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APPENDIX A

INSTRUCTION NO. ____

The evidence in this case has raised the affirmative defense of self defense, and defense of others. It is an affirmative defense to the crime of attempt to commit murder in the first degree and assault in the first degree, that Mr. Robinson used physical force or threatened the use of physical force upon another person. A person is justified in the use of physical force or the threatened use of physical force:

1. to defend himself from what he reasonably believed to be the use or imminent use of unlawful physical force by Ms. Keum and
2. He used a degree of force which he reasonably believed to be necessary for that purpose.

In addition to proving all of the elements of the crime charged beyond a reasonable doubt, the prosecution also has the burden to disprove the affirmative defense of defense of others beyond a reasonable doubt.

After considering all the evidence, if you decide the prosecution has failed to disprove beyond a reasonable doubt any one or more of the elements of defense of others. You must return a verdict of not guilty.

APPENDIX B

District Court, Arapahoe County, Colorado Arapahoe County Courthouse 7325 S. Potomac St., Centennial, CO 80112	Filed AUG 12 2015 CLERK OF THE COMBINED COURTS ARAPAHOE COUNTY COLORADO σ COURT USE ONLY σ
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff v. DEREK ROBINSON, Defendant.	
Douglas K. Wilson, Colorado State Public Defender Angela Banducci, #45598 Julia Marchelya, #42431 Deputy State Public Defender Arapahoe Public Defender's Office 12350 E. Arapahoe Rd., Suite A Centennial, CO 80112 Phone (303) 799-9001 Fax (303) 792-0822	Case No. 15CR26 Division: 206
MOTION OBJECTING TO THE ENDORSEMENT OF JANET PAULSEN KERR AS AN EXPERT WITNESS AND REQUEST FOR A SHRECK HEARING	

Mr. Robinson, by and through his counsel, moves this Honorable Court to order a pretrial hearing to determine the admissibility of opinions rendered by the endorsed expert Janet Paulsen Kerr.

1. Mr. Robinson is currently charged with Attempted First Degree Murder-After Deliberation and First Degree Assault. Mr. Robinson has plead not guilty and his case is currently set for trial October 19, 2015. The allegations involve Mr. Robinson's, then girlfriend, Ms. Keum and are thus charged as an act of domestic violence.
2. On June 12, 2015, the defense filed a Motion for Expert Endorsement and Disclosures. The motion was granted and the Court noted that Rule 16 is self-executing.
3. The prosecution has endorsed Janet Paul Kerr as an expert witness. The defense has received a Curriculum Vitae and a "Domestic Violence Expert Witness Report," which summarizes Ms. Kerr's opinion on a variety of topics related to domestic violence. **See Exhibit A.** The prosecution asserts that Ms. Kerr will testify as an expert on domestic violence relationships and the dynamics of those relationships, as well as suspect characteristics of domestic violence offenders, physical effects of trauma on a person, and stalking.
4. The summary of Ms. Kerr's opinion includes very few citations, and those that are provided are incomplete. Additionally, it refers to attachments that are not included. The defense is not aware, based on what has been provided, of the bases of most of the opinions laid out in the summary.

(R/A)

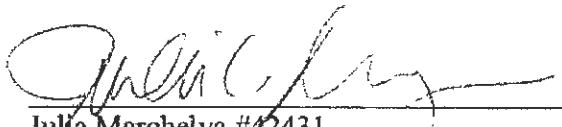
5. Mr. Robinson asserts that the summary of her testimony is insufficient on its face as it is incomplete. Mr. Robinson requests that this Court order the prosecution to produce additional expert disclosures, specifically the information she uses to form the basis of her opinion and what research she relies on in her proffered testimony.
6. Mr. Robinson additionally challenges the relevance of this information and the reliability and qualifications of Ms. Kerr and her opinions.
7. 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).
8. 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. *People v. Schreck*, 22 P.3d 68 (Colo. 2001).
9. The Court must make specific findings pursuant to C.R.E. 702 which indicate: (a) the reliability of the scientific principles; (b) the qualifications of the witness; (c) the usefulness of the testimony to the jury. *Id.* The Court’s inquiry in support of these findings is to be broad in nature, and consider the “totality of the circumstances of each specific case.” *Id.*
10. 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).
11. The *Shreck* opinion raised concerns that the standard of admissibility could lead to the admission of invalid scientific assertions at trial. However, the Court ultimately concluded that these concerns were “mitigated by ‘[v]igorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof.’” *People v. Shreck*, 22 P.3d 68, ¶47 (Colo. 2001) citing *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, (1993).
12. Mr. Robinson asserts that Ms. Kerr’s proffered testimony does not meet the standard of admissibility as laid out in *Shreck* and the rules of evidence.
13. First, Mr. Robinson asserts that Ms. Kerr is not qualified to testify about the physical effects of trauma on a person as summarized in Exhibit A, paragraph 9. She does not have any medical training or experience.
14. Second, Mr. Robinson asserts that Ms. Kerr’s testimony regarding victim recantation as summarized in Exhibit A, paragraph 2, and her testimony regarding stalking as summarized in Exhibit A, paragraph 8 are irrelevant. There is no evidence in discovery that indicates that there will be a recantation or that there was any stalking behavior involved in this case.
15. Third, Mr. Robinson asserts that the scientific principles laid out in Ms. Kerr’s summary are not reliable and should not be admitted. The prosecution is seeking to have Ms. Kerr testify to characteristics of domestic violence perpetrators (Exhibit A, paragraph 7) and levels of lethality in domestic violence relationships (Exhibit A, paragraph 6). These opinions are not based

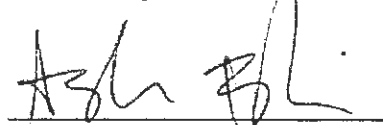
on any tested scientific principles, are useless to a jury, extremely prejudicial, and constitute inadmissible character evidence.

16. Lastly, Mr. Robinson asserts that Ms. Kerr's testimony regarding the cycle of violence (Exhibit A, paragraph 4), why victims stay in domestic violence relationships (Exhibit A, paragraph 5), and power and control (Exhibit A, paragraph 3) are not based on reliable scientific principles, and their probative value is substantially outweighed by their prejudicial effect. Ms. Kerr will be offered as a blind expert and will have no knowledge as to the relationship or actions in this specific case.
17. Therefore, Mr. Robinson asserts that the testimony of Ms. Kerr should be excluded. Mr. Robinson seeks a hearing on the testimony of Ms. Kerr under *Shreck* 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.
18. If Ms. Kerr is permitted to testify without a hearing to determine her qualifications to and the usefulness of her testimony to the jury, Mr. Robinson will be denied his constitutional rights to due process, a fair trial, confront the witnesses against him effectively, and to present a defense, pursuant to 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.

WHEREFORE, Mr. Robinson moves this Court for a pre-trial hearing pursuant to *People v. Shreck*.

DOUGLAS K. WILSON
COLORADO STATE PUBLIC DEFENDER


Julia Marchelya #42431
Deputy State Public Defender
Dated: August 11, 2015


Angela Banducci #45598
Deputy State Public Defender
Dated: August 11, 2015

Certificate of Service
I hereby certify that on 8/12, 2015, I served ☒
the foregoing document by delivering ☐
mailing ☐ faxing ☐ same to all
opposing counsel of record.

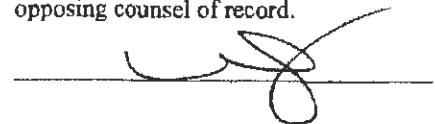


EXHIBIT A

DOMESTIC VIOLENCE EXPERT WITNESS REPORT

Janet Kerr is an expert witness in the dynamics of domestic violence and victim recantation. She has not interviewed the victim or reviewed police reports.

The Expert may be testifying to the following topics, depending on the testimony of the victim and the cross-examination of the victim, the facts of the specific case, and the defense counsel's case presentation:

1. Defining and describing Domestic Violence

- a. **Definition:** Any act of physical, emotional, psychological abuse that is perpetrated by one person against another person by whom intimate relationship shared. Intimate doesn't mean a sexual relationship. It is at least a dating relationship.
- b. **Statistics:** The National Institute of Justice (NIJ) and Center for Disease Control (CDC) report that 25% of women in the United States are victims of domestic violence. Colorado Springs is no different than any other city in the United States. CSPD responds to 15,000 reports of domestic violence per year; many come in as a noise complaint and later are determined domestic violence related. The NIJ National Crime Victims Survey reports that victims do not report all cases of their victimization to police. According to the NVAWS, only 27 percent of women who were physically assaulted by an intimate partner reported their assault to law enforcement. Less than 20 percent of women victims reported intimate partner rapes to police. If we extrapolate, here within the city limits, we have nearly 110,000 DV incidents per year.
- c. **Myths**
There are many myths related to DV. Here are a few:
 - i. "It takes two to tango" is the myth that both people are equally responsible. It does take two people to be in a relationship but it only takes one person to exert power, control and abuse.
 - ii. "This happens to other people". The truth is that DV crosses all racial, social and economic lines.
 - iii. "This is a private family matter". The cost of domestic violence to the US economy is more than \$8.3 billion. This cost includes medical care, mental health services, and lost productivity (e.g., time away from work). (*Max W, Rice DP, Finkelstein E, Bardwell RA, Leadbetter S. The economic toll of intimate partner violence against women in the United States. Violence and Victims 2004; 19(3):259-72.*)

2. **Victim Recantation:** It is extremely common for victims of domestic violence to recant at some point in time, and there are different forms of recantation. Recantation is the act of reporting an incident of domestic violence to anyone (friend, family member, or police officer) and then doing one of the following:

- a. **Complete recantation:** Completely retracting what was originally said. "That did not happen; I made it all up." This is the least common form of recantation.

