

DISTRICT COURT
ELBERT COUNTY, COLORADO
751 UTE AVE., KIOWA, CO 80117

THE PEOPLE OF THE STATE OF COLORADO vs.

Defendant:
DANIEL JAMES PESCH

▲ COURT USE ONLY ▲

Attorney:
GEORGE H. BRAUCHLER, 18th Judicial District Attorney
Atty. Reg. #: 25910
By:
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Case Number:
2017 CR 156
Division/Ctrm:
1

[P-4] – PEOPLE’S MOTION TO DISMISS ALL COUNTS WITHOUT PREJUDICE

COMES NOW, GEORGE H. BRAUCHLER, District Attorney in and for the Eighteenth Judicial District, County of Arapahoe, State of Colorado, by and through his duly appointed Senior Deputy District Attorney, and informs the Court as follows:

1. Mr. Pesch was charged with First Degree Murder, After Deliberation (F1) for events occurring on or about June 14, 2010, and three additional counts relating to actions on December 18, 2017: Attempt to Escape From Pending Felony, and two counts of Obstructing a Peace Officer. Mr. Pesch is currently scheduled for a Jury Trial on March 25, 2019.
2. On May 21 and May 25, 2018, the Court held a combined Preliminary Hearing and Proof Evident, Presumption Great hearing on the First Degree Murder and Attempt to Escape charges. The Court ultimately determined that probable cause existed for both counts at the conclusion of the testimony, and also found that the proof was evident and the presumption was great as it related to the charge of First Degree Murder.

ETHICAL OBLIGATIONS OF A PROSECUTOR

3. The Colorado Rules of Professional Conduct have long recognized that “A prosecutor has the responsibility of a minister of justice and not simply that of an advocate.” C.R.C.P. Rule 3.8, Comment 1. Rule 3.8(a) plainly directs that “[A] prosecutor in a criminal case shall refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause”, but prosecutors are further guided by ABA Criminal Justice Standards for the Prosecution Function, Standard 3-4.3(a) notes that maintaining criminal charges should also subject to the requirement that “admissible evidence will be sufficient to support conviction beyond a reasonable doubt.” This standard is routinely employed and more commonly referred to as whether a prosecutor has a reasonable likelihood of success at trial.

4. The application of this ethical guidance is not frozen in time. It requires that a prosecutor continually evaluate each case in light of changing circumstances and review new evidence or testimony that is uncovered during the pendency of a case. Every case is subject to this analysis – not just those that involve the most serious charges in our criminal justice system.
5. Here, the Court has twice found probable cause that Mr. Pesch committed the crimes alleged: First based on an investigator's filing affidavit, and Second, the Court found that the proof was evident and the presumption was great after a two-day hearing involving testimony from multiple witnesses. Despite those findings, continued investigation by the Elbert County Sheriff's Office, as well as substantial additional information provided by the defense requires the conclusion that continued prosecution of Mr. Pesch for First Degree Murder is not appropriate at this time. Instead, the People conclude that there is currently insufficient evidence to support a conviction beyond a reasonable doubt, and do not believe that there is a reasonable likelihood of convicting Mr. Pesch at a jury trial. In light of that, the People are moving to dismiss this case in its entirety and without prejudice for the reasons further outlined in the paragraphs that follow.

THE DEFENDANT'S CONFESSIONS

6. As the affidavit indicates, this case was initiated due to Mr. Pesch's continued contact with law enforcement where, over the course of a number of interviews, he continued to implicate himself in this homicide. Mr. Pesch's statements varied in their completeness, the level of detail involved, and the narrative that was told, though he ultimately provided investigators with significant details regarding the victim's death and his involvement, motive, and actions in committing the homicide.
7. Mr. Pesch's statements, while largely accurate, were never a perfect match with the reality that investigators found at the scene of this crime. Many factors could contribute to those inconsistencies, including Mr. Pesch's self-described intoxication, his emotional state at the time of the murder, and the passage of time between the incident and the confessions. However, continued investigation revealed that the vast majority of details Mr. Pesch described in his confession included information that could be available to a member of the public who diligently researched the facts of this case. While Mr. Pesch offered some details that were consistent with the crime scene, he never mentioned a unique "smoking gun" that would conclusively prove he knew something that only the killer could know – something the Court discussed in some detail during Her Honor's ruling at the Preliminary Hearing.
8. Even in the absence of a clear "smoking gun," Mr. Pesch's statements could only be described as a confession. They were offered on multiple occasions, through different sources and mediums, and also reflected his intent to leave the state of Colorado. He blended claims that he wanted to accept responsibility with discussion of flight from the jurisdiction. Rather than leave someone who had confessed multiple times to being a killer on the street to flee, Mr. Pesch was arrested and prosecution was initiated.
9. Mr. Pesch's many statements, and his mental health when those statements were given, were both topics of the Preliminary Hearing, but were also the focus of an extensive report by a mental health professional provided by the Defense. While all of the details of his mental health history are inappropriate for complete discussion in a public court filing, it is sufficient to note that Mr. Pesch's mental health history is extensive, concerning, and complicated. At times in his contact

