

District Court: Otero County, Colorado Court Address: 13 W. 3 rd St. La Junta,, CO 81050	FILED IN COMBINED COURT OTERO COUNTY, COLO. SEP 30 2015 ↑ COURT USE ONLY ↑ <hr/> Case Number: 2014 CR 217 Div.: A
<hr/> PEOPLE OF THE STATE OF COLORADO vs. Defendant: JAMES ADAM PATRICK ASHBY <hr/> JAMES R BULLOCK, DISTRICT ATTORNEY Atty. Reg. 14020 jbullock@da16co.gov Sixteenth Judicial District 323 Santa Fe Avenue, Suite 201 La Junta, Colorado 81050 Phone 719-384-8786 Fax 719-384-7330	
RESPONSE TO DEFENDANT'S MOTION (D-27)	

REDACTED

COMES NOW JAMES R. BULLOCK, DISTRICT ATTORNEY, and hereby submits the following Response to defendant's D-27 Motion . In response to the Defendant's motion, the People reply as follows:

The People, respectfully move this Honorable Court to deny the Defendant's Motion to preclude expert testimony or alternatively for a hearing pursuant to Shreck as follows:

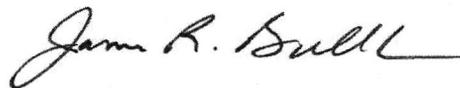
1. The Defendant has filed a motion objecting to the expert testimony of the prosecution's witness, CBI Agent Dale _____, or in the alternative requested a Shreck hearing.
2. The People believe that the testimony of Agent _____ is admissible under the prevailing law in Colorado and that the Defendant is not entitled to a pretrial Shreck hearing.
3. The expert at issue is Agent _____. He has been endorsed by the People to testify in the area of distance determinations based upon the presence of gun shot residue.
4. People v. Shreck, 22 P.2d 68 (Colo. 2001) provides a liberal, inclusive approach in determining the admissibility of expert testimony finding that the less restrictive test, under CRE 702, applies to all types of expert testimony, whether based on science or specialized knowledge. CRE 702 provides that "if scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise."
5. The Colorado Supreme court has recently reiterated that the Colorado Rules of Evidence govern the admissibility of expert testimony. People v. Ramirez, 155 P.3d 371, 378 (Colo. 2007). This includes rules 401, 402, 403, and 702. Id. Scientific evidence is admissible under CRE 702 if it is relevant and reliable. Id. To determine reliability the court should consider whether the scientific principles underlying the testimony are

reasonably reliable and whether the expert is qualified to opine on such matters. Id. The court's inquiry should be broad in nature and consider the totality of the circumstances of each specific case. Id. If the court determines that the proffered testimony is reliable it should then determine whether it is relevant under CRE 702, i.e. would it be useful to the trier of fact to determine a fact at issue. Id. at 379. The court has broad discretion to determine the admissibility of expert testimony. Id. at 380. Colorado has recognized that the type of testimony sought to be admitted here is admissible pursuant to CRE 702. See People v. Theus-Roberts, 2015 COA 32, Colorado Court of Appeals, No. 12 CA 0013 March 26, 2015. The Shreck opinion does not provide a blanket vehicle by which defendants may demand full evidentiary hearings before expert testimony can be admitted, even where the evidence at issue is novel and scientific in nature, which is not the case here. Shreck, 22 P.3d at 77. Shreck simply stands for the well-settled proposition that the trial court must make preliminary findings before admitting any kind of expert testimony to which the opposing party objects. Id.

6. Given that testimony of the nature to be presented by Agent _____ has already been determined by the Colorado courts to be reasonably reliable the only inquiry this court need undertake under CRE 702 is whether Agent _____ is qualified to testify about the subject as an expert, and whether the evidence will be helpful to the trier of fact.
7. Agent _____'s testimony will assist the trier of fact in understanding regarding distance determinations based upon the presence or lack of gunshot residue located upon the victim.
8. The court can, without hearing, make a preliminary determination that the testimony would be helpful to the jury and that Agent _____ is competent to provide information regarding these issues. Then, at trial, the standard and accepted practice is for the movant to present the expert's credentials and area of expertise on the record at trial, for the opposing party to then be allowed to voir dire the expert, and for the Court at that time to make findings regarding qualifying the witness as an expert

WHEREFORE, the People request that the court deny the Defendant's Motion to preclude Expert Testimony and DENY Defendant's alternative request for a hearing pursuant to Shreck and find Agent _____'s testimony admissible, relevant, and reliable pursuant to C.R.E. 702 and C.R.E 403.

RESPECTFULLY SUBMITTED



James R. Bullock, #14020
District Attorney