

- b. Mr. Alissa was working long weeks – up to approximately 60 hours per week – just before March 22, 2021;
 - c. Mr. Alissa’s phone contains entries from September 24, 2020 through March 17, 2021 describing:
 - i. Assault rifle components, how to properly handle an assault rifle, how to move and shoot when using an assault rifle, drills to become competent with assault rifles;
 - ii. Thousands of images and searches relating to assault rifles, tactical gear – to include bullet proof vests, ammunition vests, helmets, and other gear;
 - iii. Search history and related images related to explosives, including images of fertilizer and other dangerous chemicals;
 - iv. Internet searches including “Christ Church Attacks,” “Are hollow point bullets more deadly” and “what is the most deadly type of bullet;”
 - v. According to the DA’s motion there are 8, 596 unique data points that are relevant and there may be more that they haven’t been able to identify.
 - d. On January 19, 2021, Mr. Alissa purchased ammunition from Westminster Arms in Westminster, CO;
 - e. On March 16, 2021, Mr. Alissa purchased a Ruger AR-556 pistol from Eagles Nest Armory in Arvada, CO; and
 - f. Mr. Alissa’s bedroom was searched by law enforcement on March 23, 2021 and contained the following items: A Ruger AR Rifle, magazines for that rifle, a Beretta 9 mm handgun, magazines for the Beretta, large amounts of ammunition for a 45 caliber weapon, a 5.56, a .223, and a 9 mm, along with acetone and hydrochloric acid.
6. The government argues that the purchase of the Ruger AR-556 and ammunition is direct evidence of his crimes on March 22, 2021 and therefore no further analysis is needed. According to the government the remaining evidence is extrinsic evidence that does not implicate Mr. Alissa’s further character. Because of this, the government believes a C.R.E. 401 and 403 analysis is all that is needed by the Court. The government goes on to say that Mr. Alissa’s other actions (which are not specifically identified) are admissible under C.R.E. 404(b).

LAW AND ARGUMENT

- 7. In a 2022 decision the Colorado Supreme Court rejected the doctrine of res gestae and instead adopted a distinction between extrinsic and intrinsic evidence in determining the admissibility of uncharged other acts evidence. *Rojas v. People*, 504 P.3d 296 (Colo. 2022).
- 8. The *Rojas* court provided the following test to determine if evidence is intrinsic: “Intrinsic acts are those (1) that directly prove the charged offense or (2) that occurred contemporaneously with the charged offense and facilitated the commission of it.” *Id.* at 308.

9. In adopting the intrinsic versus extrinsic evidence standard, the *Rojas* Court looked to and heavily cited *United States v. Shea*, 159 F.3d 37 (1st Cir. 1998).
10. The *Shea* court considered the admissibility of a black revolver potentially involved in two separate robberies. The first robbery and the second robbery occurred one week apart with the revolver recovered from the second robbery. The revolver from the second robbery matched the description of the revolver from the first robbery. The *Shea* court determined that the revolver itself was intrinsic evidence of the first robbery, as it was believed to be the revolver used in that robbery. However, the evidence of the second robbery was an extrinsic act that did not directly prove the first robbery. *Shea*, 159 F.3d at 39-40.
11. To further illustrate the concept of direct evidence, the *Rojas* court provided an example expanding upon the facts in *Shea* to say that a hypothetical check cashing the day before to case the bank would also not directly prove the first robbery. *Rojas*, 504 P.3d at 309.
12. In applying the intrinsic versus extrinsic test to the *Rojas* facts, the Colorado Supreme Court determined an August 2013 false application for food stamps did not directly prove the charged February through July 2013 thefts. *Id.* at 310.
13. The government argues that the January 19, 2021 purchasing of ammunition from Westminster Arms in Westminster, CO and a March 16, 2021 purchase of a Ruger AR-556 pistol from Eagles Nest Armory in Arvada, CO is intrinsic evidence because it directly supports the commission of the offense.
14. Mr. Alissa does not dispute that this evidence is intrinsic due to the nature of his defense. That said however, the Court must still make a C.R.E. 401-403 analysis. *Id.* In conducting that analysis the Court must prohibit the introduction of that evidence
15. The government next argues that the remaining evidence is extrinsic evidence however they argue that the evidence does not implicate Mr. Alissa's character and therefore the Court only needs to conduct a C.R.E. 401-403 analysis.
16. Mr. Alissa agrees these other acts evidence are extrinsic. However, these other acts do implicate his character and therefore must be analyzed under C.R.E. 404(b). The government fails to take into consideration the evidence they are trying to introduce in relationship to the accusations Mr. Alissa is facing in this case. For example, although generally the act of going to a shooting range may not be seen as bad character, when you put it context with the accusations of killing ten people, that act becomes propensity evidence. Similarly with the act of working long hours, maybe on its face that doesn't appear to be propensity/character evidence however in the context of this case it is and therefore must be evaluated under a C.R.E. 404(b) analysis.
17. In considering the analysis with regard to Mr. Alissa's phone – as noted above Mr. Alissa believes this is extrinsic evidence that implicates his character. That said, the government fails to disclose the extent of what evidence they are trying to actually admit under *Rojas*. Giving a general summary about 8,596 unique data points does not give the defense nor the Court sufficient notice to make a legal argument or analysis under *Rojas*. This failure on the part of the government requires the Court to deny the admittance of this evidence.

