

DOLORES COUNTY COMBINED COURTS 409 Main St, Dove Creek, CO 81324 (970)677-2258	DATE FILED: March 4, 2022 3:43 PM  <b>▲ COURT USE ONLY ▲</b>
<b>PEOPLE OF THE STATE OF COLORADO</b>  vs. <b>RONALD MOROSKO</b> <b>Defendant</b>	
Honorable Matthew Margeson (Atty Reg. #39015) District Attorney for the 22nd Judicial District 109 West Main Street, Suite 303, Cortez, Colorado 81321 Phone: (970) 565-3788 Fax: (970) 565-9396	Case No: 21CR11
<b>PEOPLE’S RESPONSE TO DEFENSE #6: MOTION TO ADMIT EVIDENCE UNDER          RULE 404(A), (B) AND/OR 401</b>	

The People of the State of Colorado, by and through Matthew Margeson, District Attorney in and for the Twenty-Second Judicial District, County of Montezuma, State of Colorado, responds as follows to Defense #6: Motion to Admit Evidence Under Rule 404(a), (b) and/or 401:

1. Defense has provided notice of its intent to submit evidence from multiple witnesses that the Defendant “deliberately and routinely identifying his animal target while hunting, that he only shoots when a target animal is not only the target animal, but is of sufficient size and quality to be considered a ‘trophy’ animal”. *See para. 2 of Defense Motion #6.*
2. Defense characterizes this evidence as *res gestae* evidence that would be admissible pursuant to C.R.E. 404(a), (b) and C.R.E. 401.
3. As a preliminary matter *res gestae* evidence no longer exists in the State of Colorado. The relevant inquiry is whether or not the evidence sought to be admitted is intrinsic or extrinsic to the charged offense. *Rojas v. People, 2022 CO 8 (Colo. 2022).*
4. In this case, the evidence that the Defendant wishes to elicit is evidence related not to the actions of the Defendant on the date in question, but rather evidence that during other hunting trips the Defendant acted prudently. This evidence must by it’s very nature be extrinsic evidence.
5. The *Rojas* court divided analysis of admission of extrinsic evidence into two distinct categories based on whether or not the extrinsic evidence suggested bad character or not. “If extrinsic evidence does not suggest bad character, Rule 404(b) does not apply and admissibility is governed by Rules 401–403.” *Id. at 28.*
6. Here the evidence sought to be elicited in no way suggests bad character and must be analyzed pursuant to C.R.E. 401 through 403.
7. The initial question in that analysis is one of simple relevance, whether or not it makes a particular fact of consequence more or less likely. *C.R.E. 401.*

8. Here the very low bar set by Rule 401 and 402 are cleared. The evidence makes it less likely that Mr. Morosko would have acted recklessly or with criminal negligence when he caused the death of Mr. Gabrisch, and evidence that is relevant is generally admissible.
9. The next question here turns on a 403 analysis which excludes evidence “if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.” *C.R.E. 403*.
10. The court cannot also exclude from its analysis the prohibitions found in Rule 404 that “evidence of a person's character or a trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion, except... evidence of a pertinent trait of his character offered by an accused, or by the prosecution to rebut the same.” *C.R.E. 404(a)(1)*.
11. Here the Defendant wishes to introduce evidence specifically for the purpose of showing that he acted in conformity with his prior prudent hunting behavior when he went hunting on the date in question.
12. Though the evidence sought to be introduced may be of some relevance to the question of whether or not the Defendant acted recklessly or with criminal negligence, it should still be excluded because the evidence's probative value is minimal and is substantially outweighed by its danger that it will unfairly prejudice the People, will confuse the issues of this case, and will mislead the jury.
13. The relevance of the evidence sought to be elicited is minimal as it has no direct bearing on whether or not on the date in question the Defendant acted in a prudent and safe manner.
14. The People are not required to disprove that on specific prior hunting trips Mr. Morosko hunted safely. Requiring the People dispute a third party's perception of whether or not Mr. Morosko was a safe and prudent hunter is unduly prejudicial.
15. Further, much of the testimony that the Defendant seeks to illicit relates not to what a third party is capable of perceiving, but rather to the subjective internal experiences of Mr. Morosko. A third party witness would not be able to perceive that Mr. Morosko deliberately and routinely identified his target before shooting it. Instead, at best they may be able to testify that there was a time period between which that witness perceived the target of the hunt and when Mr. Morosko attempted to shoot it.
16. A third party witness cannot credibly testify to the subjective experience of Mr. Morosko's thought process while hunting, but only the actions they perceived him taking while hunting. This is a fine distinction and is likely to cause substantial confusion to the jury. It is also extremely misleading because it substitutes a third parties beliefs for the actual thought process of the Defendant.
17. While Mr. Morosko may be able to testify to the qualia of his experiences in the past while hunting no other witnesses should be allowed to testify regarding these experiences.

18. Finally, the People are not on notice of whom any of these potential witnesses are or what they might say. As such, it is impossible to rebut or otherwise refute their testimony.
19. Even if the People were on notice of these individuals and their testimony, the nature of the act of hunting makes it incredibly unlikely that the People could uncover evidence disputing the factual assertions these witnesses would make.
20. Hunters are not generally observed by some neutral third party and it is rare that a person engaged in the activity of hunting would be otherwise observed or recorded in such a manner that the People could make any reasonable efforts to dispute the anticipated testimony.
21. Because there is no legitimate avenue to rebut the testimony that Defense intends to relate, it is prejudicial and potentially misleading.
22. The Defendant should be excluded pursuant to C.R.E. 403 from presenting any of the character evidence enumerated in Defense #6.

WHEREFORE, the People request that the court deny the Defendant the ability to present evidence of his good character for safe hunting.

Respectfully submitted this 4th day of March, 2021.

MATTHEW MARGESON, DISTRICT ATTORNEY

By: /s/ Matt Margeson  
Matthew Margeson #39015

CERTIFICATE OF DELIVERY:

I hereby certify that on March 4, 2021, I delivered a true and accurate copy of this document to Defense counsel of record via ICCES.

/s/ Matt Margeson