

DISTRICT COURT, LA PLATA COUNTY, COLORADO Court Address: 1060 E. Second Ave., Durango, CO 81301 Phone Number: (970) 247-2304	DATE FILED: February 18, 2020
Plaintiff: PEOPLE OF THE STATE OF COLORADO v. Defendant: MARK ALLEN REDWINE	▲ COURT USE ONLY ▲
	Case Number: 17CR343
Order Regarding the Defendant's Motion in Limine to Introduce Evidence of an Alternative Suspect (D-126)	

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 defendant has filed a motion in limine seeking to be allowed to introduce evidence that four alternative suspects were responsible for Dylan's death, not the defendant. These alternate suspects are Kent Wilson, Martin Webster, Ronald Simpson, and Michael Ford.

In order for a court to introduce evidence of an alternative suspect, the ". . . defendant must prove that the other person committed some act directly connecting that person with the crime charged." *People v. Perez*, 972 P.2d 1072, 1074 (Colo. App. 1998), citing *People v. Armstrong*, 704 P.2d 877 (Colo. App. 1985); *People in Interest of R.L.*, 660 P.2d 26 (Colo. App. 1983). In order to admit alternative suspect evidence, the evidence must be relevant, and its probative value cannot be substantially outweighed by the danger of unfair prejudice, confusion

of the issues, or misleading of the jury. *People v. Elmarr*, 351 P.3d 431, 438 (Colo. 2015); CRE 401 and CRE 403.

The Court notes that it is difficult for the Court to anticipate the exact evidence that will be presented at this trial, particularly considering the number of witnesses endorsed and the volume of evidence that the Court expects to be presented to the jury. Based solely upon the offers of proof in the notice, response, and attached exhibits, the Court makes the following preliminary ruling about each witness to assist counsel in their trial preparation. The Court will reserve making any final rulings regarding the admissibility of such evidence until the trial in the event that other evidence is introduced that differs from the offers of proof presented with this notice and the additional evidence causes the Court to modify its analysis below.

KENT WILSON

The defendant alleges that during a search for Dylan on November 26, 2012, Starla Johnson and James Adcock contacted investigators and told them that they had observed Mr. Wilson driving a white van with a young white male wearing a ball cap with curly blond hair sitting in the passenger seat at 7:00 AM or 8:00 AM on November 19, 2012. Paragraph 6 of the Defendant's Notice of Intent to Introduce Alternate Suspect Evidence. On December 3, 2012, Kallen Elkins contacted law enforcement and told officers that she saw Mr. Wilson driving up Middle Mountain Road (the road that investigators later used to gain access to the two locations where Dylan's remains were eventually found) at 7:30 AM or 8:30 AM on November 19, 2012, with a young white male passenger matching Dylan's description. Ms. Elkins later saw Mr. Wilson driving back down Middle Mountain Road but did not see the boy in Mr. Wilson's van. The notice also states that when Ms. Elkins asked Mr. Wilson about the boy in his van at a vigil

for Dylan, Wilson "... murmured and expletive ... and said he doesn't like small communities."¹ Notice, para. 11. The only information that the Court has about Kallen Elkins is from paragraph 11 of the defendant's notice. The prosecution does not discuss Ms. Elkins in their response to the notice and the Court has not been provided any police reports or other information regarding Ms. Elkins.

William McCarty told law enforcement on March 21, 2013, that he believed Mr. Wilson was involved in Dylan's disappearance. The defendant's notice does not provide any details as to the source of Mr. McCarty's information in this regard. However, the prosecution's offer of proof reflects that Mr. McCarty had no first-hand information about Mr. Wilson being seen with a boy matching Dylan's description, that his information came from James Adcock and Starla Johnson. P. 655 of Exhibit 1 of the Prosecution's Response to Notice to Introduce Alternative Suspects (D-126). According to the defendant's notice, both William McCarty and Angela Lee saw Kent Wilson around Vallecito Lake on November 19, 2012. The defendant's notice also alleges that Mr. McCarty claims that Kent Wilson is a convicted sex offender.

