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| District Court, Arapahoe County, Colorado Court Address:  7325 S. Potomac Street , Centennial, CO 80112 DATE FILED: D  303-649-6355 FILING ID: A6 | ecember 14, 2017 10:44 AM 8EEDD34B94  R: 2017CR988  ▴ COURT USE ONLY ▴ |
| CASE NUMBE  **PEOPLE OF THE STATE OF COLORADO,**  Plaintiff v.  **ANGELA INGA**,  Defendant |
| Sara S. Hildebrand, Att’y Reg. No. 45268 Deputy State Public Defender  Douglas K. Wilson, Colorado State Public Defender Arapahoe County Public Defenders  12350 E. Arapahoe Road, Suite A, Centennial, CO 80112 Phone (303) 799-9001  Fax (303) 792-0822  E-[mail: sara.hildebrand@coloradodefender.us](mailto:sara.hildebrand@coloradodefender.us) | Case Number: 17CR |
| Courtroom 309 |
| **DEFENSE #7**  **OBJECTION TO PROPOSED EXPERT TESTIMONY, MOTIONS FOR EXPERT DISCOVERY AND FOR A *SHRECK* HEARING RELATED TO JENNIFER WALKER’S PROPOSED EXPERT TESTIMONY** | |

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Ms. Inga, by and through Counsel, objects to the proposed expert testimony of Jennifer Walker at trial in this case because to allow that testimony would be unreliable and not helpful to a jury and therefore inadmissible and moves this Court to deny the admission of such evidence. If the Court does not deny the admission of such evidence outright, Ms. Inga moves the Court to hold *Shreck* hearing on the admissibility of such evidence pursuant to *People v. Shreck*, 22 P.2d 68 (Colo. 2001). In support of this motion, Ms. Inga asserts the following:

# FACTUAL BACKGROUND

1. The District Attorney’s Office filed an endorsement for Tracy Alexandra Cushing, MD MPH and Bonnie Kaplan, MD as Experts in Emergency Medicine. The people also endorsed Jennifer Walker as an “Expert in Domestic Violence.”
2. The District Attorney sent Dr. Cushing’s CV and Ms. Walker’s CV, but did not send Dr. Kaplan’s CV and did not send any information about Dr. Cushing’s or Dr. Kaplan’s proposed testimony in this case.
3. The people sent in discovery a two-page letter outlining Ms. Walker’s proposed testimony “in the area of the domestic violence dynamic.” *See* Exhibit A. On the first page of that letter, Ms. Walker begins to set forth the categories of topics to which she “may testify.” *Id*. at 1 Those categories include the “cycle of violence,” “power and control,” “victim recantation,” why victims stay in domestic violence relationships” and “trauma impact on the brain of victims.” *Id*. at 1-2.
4. The people also tendered in discovery a page with the header “Treaties and References for domestic violence.” *See* Exhibit A, pg. 3.
5. Finally, the people tendered a wheel-like chart with “power and control” printed in the middle; presumably that chart supplements what Ms. Walker put in the letter related to her proposed testimony about “power and control.” *See* Exhibit A, pg. 4.

