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| DISTRICT Court, Adams County, Colorado Court Address: 1100 Judicial Center DriveBrighton, CO 80601 | DATE FILED: May 2, 2017 2:32 P FILING ID: 7B29BE322C960 CASE NUMBER: 2016CR3773 COURT USE ONLY  |
| THE PEOPLE OF THE STATE OF COLORADO,Plaintiffv.SATURNINO PADILLA,Defendant |
| Douglas K. Wilson, Colorado State Public Defender Hillary Aizenman, No. 42351Brighton Regional Public Defenders4710 East Bromley Lane, Brighton CO 80601Phone: (303) 659‐4274 Fax: (303) 659‐6935E‐mail: Hillary.aizenman@coloradodefenders.us | Case No. 16CR3773Div. G |
| **MOTION IN LIMINE TO PRECLUDE THE PROSECUTION’S PROPOSED EXPERT TESTIMONY****OR IN THE ALTERNATIVE, MOTION FOR A 702 HEARING** |

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Saturnino Padilla, by and through defense counsel, objects to the prosecution’s endorsement of Barbara Lamanna as an expert and moves this Court for an order prohibiting her proposed testimony. In the alternative, Mr. Padilla requests a 702 *Shreck* hearing to determine the admissibility of the proposed testimony. In support of this motion, Mr. Padilla provides the following:

# FACTUAL BACKGROUND

1. Mr. Padilla is charged with Third Degree Assault and Domestic Violence – Habitual Offender.
2. The prosecution has endorsed Barbara Lamanna to testify as an expert in this case. The prosecution stated in their endorsement that Ms. Lamanna is an “[e]xpert in domestic violence. Specifically in the areas of cycle of domestic violence, domestic violence dynamics, victim recantation and lack of cooperation, lethality factors and assessment, and trauma responses.” A number of these specific areas are not relevant in this case.
3. The prosecution is apparently proposing to have Ms. Lamanna testify as a blind expert. Her “Expert Testimony Report” appears to be a generic report purportedly provided with each endorsement. It describes a number of areas of possible testimony that are not relevant in this case, such as sexual abuse, and other areas which are not only irrelevant but also highly prejudicial, such as lethality factors and trauma responses.
4. The prosecution has not disclosed Ms. Lamanna’s specific qualifications to testify to the information in her disclosure or the basis for her opinion. Likewise, the prosecution has not disclosed whether Ms. Lamanna has been previously qualified to testify as an expert witness.

# LEGAL AUTHORITY

1. The trial court serves as a gatekeeper and should screen all expert testimony for reliability prior to its presentation to a jury. *Daubert v. Merrill Dow Pharmaceuticals, Inc*. 509 U.S. 579 (1993). When determining the admissibility of expert testimony in Colorado, the court should conduct a *Shreck* analysis, which requires that the court find: (1) the scientific principles underlying the testimony are reasonably reliable;

(2) the expert is qualified to give an opinion on those matters; (3) the testimony will be helpful to the jury; and (4) the evidence is not more prejudicial than probative. *People v. Shreck*, 22 P.3d 68, 77‐79 (Colo. 2001). A *Shreck* inquiry should take into consideration the totality of the circumstances of each case.

1. “A trial court is not required to conduct an evidentiary hearing under *Shreck* provided it has before it sufficient information to make specific findings under CRE 403 and CRE 702 about the reliability of scientific principles involved, the expert’s qualification to testify to such matters, the helpfulness to the jury, and potential prejudice.” *People v. Rector*, 248 P.3d 1196, 1201 (Colo. 2011) (*citing People v. Whitman*, 205 P.3d 371, 383 (Colo. App. 2007); *People v. McAfee*, 104 P.3d 226, 229 (Colo. App. 2004)); *see also Shreck,* at 77.
2. On the one hand, if the witness provides “testimony that could not be offered without specialized experiences, knowledge, or training, then the witness is offering expert testimony.” On the other hand, if the witness “provides testimony that could be expected to be based on an ordinary person’s experiences or knowledge, then the witness is offering lay testimony.” *Venalonzo v. People*, 388 P.3d 868, 871 (Colo. 2017).

# SPECIFIC CHALLENGE

1. Here, the defense asserts that Ms. Lamanna’s proposed testimony will not be helpful to the jury and is more prejudicial than probative. Moreover, Ms. Lamanna’s proposed testimony is not based on reliable scientific principles and she is not qualified to opine as an expert.
2. If allowed to testify, it is likely Ms. Lamanna will testify to “victim recantation and lack of cooperation.” Such testimony is not helpful to the jury and is more prejudicial than probative. Recantation and lack of cooperation is something ordinary people can be expected to know and understand. Jurors can evaluate the evidence and alleged victim’s credibility without expert testimony. Such opinion testimony is not helpful to understand the issues in this case, is a needless presentation of cumulative evidence, a waste of time, and most importantly, is more

prejudicial than probative because it serves to bolster the alleged victim’s testimony. Jurors can and should be evaluating the alleged victim’s credibility based on her testimony on the witness stand and prior inconsistent and consistent statements.

1. Next, any testimony regarding the “cycle of violence” inherently suggests that there are previous or subsequent instances of violence between Mr. Padilla and the alleged victim and implicates prior acts evidence under CRE 404(b). This is not only prior acts evidence, but more prejudicial than probative.
2. Furthermore, Ms. Lamanna is not qualified to testify as an expert in this case. In the alternative, the defense asserts that based on Ms. Lamanna’s generic expert testimony report and CV, the Court does not have sufficient information before it at this time to make the necessary specific findings under CRE 702 and 403 regarding the reliability of the principles forming the basis of Ms. Lamanna’s opinion, her qualifications, whether the proposed testimony will be helpful to the jury, and whether it is more prejudicial than probative.

WHEREFORE, Mr. Padilla objects to the prosecution’s endorsement of Ms. Lamanna as an expert and her proposed testimony. In the alternative, Mr. Padilla requests a 702 *Shreck* hearing to determine the admissibility of the proposed testimony.

Respectfully submitted, DOUGLAS K. WILSON

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Dated: Tuesday, May 02, 2017

# Certificate of Service

I hereby certify that on this 2nd day of May, 2017, a true and correct copy of the foregoing MOTION was served via ICCES on all parties who appear of record and have entered their appearances herein according to ICCES. /s/ Hillary Aizenman