Ms. Johnson and Mr. Adcock informed investigators that between 7:00 AM and 8:00 AM on November 19, 2012, Mr. Johnson saw Kent Wilson in his white van with a boy in the front passenger seat wearing a baseball cap with blond hair. Exhibit 1, p. 80. Mr. Adcock said that at about 1:00 PM that day, he saw Mr. Wilson driving down Middle Mountain Road in the white van and Mr. Wilson was alone in the van. According to Ms. Johnson, Mr. Adcock saw Kent Wilson driving down Middle Mountain Road when Mr. Adcock, along with Ian (last name unknown) and Doug (last name unknown), was driving up Middle Mountain Road to cut

¹ This description of Mr. Wilson's reaction when being asked about the boy in his van is remarkably similar to Ms. Johnson's statement that when she asked Mr. Wilson about the boy in his van at a community Thanksgiving dinner, Wilson stated, "...that was what he hated about fucking small towns..." *Id.*, p. 629.

firewood. *Id.*, p. 629. On March 6, 2013, Starla Johnson recanted her statement saying she confused a second white van with Mr. Wilson's van. *Id.*, p. 527.

James Adcock was interviewed a second time on July 8, 2013, and he gave conflicting dates as to the date he saw Kent Wilson driving his van down Middle Mountain Road, but he was 99% sure the gate on Middle Mountain Road was locked when he saw Mr. Wilson.² *Id.*, p. 630. Mr. Adcock confirmed that he was cutting firewood with two others when he saw Kent Wilson driving down Middle Mountain Road. *Id.* Law enforcement was able to identify Ian Alcouffe and Douglas Chamblee as the other two individuals cutting firewood with James Adcock on the day Mr. Adcock claimed to have seen Mr. Wilson driving down Middle Mountain Road alone. Both Mr. Alcouffe and Mr. Chamblee told investigators that there was snow on the ground the day that they cut firewood with Kent Wilson. Mr. Alcouffe stated it was not the day Dylan was reported missing and they did not see Kent Wilson that day. Mr. Chamblee stated he did not remember seeing Kent Wilson that day and he did not believe that was the same day that Dylan was reported missing. *Id.*, pp. 914 and 5,762.

Kent Wilson was interviewed and stated that he and his girlfriend, Patricia Wiggins, left for Bluff, Utah, on November 14, 2012. *Id.*, p. 17,131. This statement is apparently supported by a transaction on Mr. Wilson's credit card showing that he had purchased \$55.23 of gasoline in Bayfield on November 14, 2012, at 10:55 AM. *Id.*, p. 643. Mr. Wilson and Ms. Wiggins did not

² At the motions hearings held in December of 2018, witnesses testified that only the lower sections of Middle Mountain Road are open during the winter and that the Forest Service locks a gate across the road which blocks off access to the higher portions of the road during snow season. At the December hearings, investigators testified that Dylan's remains were found in two separate locations off of Middle Mountain Road above the gate. If the gate was locked when Mr. Adcock saw Kent Wilson driving down Middle Mountain Road, the probative value of all of the evidence regarding Mr. Wilson being seen with a boy on November 19, 2012, becomes negligible. It appears the defense wants the jury to infer that Kent Wilson had killed Dylan sometime after he was first seen in Mr. Wilson's van and that Mr. Wilson disposed of Dylan's remains before he was seen driving down Middle Mountain Road. If the gate was locked, Kent Wilson could not have taken Dylan's remains to the locations where they were eventually discovered.

leave Bluff to return to La Plata County, Colorado, until the late morning of November 19, 2012. *Id.*, pp. 719 and 17,160-61. An acquaintance, Tamara Desrosiers, told investigators that Kent Wilson and Patricia Wiggins stopped by her residence in Bluff, Utah, on the morning of November 19, 2012, and left in the late morning. *Id.*, p. 17,174. Both Mr. Wilson and Ms. Wiggins state that they purchased gas in their separate vehicles at the K and C store in Bluff, Utah, around noon on November 19, 2012, prior to returning to La Plata County. *Id.*, p. 643. While Kent Wilson's reported cash purchase appears to be supported by a cash receipt obtained by investigators, the bank statement that Patricia Wiggins produced to demonstrate that she purchased gasoline in Bluff showed a time of 2145 hours which, if the time stamp reflects Mountain Time, would be 9:45 PM. *Id.* The time to drive between Bluff, Utah, and Durango is approximately 2½ hours. *Id.* Mr. Wilson reported that the two stopped at a laundromat when they arrived in Durango. He then went to the Huck Finn Exxon on Florida Road before driving to his home in the Vallecito Lake area. *Id.*, p. 719. Credit card records show that a credit card owned by Kent Wilson was used to purchase gas at the Huck Finn gas station in Durango at 3:49 PM. *Id.*, p. 643. The Court takes judicial notice that the Huck Finn gas station is on Florida Road in Durango, that using Florida Road is a commonly used route to get to Vallecito Lake, and that it takes an additional 30 to 40 minutes to drive from Durango to Vallecito Lake. Dylan was first noticed to be missing by Mr. Redwine at about 11:30 AM on November 19, 2012. See the testimony of Investigator Dan Patterson on December 5, 2018. The FBI analyzed cell phone data to determine the general location of Kent Wilson's cell phone during November 17, 18, and 19 of 2012. Cell phone records reveal the Mr. Wilson was not in the Vallecito area when Dylan first went missing. *Id.*, p. 5,891.