# LEGAL AUTHORITY

* 1. Colorado Rule of Evidence 702 “governs a trial court’s determination as to whether scientific or other expert testimony should be admitted.” *People v. Shreck*, 22 P.3d 68, 70 (Colo. 2001). The focus of the trial court’s inquiry should be on the reliability and relevance of such evidence. *People v. Wilkerson*, 114 P.3d 874 (Colo. 2005) (citing *Shreck*, 22 P.3d at 78-79)).
  2. Prior to admitting expert testimony, *People v. Schreck*, requires the trial court to make specific findings regarding the admissibility of this testimony pursuant to Colorado Rules of Evidence 702 and 403. *Id.*
  3. When determining the admissibility of expert testimony under C.R.E. 702, a trial court should employ the four part analysis set forth in *People v. Shreck,* 22 P.3d 68 (Colo. 2001)*,* which requires that 1) the scientific principles underlying the testimony are reasonably reliable; 2) the expert is qualified to opine on such matters; 3) the expert testimony will be helpful to the jury; and 4) the evidence satisfies C.R.E. 403 (that the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice). *See also People v. Rector*, 248 P.3d 1196 (Colo. 2011).
  4. The Court must make further findings about the admissibility of expert testimony pursuant to C.R.E. 403: whether or not the probative value of the evidence is substantially outweighed by its prejudicial effect. *Brooks v. People*, 975 P.2d 1105 (Colo. 1999).
  5. There are inherent dangers in the admission of “expert” testimony at a jury trial, as a juror may be misled into giving more weight to the testimony of this “Expert” just because the trial court refers to the witness as such. Therefore, it is up to the discretion of the trial court to determine if a witness has met the requirements before a witness is qualified as an expert. C.R.E. 702; *People v. Gomez*, 632 P.2d 586 (Colo. 1981); *People v. Fasy*, 820 P.2d 1314 (Colo. 1981).
  6. When a party requests a *Shreck* hearing, the trial court may in its discretion determine whether an evidentiary hearing would be necessary, but only if the court already has sufficient information to make specific findings under *Shreck*. *People v. Wilson*, 318 P.3d 538 (Colo. App. 2013) (citing to *Rector*, 248 P.3d 1196).

# MOTIONS

1. Ms. Inga, through counsel, moves the Court to order the prosecution to provide her with a copy of Dr. Kaplan’s CV as well as the topics about which the prosecution intends to have her and Dr. Cushing testify as experts at trial; she also moves the Court to order the prosecution to provide her with the additional information requested in Defense Motion #2. After receipt of that information, additional motions for *Shreck* hearings regarding Drs. Cushing’s and Kaplan’s proposed testimony may follow.
2. Ms. Inga, through counsel, objects to its admission in this case at trial because that proposed testimony does not meet the standard of admissibility as laid out in the Colorado Rules of Evidence or *Shreck* and its progeny; she also moves the Court for a pre-trial *Shreck* hearing related to Ms. Walker’s testimony. A *Shreck* hearing is necessary so that further information about her testimony, her qualifications, and the basis of her opinion can be addressed in relationship to her ability to testify at trial.
3. Based on Ms. Walker’s CV, she has been in private consulting practice since 2001 and it seems that the majority of her work is dedicated to the business side of managing a non- profit organization. She has never any published any literature on the topic of domestic violence nor do her findings have any scientific basis; her opinions are based on her anecdotal experience with people other than those involved in this case. She purports to have expertise in the area of brain trauma, but no medical background.
4. If Ms. Walker is permitted to testify without a hearing to determine her qualifications to and the usefulness of her testimony to the jury, Ms. Inga would be denied her constitutional rights to due process, a fair trial, to confront the witnesses against her effectively, and to present a defense, to which he is entitled under the Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, and Article II, Sections 6, 7, 16, 18, 23 and 25 of the Colorado Constitution.
5. Ms. Walker’s proposed testimony on “victim recantation” and “why victims stay in domestic violence relationships” should be excluded because it is irrelevant in this case; the Court need not even engage in a *Shreck* analysis with respect to these areas of proposed testimony. The complainant in this case is not in a relationship currently with

Ms. Inga and to undersigned counsel’s knowledge has not recanted her allegations against Ms. Inga.

