

DISTRICT Court, LA PLATA County, Colorado 1060 E 2 nd Ave, Durango, CO	<div data-bbox="1015 279 1369 646" style="border: 2px solid black; padding: 5px; text-align: center;"> ORIGINAL FILED / REC'D IN COMBINED COURT LA PLATA COUNTY, COLORADO MAY 13 2019 <input type="checkbox"/> COURT USE ONLY <input checked="" type="checkbox"/> DEPUTY CLERK </div>
<u>THE PEOPLE OF THE STATE OF COLORADO,</u> <u>Plaintiff,</u> <u>v.</u> <u>MARK REDWINE,</u> <u>Defendant</u>	
MEGAN RING, COLORADO STATE PUBLIC DEFENDER JOHN MORAN, ATTORNEY NO. 36019 JUSTIN BOGAN, ATTORNEY NO. 33827 DEPUTY PUBLIC DEFENDER 175 MERCADO STREET, SUITE 250, DURANGO, CO 81301 PHONE: (970) 247-9284 FAX: (970) 259-6497 E-MAIL: JUSTIN.BOGAN@COLORADODEFENDERS.US EMAIL: JOHN.MORAN@COLORADODEFENDERS.US	<input type="checkbox"/> COURT USE ONLY <input checked="" type="checkbox"/> DEPUTY CLERK 17CR343 DIVISION ONE
D-119 RENEWED OBJECTION TO THE ADMISSION OF DYLAN REDWINE'S HEARSAY STATEMENTS. PUBLIC ACCESS	

Mark Redwine, by and through counsel, reaffirms his objection to any and all statements attributed to Dylan Redwine that the Prosecution seeks to introduce at trial. He makes this objection pursuant to CRE 807, 801, 802, 803, 804, 401, 402, 403, 404, 405, the Sixth Amendment to Constitution of the United States, and Article II sections 16-25 of the Colorado Constitution.

1. The Prosecution declares in paragraph 10 of P-20 that "they will introduce any and all relevant non-testimonial statements made by Dylan Redwine that appear in discovery." This shotgun approach is not proper notice and makes it impossible for Mr. Redwine to prepare for trial if said statements are admitted. CRE 807.
2. The Prosecution in both P-4, and its supplement P-20, refer to CRE 807 and its notice requirement, but they leave out an important part of the rule that cuts straight to Mr. Redwine's confrontation rights. The Prosecution states in paragraph 10 of P-4 "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." Id.
3. CRE 807 requires more from the proponent of the statements than advising "the defendant sufficiently in advance of trial" as the Prosecution asserts. CRE 807 specifically states:

However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention *to offer the statement and the particulars of it*, including the name and address of the declarant.

Id. Emphasis added.

4. The operative definition of "particular" as it appears in CRE 807 is defined as, "a specific item or detail of information —usually used in plural" See Meriam Webster Dictionary.

5. The Prosecution did not offer many specific statements, much less particulars of specific statements in their pleadings. See P-4 paragraph 20 and P-20 paragraph 11. Quite the contrary, the Prosecution has only offered paraphrased summaries of a large number of the statements they seek to introduce. Because the Prosecution has failed to provide proper notice to Mr. Redwine, the Court should outright deny P-4 and paragraph 11 of P-20.

6. In P-20 the Prosecution offers thirteen more groups of statements they want to introduce. Those statements are all derived from statements given to law enforcement from witnesses who claim Dylan made the statements. Some purported statements come from text messages attributed to Dylan Redwine. The Exhibits containing the statements purportedly made by Dylan to his friends, a judge, a lawyer a counselor and family are, but for a handful of short direct quotes, conclusory summaries and paraphrases that offer the Court little to no information about the nature and character of the statements proffered.

7. The two statements offered in P-20 Exhibit 3 are not admissible. The statements are, "[Joe] Ceballos said Dylan had confided in him that he (Dylan) did not like his dad (Mark Redwine). Dylan often talked about his brother and mother very highly. Ceballos said Dylan told him that Mark used to beat him and he was mean."

