

DISTRICT COURT, LA PLATA COUNTY, COLORADO Court Address: 1060 E. Second Ave., Durango, CO 81301 Phone Number: (970) 247-2304	DATE FILED: June 3, 2019
Plaintiff: PEOPLE OF THE STATE OF COLORADO v. Defendant: MARK ALLEN REDWINE	▲ COURT USE ONLY ▲
	Case Number: 17CR343
ORDER REGARDING THE DEFENDANT'S OBJECTIONS TO THE TESTIMONY OF FORENSIC ANTROPOLOGISTS AND REQUEST FOR A SHRECK HEARING D-112 AND D-113	

The defense has filed D-112 and D-113 objecting to the endorsement of Drs. France and Mulhern, demanding discovery and requesting a *Shreck* hearing. Both proposed witnesses have been endorsed as experts in the field of forensic anthropology.

Both D-112 and D-113 argue that the field endorsed is too broad to put the defense on proper notice to prepare a defense. However, as to both witnesses, the prosecution has provided the defense with their *curriculum vitae*s, the reports concerning their examination of the evidence, contact information, photographs taken during their examination of the evidence, and summaries of law enforcement interviews with each witness. The Court has reviewed the exhibits the prosecution has filed with its response to these two motions and finds that the materials discovered to the defense adequately describe the findings of each expert, how they arrived at their findings, the sources they used to form their opinions and each witnesses' qualifications. Members of the defense team have interviewed both witnesses. The defense is certainly aware of the nature and type of testimony both witnesses will present at trial. The

Court finds that the defense has been given appropriate notice of the witnesses' expected testimony.

The defense also argues that because defense counsel believes both witnesses will offer expert testimony in fields in which they are not properly qualified to render opinions and because the witnesses will testify about “. . . cause of death, circumstances surrounding death, animal behavior, and forensic pathology. . .” that the Court should hold a hearing pursuant to *People v. Shreck*, 22 P.3d 68, (Colo. 2001).

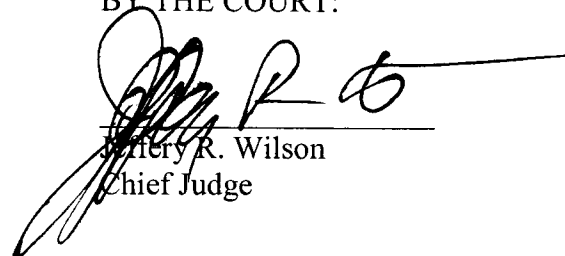
Forensic anthropology is neither a new, novel scientific field nor controversial field of scientific study. *State v. Klindt*, 389 N.W.2d 670, 673 (Iowa 1986), *overruled on other grounds by State v. Reeves*, 636 N.W.2d 22 (Iowa 2001). The reports issued by each witness which details their testimony are confined to forensic anthropology and do not intrude into other areas of scientific study. The Court will not allow either witness to testify about scientific fields for which they have not been qualified as expert witnesses. The reports issued by each witness do not reflect that either witness will testify about “cause of death” or “forensic pathology.” Expert witnesses who are qualified as experts in the field of forensic anthropology are qualified to opine about perimortem fractures to bones and evidence upon skeletal remains of predation, scavenging by wildlife, or injuries that are not consistent with natural causes. See *Klindt, supra*; *Wesner v. Com.*, No. 2011-SC-000039-MR, 2012 WL 3636928, at *5 (Ky. Aug. 23, 2012); *State v. Miller*, 429 N.W.2d 26, 39 (S.D. 1988), *citations omitted*.¹ With these facts, the Court sees no reason to hold a pretrial *Shreck* hearing. The Court will require the prosecution to properly

¹ See also *Shepherd v. State*, No. 14-08-00970-CR, 2011 WL 166893, (Tex. App. Jan. 11, 2011). Although unpublished, *Shepherd* specifically holds that forensic pathologists may testify as to “toolmarks” left on a bone by a knife or saw.

qualify both witnesses pursuant to CRE 702 and the Court will make findings pursuant to CRE 403 before allowing either witness to render opinion testimony in this case.

DONE this 3rd day of June, 2019.

BY THE COURT:



Jeffrey R. Wilson
Chief Judge