

DISTRICT COURT, LARIMER (FT COLLINS) COUNTY, COLORADO	
Court Address: 201 Laporte Avenue, Suite 100, Fort Collins, CO, 80521	
Plaintiff(s) THE PEOPLE OF THE STATE OF COLORADO	DATE FILED July 29, 2019 4:07 PM
v.	CASE NUMBER: 2019CV30244
Defendant(s) ALLEN LAWSON	
	⚠ COURT USE ONLY ⚠
	Case Number: 2019CV30244 Division: 5A Courtroom:
Order: Motion to Vacate Opinion and Dismiss Appeal for Lack of Jurisdiction	

The motion/proposed order attached hereto: DENIED.

The Court has reviewed the Motion and Response and respectfully denies the Motion. The Court issued an order on an interlocutory appeal under C. R. Crim. P. 37.1, reversing a county court's suppression of text messages from an unavailable witness. Defendant filed the instant Motion arguing that this district court should look to Colorado Appellate Rule 4.1 for guidance on how to interpret Rule 37.1. C.A.R. 4.1 specifically addresses interlocutory appeals by the prosecution to the Supreme Court from district courts.

The Court notes that Rule 37.1 is clear, and not as specifically limited in its terms as Rule 4.1. The Court therefore does not find that it is governed by C.A.R. 4.1, or that it needs to look to that appellate rule for guidance in interpreting the clear language of Rule 37.1.

Here, Defendant moved to exclude the proffered evidence on constitutional grounds. Rule 37.1 allows for interlocutory appeal of suppression rulings by a county court:

"The prosecuting attorney may file an interlocutory appeal in the district court from a ruling of a county court granting a motion made in advance of trial by the defendant for return of property and to suppress evidence or granting a motion to suppress evidence or granting a motion to suppress an extra-judicial confession or admission." Crim.P. 37.1(a).

This Court reviewed the exclusion of the evidence by the County Court and reversed. The Court is not persuaded by the defense arguments that its order was outside of the jurisdiction of this Court sitting as a reviewing court. Therefore, the Motion to Vacate Opinion is respectfully DENIED.

Issue Date: 7/10/2019



JULIE KUNCE FIELD
District Court Judge

DISTRICT COURT, LARIMER COUNTY, COLORADO 201 LaPorte Avenue, Fort Collins, CO 80521 (970) 498-6100	σ COURT USE ONLY σ
PEOPLE OF THE STATE OF COLORADO, Plaintiff-Appellant, vs. ALLEN LAWSON, Defendant-Appellee.	
Megan Ring Colorado State Public Defender KATHERINE MARAK (#52357) Deputy State Public Defender Fort Collins Regional Office 1 Old Town Square, Suite 200 Fort Collins, Colorado 80524 Phone: (970) 493-1212, Fax: (970) 498-8867 E-mail: ftcollins.defenders@state.co.us	District Court Case No. 19CV30244 County Court Case No. 18T1257
MOTION TO VACATE OPINION AND DISMISS APPEAL FOR LACK OF JURISDICTION	

Mr. Lawson, through counsel, requests that the District Court vacate its opinion dated May 24, 2019 and dismiss the People's appeal for lack of jurisdiction. As grounds:

1. Allen Lawson was charged with Driving Under the Influence on April 27, 2018. He pleaded not guilty on October 30, 2018.
2. On the morning of the scheduled trial on January 9, 2019, the People informed the trial court that Katherine Rogers was unavailable to testify, but that they would be eliciting her text messages. Defense counsel objected on multiple grounds, including that this evidence would violate Mr. Lawson's right to confront witnesses against him.
3. The trial court ruled that the text messages were testimonial and barred by the Confrontation Clause.
4. The People filed a Motion for Reconsideration on January 10, 2019. At a motions hearing on March 7, 2019, the trial court affirmed its previous ruling, again holding that the statements were barred by the Confrontation Clause.
5. The People appealed pursuant to Crim. P. 37.1. This Court ruled that Ms. Rogers's texts were nontestimonial in nature and not barred by the Confrontation Clause.

THE PROSECUTION'S APPEAL WAS NOT AUTHORIZED BY CRIM. P. 37.1, SO THIS COURT LACKED JURISDICTION TO HEAR THAT APPEAL.

6. Crim P. 37.1 only authorized interlocutory appeals of suppression rulings:

The prosecuting attorney may file an interlocutory appeal in the district court from a ruling of a county court granting a motion made in advance of trial by the defendant for return of property and to suppress evidence or granting a motion to suppress evidence or granting a motion to suppress an extra-judicial confession or admission.

Crim. P. 37.1(a).

