

District Court, City and County of Denver, Colorado Court Address: Lindsey-Flanigan Courthouse, Room 135 520 W Colfax Ave Denver, CO 80204	
THE PEOPLE OF THE STATE OF COLORADO v. STEVEN CUMBERBATCH , Defendant DOB: ██████████	▲ COURT USE ONLY ▲
Dawn M. Weber, Reg. No. 23433 Chief Deputy District Attorney Cold Case Unit McKenna E. Burke, Reg. No. 49550 Deputy District Attorney Cold Case Unit For: Beth McCann, Reg No. 5834 District Attorney 201 W. Colfax Ave. Dept. 801 Denver, CO 80202 Phone Number: (720) 913-9000 FAX Number: (720) 913-9035	Case No. 20 CR 20010 Div: Criminal Ctrm: 5H
PEOPLE’S MOTION <i>IN LIMINE</i> SEEKING PRETRIAL RULING ON ADMISSIBILITY OF SANITIZED EVIDENCE RELATED TO POLICE CONTACTS OF DEFENDANT IN DENVER AREA	

BETH McCANN, District Attorney in and for the Second Judicial District, State of Colorado, by and through the undersigned Deputy District Attorney, respectfully submits this Motion *in Limine* Seeking a Pretrial Ruling on the Admissibility of Sanitized Evidence Related to Police Contacts of Defendant in Denver Area. The grounds therefore are set forth below.

FACTUAL BACKGROUND

1. This defendant is charged with Murder in the First Degree - After Deliberation and With Intent and Murder in the First Degree – Felony Murder (Sexual Assault). The charged offenses occurred between December 5, 1994, and December 7, 1994.

2. On December 7th, 1994, victim R.D. was found deceased in room #202 at the Broadway Plaza Motel located at 1111 Broadway in downtown Denver. R.D. was found naked on the motel bed with her legs spread partially open and a blanket thrown over the bottom half of her body. She was visibly beaten. The Denver Medical Examiner's Office determined that R.D. was the victim of a homicide. She sustained numerous abrasions, contusions, and lacerations, and her cause of death was determined to be asphyxiation by smothering.
3. Crime Scene Detectives responded to document the scene and collect evidence. There were no signs of forced entry into the motel room. The inside of the motel room was in disarray. There was blood on the bed surrounding R.D.'s body and what appeared to be a bloody palm print in suspected blood on the sheet near her body. There was a bedside table missing one of its four legs. The corresponding table leg was found on the floor near the side of the bed next to a pair of white men's shorts. The metal brace that would have secured that table leg to the table was located on the bed near the victim's body. A gin bottle was also collected from the motel room.
4. Additional evidence was collected from R.D.'s body during autopsy including fingernail scrapings and oral, anal and vaginal swabs.
5. In 1994, R.D.'s was living a transient lifestyle. The motel room in which she was murdered was provided for her by the Colorado Coalition for the Homeless,
6. In the days preceding her murder, R.D. socialized with various men in her motel room. Among those men was Theodore "Teddy" Roscoe Collins. Mr. Collins was arrested for the murder on December 15, 1994, after a latent fingerprint belonging to him was recovered from a piece of furniture in the motel room. He was ultimately eliminated from suspicion because he had a documented arm injury and was not physically capable of committing the type of assault inflicted on the Victim. On December 18, 1994, the Denver District Attorney's Office declined to file charges against Mr. Collins, and he was released from custody.
7. Another man, named Patrick Mack, confessed to the killing but was never charged. Mr. Mack's confession was missing critical facts and not corroborated by other evidence in the case.
8. In July 2018, the Denver Crime Lab received a Combined DNA Index System (CODIS) Match Report for a DNA profile developed from the anal swabs sperm fraction collected at autopsy. The match was to the defendant, convicted Virginia offender Steven Cumberbatch. The defendant had not previously been investigated as a suspect in this case. Following this CODIS Match Report, Denver Police Department Cold Case Detective Kari Johnson was assigned for follow-up investigation.

