

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 NOTICE TO INTRODUCE STATEMENTS OF DYLAN REDWINE PURSUANT TO C.R.E. 807 (P-4) [PUBLIC ACCESS]	

NOW COME the People, by and through Christian Champagne, District Attorney, in the County of La Plata, and hereby respectfully submit the following notice of its intent to introduce statements by the victim, Dylan Redwine, pursuant to Colorado Rule of Evidence 807:

1. Defendant Mark Redwine has been charged in La Plata County with Murder in the Second Degree and Child Abuse Resulting in Death following a Grand Jury Indictment.
2. The charged events took place after Dylan Redwine arrived on November 18, 2012 for a custodial visit for Thanksgiving of 2012. Dylan Redwine ceased to make communication with anyone after roughly 9:37 pm that evening despite having plans with a friend the next day. His partial remains were found several months later on Middle Mountain Road roughly 8 miles from Mark Redwine's residence, and his skull was found roughly 3 years later at an entirely different location on Middle Mountain Road, with skull fractures and cut marks indicative of a tool mark from a knife or similar instrument. Dylan Redwine's blood was found inside of Mark Redwine's home, and cadaver dogs indicated that a large source of human remains had been inside the home and Mark Redwine's pick-up truck. Several witnesses noted that Dylan Redwine did not want to go on the trip to see his father, there had been tension in their relationship, and Dylan Redwine

was aware of compromising photographs that when referenced were later shown to trigger a specific violent response from Mark Redwine.

3. In the days, weeks, and months prior to his murder, Dylan Redwine made statements to multiple people regarding his relationship with his father. Specifically, he talked to his mother and his friends about not wanting to visit his father, and he discussed the custody situation with a judge, an attorney, and others in the Domestic Relations case. Further, in a recent incident, Dylan Redwine discussed having seen compromising photographs of his father and discussed potentially confronting his father with those photographs out of frustration and anger. Finally, Dylan Redwine conversed through his cellular phone and text messages regarding his plans prior to the murder. These plans were never realized, and pinpoint a narrow window for the time of the murder.

STANDARD OF REVIEW

4. Trial courts have considerable discretion in determining the admissibility of evidence, including whether the residual hearsay exception applies and whether the evidence has logical relevance. Vasquez v. People, 173 P.3d 1099, 1106 n.7 (Colo.2007); Medina v. People, 114 P.3d 845, 859 (Colo.2005). An abuse of discretion standard applies to the trial court's findings, and appellate courts will not disturb an evidentiary ruling on appeal unless it is manifestly arbitrary, unreasonable, or unfair. Medina, 114 P.3d at 859; People v. Carlson, 72 P.3d 411, 420 (Colo.App.2003).

APPLICABLE LAW

5. In determining whether hearsay statements are admissible, the court must first determine whether the defendant has a right to confront the witness. Where the statement is nontestimonial, he does not, and the analysis shifts to whether the hearsay statement is admissible pursuant to a hearsay exception under the Colorado Rules of Evidence.
6. The Sixth Amendment right to confrontation is triggered only when the defendant is denied the opportunity to confront (or cross-examine) "testimonial" statements admitted against him. *Crawford v. Washington*, 541 U.S. 36, 51, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004); *People v. Vigil*, 127 P.3d 916, 921 (Colo.2006); *People v. Fry*, 92 P.3d 970, 976-77 (Colo.2004). In *Crawford*, the Supreme Court described, without adopting, a "core class of 'testimonial' statements," including "statements that were made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial." 541 U.S. at 51-52, 124 S.Ct. 1354. For example, in *Bruton v. U.S.*, the Supreme Court held that a co-defendant's confession to law enforcement which implicated the defendant was a testimonial statement that triggered the right to cross-examination. 391 U.S. 123 (1968). However, statements that are not made to law enforcement, and that are not made under circumstances which would lead an objective witness reasonably to believe that the statement would be

available for use at a later trial, are nontestimonial.

7. When considering the admissibility of nontestimonial hearsay, under the Colorado Rules of Evidence, the court must find that a hearsay exception applies.
8. CRE 807 provides that “[a] statement not specifically covered by Rule 803 or 804 but having equivalent circumstantial guarantees of trustworthiness, is not excluded by the hearsay rule, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purpose of these rules and the interests of justice will best be served by admission of the statement into evidence.” U.S. v. Farley, 992 F.2d 1122 (10th cir. 1993). *See Also* People v. Fuller, 788 P.2d 741 (Colo.1990), People v. Meyer, 952 P.2d 774 (Colo. App. 1997).
9. In considering the trustworthiness of a statement, courts should examine the nature and character of the statement, the relationship of the parties, the probable motivation of the declarant in making the statement, and the circumstances under which the statement was made. Fuller, 788 P.2d at 744.
10. Finally, the rule goes on to state that statements sought to be introduced pursuant to CRE 807 may not be admitted unless the proponent, in this case the People, advises the defendant sufficiently in advance of trial so the defense can prepare for it and the actual statements themselves. In this case, all of the statements sought to be introduced were made by Dylan Redwine, who was murdered November 18-19, 2012.
11. Colorado appellate courts have addressed the admissibility of statements pursuant to CRE 807 in numerous cases, several of which have comparable fact patterns to this case. In addressing these cases, the Colorado courts have set clear precedent that the statements in this case should be admissible.
12. In People v. Jensen, 55 P.3d 135 (Colo. App. 2001), the Colorado Court of Appeals analyzed the admissibility of statements made by a victim before she was murdered, pursuant to CRE 807. The deceased victim’s statements were made to her husband and to a close friend, and described a confrontation she had with the defendant and an accomplice prior to the murder. Id.
13. In conducting the analysis, the Court of Appeals explained that trial courts should focus on the circumstances surrounding the statements, including “the nature and character of the statement, the relationship of the parties, the probable motivation of the declarant in making the statement, and the circumstances under which the statement was made.” Id. at 139.