7. "Motion to suppress" is a legal term of art. It relates only to a motion to exclude illegally-obtained evidence. *See Black's Law Dictionary* (10th ed. 2014) (defining "motion to suppress" as a "request that the court prohibit the introduction of illegally obtained evidence at a criminal trial.") Such motions include arguments that the defendant was unlawfully searched or seized, that his statements were obtained involuntarily or in violation of *Miranda*, or that he was identified in an unduly suggestive procedure in violation of due process.
8. A motion to exclude evidence because it violates rules of evidence or the Confrontation Clause is not a "motion to suppress." *See id.* Because Crim. P. 37.1 only authorizes appeals or orders granting motions to suppress, it does not authorize appeals of ordinary pre-trial evidentiary rulings like the one at issue here.
9. Case law regarding prosecution appeals under Crim. P. 37.1 deals solely with motions to suppress illegally obtained evidence, and thus confirms Mr. Lawson's interpretation of that rule:
- In *Tate v. People*, 290 P.3d 1268, 1269 (Colo. 2012), the prosecution appealed a county court's ruling suppressing evidence under the Fourth Amendment.
 - In *People v. Zbuk*, 239 P.3d 437, 438 (Colo. 2010), the prosecution appealed a county court's ruling regarding suppression of evidence due to a *Miranda* violation.
 - In *People v. Jorlantin*, 196 P.3d 258, 260 & n.1 (Colo. 2008), the prosecution appealed a county court's ruling suppressing evidence under the Fourth Amendment.
 - In *People v. Sapp*, 934 P.2d 1367 (Colo. 1997), the prosecution appealed a county court's ruling suppressing statements on the grounds of voluntariness and a *Miranda* violation.

COLORADO APPELLATE RULE 4.1 AND CASE LAW INTERPRETING THAT RULE FURTHER CONFIRM THAT CRIM. P. 37.1 ONLY AUTHORIZES APPEALS OF MOTIONS TO SUPPRESS ILLEGALLY-OBTAINED EVIDENCE.

10. C.A.R. 4.1 is the analog to Crim. P. 37.1 for interlocutory appeals from district court, and it uses similar language to Crim. P. 37.1:

The state may file an interlocutory appeal in the Supreme Court from a ruling of a district court granting a motion under Crim. P. 41(e) and (g) and Crim. P. 41.1(i) made in advance of trial by the defendant for return of property and to suppress evidence or granting a motion to suppress and extra-judicial confession or admission[.]

C.A.R. 4.1(a).

11. Crim. P. 37.1(g) specifically directs the court to refer to the Rules of Appellate Procedure if no procedure is specifically prescribed by Crim. P. 37.1. The text of C.A.R. 4.1 and case law regarding that rule are therefore relevant here.
12. C.A.R. 4.1 specifies that the state can only appeal orders made under Crim. P. 41(e), 41(g), and 41.1(i).
- Crim. P. 41(e) governs motions to suppress evidence due to unlawful searches or seizures.
 - Crim. P. 41(g) governs motions to suppress involuntary confessions.
 - Crim. P. 41.1(i) governs motions to suppress nontestimonial identifications.
13. These three subsections all relate to constitutional suppression issues, and these are the only issues covered by C.A.R. 4.1(a). Trial court rulings not directly addressing one of these three issues are therefore not reviewable through an interlocutory appeals process. *See People v. Smith*, 254 P.3d 1158, 1160 (Colo. 2011); *People v. Null*, 233 P.3d 670, 674-75 (Colo. 2010).
14. The Supreme Court was very clear that outside of these “extremely narrow” circumstances, it would not exercise jurisdiction under C.A.R. 4.1(a). *Smith* at 1160 (citing *People v. Braunthal*, 31 P.3d 167, 171 (Colo. 2001)).
15. Thus, an ordinary pre-trial evidentiary ruling is not reviewable under C.A.R. 4.1: “Simply stated, interlocutory appeals may not be used to obtain pre-trial review of issues not covered by C.A.R. 4.1.” *People v. Lindsey*, 660 P.2d 502, 505 (Colo. 1983). *See also People v. Dailey*, 639 P.2d 1068, 1076 n. 8 (Colo. 1982).

CONCLUSION

16. Because the trial court's ruling excluding Katherine Rogers's text messages was an ordinary pre-trial evidentiary ruling and did not stem from a motion to suppress, that ruling was not appealable under Crim. P. 37.1 and this court lacked jurisdiction over the People's interlocutory appeal.

WHEREFORE, Mr. Lawson respectfully asks that this Court vacate the opinion and dismiss the appeal for lack of jurisdiction.

MEGAN RING

COLORADO STATE PUBLIC DEFENDER

/s/
KATHERINE MARAK (#52357)
Deputy State Public Defender

CERTIFICATE OF SERVICE

I certify that on June 4, 2019, I served the forgoing document by e-filing same to all opposing counsel.
/s/Katherine Marak

Attachment to Order - 2019CV30244