9. As part of the reopened investigation, Detective Johnson located multiple records of local police contacts and arrests of the defendant in the Denver metro area in the time prior to R.D.'s murder. A number of these contacts occurred near the location of the murder. These details of these encounters are set forth below:
- a. **In 1993:** the defendant was residing at **4161 Hooker St.** in Denver. This information comes from a 1993 Lakewood PD arrest warrant for the defendant in relation to a forgery investigation.
 - b. **January 15, 1994:** the defendant was contacted/arrested by DPD Officer Maria Garcia, badge no. 83038 at **1257 Lipan St.** in Denver's Lincoln Park neighborhood (less than a mile from the Broadway Plaza Motel).
 - c. **June 14, 1994:** the defendant was contacted/arrested by DPD Officer Jerry Baruch, badge no. 82003 at **1055 Clermont St.** in Denver (3.5 miles from the Broadway Plaza Motel).
 - d. **October 14, 1994:** the defendant was contacted/arrested by DPD Officer Joe Montoya, badge no. 91011 at **1420 Ogden St.** in Denver (1.1 miles from the Broadway Plaza Motel).
 - e. **October 30, 1994:** the defendant was contacted/arrested by now-retired DPD Officer William Stanley, badge no. 92042 at **215 E. 11th Ave.** in Denver (0.2 mile from the Broadway Plaza Motel).
 - f. The People wish to note there is an additional arrest documented on **July 27, 1994.** The address associated with this address is unclear and it may have occurred at a local police precinct. Because of this, and to avoid any risk of unfairly prejudicial evidence, **the People will NOT seek to offer any evidence whatsoever related to the defendant's arrest on July 27, 1994.**
10. The palm print in suspected blood on the bedsheet next to R.D.'s body was identified as a match to that of the defendant. The defendant's fingerprint was also located on the metal brace belonging to the detached table leg that was recovered from the bed.
11. Further crime lab testing identified the defendant's DNA on multiple items collected from within the motel room and on evidence/swabs collected from R.D.'s body at autopsy. The defendant's DNA was located on R.D.'s body orally, anally, vaginally, on the her left and right fingernail scrapings, and on two hairs collected from her back.
12. In the motel room, the defendant's DNA profile was located on the inside waistband of the white men's shorts, the hairs collected from the white men's shorts, the foot of the detached table leg, the metal brace belonging to the detached table leg and the gin bottle.

LEGAL ANALYSIS AND ARGUMENT

13. The People seek a ruling *in limine* permitting introduction of sanitized evidence relating to the dates and locations of defendant's police contacts in the Denver metro area during the timeframe prior to the murder in this case.
14. The People anticipate the jury will hear evidence of the multiple suspects developed as part of the original investigation in 1994 and 1995. All of those suspects can be either linked to a relationship with R.D. or placed in or around R.D.'s motel room in the days preceding her murder. It is against this backdrop that the People seek this ruling.
15. Based on the Preliminary Hearing in this case, the People anticipate at trial the defense will argue that this case is built on DNA alone and will then attempt to attack the validity of the DNA results. The People expect the defense to argue that there is no evidence other than DNA that places the defendant at the motel.
16. Though the DNA evidence in this case is strong, the defense can always argue that R.D. and the defendant engaged in consensual sex elsewhere and that the defendant's DNA on certain portable items (such as the gin bottle) was simply brought into the room, rather than deposited by the murderer while inside the motel room.
17. Regardless of the amount of DNA evidence in the People's case, there is separate and distinct probative value in corroborating the presence of that DNA with evidence that places the defendant in the Denver area in 1994.
18. The People recognize the potential peril that accompanies un-sanitized evidence of unrelated police contacts under Colo. R. Evid. 403. To address that concern, the People are preemptively agreeing to strip the proposed evidence of any unfairly prejudicial details or facts.
19. Should the Court grant this motion, the People intend to offer this evidence through the law enforcement witnesses who contacted the defendant on each occasion. Their testimony would be sanitized of any mention to police contact and instead would reference only "documented encounters" with the defendant in the specific locations near the motel where R.D. was murdered.
20. To further mitigate any concern about risk of unfair prejudice, these witnesses will wear suits, rather than uniforms, during their testimony. The People will identify these witnesses as employees of the City and County of Denver and will make no mention of their occupation in law enforcement. The People will not elicit mention of any arrests made or crimes committed; the evidence will include only the date, time and location of these encounters.
21. The probative value of this evidence, in its sanitized form, outweighs any risk of unfair prejudice to the defendant. Placing the defendant in Denver in 1993-1994, specifically in

locations near the motel where R.D. was murdered provides necessary evidence of the defendant's opportunity to commit this crime. Without this evidence, the jury will receive an incomplete version of the facts, and the People will be unable to rebut the anticipated defense argument that there is no evidence, other than DNA, that places the defendant at or near the motel, or even in the Denver area, in December of 1994.

22. The People are willing to confer with defense counsel as to a preferred and streamlined method for introducing this proposed evidence in its most sanitized form and with language that does not suggest a police encounter (i.e., that the officers merely "spoke with" the defendant at that particular location and at that particular time).

WHEREFORE, the People respectfully submit this Motion *in Limine* Seeking a Pretrial Ruling on the Admissibility of Sanitized Evidence Related to Police Contacts of Defendant in Denver Area.

RESPECTFULLY SUBMITTED this 21st day of July, 2022.

BETH McCANN
District Attorney

By: */s/McKenna Burke, Reg. No. 49550*
Deputy District Attorney

Cold Case Unit
(720) 913-9000

CERTIFICATE OF SERVICE

I certify that on the 21st day of July, 2022, a true and correct copy of the foregoing was:

- E-served through CCE on all parties who appear of record and/or have entered their appearances.
- Filed with Denver County Court and provided to all parties who appear of record and/or have entered their appearances.
- Filed with Denver County Court and will be provided upon request for discovery.

By: */s/ McKenna Burke*