

<b>DISTRICT COURT, LA PLATA COUNTY, COLORADO</b> <b>Court Address: 1060 E. Second Ave., Durango, CO 81301</b> <b>Phone Number: (970) 247-2304</b>	DATE FILED: May 1, 2020 3:16 PM
<b>Plaintiff: PEOPLE OF THE STATE OF COLORADO</b> <b>v.</b> <b>Defendant: MARK ALLEN REDWINE</b>	<b>▲ COURT USE ONLY ▲</b>
	<b>Case Number: 17CR343</b>
<b>ORDER REGARDING THE DEFENDANT’S MOTION IN LIMINE TO RESTRICT TESTIMONY BY CARREN CORCORAN AND TO ORDER FURTHER DISCOVERY ON HER CASES (D-155)</b>	

The defendant has filed D-155, titled “Motion in Limine to Restrict Testimony by Carren Corcoran and to Order Further Discovery on Her Cases.” The motion is divided into two parts. Part I seeks to restrict Ms. Corcoran’s testimony. Part II requests that the Court order further discovery regarding other times Ms. Corcoran and her cadaver dogs have been used by law enforcement in attempts to discover human remains.

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. During the investigation, law enforcement utilized several different dogs and dog handlers to use the dogs’ sense of smell in an attempt to track Dylan, to corroborate the defendant’s statements concerning Dylan’s activities the night before he was reported missing, and to determine if any human remains or decaying human tissue were located at or had been previously located in the defendant’s house, pickup truck, and other locations.

## **I. Motion in Limine to Restrict the Testimony of Carren Corcoran**

The defendant has previously filed D-40, a motion in limine (mischaracterized as a motion to suppress) to preclude Ms. Corcoran from testifying. The issue as to whether the Court should allow Ms. Corcoran to testify as an expert witness has been extensively litigated with a thorough evidentiary hearing upon the issue in June of 2019 which included the testimony of the defendant's expert witness and the assistance of two attorneys from the Innocence Project who were admitted *pro hac vice* solely to assist in the litigation of the admissibility of cadaver dog evidence. The Court has issued a preliminary order regarding these issues in its order of February 11, 2019 regarding dog-sniff evidence (D-36, D-37, D-38, D-39, D-40, and P-14), and after a multi-day evidentiary hearing on the motions issued a much more detailed order regarding the admissibility of scent and cadaver detection dog evidence (D-36, D-37, D-38, D-39, D-40, and P-14) on July 16, 2019.

The defendant's motion improperly seeks to introduce expert testimony regarding a published study which claims that jurors find dog sniff evidence more reliable than scientific evidence suggests is appropriate. The defendant then attaches an exhibit, a published article to support his argument. See p. 2 of the Exhibit attached to the motion. The appropriate time to introduce such evidence was at the evidentiary hearing held in June 2019 to determine the admissibility of Ms. Corcoran's testimony. The appropriate way to introduce such evidence would have been to call an expert witness at the evidentiary hearing who either participated in the published study cited by the defendant or who was familiar with the study and any others like it. Had the defendant presented such evidence at the evidentiary hearing held on this issue, the prosecution would have had the opportunity to cross-examine the witness presenting such evidence and they also would have had the opportunity to rebut such testimony. If properly

presented, the Court would have considered such evidence when issuing its order allowing Ms. Corcoran to testify as an expert witness. It is unfair to the prosecution for the Court to consider the contents of the attached exhibit and the Court will not do so.

In part I of the defendant's motion it appears that the defense wishes the Court to preclude Ms. Corcoran from testifying about the times Molly made alerts that indicated the odor of human remains that were only confirmed by later confessions because Ms. Corcoran acknowledged on cross-examination at the evidentiary hearing that false confessions occur. This Court considered and rejected this argument when it ruled that Ms. Corcoran would be allowed to testify as an expert in this case. There is nothing in Part I of D-155 that was not previously presented or could not have been presented by the defendant when the issue as to Ms. Corcoran's ability to testify as an expert witness was originally litigated. There are no arguments in the defendant's motion that convinces the Court it should amend its previous orders. The request to restrict Ms. Corcoran's testimony is denied.

