

DISTRICT COURT, LA PLATA COUNTY, COLORADO Court Address: 1060 E. Second Ave., Durango, CO 81301 Phone Number: (970) 247-2304	DATE FILED: April 24, 2020 12:34 PM
Plaintiff: PEOPLE OF THE STATE OF COLORADO v. Defendant: MARK ALLEN REDWINE	▲ COURT USE ONLY ▲
	Case Number: 17CR343
ORDER REGARDING THE PEOPLE'S NOTICE OF SUBMISSION OF EXHIBITS IN SATISFACTION OF THE COURT'S ORDER RELATING TO D-47	

The defendant is charged with murder in the second degree and child abuse resulting in death in relation to the death of the defendant's thirteen-year-old son, Dylan. The defendant first reported Dylan missing from the defendant's home on November 19, 2012. The prosecution has filed a second motion in limine (P-46) seeking:

1. To preclude the testimony of Angela Lee and Frederick Miller that they saw Dylan or someone similar to Dylan after he was reported as being missing;
2. To preclude the testimony of Freddy Cracium and Donna Esquibel Cracium concerning the defendant's love for Dylan and his good character; and,
3. Other character evidence attacking the character of the defendant's ex-wife, Elaine Hall, Dylan's brother, Cory Redwine, and other undisclosed individuals.

Angela Lee and Frederick Miller

The prosecution argues that as to Angela Lee and Frederick Miller, that they possess false recollections that they saw Dylan or someone who looked like Dylan and their memories of seeing Dylan have been debunked by further investigative efforts of law enforcement. The prosecution cites CRE 401 and 403 claiming that the probative value of such evidence is

substantially outweighed by the danger of prejudice to the prosecution and confusion to the jury. As to Angela Lee, the Court disagrees. If Ms. Lee's testimony is found to be credible by the jury, the probative value of her sighting of Dylan after he was reported missing by his father is extremely high as it would directly contradict the prosecution's theory of the case. The prosecution will argue that the defendant became upset with Dylan during the night of November 18, 2012, or early the next morning which led to Dylan's death and the subsequent disposal of Dylan's remains at two different locations on Middle Mountain. If Dylan was seen after he was reported missing by his father, the prosecution would suffer a severe blow to their case against Mr. Redwine. While the accuracy of Ms. Lee's belief that she saw Dylan after he was reported missing is disputed, determining the credibility of Ms. Lee in this regard is solely the province of the jury. Based upon the offers of proof, the Court cannot find that Ms. Lee is incredible as a matter of law. The Court is not aware of, and has not been cited any, authority that would allow it to decide that Ms. Lee is mistaken and to remove from the jury their ability to make findings as to the credibility of a witness. The motion regarding Ms. Lee is denied.

According to pages 6-7 of Exhibit 6 attached to P-46¹, Frederick Miller saw a boy up high in the Middle Mountain the last day of either the second or fourth hunting season. The implication from Mr. Miller's memory is that the boy that he saw was Dylan Redwine. No matter which day Mr. Miller saw a boy on Middle Mountain, his recollection has absolutely no relevance to this case. The latest Mr. Miller claims to have seen a boy is during the afternoon of November 18, 2012. There is no dispute in the evidence that Dylan did not arrive at the Durango-La Plata County Airport until after dark on November 18, 2012. Even were Dylan seen by Mr. Miller in La Plata County in the afternoon of November 18, 2012, whatever happened to

¹ While the prosecution provided exhibits to their motion as offers of proof, the defense did not present any offers of proof to rebut the factual allegations in the prosecution's motion or exhibits.

Dylan happened after Mr. Miller believed he may have seen Dylan. The motion to exclude the testimony of Mr. Miller is granted pursuant to CRE 401 and 403.

Freddy Cracium and Donna Esquibel Cracium

Apparently, Investigator Cody Rieb of the La Plata County Sheriff's Office called Freddy Cracium on September 19, 2019, in response to a job application wherein Mr. Cracium listed the defendant as a job reference. Exhibit 7 attached to P-46. The substance of the interview was that Mr. Cracium thought highly of Mr. Redwine, did not believe that Mr. Redwine could have killed his son because Mr. Redwine obviously loved Dylan. Mr. Cracium indicated that based upon his conversations with Mr. Redwine that Mr. Redwine's former wife "hated" Mr. Redwine and would do whatever she could to get Mr. Redwine "... out of Dylan's life. . ." Exhibit 7, Disc. p. 24676. The prosecution objects to Mr. and/or Mrs. Cracium testifying concerning how much Mr. Redwine loved Dylan or how good a person Mr. Redwine is.

While it is clear that the prosecution intends to introduce evidence that Dylan Redwine was very upset with his father prior to his disappearance, the Court has not been provided any offer of proof and does not know of any allegation that Mr. Redwine did not love his son. To the Court's current knowledge, the prosecution intends to introduce evidence of **Mr. Redwine's** character that Mr. Redwine engaged in what many would consider abnormal sexual behavior, and when confronted with such behavior, reacted violently. The evidence that Mr. Redwine appeared to be a good person who loved his son has no bearing on these two character traits. The fact that Dylan was upset with his father and did not wish to visit him during Thanksgiving of 2012 is a reflection on Dylan's character, not Mr. Redwine's character. Character traits of a criminal defendant are generally not admissible in criminal trials unless the defendant "... **possesses a character trait that relates to the alleged offense-a 'pertinent' trait of his or her**

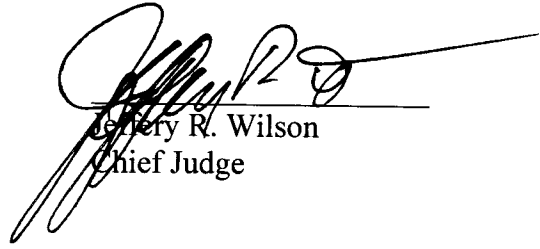
character.” *People v. Miller*, 890 P.2d 84, 91 (Colo. 1995); CRE 401(a)(1). [Emphasis added]. Based upon the offer of proof provided to the Court, the Court will not allow either Mr. or Mrs. Cracium to testify concerning Mr. Redwine’s good character or that he loved his son unless evidence is presented that Mr. Redwine did not love his son or some other evidence is admitted that the proposed character evidence rebuts. This order does not preclude Mr. or Mrs. Cracium from testifying to facts that may demonstrate confirmation bias and/or motivation on the part of law enforcement to convict Mr. Redwine, regardless of exculpatory evidence, if a proper foundation is first laid for such evidence and the Craciums have actual knowledge that would support such a conclusion.

Evidence Attacking the Character of Ms. Hall, Dylan’s Brother, Cory Redwine, and Others

Finally, the prosecution seeks a pretrial order to prevent the defendant from introducing evidence that Dylan’s mother, Dylan’s brother, Cory, and others were alcoholics, used, bought, and sold drugs, and engaged in violent acts. While the Court is certainly not as familiar with the facts surrounding this case as are the attorneys, the Court is not aware of any argument or circumstance that would allow the defense to present such evidence. However, the Court cannot enter the pretrial order requested by the prosecution. The Court is not able to accurately predict all the evidence that will be presented in this case. The Court will therefore delay ruling upon this portion of the prosecution’s motion until trial. The Court does order, however, that before the defense attempts to introduce character evidence of Elaine Hall, Cory Redwine, or any other prosecution witness, or referring to such evidence in front of the jury, the defendant provide an offer of proof and argument to the Court and counsel explaining why such evidence is admissible.

DONE this 24th day of April, 2020.

BY THE COURT:



Jeffrey R. Wilson
Chief Judge