

DISTRICT COURT, LA PLATA COUNTY, COLORADO Court Address: 1060 E. Second Ave., Durango, CO 81301 Phone Number: (970) 247-2304	DATE FILED: March 1, 2019
Plaintiff: PEOPLE OF THE STATE OF COLORADO v. Defendant: MARK ALLEN REDWINE	▲ COURT USE ONLY ▲
	Case Number: 17CR343
ORDER REGARDING THE MOTIONS TO SUPPRESS THE TESTIMONY OF VARIOUS WILDLIFE EXPERT WITNESSES D-49, D-50, D-51, AND D-52	

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. After being missing for a significant period of time, two different sets of remains identified as belonging to Dylan were recovered in two separate locations fairly near the defendant's home in a mountainous area of La Plata County. The prosecution has endorsed four expert witnesses to apparently provide opinion testimony that the condition of Dylan's remains and the distance between the location of the two different sets of remains are not consistent with the behavior of bears, coyotes, or mountain lions.

The Defendant has filed four motions to prohibit the prosecution's expert testimony regarding the predatory and/or scavenger behavior of bears, coyotes, and mountain lions in Southwest Colorado. They are:

- D-49 Motion to Suppress all Evidence Pertaining to Bear and Mountain Lion Behavior and Montana Biologist Kevin Frey

- D-50 Motion to Suppress all Evidence Pertaining to Bear and Mountain Lion Behavior and District Wildlife Manager Drayton Harrison
- D-51 Motion to Suppress all Evidence Pertaining to Bear Behavior and Testimony from Heather Johnson Researcher, Ungulates/ Carnivores Colorado Department of Parks and Wildlife, and,
- D-52 Motion to Suppress all Evidence Pertaining to Bear, Coyote, and Mountain Lion Behavior and Testimony from Lyle Willmarth Wildlife Technician Colorado Parks and Wildlife

As stated in previous orders, there is no allegation that the proposed witnesses obtained the evidence they intend to present by illegal or unconstitutional means, and the Court will treat these motions as motions in limine and not as motions to suppress. The prosecution informed the Court at the motions hearings held the week of December 10, 2018, that they would not call Kevin Frey as a witness at trial, and the Court therefore finds Motion D-49 moot.

In the remaining motions, the defense argues that the Court should analyze whether the proposed testimony is relevant as defined by CRE 401. If the proposed testimony is found relevant, the defense argues the Court should then determine pursuant to CRE 403 whether the evidence should be excluded because it is prejudicial, confusing, or a waste of time. The defendant then argues that the Court is to determine if the evidence is admissible expert evidence under CRE 702 and using a modified analysis of the procedure outlined in *Daubert v. Merrell Dow Pharmaceuticals*, 125 L.Ed.2d 469 (1993). It appears the defense is also seeking a hearing pursuant to *People v. Shreck*, 22 P.2d 68, 70 (Colo. 2001), although the motions do not specifically request that the Court conduct a *Shreck* hearing.

The defense motions regarding carnivore behavior are based upon the premise that the proposed expert testimony is based upon scientific principles. This presumption is incorrect. The Court has reviewed the responses to D-50, D-51, and D-52 filed by the prosecution, along with the exhibits attached thereto which disclose the proposed opinion testimony of each witness.

While it appears that Dr. Johnson publishes her findings in peer-reviewed articles, the opinion testimony of the three experts is based upon specialized knowledge gleaned from the experience of the experts and other experts in their field. Thus, the appropriate method of determining whether the proposed expert testimony should be admitted is to analyze the evidence to see if it is relevant evidence as defined by CRE 401, then determine if the evidence should be excluded under CRE 403, and, finally, analyze the proposed testimony under CRE 702. See *Campbell v. People*, 814 P.2d 1 (Colo.1991); *Brooks v. People*, 975 P.2d 1105 (Colo. 1999), as modified on denial of reh'g (Apr. 12, 1999); and *People v. Shreck*, 22 P.3d 68, 76 (Colo. 2001), as modified (May 14, 2001).

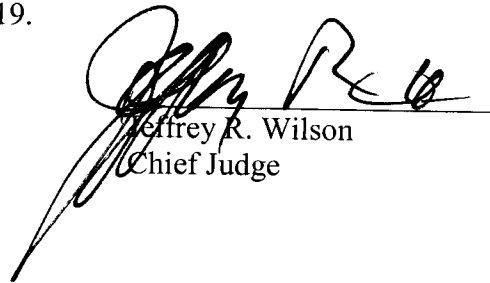
The Court will make the first two required analyses in this order. The proposed opinion evidence is clearly relevant evidence. In order to prove its case, the prosecution will need to prove Dylan was not killed by a carnivore and that his remains were not scattered to the degree in which they were found by scavengers. The evidence is clearly not a waste of time, its probative value is not substantially outweighed by its prejudicial effect, and the evidence will not confuse or mislead the jury. The evidence therefore clears the CRE 403 objection made by the defendant. The Court will make its determination as to whether the evidence is admissible pursuant to CRE 702 at the time the prosecution attempts to qualify each witness.

At the motions hearings held the week of December 10, 2018, the defense argued that the discovery given regarding the opinion of Heather Johnson, PhD, was insufficient to allow the defense to cross-examine Dr. Johnson effectively. The Court has reviewed the prosecution's response to D-51, including Exhibits 1-9. The Court finds that the discovery provided to defense counsel is sufficient pursuant to C. R. Crim. P. 16(I)(a)(III) and that, if defense counsel wishes

more information to better cross-examine Dr. Johnson, defense counsel is free to interview Dr. Johnson or consult with their own expert.

For the foregoing reasons, Defendant's Motions D-50, D-51, and D-52 are denied insofar as they request the Court to conduct a modified *Daubert* analysis or conduct a *Shreck* hearing.

Done and signed this 1st day of March, 2019.



Jeffrey R. Wilson
Chief Judge