## **II. Motion for Further Discovery**

Throughout the motion, the defendant alleges that insufficient information has been provided to defense counsel by the prosecution to allow effective cross-examination of Ms. Corcoran. The defendant's exact request for disclosures is somewhat vague and the Court is not really sure as to what the defense seeks to have the Court order. The defense motion does make two complaints regarding the disclosures that have been made by Ms. Corcoran. The first complaint is that Molly (the dog used by Ms. Corcoran in this case) may have made false indications of the presence (or former presence) of human remains. The defense motion assumes that Molly, while working on actual cases, has given false indications of human remains. Motion, p. 3. However, just because a trained cadaver dog gives an alert for the odor of human

remains in an area where human remains are not subsequently located does not mean the dog gave a false alert. See the testimony of Dr. Cablk and Carren Corcoran at the motions hearings conducted in June of 2019 and p. 5 of the Court's July 16, 2019, order regarding the admissibility of scent and cadaver detection dog evidence (D-36, D-37, D-38, D-39, D-40, and P-14). The defendant buttresses his claims of false alerts by referring to the Kayla Berg homicide in Wisconsin in which the defendant alleges Molly made a false alert at the workplace and home of a Kevin Kielcheski because no murder charges had been brought against Mr. Kielcheski. The defendant's reasoning in this argument is defective. The fact that charges have not been brought against Mr. Kielcheski does not lead to the conclusion that Molly made a false alert. While the alert may have been false, the lack of criminal charges being filed against a criminal suspect is generally the result of there being insufficient evidence to charge the suspect with a crime. The lack of filing criminal charges against a suspect does not mean that the evidence implicating a suspect is false.

The second complaint in the motion alleges that Ms. Corcoran made misleading claims about testifying in a homicide trial (Wisconsin vs Sackett). Motion, p. 4. The defendant alleges that no such trial occurred and then cites pp 97-101 of Exhibit C to support this claim. However, no Exhibit C is attached to the motion. The prosecution responded that it had already disclosed the Sackett case with case number DCI#10-4921. The prosecutor cited to Exhibit 7 in his response to support his statement that the Sackett case had previously been disclosed. While the Court appreciates that at least one party attached exhibits that were mentioned in the briefs on this matter, the Court cannot find any reference to the Sackett case or case number DCI#10-4921

in Exhibit 7, nor in any of the 10 exhibits attached to the response.<sup>1</sup> Because the Court does not believe the prosecutor would intentionally mislead the Court in this matter and there being no reply filed by the defendant disputing that the Sackett case had actually been disclosed by the prosecution, the Court will find that the Sackett case was disclosed to the defendant in some fashion.

The most specific requests for disclosures are contained on page 4 of the motion wherein the defendant appears to be requesting disclosure of the times Ms. Corcoran (as opposed to Molly) was not training her cadaver dogs but working to find evidence of human remains. While the numbered requests on p. 4 seem to refer to criminal investigations, the request specifically states it wishes disclosures concerning all of Ms. Corcoran's field deployments which would include times that Ms. Corcoran and her cadaver dogs were also attempting to find missing persons. The prosecutor has filed Exhibit 9 to his response which appears to indicate that the prosecutor asked Ms. Corcoran to respond to the four numbered requests contained on p. 4 of the defendant's motion. Exhibit 9 indicates that Ms. Corcoran's responses were forwarded to defense counsel along with the suggestion that if further information was needed, defense counsel possessed sufficient information to obtain the additional information by itself.

The information requested by the defendant on page 4 of his motion is not information required to be provided by the prosecutor under Rule 16 of the Colorado Rules of Criminal Procedure, nor has the defendant convinced the Court that it is reasonable to order the prosecutor to provide such information as a discretionary disclosure pursuant to C.R.Crim.P. 16, Part I, (d)(1). The requested information is in the possession of agencies in other states, not in the

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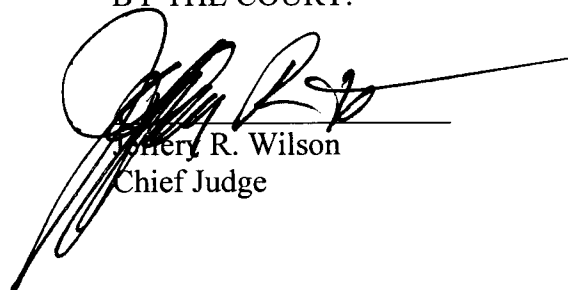
<sup>1</sup> The Exhibits attached to the prosecution's response were scanned by the prosecutor's office and the scanned version of the exhibits filed with the Court. It appears that a Post-it note covered a portion of Exhibit 7 when it was scanned. The Court does not know what information is under the Post-it note.

possession of the prosecutor. According to the exhibits attached to the response, the prosecutor has made reasonable efforts to provide as much of the specific information requested as he was able to obtain from Ms. Corcoran. The prosecution has provided sufficient information to allow the defense to conduct their own investigation to obtain the information contained on p. 4 of the motion.

The Court has not been shown that the prosecutor has violated its discovery and disclosure obligations under C.R.Crim.P. 16. The motion to order the prosecutor to provide additional unspecified discovery in addition to the disclosures contained in exhibit 9 to the prosecutor's response to the motion, is denied.

DONE this 1<sup>st</sup> day of May, 2020.

BY THE COURT:



Gregory R. Wilson  
Chief Judge