Based upon the offers of proof submitted to the Court, the Court finds that the evidence that Kent Wilson was seen driving in the morning of November 19, 2012, with a young male that matched Dylan's description and that afternoon seen driving down Middle Mountain without the young man is of fairly low probative value because none of the witnesses were able to identify the young male as Dylan. The evidence is only relevant in this case if Kent Wilson was seen driving down Middle Mountain Road alone later in the day on November 19, 2012. As stated in footnote 2 above, the evidence allows the jury to infer that Kent Wilson had killed Dylan sometime after he was first seen in Mr. Wilson's van and Mr. Wilson disposed of Dylan's remains before he was seen driving down Middle Mountain Road. The Court is the gatekeeper of evidence and the Court:

need[s] to place reasonable limits on collateral issues, and to avoid encouraging the jury to speculate, *see People v. Perez*, 972 P.2d 1072, 1074 (Colo. App. 1998), alternate suspect evidence must be sufficiently probative to be admissible; that is, it must be both relevant (under CRE 401) and its probative value must not be sufficiently outweighed by the danger of confusion of the issues or misleading the jury, or by considerations of undue delay (under CRE 403).

Elmarr, p. 439.

The Court finds, that as to Kellen Elkins, the lack of any offer of proof, other than what was contained in paragraph 11 of the defendant's notice, makes it very difficult for the Court to issue any pretrial rulings as to whether it should allow Ms. Elkins to testify about Mr. Wilson. If either party has additional information that can be provided to the Court as offers of proof, the Court will consider such information and make a pre-trial ruling regarding Ms. Elkins. The Court is particularly interested in the actual details and circumstances of Ms. Elkins' statements. The Court is also interested in a more detailed explanation of the cell phone evidence showing Mr. Wilson's phone being located in the Bluff, Utah, area and whether the time on the bank statement provided by Ms. Wiggins reflects Mountain Time or some other time zone. If the

parties wish to present additional offers of proof, they shall do so at or before the pretrial conference on March 5, 2012. If no additional offers of proof are made, the Court will make a determination as to the admissibility of Ms. Elkins' statements during the trial.

The Court finds that the evidence William McCarty is able to give at trial is based solely upon talking to Starla Johnson and James Adcock. If hearsay exceptions exist that would allow Mr. McCarty to testify regarding what Ms. Johnson and Mr. Adcock told him, such testimony would only be admissible if the Court admits the testimony of Starla Johnson and James Adcock.

The Court finds that as to James Adcock and Starla Johnson there is significant information in the prosecution's offer of proof that Mr. Adcock's memory is not accurate. Mr. Adcock believes the gate across Middle Mountain Road was locked when he claims to have seen Kent Wilson driving down Middle Mountain Road. Two independent witnesses with James Adcock state there was snow on the ground on the day that they cut firewood with Mr. Adcock which tends to confirm the gate was locked on that day. The same two witnesses dispute they saw Kent Wilson on November 19, 2012, and two different witnesses, along with cell phone records, place Mr. Wilson in Utah on the morning of November 19, 2012. Circumstantial evidence regarding gas purchases in Bayfield, Bluff³, and in Durango also supports Kent Wilson's assertion that he did not return to the Vallecito area until the afternoon of November 19, 2012.

Based upon this evidence, the Court finds that the probative value of this alternative suspect evidence being proffered by the testimony of Starla Johnson, James Adcock, and William McCarty is substantially outweighed by the danger of unfair prejudice to the

³ The Court will not consider Ms. Wiggins' purchase of gas at 9:45 PM to be proof that Mr. Wilson was not in the Vallecito area when Dylan disappeared unless the prosecution explains this contradiction in the offer of proof they make concerning Kallen Elkins.

prosecution and confusion to the jury. Pursuant to CRE 403 and *Elmarr*, the Court will not allow the defense to use Starla Johnson, James Adcock, or William McCarty to introduce alternative suspect evidence regarding Kent Wilson.

