

<b>DISTRICT COURT</b> <b>EAGLE COUNTY, COLORADO</b> 885 E. Chambers Road P.O. Box 597 Eagle, Colorado 81631	<div style="text-align: center; padding-top: 100px;"> σ <b>COURT USE ONLY</b> σ </div>
<b>Plaintiff:</b>  PEOPLE OF THE STATE OF COLORADO.  <b>Defendant:</b>  KOBE BEAN BRYANT.	
	Case Number: 03 CR 204  Div.: R
<p style="text-align: center;"><b>ORDER RE: DEFENDANT’S MOTION TO PRECLUDE TESTIMONY OF MS. JEAN MCALLISTER</b></p>	

This matter comes before the Court on Defendant’s Motion to Preclude Testimony of Ms. Jean McAllister. Mr. Bryant’s Motion cites Rules 403 and 702 of the Colorado Rules of Evidence; *People v. Shreck*, 22 P.2d 68 (Colo. 2001); *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 US 579 (1993); and *People v. Hampton*, 746P.2<sup>nd</sup>947 (1988). Ms. McAllister has been endorsed by the prosecution as a rebuttal expert in sexual assault victimization/reaction and trauma. Mr. Bryant objects to her testimony on three grounds: 1) she is not qualified; 2) the testimony sought is not reliable; and 3) Ms. McAllister should be prohibited from testifying because her organization’s repeated public commentary is designed to influence public opinion, undermine the fairness of the proceedings and is in contravention of the Court’s Pre-Trial Publicity Order.

The People’s Response requests the Court to deny the motion as follows: 1) McAllister has been endorsed only as a rebuttal witness and the issue of her testimony is not ripe until the Court rules on certain motions in limine; and 2) if the Court determines it appropriate to rule before deciding the pending motions, that the Court should find she is qualified, her testimony is reliable and that no Court order has been violated. They primarily argue the fact that she was previously allowed by the Court to present testimony at one of the rape shield hearings and reiterate the purported foundations of her qualification.

It should be noted that when she was offered as an expert, the defense challenged her qualifications, and Ms. Bakke acknowledged and represented certain “limitations” to McAllister’s testimony. Additionally, the Court specifically found that the evidence would assist the trier of fact, meaning the Court, “at this particular hearing.” The People argue that, based upon her prior testimony and the Court’s previous findings and ruling, further evidence and hearing on her qualifications is not necessary. The Court is not convinced. Qualification for the Court during pretrial hearing does not necessarily satisfy the need for qualification before a jury at trial. The Court further concludes that Rule 702 and *Shreck* designate the applicable standard and procedure rather than *Daubert* or *Hampton*. However, the People are correct that testimonial “inconsistencies” should go to weight and not admissibility.

Ms. McAllister is currently the executive director and the immediate past chair of the Colorado Coalition Against Sexual Assault. In their Response, the People casually attempt to dismiss the defense claim of conflict between McAllister’s role as an advocate and proffered expert. They submit that no Court order has been violated and that the defense request is untimely since he has been aware of her as a potential witness since March. The contradiction is obvious. The motion cannot logically fail for lack of ripeness and also be untimely. Furthermore, the People have not only endorsed her as a witness but also proffered her as an expert supporting their position. Such could easily be viewed as coming within the purview of “others assisting or associated with the prosecutor.”

After reviewing the Motion, Response and Reply, the Court determines that the issue of Ms. McAllister’s qualification as a rebuttal expert is not ripe until after ruling on the related motions in limine. If appropriate, the issue may be raised within five days after such ruling.

Therefore, determination of this motion is deferred.

Done this day 16<sup>th</sup> of June, 2004.

BY THE COURT

  
W. Terry Ruckriegle  
Chief District Court Judge

## CERTIFICATE OF MAILING

I hereby certify that I have, on this \_\_\_\_\_ day of \_\_\_\_\_, 2004, mailed and/or faxed a true and correct copy of the foregoing ORDER by U.S. Mail, postage prepaid, to the following:

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