- b. Minimization: Victim minimizes the violence, makes excuses why it occurred, and blames themselves. "Well, I did say that but I was making a mountain out of a mole hill. I was just angry." Or, "it was really my fault I provoked him." This type of recantation is much more common than complete recantation.
- c. Refuses to tell what happened again: Refuses to discuss what occurred, refuses to testify, or refuses to appear in court. This person simply shuts down.

These findings are based upon 29 years of clinical and advocacy experience with domestic violence victims.

Reasons victims recant

- a. Love (most common) - The victim is still in love with the perpetrator, and only wants the violence to stop. "I love him. He's committed to the relationship now. He's going to counseling."
 - b. Fear (most common) - The victim is fearful of the perpetrator, threats, and future violence. "I lived with him long enough to know he is capable of carrying out the threats that he makes. I'm safer if I stay with him." That is true because the most lethal time in a domestic violence relationship is when the victim attempts to leave. "If you leave me, I will find you. I will track you down. You will never be able to get away from me." It is likely that the perpetrator has carried through on previous threats and the victim believes it will be the same in the future.
 - c. Guilt - The victim feels responsible for the consequences the perpetrator is facing. "It is all my responsibility. I thought I could help him. I wanted to help him. I wasn't good enough."
 - d. Low self-esteem - Even more than the victim's physical body, the victim's self-esteem is battered. They are told how worthless and incapable they are and come to believe it. There's a belief that "I deserve it" and "it is never going to be any different with anyone else." This dynamic perpetuates the abuse.
 - e. Dependency on the perpetrator - financial as well as emotional. "How will I support myself, my children? Where am I going to find a job? Child care? Reliable transportation? Easier to stay in relationship and have some financial stability."
 - f. Past History - The victim feels that they can only rely on the perpetrator and does not trust the "system." Many victims of domestic violence grew up in domestic violence homes. That behavior was modeled for them; they would expect nothing more. The "system" -- 15,000 calls, only about 3,000 arrests from CSPD. Offender is often arrested and spends one night in jail and then bonds out. Why should she have to leave her house and go to a shelter to be safe when he's the one who's committed a crime?
3. **Power and Control:** The underlying issue of domestic violence relationships is based on power and control by the perpetrator. Victims often do not report the violence, delay reporting the violence, and/or tell others about the abuse due to power and control issues. There are several forms of power and control, and some or all may be present. There are many ways to abuse a partner without ever laying a finger on them.
- a. Emotional Abuse. Name calling, put downs. The control around where you can go and how you can dress. Domestic violence offenders get compliance through making trivial demands which ultimately becomes an effective tactic to perpetuate the abuse. The more you can get your victim to comply; the more the victim complies. Teaching the victim how to become a better victim. Emotional abuse is also revealed through the perpetrator destroying property, making the property unusable, or the perpetrator giving the property away to a third party (without the victim's consent).

- b. **Economic Abuse.** Offenders like to be in control of all aspects of their life of their victim. Often offenders are the primary breadwinner and may give the victim an allowance. Offenders may hold the money until certain conditions are met. If the victim is primary earner, she has economic independence – has a primary escape route and such independence is a challenge or threat to the offender. Under some circumstances, offenders may instigate arguments over whose career takes priority. An offender might also contact supervisors in an effort to cause trouble for the victim at work.
- c. **Sexual Abuse.** When we think about sexual abuse often think about penetration/intrusion but there are non-physical ways to sexually abuse your partner. Forcing a person to view pornography (against value system); belittling sexual performance; threatening to have an affair or having an affair; or demeaning remarks about sexual orientation are all forms of sexual abuse. Offenders may threaten exposure of the affair by communicating to family members, co-workers, or claiming to have pictures/video of victim with person whom she had an affair and, for example, posting online.

Physical – coercing or forcing a person to commit sex acts that they do not want to participate in. A domestic violence sexual assault is almost never reported to police—domestic violence is a highly underreported crime in conjunction with a sexual assault which is also a highly underreported crime.

- d. **Using Children.** Offenders often put children in the middle and give kids inappropriate information about what is happening in the adult relationship. They may also use inappropriate language when referring to the victim. The focus may be more toward “getting even” than the appropriate care for the children. Offenders use threats around taking children away; moving and taking the children with them; or unsubstantiated reports to DHS or law enforcement. Offenders may refuse to cooperate in a therapeutic setting with the children and victim, and in facilitating the children’s schedules: medical care, sports, and other activities. They essentially set up several barriers to sharing parental responsibilities.
- e. **Threats.** The more direct, specific and well thought out the more likely to carry them out. The best predictor of future behavior is past behavior. Threats can encompass financial matters, job, children, and physical safety. Offenders making threats to third parties, with whom the victim has had contact, generates fear and causes the victim to believe that “if he is willing to harm others, he will certainly harm me.” These actions directed toward third parties also fall under the description of intimidation. Threats may also include the perpetrator order the victim to keep the abuse secret, to not tell friends or family, or seek the advice of an attorney.
- f. **Using Male Privilege.** The belief that the man is ‘king of the castle’ and has the right to control his woman.
- g. **Spiritual Abuse.** Using scripture to support the use of violence. Isolating the victim from sources of spiritual support
- h. **Intimidation.** Using looks and/or gestures to convey a message of dominance. Offenders may use the court system, whether civil or criminal, to create hardship for the victim and third parties. These behaviors are designed to continue the abuse and show the victim who has control. To show control, an offender may continue to live in the same household as the victim even after there has been a decision to divorce. At times such living situation might be a financial decision but it may also be that the offender refuses to relinquish control of the house. As part of control and intimidation, offenders may solicit third parties to harm a victim either physically or emotionally.
- i. **Isolation.** Controlling where she goes, what she wears, who she sees and talks to. Offenders may create scenarios that will cause hardship to the victim—cutting her off from sources of support, making it difficult for the victim to continue to work outside the home, creating challenges in caring for children. If a victim

leaves (or shows a degree of independence) and then returns, a perpetrator may work to isolate her even more.

- j. Physical violence.
- k. Minimization, denial, and blame. Offenders often believe – “It is all her fault. She wanted the divorce.” Offenders may claim mental distress based on the victim’s actions. Essentially, the offender will claim that “but for her actions, his life would be just fine.”

See Power and Control Wheel handout (attached)

Why and how was the Power and Control Wheel created?

In 1984, staff at the Domestic Abuse Intervention Project (DAIP) began developing curricula for groups for men who batter and victims of domestic violence. We wanted a way to describe battering for victims, offenders, practitioners in the criminal justice system and the general public. Over several months, we convened focus groups of women who had been battered. We listened to heart-wrenching stories of violence, terror and survival. After listening to these stories and asking questions, we documented the most common abusive behaviors or tactics that were used against these women. The tactics chosen for the wheel were those that were most universally experienced by battered women.

- 4. **Cycle of Violence:** There are three phases in the cycle of violence. The cycle repeats itself and often intensifies.
 - a. The first stage is the “Tension Building” phase where there is stress and less overt conflict, intimidation (subtle threats) and/or silent treatment. Victims refer to this as the “walking on egg shells” – try to keep house clean, kids fed and put to bed, favorite meal prepared.
 - b. The second phase is the “Battering” phase where physical violence occurs against the victim, property, and/or animals. In a young relationship, the battering phase can be an emotional battering. And, as time goes on, physical violence occurs.
 - c. The third phase is the “Honeymoon/Hearts and Flowers” phase where the perpetrator apologizes, shows remorse, and promises not to be violent again and make their life together better. The perpetrator promises to go to counseling and things will get better.

General pattern is as stated above. Because people have different temperaments, personalities, and life experience, expressions of these phases can vary.

The original concept/research comes from Lenore Walker and she identified that the cycle occurs in 52% cases. In my experience, I’ve seen this cycle in more than 50% of cases.

5. Why Victims Stay in Domestic Violence Relationships/Barriers to victims leaving/Delayed reporting

- a. Love – (most common) The victim is still in love with the perpetrator, and only wants the violence to stop. “I love him. He’s committed to the relationship now. He’s going to counseling.”
- b. Fear – (most common) The victim is fearful of the perpetrator, threats, and future violence. “I lived with him long enough to know he is capable of carrying out the threats that he makes. I’m safer if I stay with him.” That is true because the most lethal time in a domestic violence relationship is when the victim attempts to leave. “If you leave me, I will find you. I will track you down. You will never be able to get away from

me.” It is likely that the perpetrator has carried through on previous threats and the victim believes it will be the same in the future.

- c. **Guilt** – The victim feels responsible for the consequences the perpetrator is facing. “It is all my responsibility. I thought I could help him. I wanted to help him. I wasn’t good enough.”
- d. **Low self-esteem** – Even more than the victim’s physical body, the victim’s self-esteem is battered. They are told how worthless and incapable they are and come to believe it. There’s a belief that “I deserve it” and “it is never going to be any different with anyone else.” This dynamic perpetuates the abuse.
- e. **Dependency on the perpetrator** – financial as well as emotional. “How will I support myself, my children? Where am I going to find a job? Child care? Reliable transportation? Easier to stay in relationship and have some financial stability.
- f. **Past History** – The victim feels that they can only rely on the perpetrator and does not trust the “system.” Many victims of domestic violence grew up in domestic violence homes. That behavior was modeled for them; they would expect nothing more. The “system” -- 15,000 calls, only about 3,000 arrests from CSPD. Offender is often arrested and spends one night in jail and then bonds out. Why should she have to leave her house and go to a shelter to be safe when he’s the one who’s committed a crime?

