

DISTRICT COURT LA PLATA COUNTY, COLORADO 1060 E. SECOND AVENUE DURANGO, COLORADO 81301	DATE FILED: May 10, 2019 10:39 AM FILING ID: 4438E93C806F5 CASE NUMBER: 2017CR343
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff v. Mark Allen Redwine Defendant	COURT USE ONLY
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	
<p style="text-align: center;">D-118 MOTION FOR RE-HEARING ON PROSECUTION'S MOTION TO INTRODUCE PURPORTED EVIDENCE OF "SINGULAR OTHER ACT" PUBLIC ACCESS</p>	

Defense Counsel for Mark Redwine is in possession of the "SUPPRESSED ORDER REGARDING THE PROSECUTION'S NOTICE OF INTENT TO PRESENT EVIDENCE OF SINGULAR OTHER ACT PURSUANT TO C.R.E. 404(b) (P-8). Defense Counsel requests a rehearing on that motion.

THE STORIES OF DENISE HESS AND KATHY BERRI

1. Dylan Redwine went missing from his father's home on or about November 18 and 19, 2012. His father, the Defendant in this case, owned a house in the Vallecito, Colorado area. Dylan was visiting his father on November 18 and 19, 2012, consistent with a court order for visitation issued in 05DR255. Mark Redwine reported his son was missing on November 19, 2012. Since reporting his son missing, Mark Redwine has been the primary suspect in Dylan's disappearance and death in the eyes of law enforcement and the community at large despite there being no compelling evidence to support that suspicion. He has also been the target of a campaign orchestrated by Dylan's mother designed to inculcate him in this matter. Some of Dylan's skeletal remains were found in June 2013. Said remains were found in the wilderness area known as "Middle Mountain" in the Vallecito, Colorado area.

2. After some of Dylan's skeletal remains were found in June 2013. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Id.

3. [REDACTED]
[REDACTED]
[REDACTED]

4. [REDACTED]
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[REDACTED]
[REDACTED]

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[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

7. [REDACTED]
[REDACTED]

DR. DIANE FRANCE'S REPORTS

8. [REDACTED]
[REDACTED]

- [REDACTED]
[REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

e.

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9. This "theory" rests upon the OPINION of Dr. France, the anthropologist that repeatedly examined the PARTIAL cranium of Dylan Redwine. The prosecution submits that Dr. France summarily found that Dylan suffered from blunt force trauma to the head while he was alive.

10. Dr. France, in Prosecution Exhibit 3 states, "There are many fracture on the edges of the segment, many of which *can be most conservatively explained by scavenging*. There are numerous toothmarks on the section . . . but there are also fractures that *cannot be easily explained* by scavengers. The left frontal bone and left coronal suture . . . have indications of perimortem blunt trauma."

11. By the prosecution's own expert analysis, many of the fractures to the partial cranium of Dylan Redwine were caused by animal scavenging. Other fractures may not be *as easily explained* by scavenging. The learned doctor *cannot rule out scavenging* as the source of injury of the other fractures she also associates with blunt force trauma. In fact, in a subsequent conversation with the prosecutors in this case, Dr. France submitted that the other fractures could have been caused other forces besides blunt force trauma:

Dr. France said that she agreed that the bending could have occurred from pressure being applied by an animal. Dr. France said she also gave a hypothetical of a cow stepping on it or kicking it, or the cranium being dropped on rocks or rocks piled up on the cranium. She said she doubted this would have caused that injury, and that her opinion was that the fractures were caused by blunt force trauma, and that these injuries were perimortem. Exhibit 1.

12. Further, the learned doctor submits that the fractures in question were "perimortem," meaning they could have been inflicted, days, weeks, or months after death – not necessarily prior to or at time of death. *Id.* As to the two marks on the right zygoma of the partial cranium, the doctor posits that in her opinion those could not have been made by a large scavenger or rodent, but were made by a "sharp cutting tool."

13. The prosecution has failed to prove in their pleadings and brief argument that blunt force trauma was inflicted on Dylan Redwine by Mark Redwine because they cannot even prove blunt force trauma inflicted by *any person* occurred to Dylan's partial cranium.

