

DISTRICT COURT, LA PLATA COUNTY, COLORADO Court Address: 1060 E. Second Ave., Durango, CO 81301 Phone Number: (970) 247-2304	▲ COURT USE ONLY ▲
Plaintiff: PEOPLE OF THE STATE OF COLORADO v. Defendant: MARK ALLEN REDWINE	
Christian Champagne - District Attorney, #36833 Matthew Durkin, Special Deputy District Attorney, #28615 Fred Johnson, Special Deputy District Attorney, #42479 P.O. Drawer 3455, Durango, Colorado 81302 Phone Number: (970) 247-8850 Fax Number: (970) 259-0200	Case Number: 17 CR 343
PEOPLE'S MOTION IN LIMINE: EXCLUSION OF IMPROPER "OPPORTUNITY AND/OR MOTIVE" EVIDENCE/ALLEGATIONS AT TRIAL (P-5) [PUBLIC ACCESS]	

COME NOW the People, by and through Christian Champagne, District Attorney in and for the Sixth Judicial District of the State of Colorado, and moves this Honorable Court to exclude evidence of improper "opportunity and/or motive" for another to commit this crime without proper notice and foundation. AS GROUNDS for this motion, the People state as follows:

1. Evidence of an alternate suspect is improper and inadmissible unless there is an established nexus between such person and the murder of Dylan Redwine.
2. In *People v. Mulligan*, 568 P.2d 449 (Colo. 1977), the Colorado Supreme Court held that evidence that another person had an opportunity or motive for committing the crime for which the defendant is being tried, is not admissible without proof that such other person committed an act directly connecting him with the crime.
3. In *Mulligan*, the court held that evidence of another's opportunity or motive must be preceded by proof that such person committed some act directly connecting him with the crime. The Court in *People in Interest of R.L.*, 660 P.2d 26 (Colo. App. 1983) stated that this rule is premised on the need to place reasonable limits on collateral issues and to avoid undue prejudice to the prosecution by encouraging jury speculation. *People v. Green*, 27 Cal.3d 1, 164 Cal.Rptr. 1, 609 P.2d 468 (1980). The evidence presented must create more than an unsupported inference, or a possible ground for possible suspicion. *State v. Renteria*, 21 Ariz.App. 403, 520 P.2d 316 (1974). When the evidence amounts only to proof of opportunity or motive, then it is still in the realm of suspicion, *Green*, *supra*, and should not be admitted.

4. In *People v. Armstrong*, 704 P.2d 877 (Colo. App. 1985), a robbery prosecution, testimony by an employee of a store in which the crime occurred that he saw two unidentified men in the parking lot prior to the robbery, which was proffered by defendant, was properly excluded absent other proof that such persons were connected with the crime.
5. In *People v. Owens*, 97 P.3d 227 (Colo. App. 2004)(rehearing denied April 1, 2004; cert. denied Aug. 16, 2004), the defendant sought to admit evidence that (1) before one of the robberies, a black male sat in the restaurant not eating or ordering food, but waiting for a companion, a restaurant employee; (2) the employee asked his manager about the extent of the restaurant's profit that evening; and (3) the manager reported that both men acted suspiciously and disappeared about an hour and a half before the robbery.
6. The *Owens* court stated, “[t]hese allegations raise only speculation and not a direct connection of either the black male or his companion to the crime. Thus, we conclude that the trial court properly acted within its discretion in excluding the proffered evidence.” See *People in Interest of R.L.*, supra, 660 P.2d at 28 (purpose of rule is to avoid prejudice from jury speculation); *People v. Armstrong*, 704 P.2d 877, 879 (Colo. App. 1985)(evidence that, fifty minutes before robbery, two unidentified black men were seen in restaurant's parking lot, but left the parking lot within ten minutes, properly excluded).

Wherefore, consistent with long-standing caselaw, the People respectfully request that the defendant be ordered not to seek to admit evidence of an alternate suspect without first establishing a nexus between such person and the murder of Dylan Redwine.

Respectfully submitted this June 28, 2018.

CHRISTIAN CHAMPAGNE
DISTRICT ATTORNEY
6th JUDICIAL DISTRICT

/s/ Christian Champagne
Christian Champagne #36833
District Attorney

CERTIFICATE OF SERVICE

I hereby certify that on 6/28/18, I delivered a true and correct copy of the foregoing to the parties of record via e-service.

/s/ Christian Champagne
Christian Champagne