8. "Dylan did not like his dad" is not a statement from Dylan. It is a statement from Joe Ceballos. Further, the content of the statement is irrelevant. CRE 401, 402 403. The second statement "Mark used to beat him and he was mean," is a statement by Joe Ceballos as well, and is impermissible character evidence. CRE 404. Further, Joe Ceballos is bias and his credibility is suspect, in that he told law enforcement he wished he was older so he could help convict Mark Redwine. Id. Neither statement is evidence of material fact, and the purposes of justice will not be served by permitting their admission. People v. Fuller, 788 P.2d 741 (Colo.1990). Even if the statement is admissible under CRE 807, it is still subject to a CRE 404 analysis.

9. The statements offered in P-20 Exhibit 4 are not admissible. The statements and observations and opinions of Dylan's friend Harvey Adams are:

Harvey said Dylan did not say much about going to Bayfield except that he was going to hang out with his friends. Dylan made no mention about his father, Mark Redwine.

Harvey said Dylan made it sound like he was only going to be hanging out with his friends. Harvey said Ceballos asked Dylan why he was going to his dad's for Thanksgiving, and Dylan said he had to go. *Harvey got the impression* that he did not want to go.

Harvey went on to say that whenever Harvey or Ceballos asked Dylan about his dad, Dylan would become uncomfortable and avoid the subject. Harvey said Dylan would always change the subject. *Harvey said Dylan gave him the impression* that Dylan did not care for his dad very much.

Id. Emphasis added.

10. These opinions, purported observations, and impressions are irrelevant, confusing, and far more prejudicial than probative. CR 401, 402, 403. Further, they are not admissible pursuant to CRE 807. Harvey's impressions do not speak to a material fact nor serve the interests of justice. There are no direct statements attributed to Dylan Redwine in the exhibit.

11. P-20 Exhibit 5 contains numerous inadmissible statements. First, the claim that Dylan told Amanda Saxon that his dad was mean and beat him with a leather belt is inadmissible under CRE 404. The text messages Amanda Saxon attributes to Dylan are irrelevant as well. CRE 401, 402 403. Likewise, without any evidence, observations, or corroboration, Amanda Saxon told police that she believed Mark Redwine killed Dylan. Her bias and motivation must be considered under the circumstances of the statements.

12. P-20 Exhibit 6 refers to a summary by Cory Redwine's friend Lucas Fields, claiming that Dylan did not like going to visit his father without Cory being present. Claims from Cory Redwine's close friend are bias because Lucas shares the same motive to convict Mark Redwine as Cory Redwine. Further, the inference that Dylan was scared of his father and wanted his older brother to be present is impermissible under CRE 404.

13. The summary of statements purportedly made by Dylan to his mother's boyfriend in P-20 Exhibit 7 is irrelevant, and does not speak to a material fact.

14. The incidents referred to in P-20 Exhibit 8, as claimed by Cory Redwine, are not permissible under CRE 404. The allegation that Mark Redwine wanted to watch television and listen to music with Dylan and not take him bowling is wholly irrelevant, unfairly prejudicial and offers little to no probative value for the jury.

15. The vast majority of P-20 Exhibit 9 refers to Elaine Hall's claims of prior physical altercations between Cory/Dylan and Mark Redwine. They also refer to allegations of prior child abuse by Mark Redwine. These are not admissible under CRE 404. That Dylan purportedly told his mother that it was boring to spend time with his father is irrelevant.

16. [REDACTED]

17. The interactions between Dylan Redwine and Kathleen Sayers as summarized in Exhibit 11 are wholly irrelevant to this case and are impermissible character evidence. CRE 401, 402, 403, 404.

18. The statements attributed to Dylan Redwine and the observations of Cory Redwine contained in P-20 Exhibit 1 are not admissible. The observations of Cory Redwine regarding his observations of Dylan prior to his visit to his father are irrelevant. CRE 401, 402, 403, 404. Cory's recollections of fighting with Mark Redwine, threats he claims Mark Redwine made at him, what happened when Mark Redwine would pick up Dylan, and Mark Redwine drinking alcohol are all irrelevant. CRE 401, 402, 403, 404. [REDACTED]

19. As noted by the Prosecution, this Court should examine the nature of the statement, the 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.