14. The court found that the statements had sufficient guarantees of trustworthiness, and specifically noted the following: “Here, the victim volunteered spontaneous statements recounting the incident to her husband and to a close friend whom she had known for years. Her description of the incident was not self-serving, nor did she have an apparent motive to lie. She had personal knowledge of the events she described, and there was no reason to question her ability to perceive, remember, or recount the incident.” Id. at 139-140.
15. The court found that the other requirement under CRE 807 were satisfied because A) evidence of prior threats, mistreatment, or malice by the defendant toward the victim is admissible to show the defendant's motive and culpable mental state and thus pertained to a material fact, B) because the victim was deceased, the court concluded that the statements were more probative than any other available evidence portraying her relationship with defendant, and C) the court also observed that “the interests of justice are also promoted by having the complete facts surrounding an incident available to the jury.” Id. at 140.
16. In Jensen, as in other cases involving the deceased victim of murder, the court held that the statements of the deceased victim were properly admitted pursuant to CRE 807. See also Pena v. People, 173 P.3d 1107 (Colo. 2007) (holding that statements made by a child sex assault victim as to the identity of the perpetrator were admissible under CRE 807 after that child was subsequently murdered by the defendant, noting that the physical evidence of injuries was a factor to corroborate the statement and the circumstances of the statement to an aunt demonstrated reliability); People v. Garrison, 109 P.3d 1009 (Colo. App. 2004) (holding that statements made by a murder victim to his manager weeks earlier at work describing a threat made by the defendant were admissible under CRE 807, and that the indicia of reliability was established by circumstances where the manager asked the victim if he was okay and the victim responded having no motive to lie). It is worth noting that in all three of these cases, the statements were made to friends or family and not law enforcement, and the court found that none of the statements were subject to the Confrontation Clause.
17. Just as in the present case, in Jensen, Pena, and Garrison, the statements are made by the unavailable deceased victims of murder. The statements relate to conduct of the defendants which were a concern to them at the time that they made the statement. The statements are made to non-law enforcement friends or acquaintances with no motive to be dishonest about what had occurred.
18. Under these circumstances, as outlined above, Colorado courts have consistently held that statements are admissible pursuant to CRE 807.

STATEMENTS BY DECEASED VICTIM

19. In this case, the People hereby give notice that they will introduce any and all relevant non-testimonial statements made by Dylan Redwine that appear in discovery.
20. Specifically, this includes, but is not limited to, statements regarding the relationship with his father, prior but recent interactions with his father that led to tension on November 18-19, 2012, the compromising photographs he observed of his father, and his plans and conversations surrounding the Thanksgiving visit. These statements will include the following witness testimony and evidence:
 - a. Elaine Redwine: Elaine Redwine will testify that Dylan Redwine was not speaking with his father for much of the time leading up to the Thanksgiving visit. She will further testify that he stated he did not want to go on the visit. She will testify as to text messages from Dylan to her that document and corroborate this around the time of his flight on November 18, 2012.
 - b. Attorney Amber Harrison: Amber Harrison had conversations with Dylan Redwine during which he told her that he did not want to visit his father leading up to November 2012. Further, Dylan Redwine had told her the reason he was feeling uncomfortable with Mark Redwine was that he was creepy and that he had seen the compromising photographs of his father.
 - c. Judge Dickinson conversation: Dylan Redwine spoke about the custody case on September 21, 2012 about his living situation prior to the court ordering the Thanksgiving visit. The People could potentially introduce a certified copy of this statement on relevant points regarding his relationship with the Defendant.
 - d. Dylan's Friends: Dylan Redwine spoke to several friends about his relationship with his father, about his reluctance to go on the Thanksgiving trip, and his plan to spend time with friends throughout the visit rather than spending the time with his father. These include but are not limited to his statements to
that appear in discovery.
 - e. Cory Redwine: Dylan Redwine's brother Cory will also testify to discussions about the tension between Dylan and his father Mark Redwine in the months, weeks, and days leading up to the Thanksgiving trip. Cory will testify to Dylan's statements that he was aware of and had seen the compromising photographs of Mark Redwine. Cory Redwine will further testify to Dylan's statement requesting Cory send to photographs to him to confront Mark Redwine in the context of an argument with Mark Redwine on a recent visit.