6. Levels of lethality in domestic violence relationships

Research into domestic homicides typically reveals these to be crimes of accumulation in which men's violence and women's entrapment seem to intensify over time. The absolute distinction between lethal and non-lethal cases is a false dichotomy; rather there is a range or continuum of violence and entrapment that underpins abusive intimate relationships. (Websdale, N. 2000, February). The following key risk factors include:

- a. Access to/ownership of guns
- b. Use of weapon in prior abusive incidents
- c. Threats with weapons
- d. Serious injury in prior abusive incidents
- e. Threats of suicide
- f. Drug or alcohol abuse
- g. Forced sex of female partner
- h. Obsessiveness/extreme jealousy/extreme dominance

7. Suspect characteristics

From Lundy Bancroft’s book *Why Does He Do That: Inside the Minds of Controlling and Abusive Men*.
Characteristics of batterers:

- a. **Batterers often have low self esteem**
Even though many batterers might appear to be “tough”, “strong”, and “confident”, more often than not, they suffer from low self-esteem. If they are emotionally needy, and they have become dependent on their partner, the thought of losing that partner feels threatening and thus behaviors of control and jealousy follow. This holds true not only for heterosexual relationships, but in gay and lesbian relationships as well. For male abusers, they may feel that they fall short in the area of their own sex stereotype and so they overcompensate with hyper-masculinity.

b. Rush in to relationships

Many victims dated or knew their abuser for less than six months before they were engaged or living together. Abusers can come on like a whirl-wind claiming "love at first sight," and using flattery such as "you are the only person I could ever talk to" or "I have never felt loved like this by anyone." They may need someone desperately, and will pressure the other partner to commit to a relationship before they are truly ready.

c. Are excessively jealous

Abusers often say that jealousy is a sign of love. Jealousy has nothing to do with love; it's a sign of possessiveness and lack of trust. In a healthy relationship, the partners trust each other unless one of them has legitimately done something to break that trust. Of course not every twinge of jealousy is a sign of doom to come, but when that jealousy becomes a negative aspect or a disruptive force in a relationship, red flags need to be going up.

d. Exhibit controlling behavior

Often at the beginning, a batterer will say that this behavior is because they are concerned about their partner's safety, a need for their partner to use time well or to make good decisions. Abusers will be angry if their partner is "late" coming back from the store or an appointment; she might be questioned closely about where she went or who she talked to. As this behavior gets worse, the abuser may not let her make personal decisions about the house, clothing, or going to church. They may keep all the money; or may make their partner ask permission to leave the house. These types of behaviors mimic the parent/child relationship and thus by definition cannot be part of an equal and healthy relationship.

e. Have unrealistic expectations or demands

Abusive people often expect their partner to meet ALL of their needs: the perfect partner, lover, and friend. They say things like "if you love me, I'm all you need and you're all I need." They may expect their partner to take care of everything for them emotionally, physically, and sometimes economically. However, this is not natural or healthy in a relationship. Instead, partners in healthy relationships encourage each other to pursue their dreams, to have friends and interests outside of the relationship and take pride in their partner in these things.

f. Use isolation to keep their victim centered on them

Frequently, an abusive person tries to cut the partner off from all resources. If she has friends, she may be called a "whore," a "slut" or "cheating." If she is close to family, she is "tied to the apron strings." Abusers will accuse people who are supportive of causing trouble, and may restrict use of the phone. They can gradually isolate their victim from her friends. They may not let her use a car (or have one that is reliable), and may try to keep her from working or going to school. Some abusers will try to get her into legal trouble so that she is afraid to drive or go out. Sometimes this process can take years and then suddenly a victim looks up and realizes that they've been moved across the country, away from family, friends and a support system and without a job or resources of their own--making them completely isolated and totally dependent on the abuser.

g. Believe in male supremacy and the stereotyped masculine role in the family

Batterers are often obsessive about appearing to be "the man of the house" and they tend to hold very high and rigid rules about how they get act because they are "the man"--often leading them to feel the need to dominate and control and to expect their word and their needs to be catered to at all times, including in the bedroom. These abusers see their victim as unintelligent, inferior, responsible for menial tasks, and less than whole without the relationship. They will often tell her that no one else would want her or that she is nothing without them. They will remind her of their

"provider role"-- anything they have done for you . . . thus ing guilt and convoluted "logic" to pressure you to into servile behaviors.

h. Use of force during sex

Abusive partners may show little concern about whether their victim wants to have sex, and use sulking or anger to manipulate her into giving in to sex. They may start having sex with her while she is sleeping, or demand sex even when she is ill or tired. This sends the message that the abuser is just in it for himself and/or he is enjoying the power of coercing sex knowing that the victim is less than willing. They may want to "make up" by having sex after they have just been physically or verbally abusive. Sex under these conditions is just an extension of the power and control exerted by the prior abuse.

i. Have poor communication skills

Abusers typically have trouble discussing feelings, especially very strong ones like anger or frustration. Some may feel that "having feelings" and talking out problems goes against the stereotyped role that values (see above). Without the skills or self-permission to express themselves in constructive ways, they can lash out with violence.

j. Use negative behaviors (drugs, alcohol, battering) to cope with stress

Studies suggest that batterers, in general, have a higher incident of drug and alcohol abuse than non-batterers. This does NOT mean that drugs or alcohol cause the abuse, rather it lowers inhibitions making an already frustrated and violence-prone person more likely to fall back on violence as a crutch, especially when confronted with their lack of communication skills and feelings of inadequacy.

k. Blame others for their actions

Commonly, abusers use the actions of others as excuses for their own behavior. They blame the person who made them angry, as if that person were pushing some magic button that released violent behavior. How often have victims heard, "why did you make me do that"? If he is chronically unemployed, someone is always "out to get him." They may make mistakes and then blame their partner for upsetting them so that they can't concentrate on their work. They often tell their partner that she is at fault for nearly everything that goes wrong. Abusers see themselves as the "victim" in the relationship, and do not take responsibility for their own feelings or behaviors.

l. Are prone to hypersensitivity

Abusers are easily insulted, and may take well-intended feedback as a personal attack. They will rant and rave about the injustice of things that are really just a part of living, such as having to get up for work, getting a traffic ticket, or being asked to help with chores.

m. Present dual personalities

Often the most frustrating thing for victims is the Jekyll and Hyde personality of their abuser. They may function well at work, with friends and family, and in social settings. Sometimes only the victim is aware of the true "nature of the beast". This often makes it difficult for a victim to reach out for support from friends and family, because those persons may try to talk the victim out of thinking that their partner is abusive. Often friends and family of the victim will go on and on about "what a great partner you've got there", because the abuser has successfully hidden their violence at home. It's even more frustrating and confusing for the victim when members of their support system try to turn the tables and say things like "well, just don't make him mad". They are putting the blame on the victim. When this happens, the violent partner gets back-up from the very people the victim needs for support.

n. Exhibit cruelty to animals or children

This is a person who punishes animals brutally or is insensitive to their pain. They may expect children to be capable of things beyond their developmental ability. They may tease children until they cry. They may be very critical of other people's children, especially any children you bring in from a previous relationship. An abusive partner may threaten to prevent you from seeing children or punish children to get even with you. About 60% of people who beat their partner also beat their children. Abused women often say that they stay "for the sake of the kids." Unfortunately, one parent abusing the other creates high risk for child abuse, childhood depression, anxiety and other mental and physical illnesses. Children who grow up in these homes may develop criminal, even violent, behaviors of their own. Domestic abuse models/normalizes violence for children as they grow up and into relationships of their own.

8. Stalking

(Source: Stalking New York State Office for the Prevention of Domestic Violence www.opdv.ny.gov)

a. What is stalking?

In simplest terms, stalking is the unwanted pursuit of another person. By its nature, stalking is not a one-time event. The individual's actions must be considered in connection with other actions to determine if someone is being stalked. It includes repeated harassing or threatening behavior toward another person, whether that person is a total stranger, slight acquaintance, current or former intimate partner, or anyone else.

Stalking is also:

- A terrorizing crime with no real identified beginning and seemingly no end;
- A crime that can cause tremendous fear without the slightest physical injury;
- A behavior with a high correlation to physical and sexual violence;
- A crime that can be lethal; and
- A very effective tactic of control for domestic violence abusers.

81% of women stalked by a current or former intimate partner are also physically assaulted by that partner; 31% are also sexually assaulted. (Tjaden & Thoennes, 1998, Stalking in America, NIJ).

b. What is cyberstalking?

Cyberstalking means using technology to stalk. Cyberstalkers need not be in physical proximity to their targets, and are therefore sometimes able to remain anonymous or even enlist others to help them stalk.

c. Typical Stalking Behaviors

Stalking behaviors can include any behaviors if they have no reasonable legitimate purpose, depending upon the context in which they are done. The acts committed are limited only by the stalker's creativity, access, and resources.