18. In order for the Court to admit the governments proposed prior bad acts under C.R.E. 404(b) the Court must employ the four-part test of *Spoto*:
 - a. The evidence must relate to a material fact; that is a fact “that is of consequence to determination of the action.”
 - b. The evidence must be logically relevant, meaning it has “any tendency to make the existence of the material fact more probable or less probable than it would be without the evidence.
 - c. The logical relevance must be independent of the prohibited intermediate inference that the defendant committed the crime charged because of the likelihood that he acted in conformity with his bad character.
 - d. The probative value of the evidence must substantially outweigh the danger of unfair prejudice.

Spoto, 795 P.2d 1314.
19. Colorado courts have made it clear that the proponent of other act evidence must conduct an exacting analysis to show how the evidence will be used for a purpose other than showing that the defendant has a bad character. *People v. Spoto*, 795 P.2d 1314 (Colo. 1990); *Yusem v. People*, 210 P.3d 458 (Colo. 2009). In clarifying the four-part test set forth in *Spoto*, the *Yusem* court emphasized that the prosecution must "articulate a precise evidential hypothesis" for each piece of evidence it seeks to introduce under C.R.E. 404(b). 210 P.3d at 463-64 (internal quotations omitted). The prosecution cannot seek to have prior act evidence admitted for purposes that are "carelessly grouped together," but rather must conduct a separate *Spoto* analysis for each purpose. *Id.* at 464.
20. The government’s conclusory statements do not substitute for the legal analysis required by the constitution, C.R.E. 404(b), and case law. In its motion, the prosecution has failed to meet its burden of establishing a clear hypothesis of how the prior act evidence is admissible. The prosecution has lumped together its purported reasons for introducing the prior act evidence.
21. Mr. Alissa possibly going to a gun range 12-18 months before the shooting at King Soopers does not relate to a material fact. Because this is alleged to have happened years prior to the shooting at King Soopers there is very little probative value and any probative value is substantially outweighed by the unfair prejudice.
22. Mr. Alissa working long weeks prior to the shooting at King Soopers does not relate to a material fact nor does it give any tendency to make the existence of a material fact more probable or less probable than it would be without the evidence. What we learned from Mr. Alissa working long weeks prior to the shooting was that he was having delusions about others following him. He was making a number of mistakes at his job, mistakes that one normally wouldn’t make after working as long as he had at the restaurant. He also was talking delusionary while at work, all signs of the serious mental illness he was suffering from at the time.
23. The search of Mr. Alissa’s bedroom and what was ultimately found has no probative value on whether he planned the shooting or was sane at the time. Any probative value is substantially outweighed by the unfair prejudice.

CONCLUSION

24. Mr. Alissa requests this Court apply the appropriate standards and deny the admittance of irrelevant and substantially prejudicial evidence.

Mr. Alissa makes these arguments and motions, and all motions, requests and objections in this case, whether or not expressly stated at the time of the motion or objection, under the Due Process, Trial by Jury, Right to Counsel, Confrontation, Compulsory Process, Equal Protection Cruel and Unusual Punishment and Privilege Against Self Incrimination Clauses of the federal and Colorado Constitutions, and the Fourth, Fifth, Sixth, Eighth and Fourteenth Amendments of the U.S. Constitution, and Art. II, §§ 3,6,7,8,16,18,20,23 and 25 of Colorado’s Constitution.

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Certificate of Service

I hereby certify that on ____May
20_____, 2024, I served the foregoing
document through Colorado E filing to all
opposing counsel of record.

_____KH_____

Dated: May 20, 2024