- f. Electronic communications: Dylan Redwine communicated electronically including over his phone and Ipod including in the months, weeks, days, hours, and minutes leading up to his death. These statements he made that are documented in records now in evidence corroborate and demonstrate the reliability of the above referenced statements.
21. The People hereby incorporate by reference the entirety of the Grand Jury exhibits and testimony as an offer of proof, including the timeline of electronic communications involving statements by Dylan Redwine.

ARGUMENT

22. As a threshold matter, none of the statements the People intend to introduce without the declarant are testimonial statements. Here, the statements the People will offer at trial were not made to law enforcement and were not made in anticipation of litigation in this criminal case; rather, they were made to friends and family in an informal setting or to professionals in the context of a domestic relations case. Therefore, the defendant's right to confrontation would not be violated by the admission of these statements. See Crawford, supra.
23. With regard to the admissibility of the nontestimonial hearsay statements pursuant to the Colorado Rules of Evidence, the statements made by Dylan Redwine in the days leading up to his murder satisfy all of the requirements of admissibility under CRE 807.
24. First, these statements will be offered to prove a material fact – that when Dylan Redwine went to visit his father on November 18, 2012 and was murdered, there was tension in their relationship that led to the ultimate motive for the murder. Further, Mark Redwine has downplayed the tension between himself and his son Dylan Redwine throughout his many self-serving statements to police and other witnesses in this case. With regard to the compromising photographs, Dylan Redwine's statements that he had seen the photographs and previously planned to use them to get back at his father during an argument ties in directly to the motive for the murder because this was a documented trigger of violence for Mark Redwine. Finally, his plans with friends demonstrate his tenuous relationship with his father, and also are probative of the fact that Dylan was murdered the evening of November 18-19, 2012 before he could follow through to visit his friend Ryan Nava at 6:30am on November 19, 2012.
25. Second, as statements by the murdered victim of this case, they are more probative on the point for which they are offered than any other evidence the People can reasonably procure because they are the *only* remaining evidence of how Dylan Redwine felt and what he planned to do. Further, this evidence directly contradicts the claims of the defendant with regard to the state of their relationship and the motive for the murder. There is no other reasonable means of procuring this evidence. This is consistent with the holdings of Jensen, Pena, and Garrison.

26. Third, the general purposes of the Rules of Evidence and the interests of justice will be served by their admission. A jury should not have to decide this case without the critical context provided by these statements. Homicide trials are unique because the victim can no longer speak for himself. These reliable statements made to friends and other professionals at the time leading up to his murder and disappearance should be admitted. They provide context to a case where a jury will have to decide whether or not, and why, a father would kill his son. As noted in Jensen, “the interests of justice are also promoted by having the complete facts surrounding an incident available to the jury.” Id. at 140.
27. Finally, the statements that the People seek to introduce bear direct and circumstantial guarantees of truthfulness and reliability. The following factors satisfy the requirements of CRE 807 and provide sufficient guarantees of trustworthiness which are equivalent to the guarantees provided under rules 803 and 804 of the Colorado Rules of Evidence:
- a. Dylan Redwine was speaking about his personal feelings and direct observations, which were manifested in his actions. See Jensen, 55 P.3d at 139, 140. For example, Dylan Redwine did not speak to his father for a long period of time as shown in his phone records, and the night of the murder he can be seen on surveillance video having limited interaction with his father despite the infrequent nature of their visits. It should further be noted that to the extent Dylan Redwine talked about feelings he had at the time, and to the extent Dylan Redwine made statements about what he intended to do, other hearsay exceptions would apply as well.
 - b. Dylan Redwine had no apparent motive to lie, and his statements about the status of their relationship were not self-serving in any way except as to the determination of whether he would have to see his father or not. See id. There was no pending criminal litigation, and the statements were not made to police officers in the course of an investigation.
 - c. The statements were made to friends, family members, and professionals in confidence, close in time to when the murder occurred, in private discussions with those confidants regarding what he was going to do next.
 - d. The offered statements made by Dylan Redwine were corroborated by video footage of his physical actions, the existence of the compromising photographs, and the documented phone records and text messages. See Pena, 173 P3.d at 1112. This is consistent with the statements for which the People are providing notice.
 - e. These statements either fit or very closely mirror other established reliable hearsay exceptions including C.R.E. 803(1) spontaneous present sense impression and C.R.E. 803(3) then existing mental, emotional, or physical

condition. For this reason, they also share the similar characteristics of reliability that are deeply rooted in those exceptions.

28. While the People are providing proper notice under C.R.E. 807, the People in no way waive any arguments as to other hearsay exceptions that may apply to the statements offered in this motion, such as present sense impression. Similarly, the People do not concede that all of the decedent's statements are in fact hearsay offered for the truth of the matter asserted, specifically any statements of his intent to do something. Therefore, the People give this notice but reserve argument as to any other theories of admissibility that do not require the same notice.
29. Pursuant to CRE 807, the People submit the following notice of intent to introduce statements by the deceased victim Dylan Redwine at trial in this case.
30. The People respectfully request that the court find that the statements and events described in those statements occurred by a preponderance of the evidence, and that the statements bear sufficient circumstantial guarantees of trustworthiness, making them admissible at trial.

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