Stalkers' common behaviors include:

- Following, monitoring, surveillance of victim and/or victim's family, friends, co-workers;
- Disorderly conduct offenses;
- Criminal mischief, larceny, robbery, burglary, trespass, loitering;
- Forgery or criminal impersonation;
- Abusing or killing pet or other animal;
- Repeated threatening communications or attempts to communicate, especially after being clearly informed to stop;

- Violation of any order of protection;
- Crossing jurisdictions/borders to stalk/commit offenses;
- Kidnapping victim or children or threatening to do so; and/or
- Threats of suicide or homicide.

d. Intimate Partner Stalkers

When stalking is identified, it is generally true that:

- The more of a relationship that existed prior to the identified stalking, including spouses or intimate partners, the more likely the stalkers are choosing to use their behaviors in order to gain (or regain) power and control over their victims.
- The great majority are male perpetrators targeting female victims.
- The less of a relationship between stalker and target that occurred prior to the stalking, the more delusional and/or mentally disturbed the stalker.

e. Risks Increase When Current or Former Intimate Partner Is Stalking

- Studies show increased fatality risk by stalker
- Stalker already has extensive and intimate knowledge of victim and routines (history, social or family contacts, daily routines, employer, co-workers, neighbors, children, pets)
- Stalker already knows victim's hopes and fears (so easier to exploit them)
- Stalker can make it look like there are "legitimate" reasons for the behavior
- Stalker has opportunity for regular contact with victim through children's activities, court dates, family, mutual friends, work, school, etc.
- Especially increased risk if stalker has access to weapons
- Can have increased risk of kidnapping children

f. Impact on Victims

Stalking can have a devastating impact on victims, including:

- Continuous intense stress or anxiety; hyper-vigilance and/or all-consuming fear
- Feeling vulnerable, out of control, guilt and/or self-blame
- Disruption of everyday living routines (self-isolation, move to new home or work location, change phone number and/or other contact information, change identity)
- Anger, rage, depression, post-traumatic stress disorder, failure to concentrate, and/or short-term memory loss
- Somatic responses (nightmares, sleeping habits, eating disorders)
- Loss of work productivity
- Loss of trust in police and criminal justice system

9. Effects of Trauma

a. Neurobiological responses during/after trauma (Bruce Perry)

i. Brain development/organization

1. Lizard Brain - this part controls our most basic reflexive functioning and primarily sensory processing- we can hear and see, etc., but we do not make sense of it. We respond reflexively to our environment. Ex: We are a baby and we hear a loud noise we become startled and cry and we cannot make sense of it.
2. Midbrain - Think here of a toddler learning how to walk and talk. Learning that things are hot or cold or NO. We are using secondary sensory processing in that we can hear and see things and assign feelings and meaning to those things. We are reactive versus reflexive, yet we

- still have very little emotional control. Think of a kid who reacts emotionally with very little regulation. They have little control they just know that they are upset.
3. Limbic system - Now we have some ability to regulate emotions and behaviors - we have cause and effect thinking. If I make this choice it will affect me in this way. We are able to form friendships and engage in more concrete thought in this stage.
 4. Cortex - Our Algebra brain. Our more complex, rational and abstract thinking. This does not always develop in people. If there is damage done to this part of the brain it decreases a person's ability to self-regulate their emotions.
- ii. During the trauma:
 1. Danger sensed
 2. Sympathetic nervous system activates
 3. Non-essential systems turned off
 4. Adrenal gland response – fight or flight
 - iii. During or shortly after the trauma:
 1. Reciprocal activity in parasympathetic nervous system
 2. Cortisol production increases
 3. Heart slows
 4. Respiration slows
 5. Opiates released
 6. Freeze response
 - iv. After the Trauma:
 1. Frontal lobe activity resumes, often hyperactively
 - a. Intrusive thoughts and images
 - b. Body recalibrates
 - c. Shake, cry, tremble
 - d. Shut down
 2. Hippocampus responsible for putting experiences into chronological order and perspective
 - a. hippocampus is 'non-essential' and is suppressed under threat
 - b. We have unfinished neurobiological responses and inadequate memory
 - c. Information is remembered as physical sensations, feelings and behavior
 - a. Information is not connected to normal cognitive memory
 3. Results
 - a. Neutral
 1. Single event
 2. Adequate support afterward
 3. Little prior trauma
 - i. We may be shaken
 - ii. can leave the trauma behind
 - b. Negative
 1. Young/developmentally vulnerable
 2. Inadequate support
 3. Multiple traumas
 - iii. Left with many intense responses
 - iv. Chronically activated survival response
 4. Implications
 - a. Behavioral
 - b. Cognitive
 - c. Physical
 - d. Emotional

Respectfully Submitted,

Janet Kerr, MA, LPC

APPENDIX C

DISTRICT COURT, ARAPAHOE COUNTY, COLORADO 7325 South Potomac Street Centennial, Colorado 80112 (303) 649-6355	▲ COURT USE ONLY ▲
THE PEOPLE OF THE STATE OF COLORADO, vs. DEREK ROBINSON, Defendant.	
	Case Number: 15CR26 Division: 206
COURT'S ORDER RE: DEFENDANT'S MOTION OBJECTING TO THE ENDORSEMENT OF JANET PAULSEN KERR AS AN EXPERT WITNESS AND REQUEST FOR A <i>SHRECK</i> HEARING	

This matter comes before the Court on the Defendant's Motion Objecting to the Endorsement of Janet Paulsen Kerr as an Expert Witness and Request for Shreck Hearing. The Court, having considered the Defendant's Motion and the People's Response, and being fully advised in the premises, finds and orders as follows:

Relevant Procedural History

1. The Defendant is charged with Criminal Attempt to Commit Murder in the First Degree pursuant to C.R.S. §18-3-102(1)(a); 18-2-101, a class two (2) felony; Assault in the First Degree pursuant to C.R.S. 18-3-202(1)(a), a class three (3) felony and two Crime of Violence counts, both sentencing enhancers. The People have alleged that the offenses are acts of domestic violence.
2. On or about June 12, 2015, Defendant filed a Motion for Expert Endorsement and Disclosures. At the motions hearing held on July 13, 2015, this Motion was addressed on the record. The People indicated they anticipated two (2) potential experts: an expert in the area of domestic violence and a medical expert. The Court granted the Defendant's Motion, noting that C.R.C.P., Rule 16 is self-executing.



3. The People have endorsed Janet Paulsen Kerr as an expert witness in the area of domestic violence. The People provided Ms. Kerr with a Curriculum Vitae (CV) and a "Domestic Violence Expert Witness Report," attached to Defendant's Motion as Exhibit A.
4. On or about September 2, 2015, the People filed a Response to the Defendant's Motion Objecting to the Endorsement of Janet Paulsen Kerr as an Expert Witness and Request for a *Shreck* Hearing.
5. The Court notes the Court's file does not contain a copy of the endorsement of Ms. Kerr. Defendant's Motion indicates that the People have endorsed my Kerr as an expert on domestic violence relationships and the dynamics of those relationships, as well as suspect characteristics of domestic violence offenders, physical effects of trauma on a person and stalking.
6. In summary, Defendant contends that the information provided by the People is insufficient; Ms. Kerr's proffered testimony does not meet the standard of admissibility pursuant to CRE 702; Ms. Kerr is not qualified to testify about the physical effects trauma has on a person; the scientific principles are not reliable regarding some of her opinions and some of her testimony is irrelevant to this particular trial.

Standard of Review – *Shreck* Review of Expert Opinions

7. C.R.E. 702 states the standard for the trial court to qualify an expert witness:

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.
8. In 2001, the Colorado Supreme Court issued *People v. Shreck*, 22 P.3d 68 (Colo. 2001), abandoning the "general acceptance in the scientific community" standard for the admission of expert testimony set forth in *Frye v. United States*, 293 F. 1013 (D.C.Cir. 1923), and adopted the rationale of the U.S. Supreme Court in *Daubert v. Merrell Dow Pharm.*, 509 U.S. 579 (1993), focusing instead on C.R.E. 702 and 403:

The focus of a Rule 702 inquiry is whether the scientific evidence proffered is both reliable and relevant. In determining whether the evidence is reliable, a trial court should consider (1) whether the scientific principles as to which the witness is testifying are reasonably reliable, and (2) whether the witness is qualified to opine on such matters. In determining whether the evidence is relevant, a trial court should consider (3) whether the testimony would be useful to the jury.

A trial court's reliability inquiry under CRE 702 should be broad in nature and consider the totality of the circumstances of each specific case.

Given the flexible, fact-specific nature of the inquiry, we decline to mandate that a trial court consider any particular set of factors when making its determination of reliability.

Instead, we hold that the CRE 702 inquiry contemplates a wide range of considerations that may be pertinent to the evidence at issue.

By way of illustration, however, we recite here the wide range of issues other courts have considered when making a Rule 702 determination. For example, in *Daubert*, the Court articulated the following nonexclusive list of general observations that a trial court might consider: (1) whether the technique can and has been tested; (2) whether the theory or technique has been subjected to peer review and publication; (3) the scientific technique's known or potential rate of error, and the existence and maintenance of standards controlling the technique's operation; and (4) whether the technique has been generally accepted. The Third Circuit has articulated yet other considerations: (1) the relationship of the proffered technique to more established modes of scientific analysis; (2) the existence of specialized literature dealing with the technique; (3) the non-judicial uses to which the technique are put; (4) the frequency and type of error generated by the technique; and (5) whether such evidence has been offered in previous cases to support or dispute the merits of a particular scientific procedure.

We hold that a trial court making a CRE 702 reliability determination may, but need not consider any or all of these factors, depending on the totality of the circumstances of a given case. A trial court may also consider other factors not listed here, to the extent that it finds them helpful in determining the reliability of the proffered evidence.

[4] In addition, a trial court making a CRE 702 determination must apply its discretionary authority under CRE 403 to ensure that the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice, confusion of the issues, undue delay, waste of time, or needless presentation of cumulative evidence.

Shreck, 22 P.3d at 77-78 (citations omitted)(bracketed numbers added).