MARTIN WEBSTER

The defendant also seeks to introduce evidence that a Martin Webster confessed to killing a boy in Bayfield to James Croxell. The notice also argues that two other individuals, Jason Hanson and Eddie Simon, were aware of Mr. Webster's confession to James Croxell. Although the defense cites discovery page numbers to document its notice, the Court does not have access to discovery and the defendant did not file copies of the discovery pages as exhibits for the Court to review.

Initially, while incarcerated in the La Plata County jail, James Croxell told investigators only that Martin Webster had told him that Mr. Webster had killed a boy in Bayfield, Colorado. P. 5,948 of Exhibit 2 to the Prosecution's Response to the Notice to Introduce Alternative Suspects (D-126). Martin Webster did not identify the boy, but James Croxell assumed it was Dylan Redwine. *Id.* Mr. Croxell told investigators that he hoped to receive a lighter sentence in return for his help on the Redwine case. *Id.*, p. 5,947. Mr. Croxell stated he initially did not believe Martin Webster because he made the confession when drunk. *Id.*, p. 5,949. Mr. Webster died on April 7, 2014, prior to James Croxell making his report to law enforcement. *Id.* p. 6,188. Law enforcement was able to obtain Martin Webster's cell phone number. While it was too late to obtain records specific to Martin Webster's cell phone, *Id.*, p.6,188, data from cell tower records in the Vallecito area were reviewed which did not reflect that Mr. Webster was in the Vallecito area on November 18th or 19th of 2012. *Id.*, p. 6,058.

Investigators later interviewed James Croxell, Jason Hanson, and Eddie Simon while they were incarcerated in the Department of Corrections (“DOC”). Both Mr. Hanson and Mr. Simon told investigators that the only information they knew about Martin Webster came from James Croxell; neither of them knew Martin Webster. *Id.*, pp 18,595, 24,441.

James Croxell was interviewed a second time while incarcerated in DOC. In the second interview, Mr. Croxell stated that Martin Webster had confessed to him that he had killed Dylan Redwine and another man. *Id.*, p. 18,596. At DOC, Mr. Croxell gave investigators a copy of a letter he had written, attempting to convince DOC that he should have been serving concurrent, not consecutive sentences and that he wanted “someone to fix [his] time.” In the letter, Mr. Croxell repeated his claims that Martin Webster had killed Dylan Redwine and another individual. *Id.*, pp. 18,598-99.

Neither the defendant’s notice nor the exhibits filed by the prosecution demonstrate any connection between Dylan Redwine’s death and Mr. Webster, other than the alleged confession to James Croxell. Based upon the offers of proof, the Court finds Mr. Croxell to be less than credible. In both the original statement and in the letter, Mr. Croxell was seeking to use the information about Dylan to decrease the amount of time he was to be incarcerated. In the second telling of Martin Webster’s confession, Mr. Croxell added the detail that Mr. Webster admitted to killing another male in addition to Dylan. *Id.*, p. 18,596. In the second interview, James Croxell stated he had information about other murders not committed by Martin Webster. *Id.*, pp. 18596, 18,599. According to James Croxell, Mr. Webster never identified the boy that he allegedly killed. As pointed out by the defendant in his various motions for a change of venue, the disappearance of Dylan Redwine in November of 2012 was an extremely well-known event throughout Southwest Colorado. A drunk braggart would have certainly named Dylan as the

victim of his homicide. The entirety of the statements made by James Croxell, as demonstrated by Exhibit 2, is simply not believable and is not corroborated by any circumstances that would indicate its trustworthiness. The defendant does not inform the Court as to the rule of evidence by which he intends to introduce Webster's statements; although, he does correctly cite CRE 804(a)(4) to argue that Martin Webster is unavailable. Notice, para. 28. The defendant intends to introduce Mr. Webster's statements through Eddie Simon and Jason Hanson (and apparently James Croxell) as statements against interest. *Id.* The statements being admitted through Eddie Simon and Jason Hanson will be double hearsay. The Court has not been cited and is not aware of any hearsay exception that would allow Mr. Simon and Mr. Hanson to testify as to what James Croxell told them, even if Martin Webster's statement to Mr. Croxell is admissible. The Court notes that for statements Mr. Webster allegedly made to Mr. Croxell to be admissible as statements against interest, the statements must be ". . . supported by corroborating circumstances that **clearly indicate its trustworthiness.**" CRE (b)(3)(B), *emphasis added*.

As stated above, the Court finds James Croxell's statements are not corroborated by any other facts or circumstances that would support the truthfulness of the alleged confession. The Court will not allow the defense to introduce evidence that Martin Webster is an alternate suspect in this case.