CORY REDWINE'S STORY

14. [REDACTED]

PROCEDURAL HISTORY

15. [REDACTED]

Mr. Redwine was indicted by a Grand Jury for the murder of Dylan Redwine. Mr. Redwine was indicted on July 20, 2017. On September 14, 2018 the Prosecution filed PEOPLES NOTICE OF INTENT TO PRESENT EVIDENCE OF SINGULAR OTHER ACT PURSUANT TO C.R.E. RULE 404(b) (P-8). Mr. Redwine objected to this evidence on September 20, 2018 in D-46 OBJECTION TO THE ADMISSION OF 404(B) EVIDENCE, TESTIMONY FROM DENISE HESS (NOW DECEASED) AND/OR KATHY BERRI AND REQUEST FOR A HEARING. The Court permitted roughly 15 minutes of argument from Defense Counsel on this issue, no testimony was taken or submitted at the hearing on this issue. The Court granted the Prosecution's Motion in a written order on January 29, 2019.

[REDACTED]

16. As set forth in People v. Spoto, 795 P.2d 1314 (Colo. 1990), and its progeny, in order for other acts evidence to be admissible it must pass the follow four-part test: it must (1) relate to a material fact; (2) be logically relevant by tending to make that material fact more probable or less probable; (3) logical relevance must not depend on the intermediate inference that CRE 404 prohibits—that the defendant committed the crime charged because of the likelihood that he acted in conformity with his bad character as reflected in the other acts evidence; and (4) its probative value must not be substantially outweighed by its prejudicial impact. Id.

17. Before admitting prior act evidence, the “trial court must be satisfied by a preponderance of the evidence that the prior bad act occurred and that the defendant committed the act.” People v. Warren, 55 P.3d 809, 814 (Colo. App. 2002) (citing People v. Garner, 806 P.2d 366, 373 (Colo. 1991)). A fact is established by a preponderance of the evidence when, upon

consideration of all the evidence, the existence of that fact is more probable than its nonexistence. See Page v. Clark, 592 P.2d 792, 800 (Colo. 1979).

18. [REDACTED]

19. [REDACTED]

20. This Court notes in its Order on this matter that "There was no evidence presented by the defense that this confrontation did not occur as relayed in the offer of proof [by the Prosecution]." The Onus is not on the Defendant to rebut a weak non-testimonial offer of proof that falls far short of the burden of a "preponderance of the evidence." Id. [REDACTED]

[REDACTED]

20. To determine whether evidence relates to a material fact, courts ask whether the other act evidence can be used to prove "(1) actual elements of the charged offense" or "(2) intermediate facts, themselves probative of ultimate facts." Yusem v. People, 210 P.3d 458, 464 (Colo. 2009). Under the second prong of the Spoto analysis, Courts look at whether the evidence "has any tendency to make the existence of the material fact more probable or less probable than without the evidence." Id. at 464-65. The Prosecution's proffer and hypothesis does not make a material fact more or less probable, it creates a fact not supported by corroborated by other evidence.

21. [REDACTED]

[REDACTED]

22. The Prosecution cannot prove what the cause of death was to Dylan Redwine. Their own pathologist and coroner both claim that cause of death is undetermined. See Exhibit 2 and Exhibit 3. The Prosecution's own Forensic Anthropologist cannot rule out that fractures to the partial cranium came from animal and environmental damage. See Exhibit 1.

23. Under the third prong of the Spoto analysis, Courts look at whether 'the logical relevance of the proffered evidence depends upon an inference that a person who has engaged in such misconduct has a bad character and the further inference that the defendant therefore engaged in the wrongful conduct at issue.' Id. at 466. Where other act evidence is offered to prove a mental state, the prior conduct must involve the same intent that the prosecution seeks to establish in the charged offense. People v. Casias, 312 P.3d 208 (Colo. App. 2012).

24. [REDACTED]

25. Evidence is not admissible on this theory if the prior crime and the crime charged simply involved similar misconduct, People v. Williams, 2016 WL 1385329 (Colo. App. 2016) (holding that mere repetition of a similar crime like drug dealing does not make a prior transaction probative of a common plan, there being no overarching goal or nexus between each crime; evidence of an earlier, unrelated drug sale was not admissible to show a common scheme or plan in connection with the charged crime).

26. A person acts "knowingly" or "willfully" with respect to conduct or to a circumstance described by a statute defining an offense when he [she] is aware that his [her] conduct is of such nature or that such a circumstance exists. A person acts "knowingly" or "willfully," with respect to a result of his [her] conduct, when he [she] is aware that his [her] conduct is practically certain to cause the result. C.R.S. § 18-1-501.

27. [REDACTED]

Dated: May 10, 2019

/s/ Justin Bogan

Justin Bogan, No. 33827
Deputy State Public Defender

/s/ John Moran

John Moran, No. 36019
Deputy State Public Defender

Certificate of Service

I hereby certify that on May 10, 2019, I served the foregoing document by e-filing same to all opposing counsel of record.

/s/ Justin Bogan

/s/ John Moran