9. The quantum of certainty in an expert's opinion is also subject to the trial court's "reliability" determination:

Thus, in determining that an expert's testimony is unreliable and should therefore not be admitted under CRE 702, it is not enough for a court to conclude that the testimony is "speculative." Instead, as stated earlier, the court must consider whether the scientific principles underlying the testimony are reasonably reliable, and whether the expert is qualified to opine on such matters. As we stated in *Martinez* [51 P. 3d 1046 (Colo. App. 2001)], the standard of admissibility under CRE 702 is reliability and relevance, not certainty.

People v. Ramirez, 155 P.3d 371, 379 (Colo. 2007)(citations omitted).

10. In a more recent decision from the Court of Appeals, *People v. Rector*, 226 P.3d 1170 (Colo. App. 2009), the quantum and method of proof required by the trial court to address the admission of expert testimony under *Shreck* is addressed:

Reliability is determined by the trial court based on the totality of circumstances, considering the reasonable reliability of the scientific principles underlying the testimony. The totality of the circumstances consideration may include factors that the Supreme Court and other courts have considered pertinent to the same inquiry. An expert may also use a process of elimination as a reliable scientific method to reach a conclusion.

Id. at 1174 (citations omitted).

Expert Endorsement of Janet Paulsen Kerr

Opinions to be expressed by Janet Kerr

11. The People have endorsed Ms. Kerr to testify as an expert in the area of domestic violence relationships and the dynamics of those relationships, as well as suspect characteristics of domestic violence offenders, physical effects of trauma on a person and stalking. Attached to Defendant's Motion as Exhibit A is a copy of the report prepared by Ms. Kerr.
12. The Court will not repeat all the opinions outlined in the report. The Court does note that the report is general, in that Ms. Kerr is offered to testify about domestic violence in general and has not specifically met with or interviewed Ms. Keum (the listed victim in this case) nor is privy to the details of the investigation of this particular case.

Qualifications of Janet Kerr

13. The determination whether a witness is qualified to render an opinion helpful to the jury is left to the discretion of the trial court and will not be disturbed absent a clear showing on an abuse of discretion. An abuse of discretion does not occur unless the trial court's ruling is manifestly arbitrary, unreasonable, or unfair. *People v. Copeland*, 976 P.2d 334 (Colo. App. 1998), *aff'd*, 2 P.3d 1283 (Colo. 2000).
14. While the parties are privy to the CV of Ms. Kerr, the Court was not provided a copy for review. Ms. Kerr's report does indicate that she is an MA and LPC. The Court is familiar with Ms. Kerr and is aware that she has been qualified in District Courts on numerous occasions as an expert witness in the area of domestic violence. The Court anticipates that she is qualified, but the Court is requesting a copy of Ms. Kerr's CV in order to make specific findings. The CV must be provided to the Court by the People no later than **Friday, September 25, 2015**, as the Court intends to make the necessary findings at the pre-trial readiness conference scheduled on this case for October 2, 2015.

Usefulness of Janet Kerr's Testimony to the Jury

15. The Court finds, based upon the Court's knowledge of the alleged facts in this case, that expert testimony in the area of domestic violence will be assistive to the jurors.

16. By virtue of a previous Court ruling, the Court anticipates the jurors will hear of other instance of abuse between the Defendant and the victim from 2007, 2013 and 2014, prior to the shooting of January 5, 2015. The Court is aware that on some occasions, the victim did not contact the police. In addition, despite these previous instances of abuse, the victim is alleged to have remained in a relationship with the Defendant.
17. While some jurors may have general knowledge about domestic violence, the Court finds this testimony will be assistive. The question for the Court's consideration is whether an untrained lay person would be qualified to determine a particular issue as intelligently and to the best possible degree without the enlightenment offered by the proffered expert who has specialized understanding in the subject area. *Lanari v. People*, 827 P.2d 495 (Colo. 1992). An expert opinion about how the cycle of domestic violence works, why a victim might not seek police intervention and why a victim might remain in an abusive relationship over a long period of time is relevant and assistive to the jury in this particular case.
18. Further, Ms. Kerr will not be opining on the veracity of Mary Keum or the specific facts of this case, nor will she indicate she has any knowledge of the actual relationship between the victim and the Defendant. Rather, her general opinions will be assistive in gauging the victim's credibility.

Reliability of Janet Kerr's Opinion

19. In this particular case, the expert testimony to be offered by Ms. Kerr is not "scientific" evidence, such as DNA, but rather testimony that is based upon her training and experience as related to her work with victims of domestic violence, akin to testimony regarding behaviors exhibited by victims of sexual assault. The expert opinion does not necessarily rely upon scientific procedures and/or principals, but rather upon years of training and work experience.
20. The Court finds, based upon review of applicable case law, that the expert opinions to be offered by Janet Kerr are reasonably reliable. The reliability of the principles underlying the battered woman opinion evidence is well recognized. *People v. Lafferty*, 167 P.3d 1132 (1999); *People v. Yaklich*, 833 P.2d 758 (Colo. App. 1991); *People v. Wallin*, 167 P.3d 183 (2007).
21. Court have repeatedly found social science experts who discuss dynamics of relationships, risk factors and victims responses and behaviors to be a reliable area of expertise both when dealing with victims of domestic violence and sexual assault so along as the expert is not specifically testifying to the veracity of a witness. *People v. Rector*, 248 P.3d 1196 (Colo. 2011); *People v. Whitman*, 205 P.3d 371 (Colo. App. 2007); *People v. Baenziger*, 97 P.3d 271 (Colo. App. 2004); *People v. Aldrich*, 849 P.2d 821 (Colo. App. 1992) and *People v. Hampton*, 746 P.2d 947 (Colo. 1987).

CRE 403 Analysis

22. Based upon the Court's understanding of the facts of this particular case, the Court finds that the probative value of this expert testimony outweighs the danger of any unfair prejudice to the Defendant pursuant to CRE 403. In making this determination, the evidence should be accorded its maximum probative weight and its minimum prejudicial effect. *People v. Quintana*, 882 P.2d 1366 (Colo. 1994). This is a case in which the jury will hear that parties were involved in an intimate relationship for approximately 10 years. There was physical abuse that took place prior to the shooting of January 5, 2005. There is evidence that the victim did not report abuse to the police in the past and remained in an allegedly abusive relationship for years. The probative value of the testimony from an expert witness about why someone remains in an abusive relationship, the cycle of domestic violence and why someone might not report to the police in assessing the credibility of the victim outweighs the danger of any unfair prejudice to the Defendant. Both the victim and the expert will be available for cross-examination. In addition, the expert witness can be cross-examined on the fact that she has never met this victim and knows nothing of the actual relationship between the parties.

Necessity of a Shreck Hearing

23. The *Shreck* opinion requires the trial court receive sufficient information about the reliability and relevancy of the testimony and find that the probative value of the evidence is not substantially outweighed by unfair prejudice. *People v. Shreck*, 22 P.3d 68 (Colo. 2001). A trial court is not required to hold a *Shreck* hearing where it has sufficient information to make specific findings under CRE 403 and CRE 702 about the scientific principles' reliability, the expert's qualification and the evidence's helpfulness to the jury and potential prejudice. *People v. Rector*, 248 P.3d 1196 (Colo. 2011).
24. Anticipating a review of Ms. Kerr's CV which will substantiate her qualifications as an expert, the Court does not find there is a need for a *Shreck* hearing in this matter. The Court has sufficient information and has made the necessary findings pursuant to CRE 702.

Specific Areas Raised in Defendant's Motion

25. The Court notes Defendant has raised some specific areas of concern regarding Ms. Kerr's testimony that the Court needs to address.
26. First, Defendant has raised the fact that he anticipates Ms. Kerr may testify about why victims recant. Based upon the current state of the evidence, the Court finds that this likely would not be a relevant area of inquiry of Ms. Kerr, as it is anticipated that Ms. Keum will testify consistent with her previous statements. However, anything can happen at the time of trial. If Ms. Keum does recant on the witness stand, the Court will permit this area of inquiry with Ms. Kerr.

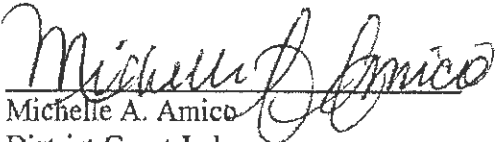
27. Second, Defendant has raised the fact that he anticipates Ms. Kerr may testify about stalking. Again, based upon the current state of the evidence, the Court finds that this likely would not be a relevant area of inquiry of Ms. Kerr. However, the Court may not be privy to all of the facts of the case. If the People intend to elicit expert opinion from Ms. Kerr in the area of stalking, the People will need to make an offer of proof at the pre-trial readiness conference scheduled for October 2, 2015.
28. Third, the Defendant has raised a concern about Ms. Kerr testifying regarding the physical effects of trauma on a person. The Court notes that on page 9, paragraph 9 of Ms. Kerr's report, there is a heading entitled "Effects of Trauma." The following two (2) pages then go on to discuss Neurobiological responses during and after trauma. A name is listed after this, Bruce Perry, so the Court is unclear if Mr. Perry is someone that Ms. Kerr relies upon for this information or if this information is based upon her own area of expertise.
29. The Court has concern about Ms. Kerr, who is not a medical expert, testifying about the impacts of trauma on the brain. While unpublished opinions from the Court of Appeals are not binding authority, the analysis from this opinion can be assistive and persuasive to the trial court. In *People v. Dwight Robinson*, 09CA680, December 26, 2013, the Colorado Court of Appeals addressed a social worker's lack of experience to testify about neurological explanations for a victim's conduct. The expert at issue in the case was an expert in the area of sexual assault and trauma related to sexual assault, who testified about the neurological explanations for the victim's conduct. This expert was a social worker by training and had received a BA in sociology and worked in the field for 30 years. The witness was asked to testify at trial about what happens to someone's brain function when they are exposed to trauma. Over defense counsel's objection, the expert was allowed to testify about medical research in this area. The Court of Appeals agreed that the trial court erred in allowing the expert witness to testify about *neurological explanations* for a victim's conduct and the error required reversal. Thus, the Court will proceed with caution in this area. If the People are seeking to elicit the *neurological effects of trauma* on the brain through Ms. Kerr, then the Court finds there needs to be further offer of proof and there may be a need for a hearing *on this particular area only*. If the People intend to elicit this testimony, the People need to notify defense counsel and the Court so the Court can determine if a setting is necessary prior to the October 2, 2015 pre-trial readiness conference or if the matter can be handled on that date.
30. Finally, Defendant has asserted the information provided by Ms. Kerr is incomplete as her report as it refers to attachments that are not included and does not outline sufficiently the bases of most of her opinions.
31. Pursuant to C.R.C.P., Rule 16 Part (I)(a)(III), the People shall provide any reports or statements of experts made in connection with the particular case, including the results of physical or mental examinations and of scientific tests, experiments or other comparisons. The People have provided Ms. Kerr's CV and a summary of her testimony, in compliance with Rule 16. The Court suspects that a bulk of Ms. Kerr's expertise is based upon her own work experience. However, to the extent Ms. Kerr has specific articles or materials that she routinely relies upon that support her opinions, the Court will Order the People to ensure

