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18-1-01670-31  
MTL 79  
Motion in Limine  
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR SNOHOMISH COUNTY

STATE OF WASHINGTON

Plaintiff,

vs.

TALBOTT, William E.,

Defendant.

Case No: 18-1-01670-31

DEFENDANT'S SUPPLEMENTAL  
MOTIONS IN LIMINE

Comes now, the defendant, and makes the following motions in limine in addition to the motions made in the defendant's original trial brief.

1. Designation of [REDACTED] Testimony: A preservation deposition [REDACTED] was taken earlier in this case in the event he was unable to testify. The deposition has not yet been reviewed for objections, redactions, etc. The defense is seeking clarification in regard to [REDACTED] availability to testify in this trial.
2. Motion to exclude [REDACTED] Testimony regarding seeing the van: Pursuant to ER 403, the court may exclude evidence if its probative value is substantially outweighed

1 by the danger of unfair prejudice, by misleading the jury, or confusion of the issues.  
2 ER 602 prohibits a witness from testifying unless evidence is introduced sufficient to  
3 support a finding that the witness has personal knowledge of the matter. ER 701  
4 prohibits opinion evidence from lay witnesses unless it is "rationally based on the  
5 perception of the witness." And ER 402 requires evidence to be relevant.

6 Mr. [REDACTED] claims that he saw a van like the Cook van at the residence belonging  
7 to Mr. Talbott's parents. The circumstances of the "sighting" are aptly described in  
8 other defense motions (knapstad motion, and motion to sever), but generally the  
9 circumstances were that he was driving by the parent's house before dawn on a misty  
10 morning in the fall of some year between 1985 and 1991, traveling at a speed of at least  
11 35 mph, and he had approximately two seconds to see the van as he drove past. He did  
12 not note a license plate or any other distinguishing feature, other than noticing the  
13 hubcaps of the van (of note, the Cook van had factory stock hub caps). Mr. [REDACTED] does  
14 not know specifically what day of the week this might have occurred, and he does not  
15 recall what he himself was driving at the time.

16 The initial evidentiary problem is to relevance: Mr. [REDACTED] has no real idea of  
17 when he saw this van. If it was not during the narrow period of time between when the  
18 Cook van was missing, there is no relevance, and the danger of unfair prejudice to allow  
19 this speculation could not be greater.

20 The underlying problem is that what Mr. [REDACTED] claims is not rationally possible.  
21 That a person could recall a memory of a two second viewing of a nondescript van  
22 parked in the driveway of a house that the person was driving past in the darkness 30  
23  
24

1 years ago defies rational acceptance. This testimony is conjecture and should be  
2 excluded.

3 3. Motion to exclude [REDACTED] Testimony regarding alleged photograph of WSR

4 ER 401, 403, 602, and 701. Mr. [REDACTED] relayed a story that allegedly took place  
5 in the early 1980's that he and Mr. Talbott walked from the High Bridge to the  
6 riverbank of the Washington State Reformatory in Monroe where Mr. Talbott allegedly  
7 took a picture of the prison. Mr. Talbott allegedly had the picture developed and gave  
8 it to Mr. [REDACTED] and told Mr. [REDACTED] to keep it, though Mr. [REDACTED] did not know why. Mr. [REDACTED]  
9 has that picture and has provided it to detectives.

10 This testimony should be excluded because it is not relevant. Mr. Cook's body  
11 was found next to the High Bridge, not inland from it, nor near WSR.

12 Second, the picture that Mr. [REDACTED] claims to be of WSR clearly is not a picture  
13 of WSR. This was made clear by the photographs submitted as discovery to the defense  
14 on May 30, 2019. Even if it were a picture of WSR, it would have no relevance. But  
15 it is not even what it is purported to be, and it should be excluded for these reasons.

16 4. The defense is reserving the motion to exclude certain photographs under ER 403 The  
17 state has not yet identified what particular photographs related to the crime scene,  
18 autopsies, etc., that may be prejudicial. The defense anticipates working with the  
19 prosecution to identify any pictures it finds objectionable and raise that issue with the  
20 court when that has been done.

21 5. Motion to exclude genetic genealogy evidence pursuant to ER 402 and 403.

22 This motion is made in connection with the defense motion regarding AKESOGen labs.

23 While this genetic genealogy evidence may have some res gestae value in explaining  
24

1 how the government came to target Mr. Talbott for investigation, it does not further  
2 any material fact that makes his guilt or innocence more or less probable. It would be  
3 a waste of the courts time and the jurors time to present days of expert testimony  
4 regarding an issue that could be presented in summary form by a detective explaining  
5 the catalyst for Mr. Talbott's investigation.  
6

7 DATED this 6<sup>th</sup> day of June, 2019.

8 Respectfully submitted,

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11 Rachel Forde, WSBA# 37104  
12 Attorneys for Defendant  
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