with law enforcement Mr. Pesch denied any mental health issues, though investigators later became aware of at least one significant mental health event near the time of Mr. Pesch's ultimate confession. His mental health evaluation indicates that Mr. Pesch's characteristics are correlative with other individuals who make voluntary false confessions. Additional interviews with Mr. Pesch's family members, and a detailed review of his contact with law enforcement authorities in other jurisdictions indicate that Mr. Pesch has a significant history of claiming ailments or reporting conduct that did not exist, or, at least, did not genuinely involve him. This history reportedly goes back many years prior to the incriminating statements he made in this particular case.

10. This evidence raises the difficult question of assessing the credibility of Mr. Pesch's own words – the primary, and indeed, the only substantial evidence of his guilt in this case. In the absence of a clearly identified alternate suspect, a perfect alibi, or clear eyewitness testimony that demonstrates something to the contrary, it is incredibly difficult to reach the conclusion that a confession is “false.” Here, though, that is not a requirement. Instead, the People evaluate this evidence as it relates to the weight a jury would give Mr. Pesch's statements, and how that impacts the People's ability to establish Mr. Pesch's guilt beyond a reasonable doubt. In light of this additional information, it becomes clear that, while incriminating, Mr. Pesch's statements alone are insufficient to convince a jury that he is guilty beyond a reasonable doubt. In light of that reality, continued prosecution of Mr. Pesch for this homicide is not appropriate.

ABSENCE OF FORENSIC CORROBORATION

11. An additional factor weighing in favor of that determination is the lack of forensic corroboration. As the Court is aware, no corroborating evidence has yet been identified. The unique circumstances of the victim's death yielded a number of items that may have potential forensic significance and could aid in the prosecution of the killer. While we do not discuss each item of forensic significance here as some future prosecution may be initiated in this case, it is important to note that a number of items of potential forensic value were collected by investigators and subjected to the best available testing by forensic scientists at the Colorado Bureau of Investigation. Some of that testing was not completed until months after prosecution of this case had already begun.
12. Despite the best efforts of these scientists, the items examined do not implicate any particular suspect, let alone Mr. Pesch. Where there were mixtures of DNA, often the samples were insufficient for comparison to a particular individual. Where conclusive profiles could be developed, Mr. Pesch was excluded as a contributor of that sample of DNA. While this evidence may not exonerate Mr. Pesch on its own, it is also clear that the evidence does not implicate him, and cannot corroborate the statements he made describing his own involvement in this homicide.

EVIDENCE OF A PARTIAL ALIBI

13. At the Preliminary Hearing, a member of Mr. Pesch's family was called to testify by the defense, and provided detailed testimony which the Court characterized at least a “partial alibi”. The Court also noted that the family member appeared to offer testimony that was credible. In essence, the family member testified that the defendant was on a trail ride with his parents and a family friend outside of Montrose on June 13, 2010, and provided a journal of trail rides in evidence along with a photograph to corroborate that claim. This area is a substantial distance

from the scene of the murder, and would require a lengthy drive for Mr. Pesch to both have participated in the trail ride, and to be at the scene of the murder.

14. While the testimony and additional interviews following up on that testimony did not, by themselves, conclusively demonstrate that Mr. Pesch could not have been in Elbert County at the time of the murder, it is certainly circumstantial evidence that the People must review as it relates to the credibility of Mr. Pesch's confessions to law enforcement, and at this time, it weighs in favor of dismissing this case.

CONCLUSION

15. As the record in this case makes clear, the only substantial evidence of Mr. Pesch's guilt comes from his own statements. While those statements are compelling, the current state of the forensic evidence offers nothing to corroborate his own claims of responsibility, while additional investigation now calls into question the veracity of those confessions. In light of that reality, as well as the other circumstances described in this motion, the People believe that there is no longer a reasonable likelihood of success at trial. Therefore, the People respectfully request that this case be dismissed without prejudice. The People will seek to pursue charges unrelated to the homicide charge in a separate criminal proceeding.

DATED this 3rd Day of December, 2018.

Respectfully submitted,
GEORGE H. BRAUCHLER, District Attorney

By: /s/ Christopher P. Wilcox
Chris Wilcox, Senior Deputy District Attorney
Attorney Registration Number: 44805

Case: 2017 CR 156

CERTIFICATE OF SERVICE

I hereby certify on the 3rd day of December, 2018, a true and complete copy of the foregoing [**P-4**] – **PEOPLE’S MOTION TO DISMISS ALL COUNTS WITHOUT PREJUDICE** was filed via Colorado Courts eFiling System and served on all parties of record as contained therein.

By: /s/ Christopher Wilcox
Certifying Person