Ms. Kerr provides that list to counsel for Defendant. This list is to be provided within seven (7) days from the date of this Order.

WHEREFORE, the Court hereby **DENIES IN PART** the Defendant's Motion Objecting to the Endorsement of Janet Paulsen Kerr as an Expert Witness and Request for a *Shreck* Hearing, consistent with this Order.

SO ORDERED THIS 15th DAY OF SEPTEMBER, 2015.

BY THE COURT:


Michelle A. Amico
District Court Judge
18th Judicial District

Cc: Ms. Julia Marchelya, attorney for Defendant
Mr. Andrew Steers, Deputy District Attorney

APPENDIX D

1 You had some issues of her testimony.

2 MS. BANDUCCI: Well, the issue with Ms. Kerr's
3 testimony is that there was a prior order issued with limits
4 to Ms. Kerr's testimony. So I just want to clarify what those
5 are, because I know that you weren't the Court on that. And
6 then separately, Ms. Kerr includes in her sort of opinion
7 testimony a lot of things that would just be irrelevant to
8 this particular case, just general statistics about domestic
9 violence and the sort of societal problem of it.

10 My objection is as to those portions of her opinion
11 testimony, that they are completely irrelevant to this
12 particular case and all they do is suggest to the jury to
13 convict based on an improper basis, which would be that they
14 need to somehow stop this greater societal problem of domestic
15 violence rather than just taking what she has to say in
16 relation to this case, or as relevant to this case.

17 THE COURT: Response?

18 MR. STEERS: As to -- to be clear, Judge, do you want
19 me to respond to the statistics or to setting the limits?
20 Which one do you want to talk about first?

21 THE COURT: I don't care. You pick.

22 MR. STEERS: As to the statistics, specifically, what
23 I would say at this point is that's always been present in her
24 opinion letter. Defense had the opportunity to litigate it;
25 chose not to. And that is absolutely fair game at this point.

1 I think it's a law-of-the-case argument right now. They don't
2 get to continue to bring up things. As long as I'm operating
3 within the topic limits of Judge Amico's order I believe I'm
4 well within my rights to do any of that.

5 MS. BANDUCCI: Your Honor, I disagree this is a
6 relevance argument.

7 THE COURT: I disagree, Ms. Banducci. Judge Amico did
8 an eight-page order. I've read it multiple times on this
9 order. That issue that Judge Amico had was about physical
10 effects of trauma on the person and the medical expert on the
11 brain for the trauma. Those were the issues. Everything else
12 was fair game.

13 MR. STEERS: With one exception.

14 THE COURT: I might have missed one. I'm sorry.

15 MR. STEERS: The one exception was whether or not
16 Ms. Keum recanted and whether or not she would be able to talk
17 about it. It's clear, she didn't. So I'm not going into that
18 at this stage.

19 THE COURT: We're not relitigating this, Ms. Banducci.
20 It is a relevant issue. Judge Amico ruled on this, spent an
21 extensive amount of time doing an eight-page order. And this
22 is -- Judge Amico found that this was relevant. This Court
23 finds it's relevant. I'm not arguing this, Ms. Banducci.
24 It's already been established by Judge Amico and by me. Thank
25 you.

1 investigation, or otherwise attain information about the case
2 from an outside source. You must not read or listen to any
3 news reports or Internet information or other electronic
4 sources about the trial. Your verdict must be based solely on
5 the evidence presented in the courtroom and the law as I
6 instruct you.

7 Finally, it is especially important that you do not
8 form or express any opinion about the case until your
9 deliberations at the end of the trial.

10 Ladies and gentlemen, it's a couple minutes after
11 3:05. If I give you to 3:15, do you think that will work?

12 All rise for the jury.

13 (The jury left the courtroom.)

14 All right. Let the record reflect the jury has left
15 the courtroom.

16 Are there any issues we need to address before I let
17 you guys use the restroom?

18 MR. STEERS: No. Thank you.

19 MS. BANDUCCI: Your Honor, I just want to supplement
20 what I was stating up there, because I think maybe there
21 was -- regarding Ms. Kerr. I think that there was some
22 confusion about the statistics that I was referring to. I'm
23 not talking about Ms. Kerr's statistics that she sort of comes
24 up with from her own anecdotal experience about the number of
25 people that recant or anything like that; what I was referring

1 to was at the beginning of her report when she states things
2 like 25 percent of women in the United States are victims of
3 domestic violence, that they -- that the Colorado Springs
4 Police Department responds to 15,000 reports of domestic
5 violence per year, that there are approximately 110,000
6 domestic violence incidents per year, that the cost of
7 domestic violence to the US economy is more than 8.3 billion
8 dollars.

9 That's what I was referring to, because those are just
10 general information about domestic violence that is not
11 relevant to Mr. Robinson's case. And what it does is put in
12 the mind of the jury that because of this larger societal
13 problem they should do something to protect women against it,
14 and that is not a proper purpose -- that's not something that
15 they can properly consider at all. It's just completely
16 irrelevant. So that's what I was referring to, not where she
17 says that, you know, over 50 percent of domestic violence
18 victims recant and so that sort of thing.

19 THE COURT: Mr. Steers, I believe that Judge Amico had
20 this information when she made her ruling.

21 MR. STEERS: Your Honor, I agree with you. The
22 information has been presented to Judge Amico. She has made a
23 decision on it. She specifically -- and the caselaw
24 specifically allows an expert in the area of domestic violence
25 in order to explain to the jury and give them greater

1 understanding. Statistics are necessarily part of that
2 symptom, and Judge Amico saw a problem with that.

3 She is certainly more than capable enough to come to
4 her own opinion about that, whether or not defense raised
5 that, and having reached an issue on that. Number one, the
6 defense did not raise that at the time when they had the
7 opportunity; and two, Judge Amico, when she was able to read
8 through everything, specifically allowed this in. So there
9 is -- it's in. It's law of case. At this point we're
10 relitigating a decided issue.

11 MS. BANDUCCI: Her order did not address this specific
12 thing.

13 THE COURT: Ms. Banducci, she read everything. I'm
14 not relitigating this issue. And even if she didn't -- which
15 I highly doubt, because she is so thorough -- I'm finding it
16 relevant. The caselaw allows for it and allows for all of
17 this information, and she cites the caselaw in her ruling. So
18 your request is denied.

19 May we have a break?

20 MR. STEERS: I'm good with that.

21 THE COURT: All right. Thank you.

22 (A break was taken 3:10 p.m. to 3:16 p.m.)

23 We're back on the record on 15CR26.

24 Are there any issues we need to address before we
25 bring back in the jury?

APPENDIX E

1 Q You're not a doctor of any sort?

2 A Correct.

3 Q You have not been involved in any research or the
4 writing of any peer-reviewed publications on this topic?

5 A Correct.

6 Q You don't collect data; is that right?

7 A Correct.

8 Q Okay.

9 So any opinion that you were to -- that you would be
10 providing would be sort of anecdotal based on your experience
11 counseling?

12 A Yeah. Based on 30 years experience counseling
13 literally thousands of victims.

14 MS. BANDUCCI: Your Honor, maintaining my previous
15 objections.

16 THE COURT: Noting your previous objection, Ms. Kerr
17 will be qualified as an expert.

18 **D I R E C T E X A M I N A T I O N C O N T .**

19 BY MR. STEERS:

20 Q In your both training other people and counseling
21 people in the areas of domestic violence, are there a lot of
22 misconceptions about domestic violence?

23 A There are a lot of misconceptions about domestic
24 violence. A lot of myths out there.

25 Q Like what?

1 A Well, I think one of the most common myths that I hear
2 is this idea that it takes two to tango, that in a
3 relationship you have two people who are equally responsible
4 for what happens. And while it's true that it takes two
5 people to be involved in an unhealthy relationship, it really
6 only takes one person to be violent.

7 Q What is domestic violence?

8 A So the definition that we use for domestic violence is
9 any physical, psychological, emotional harm that's inflicted
10 by one person on another person with whom there is an intimate
11 relationship: So husband-wife; boyfriend-girlfriend.

