

DISTRICT COURT, LA PLATA COUNTY, COLORADO Court Address: 1060 E. Second Ave., Durango, CO 81301 Phone Number: (970) 247-2304	ORIGINAL FILED / REC'D IN COMBINED COURT LA PLATA COUNTY, COLORADO MAY - 3 2019 DEPUTY CLERK ▲ COURT USE ONLY ▲
Plaintiff: PEOPLE OF THE STATE OF COLORADO v. Defendant: MARK ALLEN REDWINE	Case Number: 17 CR 343
Christian Champagne - District Attorney, #36833 Matthew Durkin, Special Deputy District Attorney, #28615 Fred Johnson, Special Deputy District Attorney, #42479 P.O. Drawer 3455, Durango, Colorado 81302 Phone Number: (970) 247-8850 Fax Number: (970) 259-0200	
PEOPLE'S RESPONSE TO [D-113] OBJECTION TO ENDORSEMENT OF DOCTOR MULHERN, DEMAND FOR DISCOVERY, DEMAND FOR SHRECK HEARING [PUBLIC ACCESS]	

NOW COME the People, by and through Christian Champagne, District Attorney, in the County of La Plata, and hereby respond to defense motion [D-113] and move this honorable Court to overrule the defendant's objection, deny defendant's demand for discovery beyond Crim. P. Rule 16, deny defendant's demand for a *Shreck* hearing, and grant an order that the expert's testimony is admissible, relevant, and reliable pursuant to C.R.E. 702 and C.R.E 403. AS GROUNDS for this response, the People state as follows:

1. The defense has objected to the endorsement of the People's expert Dr. Dawn Mulhern, an expert in Forensic Anthropology.
2. The defense argues that the endorsement and discovery lack sufficient information. In paragraph 3 of their motion, the defense argues that the People's endorsement does not sufficiently narrow the fields of forensic anthropology in which Dr. Mulhern is an expert, lacks sufficient details regarding her potential testimony, and requires further discovery. D-113, ¶ 3.
3. However, in paragraph 4, the defense goes on to describe exactly what Dr. Mulhern did on behalf of law enforcement in this case, what her potential testimony will entail, and the discovery that forms the basis of that testimony (three separate reports in which she described her expert opinion in great detail,

supported by photographs, in addition to summaries of interviews about her work on the case, and a defense interview of the expert.). *Id.* at ¶ 4.

4. The defense demands the expert's written summary of the proposed testimony, data relied upon in all conclusions, list of materials and training the expert relied upon, and a detailed explanation of her opinion regarding specific conclusions. The defense further demands a "...Shreck Hearing on the pro-offered testimony..."

I. RESPONSE TO DEFENSE OBJECTION TO ENDORSEMENT OF EXPERT AND DEMAND FOR DISCOVERY.

5. On the topic of expert discovery, the relevant sections of Crim. P. Rule 16 state:

The prosecuting attorney shall make available...any reports or statements of experts made in connection with a particular case, including results of physical or mental examinations and of scientific tests, experiments or comparisons.

Crim. P. Rule 16 (I)(a)(1)(III).

Where the interests of justice would be served, the court may order the prosecution to disclose the underlying facts or data supporting the opinion in that particular case of an expert endorsed as a witness. If a report has not been prepared by that expert to aid in compliance with other discovery obligations of this rule, the court may order the party calling that expert to provide a written summary of the testimony describing the witness's opinions and the bases and reasons therefor, including results of physical or mental examination and of scientific tests, experiments, or comparisons. The intent of this section is to allow the defense sufficient meaningful information to conduct effective cross-examination under C.R.E. 705.

Crim. P. Rule 16 (I)(d)(3).

6. The defense demand for discovery exceeds the scope of what is required under Rule 16, is without legal authority, is unreasonable and unduly burdensome, and veers into the realm requiring the prosecution to conduct investigation on behalf of the defense. *See People v. District Court of El Paso County*, 790 P.2d 332, 338 (Colo. 1990) (holding that defense must show its request is reasonable, including a showing that the material or information sought is unavailable from any source other than the prosecution); *see also Garrigan v. Bowen*, 243 P.3d 231, 235 (Colo. 2010) (holding that an "expert considers information 'in forming the opinions' if the expert reviews the information with the purpose of forming opinions about the particular case at issue.").

7. The People have already provided discovery sufficient to meet the requirements of Crim. P. Rule 16 and provided sufficient meaningful information to conduct effective cross-examination under C.R.E. 705. To wit:
 - a. The expert's contact information was provided in the expert endorsement.
 - b. The expert's *curriculum vitae* were provided in discovery pages 1881-1893. *Exhibit 1*.
 - c. A written summary of the expert's opinion and the bases and reasons therefor, including results of physical or mental examination and of scientific tests, experiments, or comparisons, if any, was provided in discovery pages on discovery disk #339. *Exhibits 2, 3, 4*.
 - d. A written summary of interviews with Dr. France conducted by both the prosecution and defense in which she details and described her work and the substance of her opinion and proposed testimony. *Exhibits 5, 6*.
8. The endorsement of the expert is specific and narrow, and in concert with the *curriculum vitae*, summary of the expert's opinions and the bases and reasons therefor, and the accompanying results of physical or mental examination and of scientific tests, experiments, or comparisons, if any, provide ample notice of the expert's testimony. As such, the People ask the court to deny the defense demand for discovery beyond what is required under Rule 16.