1. Additionally, Ms. Walker’s testimony on “the cycle of violence,” “power and control” and “trauma impact on the brain of victims” should be excluded at trial because it cannot pass the test set forth in *People v. Shreck* as described below.
2. First, there is no evidence before the Court from which it could make a finding under the first prong of the *Shreck* analysis, no way for the court to find whether the scientific principles underlying Ms. Walker’s proposed testimony are reasonably reliable. Without the ability to make that finding, her proposed testimony cannot pass the first prong of the *Shreck* analysis and should therefore be excluded at trial.
3. As to the second prong of the *Shreck* analysis, Ms. Walker is not qualified as a matter of law to give an opinion on the “cycle of violence,” “power and control” or “trauma impact on the brain of victims.” The documents provided to the defense counsel do not list the cases in which Ms. Walker has testified; her letter simply states that she has “testified over 75 times primarily in criminal cases for both the prosecution and defense” and that she does not “have a list of those cases.” Accordingly, parties and the Court lack information such as whether Ms. Walker testified as an *expert* witness in those cases and the area in which she testified. There has not been any testimony, evidence, or an offer of proof presented to support the assertion that Ms. Walker is qualified to give an opinion on the dynamics of domestic violence.
4. Specifically related to proposed testimony on “trauma impact on the brain of victims,” Ms. Walker does not even purport to have qualifications as a doctor or someone who has had specialized training or experience on the complex issues related to the human brain. Ms. Walker has no medical training, no training or education as a psychiatrist, psychologist, medical doctor, or neurologist, and no scientific qualifications which would allow her to offer an opinion on how trauma affects the human brain. District courts in this jurisdiction have previously refused to allow Ms. Walker to opine on brain trauma because she is not qualified to do so.
5. In Ms. Walker’s CV, she lists a Master’s in Public Administration with a Domestic Violence emphasis. However, Ms. Walker only took twelve actual credit hours in domestic violence across the duration of her college course load, and did not perform her Master’s capstone in the field of domestic violence. Furthermore, Ms. Walker has never personally conducted or published any research in the field of domestic violence; the research and reports she attached to her CV were written by others in the field. Additionally, due to her lack of research, in 2010, the Littleton County Court refused to qualify Ms. Walker as an expert. Finally, according to her CV, for the first 12 years of her career, Ms. Walker worked essentially as a member of the prosecution team for two

District Attorney’s offices and one law enforcement agency. In her current role, Ms. Walker continues collaborating with law enforcement.

1. Ms. Walker has not met with the complainant in this case or reviewed the police reports; she will testify as a blind expert. Based on those facts, Ms. Walker’s proposed testimony on the “cycle of violence,” “power and control” and “trauma impact on the brain of victims” is irrelevant and would not be helpful to a jury. Moreover, Ms. Walker cannot offer any evidence of the relationship at issue in this case. She has not seen them together or investigated the dynamic of the relationship that allegedly existed between them. She cannot speak and clearly has no information to offer about specific cultural dynamics present in Peru, where Ms. Inga and the complainant are originally from, so any opinion she would give about their relationship would be inadmissible as speculation. Because her testimony would not be helpful to a jury it should be excluded under the third prong of the *Shreck* analysis.
2. Finally, Ms. Walker’s proposed testimony in the areas of the “cycle of violence,” “power and control” and “trauma impact on the brain of victims” would be extremely prejudicial to Ms. Inga because a jury, which is likely to see an “expert” witness as someone whose testimony is more credible than lay witnesses, would assume that Ms. Walker’s generalized testimony about these areas of research is applicable in this case. Because it is not necessarily relevant in this case, there would be a grave risk that the jury would make determinations not on facts or evidence relevant to this case, but rather general principles. That extreme prejudice substantially outweighs any minimal probative value her testimony may have as to issues in this case and accordingly should be excluded under the fourth prong of *Shreck.* Moreover, to admit Ms. Walker’s proposed testimony would violate Ms. Inga’s rights to due process and a fair trial under U.S. Const. amend. VI, XIV; Colo. Colo Const. art. II § 16 and 25.

WHEREFORE, Ms. Inga, through counsel, moves the Court to order the prosecution to provide defense counsel with the information listed above and objects to the proposed testimony of Jennifer Walker; she also moves the Court to hold a pre-trial *Shreck* hearing as to the admissibility of Ms. Walker’s proposed testimony. She makes these motions pursuant to C.R.E. 401, 402, and 403 and her rights to due process and a fair trial under U.S. Const. amend. VI and XIV; Colo Const. art. II § 16 and 25.

Respectfully submitted this 14th day of December, 2017,

/s/ Sara S. Hildebrand Deputy State Public Defender

# Certificate of Service

I hereby certify that on December 14, 2017, I served the foregoing document through ICCES on all opposing counsel of record.

/s/ Sara S. Hildebrand