12 Q Is this common? Is this uncommon?

13 A Oh, it's quite common. The Department of Justice
14 statistics estimate that between 25 and 30 percent of women
15 are victims of domestic violence over their -- over the life
16 span.

17 Q In a relationship that involves domestic violence, is
18 there a cycle that occurs?

19 A Yes, there is a cycle.

20 Q What is that?

21 A So the cycle of violence was originally identified by
22 a psychologist named Lenore Walker, and she observed that in
23 over 50 percent of domestic violence cases you have this
24 three-phase cycle, and the third -- the third -- the -- let me
25 start with the first phase.

1 The first phase is the tension-building phase. And
2 it's during the tension-building phase that the offender
3 starts to become tense and everyone in the household can feel
4 the tension rising. Victims will refer to that commonly as
5 the walking-on-eggshells phase where they try and do
6 everything they can to make sure this doesn't get any worse.
7 So, you know, they want to make sure the house is clean and
8 there's a good meal and the kids are bathed, or whatever it is
9 they think their partner wants, to keep this from getting
10 worse.

11 Then you move into the second phase, and the second
12 phase is what we refer to as the battering phase. In a young
13 or new relationship the battering can be an emotional
14 battering, kind of name-calling: You're stupid; you're fat
15 you're worthless; you're-lucky-I-stay-with-you kind of
16 battering. But as you get some time into the relationship you
17 start to see the physical violence occur. So it may begin as
18 a push or slap or a shove.

19 Then you move into the third phase, and the third
20 phase is called the honeymoon phase. And it's during this
21 phase that the offender is sorry, contrite, they promise never
22 to do it again, they promise they'll go to counseling or stop
23 drinking or whatever it is that they think will keep the
24 victim in the relationship. Often that works, and so the
25 relationship stays intact and you just go through the cycle

1 again and again.

2 And over time it intensifies and condenses so that
3 time periods often become shorter, and you move into the
4 tension-building and the battering and then into the honeymoon
5 more quickly, and it intensifies, as I said. So the
6 batterings often become more serious.

7 Q Is there one of those three phases of the cycle that
8 is more important to the relationship continuing as a
9 relationship of domestic violence than any of the others?

10 A Sure. That makes sense that that would be the
11 honeymoon phase. That's the phase, again, where the offender
12 is trying to do what they can to keep the person hooked into
13 the relationship. The relationship is really about -- the
14 core issue for most offenders, it's power and control. And so
15 they -- they use this strategy to keep power and maintain
16 control.

17 And when the strategy of battering doesn't work and
18 they feel like, oh, oh, maybe I've gone too far, and they
19 start to feel their victim pull away. They engage in
20 honeymooning type behavior. And that's when the victim says,
21 oh, wait, there he is. There's this person I fell in love
22 with. There's the nice guy that I dated. And they think that
23 that's the person with whom they can maintain a relationship;
24 that's the person they want to maintain the relationship with.

25 Q What role do threats play in this maintaining of power

1 and control?

2 A So threats are, again, another one of the strategies
3 that offenders use during that tension-building phase. And
4 the threats are -- the threats -- threats are very interesting
5 because they can -- they happen on a continuum. So they can
6 be rather low-level kinds of threats and they can be much more
7 specific and thought-out. And those are the kinds of threats
8 that -- specific, well-thought-out ones are the ones that
9 concern us and we think of as more highly lethal. But the
10 threats are just another power and control strategy that
11 offenders use.

12 Q And you said more specific threats are more
13 concerning. Are there other things that are more concerning?

14 A So in terms of trying to assess lethality in the
15 domestic violence relationship there are a number of things
16 that we listen for and look for, so that would be one,
17 specific, well-thought-out threats.

18 Another would be a threat to use weapons and access to
19 those weapons. That's -- that's very high on the lethality
20 list.

21 Another concern is strangulation. That's -- putting
22 your hands around someone's throat is a very intimate and very
23 dangerous crime and very high on the lethality list.

24 Q What impact does the system have on how the victim
25 stays in a domestic violence relationship?

1 A That's a really complicated question. And so the --
2 the system -- when I think of system I think of law
3 enforcement response, I think of prosecution, I think of the
4 court system, I think of all those of things.

5 And if victims feel supported, believed, heard,
6 throughout each step of the system, they -- that's obviously
7 helpful to them. If they feel like they're not believed, if
8 they feel like they don't have confidence in law enforcement
9 or prosecutors or, you know, other folks, victim advocates to
10 protect them, then it's a problem.

11 Q What about when the victim -- when police get involved
12 in a situation and yet the offender still has contact with the
13 victim? How does that impact her fear level in terms of
14 staying in the relationship?

15 MS. BANDUCCI: Objection. Relevance. Outside the
16 scope of what's been previously litigated.

17 THE COURT: Do you want to respond, Mr. Steers?

18 MR. STEERS: Your Honor, it is within what we've
19 previously litigated. I point to No. 3, Paragraph H.

20 THE COURT: Overruled.

21 A So, I'm sorry. Will you restate the question.

22 Q (By Mr. Steers) Yes, ma'am.

23 When the police get involved and the offender still
24 has the ability to contact the victim how does that impact
25 fear, intimidation, power, and control?

1 A So when victims reach out for help and they feel like
2 they're still subject to the influence or they're still under
3 the -- what's the right word I'm looking for? Many victims
4 count on the system, on law enforcement to be able to keep
5 them safe, and so very often in these cases protection orders
6 are issued, mandatory protection orders. If those aren't
7 issued or if the offender decides they're going to ignore
8 those, the victim feels even more vulnerable and, like, oh, my
9 gosh, I may need to step away from this because this feels
10 unsafe to me, or -- I mean, they might have a number of
11 responses.

12 Q Is it safe for a victim to attempt to step away from
13 domestic violence relationship?

14 A That's an excellent question. What we know from the
15 research is that the very most dangerous time for a victim in
16 a domestic violence relationship is when she tries to leave.
17 Again, according to the Department of Justice, 75 percent of
18 domestic homicides happen at that time.

19 Q Thank you.

20 MR. STEERS: Nothing further.

21 THE COURT: Cross-examination.

22 **C R O S S - E X A M I N A T I O N**

23 BY MS. BANDUCCI:

24 Q Ms. Kerr, you were testifying as what you would call a
25 blind expert; is that right?

APPENDIX F

1 His conduct, his words, foreshadow what he did on
2 January 15th of 2015. He assaulted her later that day
3 after her friends left and police were called.
4 Remember he had a court date for that case that was set
5 for January 6th, 2015; the day after Mary Keum was shot
6 in the face.

7 What else do we know about leading up to this
8 date? We know Ms. Keum had an abortion. She testified
9 that that was sometime around Halloween of 2014, and we
10 know that the defendant was angry about that.

11 You heard from Rebecca Thompson. He called her in
12 the middle of the night, upset, crying. He told her
13 about the abortion and he told her, "I will fucking
14 kill her for killing my child." She may have thought
15 it was a joke, but that was no joke. That shows you
16 his intent, his motive.

17 We also know that there were allegations that
18 Ms. Keum was cheating on him. He told Rebecca Thompson
19 that during that same conversation and we know from
20 Mary that these allegations had intensified leading up
21 to January 5th of 2015.

22 We also know that he was moving out of the house
23 around that time. You heard from Janet Kerr. The most
24 dangerous time for a victim of domestic violence is
25 when she's trying to leave. This relationship was

1 coming to an end. The relationship as he knew it was
2 gone. 75 percent of domestic violence homicides result
3 from that time period, and that is exactly what this
4 was.

5 MS. BANDUCCI: Objection, Your Honor. It's asking
6 for a verdict based on prejudice.

7 THE COURT: Overruled. This is argument.

8 MS. MORIARTI: Let's look at his conduct on
9 January 5th, the day of the shooting. He texted
10 Rebecca Thompson. He text Rebecca Thompson at
11 5:36 p.m., "You want to fuck?" Why is that important?

12 Police respond to this shooting at around 6:15 at
13 Mary Keum's house. The defendant texted Rebecca
14 Thompson a little over 30 minutes before this happens.
15 Why would he do that? He's setting up a place for him
16 to go. He's setting up someone who's going to say he
17 was with me. He's setting this up before it happens.

18 He comes over to that house and Mary Keum told you
19 he's angry. He comes in. He immediately starts
20 accusing her of cheating. He's demanding to go to
21 Rookie's and Rookie is person he thinks she's cheating
22 with. He wants to go over there and have her confess
23 to Rookie's wife what's going on.

24 He goes and gets the gun at some point during this
25 conversation. Now, I want you to remember what Mary

1 gun at someone's head and pulled the trigger? Are
2 those the actions of an innocent man?

3 There. That's her blood. They talked a lot about
4 how there's no blood on the handle. You can clearly
5 see it here and you can see the streak of blood here in
6 the photo from where the gun was thrown. There's blood
7 on that gun.

8 CSI Solano did not testify that she had never
9 tested the handle. The questions were she had never
10 tested the butt. We'll see that in a moment. He also
11 said on November 10th, "You won the battle. I'll win
12 the war." And he meant that.

13 What's clear, ladies and gentlemen, is he had been
14 planning this for awhile. He had been making
15 statements about it. He knew this relationship was
16 ending and he wanted to kill her. And she almost died.

17 But for her own will to live; but for Neil and
18 Christine calling the police; but for Officer Samuels,
19 Sergeant Samuels, picking her up and throwing her into
20 the back of an ambulance; but for her being that close
21 to University; but for the grace of God, she dies that
22 day. Her carotid artery is cut.

23 Let's go back to what the evidence tells us. You
24 heard CSI Solano point out where the trajectory of the
25 bullet is. It's consistent with what Mary said. You

1 and is an impossibility.