RONALD SIMPSON

The defendant also seeks to introduce evidence that Ronald Simpson is a registered sex offender who lived alone approximately ½ mile from the Redwine home when Dylan disappeared. Notice, para. 29-31. There are no further facts alleged in the defendant's notice regarding Mr. Simpson. Apparently, the defense wishes to argue that Dylan may have been killed while being sexually assaulted by Mr. Simpson. The defense has presented no offer of

proof regarding the facts of Mr. Simpson's prior offense. There is absolutely no evidence that Dylan was sexually assaulted prior to his death. In order to introduce evidence that an alternate suspect committed the charged crime instead of the defendant, ". . . the alternate suspect's prior act or crime must be similar to the present crime . . ." *People v. Cook*, 342 P.3d 539, 547 (Colo. App. 2012). There has been no offer of proof presented to the Court that Mr. Simpson has any connection to Dylan's disappearance and death.

The Court will not allow the defense to introduce evidence that Ronald Simpson is an alternate suspect in this case.

MICHAEL FORD

The defendant seeks to introduce evidence indicating that Michael Ford is an alternative suspect in this case. Law enforcement interviewed Tricia and James George who reported that Benjamin Douglass, while drinking and possibly high on methamphetamines, told the Georges that Michael Ford told Benjamin Douglass that Mr. Ford had taken Dylan camping and that he, Michael Ford, was the last person to see Dylan alive. Exhibit 3, p. 15,057 to the Response to Notice to Introduce Alternate Suspects (D-126). Both of the Georges noticed that Mr. Douglass expressed some hostility toward Michael Ford when Mr. Douglass talked about Mr. Ford. *Id.*

Benjamin Douglass, when interviewed by law enforcement, stated that Michael Ford made the statements to him while Mr. Ford was substantially inebriated ("really tweeking") on methamphetamine. *Id.*, p. 15,053.

Michael Ford, when interviewed by law enforcement, denied that he had ever been hiking or camping with Dylan and he wouldn't go hiking or camping "...with a kid that age." *Id.*, p.15,060. Mr. Ford stated that he had previously called out Benjamin Douglass to fight when

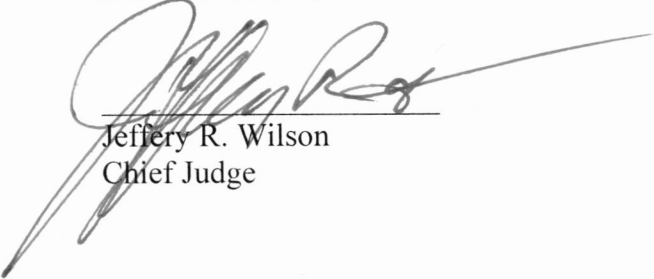
Mr. Douglas had “. . . started problems by talking about Ford’s son.” Mr. Douglass has had a problem with Michael Ford since that time and does not like Mr. Ford. *Id.*, p. 18,620.

As stated above, the Court is the gatekeeper of evidence, particularly on collateral issues. At best, the evidence the defendant intends to introduce is that Michael Ford, while high on methamphetamines, told another substance abuser that he took Dylan camping and that he was the last person to see Dylan alive. For this evidence to be useful to the defendant, the jury would have to find that Mr. Ford told a person he does not like and who holds a grudge against Ford that he, Ford, was involved in Dylan Redwine’s disappearance. The Court finds it highly unlikely that Dylan would have left his home and gone camping on Middle Mountain with an adult male he probably did not know when, according to Mr. Redwine’s numerous statements, Dylan had made plans the night before he disappeared to see his friends early on the morning of November 19, 2012. The Court finds the probative value of such evidence is extremely low and that such evidence is a waste of the jury’s time in what promises to be a very long trial. The Court further finds that the probative value of such evidence is substantially outweighed by the danger of unfair prejudice to the prosecution and confusion to the jury. The Court will not allow the defense to introduce evidence that Michael Ford is an alternate suspect in this case.

For the foregoing reasons, the Court orders that the defendant will not be allowed to introduce alternate suspect evidence regarding Martin Webster, Ronald Simpson, or Michael Ford. The Court orders that the defendant will not be allowed to call Starla Johnson, James Adcock, or William McCarty to testify regarding Kent Wilson. The Court will delay ruling upon whether Kellan Elkins will be allowed to testify regarding Kent Wilson until further offers of proof are provided to the Court. If no offers of proof are provided to the Court, the Court will decide during the trial whether to allow Ms. Elkins to testify.

DONE this 18th day of February 2020.

BY THE COURT:



Jeffery R. Wilson
Chief Judge