative of tool marks and not environmental damage;
 - g. All materials and training she relies on in opining that the two “kerf” marks on the right zygoma of the partial cranium could not be caused by weather, water, ice, temperature variations, mammals, birds, insects and what her methodology is for eliminating weather, water, ice, temperature variations, mammals, birds, insects from the causation of the kerf marks;
 - h. All materials and training she relies upon in her analysis: of the two fractures of the frontal bone of the cranium, the purported separation of the sutures on the cranium, purported bending/denting of the cranium and specifically, why she can or cannot attribute those defects to animal scavenging or other environmental factors, what animals she believes could not have caused those defects, and why she cannot attribute those fractures to animal activity.
6. Because Defense Counsel believes that Dr. Mulhern will testify about the fields of zoology, tool mark analysis, physical anthropology, forensic pathology, forensic anthropology, ecology, and other fields that she may not be qualified to opine about and because the prosecution has not provided a proper endorsement nor summary of her proposed testimony, Defense Counsel requests Shreck Hearing on the pro-offered testimony as to the reliability of the methodologies she employed in forming her opinions and her qualifications to offer opinions about cause of death, circumstances surrounding death, animal behavior, and forensic pathology.

II. Law and Analysis

7. 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, e.g., U.S. Const. amends. V, VI, XIV; Colo. Const. art. II, §§ 16, 23, 25; *Lisenba 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).

8. The Colorado Supreme Court has “channeled a trial court’s discretion” to admit expert testimony through the test announced in *People v. Shreck*, 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. 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; *Shreck*, *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. *Shreck*, 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, e.g., *Shreck*, 22 P.3d at 77; *Salcedo*, 999 P.2d at 838; *Brooks*, 975 P.2d at 1114.
9. 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).

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: 4 19 19

/s/ Justin Bogan

Justin Bogan, No. 33827
Deputy State Public Defender
Dated: 4 19 19

Certificate of Service

I hereby certify that on April 19, 2019 I served the foregoing document by e-filing same to all opposing counsel of record.

/s/ John Moran

/s/ Justin Bogan