2 You don't commit suicide that way. That's not how
3 an accident happened. You have no evidence before you
4 that there was a struggle before this gun went off.
5 Somebody else shot her. Somebody that was taller than
6 her.

7 Attempt to commit murder in the first degree; this
8 is what we have to prove. These are the mental states
9 we have to prove, and I want to point out again that
10 the time to deliberate could be short or long. But
11 what we have in the evidence before us is on
12 November 10th 2014, the defendant said, "I'm going to
13 come back here and shoot everyone. And you won the
14 battle but I'll win the war."

15 We know he's mad about that court date because he
16 asked her not to show up and he darn well tried to make
17 her not show up by shooting her. Right before
18 Christmas, a few weeks earlier, "I'll fucking kill her
19 for killing my kid."

20 The weeks leading up, he accuses her of cheating.
21 You heard Ms. Kerr talk about that. Things offenders
22 do to keep the victim there. They threaten them. He
23 fixed up the room, honeymoon phase. He's trying to be
24 nice, but these things aren't working. She still wants
25 out.

1 What is that evidence of? It's evidence that she
2 was shot. The bullet trajectory is downwards.

3 MS. BANDUCCI: Objection, facts not in evidence.

4 THE COURT: Overruled. The doctor testified.

5 MR. STEERS: The relationship was ending and this
6 is so key. He knew it was over. He was mad that she
7 called the police, that there was a court date. He was
8 accusing her of cheating on him. He was mad that she
9 had had an abortion, and he couldn't get control back.
10 So what does he do? He ends it.

11 She wanted out, and during this dangerous time,
12 when he's feeling this woman whom he'd been in a
13 relationship with for 10 years slipping away, he could
14 no longer control her, he no longer had power, he loads
15 a handgun. He points it at her face and he pulls the
16 trigger.

17 "I know where your gun is." Think about how
18 honest that is. Ladies and gentlemen, follow the
19 evidence. Follow the evidence you have before you,
20 because the evidence in the case says the defendant is
21 guilty, because the evidence in this case is what you
22 have heard.

23 It's not imagination. It's not speculation. The
24 evidence in this case says that on January 5th of 2015,
25 Derek Robinson, the defendant, loaded a revolver,

APPENDIX G

1 moment to thank those of you in the panel who were not chosen
2 to serve on the jury today. I hope you appreciate how
3 important it is that you came in for service today, and that
4 includes all of you. Believe it or not, we've gone all the
5 way over to the right side before.

6 The right to a trial by jury is one of the things that
7 is very special about our country, and we couldn't do it
8 without your service and participation. Thank you for your
9 time. You may now take off your badge. There will be a
10 basket at the end for those that are not chosen, and the rest
11 of the prospective jurors are free go. Thank you so much.
12 I'm sorry.

13 MS. BANDUCCI: Can we approach before the Court
14 releases all the jurors and keep --

15 THE COURT: I'm sorry. Hold on. Have a seat.

16 MS. BANDUCCI: Thank you. Please approach. I
17 apologize.

18 (The following discussion was held at the bench, out
19 of the hearing of the jury.)

20 MS. BANDUCCI: Your Honor, I wanted to raise a *Batson*
21 challenge as to Mr. Shukla, Mr. Nguyen -- and Mr. Nguyen, and
22 Mr. Villegas, knowing that three of the six peremptories used
23 by the People -- noting that the People used four, so I guess
24 three of four peremptories used by the People were for persons
25 of color. Mr. Shukla is -- appears to be Indian descent.

1 Mr. Nguyen appears to be of Asian descent. Mr. Villegas
2 appears to be of Hispanic descent. These jurors, none of whom
3 were talkative, didn't say anything that really showed that
4 they were one way or the other. All of them expressed that
5 they would follow the law and consider the evidence.

6 MR. STEERS: Your Honor, even a *Batson* challenge --
7 the first thing they have to establish is a pattern. I would
8 note they left out Mr. Limke in terms of who they used their
9 challenges on, and he is white. So I would point out that
10 there is no pattern charge.

11 THE COURT: Three out of four potentially could be
12 considered a pattern, so let's go through this. But I will
13 note for the record that No. 1, Mr. Shukla, had you guys asked
14 for a for-cause challenge. He did not -- he was not willing
15 to follow the reasonable-doubt standard. In fact, he made
16 several statements that I even highlighted in here about
17 reasonable doubt and that he would not follow the law and
18 take -- if he thought the fact was necessary he would not
19 follow the beyond-a-reasonable-doubt instruction and use that
20 in the jury room. So I will note for that for Mr. Shukla.
21 But let's go to the second step.

22 MR. STEERS: Your Honor, in terms of Mr. Shukla, I'll
23 adopt the Court's record. That was going to be my record, as
24 well. I asked him if there's something you feel is necessary
25 but is not something we have to prove, should it have been are

1 you going to hold us to that, and he unequivocally said yes.
2 I didn't raise a for-cause challenge because I didn't
3 personally feel it rose to that; however, I think it's
4 certainly grounds for peremptory challenge.

5 As to Mr. Nguyen, it was similar as -- the question I
6 asked him he answered in such a way that led us to believe
7 that he didn't fully understand what the question was. We
8 believe it's a language issue, and we have concerns about him
9 being able to understand the trial.

10 In terms of Mr. Villegas, if I can step back to talk
11 to Ms. Moriarty real quick, there was a specific statement he
12 made that I need to get.

13 (Pause.)

14 Mr. Villegas, my concern was, in using the example on
15 the speeding, I -- it was the same thing essentially as
16 Mr. Shukla. I asked him repeatedly about the color of the car
17 and he said he didn't know in terms of color, even if it was
18 an element, he didn't know if he could find guilty if the
19 color of the car wasn't proven.

20 MS. BANDUCCI: Your Honor, Mr. Nguyen -- starting with
21 him -- I did not see any issues with him being able to
22 understand the People's question.

23 THE COURT: So he wasn't asked a ton of questions, but
24 his response -- English is clearly not his first language. So
25 I do remember not completely understanding his answer when he

1 gave it. And I don't know if it's because I was sitting so
2 far away. But I do remember thinking that potentially could
3 be a problem, but that was with Mr. Steers.

4 I didn't see it as much with you, Ms. Banducci, when
5 you questioned him. But I did with Mr. Steers. And I don't
6 know if it's the way the question was phrased.

7 MS. BANDUCCI: To me, it appeared that he just didn't
8 know how to answer the question, not because he didn't
9 understand the question. Because the question was sort of a
10 broader question about how would you -- I think the question
11 was something broad, like what do you think it means to be a
12 good juror, or how would you judge somebody's credibility,
13 something that was sort of broad in nature and not necessarily
14 a specific question.

15 He also didn't respond when the Court was asking
16 anybody whether or not that they can read and understand
17 English. He was not one of the People that raised their hand,
18 and indicated that that might be an issue.

19 As to Mr. Villegas and Mr. Shukla, it appears the
20 People are relying on the same line of questioning. Their
21 responses were that if -- if that detail was important for
22 some reason, so not necessarily that they would make the
23 People prove facts beyond the elements, but that if it was an
24 important detail because it mattered for the case that they --
25 that that would be a problem if they still had questions about

1 that particular thing, like the color of the car.

2 THE COURT: All right. So the Court is finding that
3 the *Batson* challenge has not been met, and here's why. For
4 Mr. Shukla, like I previously stated, had either side asked
5 for a for-cause challenge I would have granted it. It was
6 highlighted on my sheet he was not able to follow reasonable
7 doubt. I'm seeing that there is a race-neutral reason.

8 As for Mr. Nguyen, I think this is a very different
9 reason, and that's not like your asking a whole different type
10 of -- it's not the same reason as for Mr. Shukla, let me just
11 put it that way. And the Court does see the hesitation that
12 the People have, and the Court had originally the same
13 hesitation, and so the Court finds that that's a race-neutral
14 reason.

15 As for Mr. Villegas, with the car example, he had a
16 really hard time with the car example on the color -- and so
17 did some other jurors, I will give you that. But he also
18 didn't know about reasonable doubt. He kept saying he didn't
19 know, and I wrote that down. So the Court is finding that
20 there is a race-neutral reason for that.

21 The Court would also note for the record that there is
22 still an African-American on the panel, which is the defendant
23 is African-American. And in the Court's perspective he was a
24 very strong, very neutral panelist, who wasn't even touched by
25 either side of you wanted to excuse him. So the Court is

1 denying this request.

2 The Court is seeing very different reasons for this,
3 as like you have with that new case that just came out by the
4 United States Supreme Court -- and it's not just based on
5 race -- and very applicable reasons. So the Court is denying
6 the request at this time.

7 MS. BANDUCCI: I just wanted to add this one piece of
8 record. The Court -- understanding the Court has not made its
9 ruling, the panel that is left -- the panel that is left is
10 entirely white, absent Mr. Howard.

11 THE COURT: Yeah, but most of the panel that we had
12 were not very race-mixed to begin with, and I don't know why
13 that is the case, 'cause that's not usually the case, but this
14 is what we had. But none of the members that the prosecutor
15 discharged were the same race as the defendant.

16 (Open court.)

17 All right. April Fools is over. The rest of the
18 panel may go. Thank you so much. I appreciate your service.

19 (The prospective jurors left the courtroom.)

20 All right, ladies and gentlemen. You guys may be
21 seated.

22 For those of you who have been chosen as jurors, I
23 want to let you know that you can tell people you are on a
24 jury and you can say this is a criminal case, but that's it.
25 Do not go home and talk to your spouse or significant other,