

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
<p style="text-align: center;"><b>ORDER REGARDING THE PEOPLE’S MOTION IN LIMINE REGARDING RES          GESTAE EVIDENCE PURSUANT TO THE COURT’S ORDER REGARDING THE          ADMISSIBILITY OF HEARSAY STATEMENTS (P-28)</b></p>	

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 Court has previously ordered that the People file this motion in limine so that the Court could make pretrial rulings regarding the prosecution’s intent to introduce compromising photographs of the defendant, to present evidence of the defendant’s alcohol consumption and evidence of prior violence toward his sons. In the motion, the People argue that the evidence that the prosecution intends to introduce is properly admitted as *res gestae* evidence. *Res gestae* evidence is evidence that is necessary “. . . to provide the fact-finder with a full and complete understanding of the events surrounding the crime and the context in which the charged crime occurred.” *People v. Quintana*, 882 P.2d 1366, 1373 (Colo. 1994). The defendant has not specifically responded to this motion in limine, although he has previously objected to this evidence in his renewed objection to the admission of Dylan Redwine’s hearsay statements (D-119). For the reasons

stated below, the Court finds that the evidence that is the subject of this motion, as long as it is otherwise admissible, is admissible as *res gestae* evidence.

### **Compromising Photographs**

The Court has previously discussed in its Suppressed Order Regarding the Prosecution's Notice of Intent to Present Evidence of Singular Other Act Pursuant to C.R.E. Rule 404(b) (P-8) (issued on January 29, 2019) the reasons that the prosecution wishes to introduce the compromising photographs. The Court incorporates those reasons herein. The Court finds that these photographs are *res gestae* evidence needed to explain the prosecution's theory of the case. The Court will allow the photographs to be admitted pursuant to the procedure outlined in the prosecution's motion. Unless requested otherwise by the defense, the Court shall read the following limiting instruction at the time the photographs are introduced:

The evidence you are about to see is being admitted for a limited purpose. The photographs are not being admitted to prove that the defendant has a bad moral character, and the jury cannot use this evidence for this purpose. The photographs are being admitted to allow the prosecution to attempt to prove that the defendant became violently enraged when confronted by others concerning his sexual preferences. The photographs are also being admitted to allow the prosecution to attempt to explain the deteriorating relationship the defendant had with Dylan. It can be used by the jury for these purposes and no other.

### **Excessive Alcohol Consumption**

The People wish to admit evidence that while drinking in Dylan's presence, the defendant would make disparaging comments about Dylan's family. The People wish to introduce this evidence to show the tension that the defendant's drinking caused with Dylan. In addition, the People wish to introduce such evidence as it pertains to the events the night before Dylan was reported missing and that the defendant was reported to have sat on his porch drinking instead of assisting in the search of his son. The Court finds this evidence admissible to explain the defendant's state of mind and to explain the relationship Dylan had with his father. If the

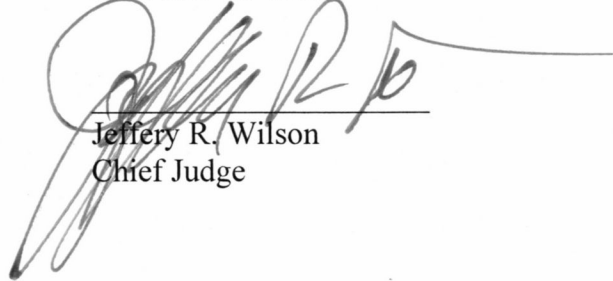
defendant wishes the Court to give a limiting instruction similar to the instruction above, the Court will do so. Evidence regarding the defendant's alleged excessive alcohol consumption shall be limited to the evidence the prosecution has described in its motion in limine.

**Violence Toward the Defendant's Sons**

The Court finds that Dylan's statements regarding his fear or apprehension at going to his father's home alone due to the father's violent behavior, if otherwise admissible evidence, will be admitted to explain Dylan's relationship with his father. No other evidence of the defendant's alleged violence towards his sons may be admitted. If the defendant wishes the Court to give a limiting instruction similar to the instruction above, the Court will do so.

Done and signed this 18<sup>th</sup> day of February, 2020.

BY THE COURT:



Jeffery R. Wilson  
Chief Judge