II. RESPONSE TO DEFENSE DEMAND FOR SHRECK HEARING.

9. The defense demands a *Shreck* hearing without supporting argument or legal authority.
10. *People v. Shreck*, 22 P.2d 68, 70 (Colo. 2001) provides a liberal, inclusive approach in determining the admissibility of expert testimony, finding that C.R.E. 702 applies to all types of expert testimony. To determine admissibility of proffered expert testimony, the Court should consider whether the scientific principles underlying the testimony are reasonably reliable, whether the expert is qualified to offer an opinion, its helpfulness to the jury, and potential prejudice. *Ramirez, People v. Ramirez*, 155 P.3d 371, 378 (Colo. 2007) (holding that C.R.E. 401, 402, 403, and 702 govern the admissibility of expert testimony).
11. In situations in which the expert's opinion is based on experience-based specialized knowledge, as opposed to hard science, the trial court should focus exclusively on C.R.E. 702 and 403, as opposed to incorporating the well-known *Frye* and *Daubert* factors. *Brooks v. People*, 975 P.2d 1105, 1108-14 (Colo. 1999); *see also Frye v. United States*, 293 F. 1013 (D.C.Cir. 1923), *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).
12. The Court has discretion to rule on a *Shreck* hearing request based on the pleadings, and is not required to hold an evidentiary hearing if it has sufficient

information before it to make specific findings under C.R.E. 702 and 403. *People v. Rector*, 248 P.3d 1196, 1201 (Colo. 2011) (citing *Shreck*, 22 P.3d at 77).

13. The discretion to rule without an evidentiary hearing "... comports with the trial court's need to "avoid unnecessary reliability proceedings in ordinary cases where the reliability of an expert's methods is properly taken for granted..."” *Id.* (citing *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 152, 119 S.Ct. 1167, 143 L.Ed.2d 238 (1999); *see also People v. Wilson*, 318 P.3d 538, 545-46 (Colo. 2013) (declining to hold a *Shreck* hearing on fingerprint comparison evidence as such evidence represents "...an ordinary case where reliability is properly taken for granted”).
14. Furthermore, the Court may deny the *Shreck* hearing request if the moving party fails to state a specific challenge to the expert testimony. *Id.* In deciding whether a determination of admissibility requires a *Shreck* hearing, a trial court must consider the issues as framed in the motion before it. *Id.* As the Court in *Rector* noted:

A trial court cannot be expected to intuit the challenge brought by the parties. Rather, a party raising a challenge under *Shreck* to the admissibility of expert testimony must sufficiently identify the testimony and/or the witness being challenged.

Id. If the moving party’s challenge is too general for the Court to identify a specific challenge to the expert testimony, the Court may deny the motion summarily. *Id.*
15. The scientific principles underlying the testimony are reasonably reliable; Colorado has recognized that the type of testimony sought to be admitted here is admissible. *See People v. Garner*, 381 P.3d 320 (Colo. App. 2015)(holding that defense attorney’s failure to call a forensic anthropologist following the testimony of the prosecution’s forensic anthropologist was not ineffective assistance of counsel (implying that such testimony is admissible and reliable)).
16. The expert is qualified to opine on the topic. *See Exhibit 1.*
17. The evidence is relevant and helpful to the jury as it speaks to whether the victim’s remains reflect details and information regarding the cause and manner of death, a fact of consequence to the determination of the action, and thus should be admitted. *See Exhibits 2, 3, 4; see also C.R.E. 401, 402.* The probative value of the evidence is not substantially outweighed by its danger of unfair prejudice, confusion, misleading the jury, or undue delay or waste of time. *See Exhibits 2, 3, 4; see also C.R.E. 403.*
18. The People request the Court to rule on the admissibility of this evidence without a *Shreck* hearing. The Court has sufficient information before it to make specific

findings under C.R.E. 702 and 403, the defense motion fails to clearly identify a specific and detailed challenge to the proffered testimony, and ruling without an evidentiary hearing "... comports with the trial court's need to "avoid unnecessary reliability proceedings in ordinary cases where the reliability of an expert's methods is properly taken for granted...." See *Rector*, 248 P.3d at 1201.

WHEREFORE, the People request that the court OVERRULE the defendant's objection, DENY defendant's demand for discovery beyond Crim. P. Rule 16, DENY defendant's demand for a *Shreck* hearing, and GRANT an order that the expert's testimony is admissible, relevant, and reliable pursuant to C.R.E. 702 and C.R.E 403.

Respectfully submitted this May 3, 2019.

CHRISTIAN CHAMPAGNE
DISTRICT ATTORNEY
6th JUDICIAL DISTRICT

/s/ Christian Champagne
Christian Champagne #36833
District Attorney

CERTIFICATE OF SERVICE

I hereby certify that on May 3, 2019, I delivered a true and correct copy of the foregoing to the parties of record via e-service.

/s/ Christian Champagne
Christian Champagne