20. The considerations required by CRE 807, People v. Jensen, 55 P.3d 135, and Fuller require that this Court deny the Prosecution's motion or conduct a testimonial hearing with all the hearsay witnesses. The offer of proof by the Prosecution is deficient in that neither their pleadings nor exhibits sufficiently address:

Specific Statements attributed to Dylan Redwine;
The nature of the specific statements attributed to Dylan Redwine;
The character of the specific statements attributed to Dylan Redwine;
The motivation of Dylan Redwine for making the statements;
The circumstances under which the statements were made.

21. This Court is charged with the duty of determining the trustworthiness of the statements attributed to Dylan Redwine using the above criteria. Id. Neither the exhibits nor conclusory pleadings offered by the Prosecution provide this Court with the circumstances regarding the statements nor enough information to apply the above factors. Id.

22. Unlike the statements in Jensen, the vast majority of proffered statements do not diagram evidence of prior threats, mistreatment or malice by the Defendant. As to the statements that do reference alleged previous abuse of Dylan Redwine by Mark Redwine, those statements and allegations are subject to the notice requirements of CRE 404 and People v. Spoto, 795 P.2d 1314 (Colo. 1990), and its progeny. In order for other acts evidence to be admissible it must pass the follow four-part test: it must (1) relate to a material fact; (2) be logically relevant by tending to make that material fact more probable or less probable; (3) logical relevance must not depend on the intermediate inference that CRE 404 prohibits—that the defendant committed the crime charged because of the likelihood that he acted in conformity with his bad character as reflected in the other acts evidence; and (4) its probative value must not be substantially outweighed by its prejudicial impact. It is not sufficient for the party seeking admission of other acts evidence to merely list the litany of permissible uses for such evidence. On the contrary, the prosecution must articulate a precise evidential hypothesis by which a material fact can be permissibly inferred from the prior act independent of the use forbidden by C.R.E. 404(b). Yusem, 210 P.3d 458. To determine whether evidence relates to a material fact, courts ask whether the other act evidence can be used to prove “(1) actual elements of the charged offense” or “(2) intermediate facts, themselves probative of ultimate facts.” Yusem v. People, 210 P.3d 458, 464 (Colo. 2009).

23. The mere fact that Dylan Redwine's purported statements MAY be admissible under 807 does not relieve the proponent of those statements from satisfying the requirements of CRE 404 and Spoto.

24. Unlike People v. Pena, 173 P.3d 1107, there is no compelling corroborating evidence of the statements attributed to Dylan Redwine and the Prosecution has not offered any persuasive corroboration. That poor quality video tape from Wal Mart shows Dylan having “limited interaction” with Mark Redwine does not confirm that Mark and Dylan Redwine were not communicating nor not getting along. [REDACTED]

[REDACTED] The prosecution has not tendered this video footage for the Court's consideration.

25. Though several of the statements attributed to Dylan were made to family and friends, they were made to family members and friends who: (1) are sworn to the destruction of Mark

Redwine, (2) concluded early on in this investigation that Mark Redwine is guilty of killing Dylan Redwine, and (3) have voiced their enthusiasm to convict Mark Redwine to law enforcement regardless of the evidence. Certainly considering the sources of the hearsay statements and their motivations falls under the "circumstances of the statements" under CRE 807 and attendant case law.

WHEREFORE, Mr. Redwine makes this motion pursuant to the Due Process, Trial by Jury, Right to Counsel, Equal Protection, Cruel and Unusual Punishment, Confrontation, Compulsory Process, Collateral Estoppel, Double Jeopardy, Right to Remain Silent and Right to Appeal Clauses of the Federal and Colorado Constitutions, and the First, Fourth, Sixth, Eighth, Ninth, Tenth, and Fourteenth Amendments to the United States Constitutions and Article II, Sections 3, 6, 7, 10, 11, 16, 18 20, 23, 25 and 28 of the Colorado Constitution.

Respectfully submitted,

/s/ John Moran

John Moran, No. 36019
Deputy State Public Defender
Dated: May 13, 2019

/s/ Justin Bogan

Justin Bogan, No. 33827
Deputy State Public Defender
Dated: May 13, 2019

Certificate of Service

I hereby certify that on May 13, 2019 I served the foregoing document by e-filing same to all opposing counsel of record.

/s/ John Moran

/s/ Justin Bogan