

COUNTY COURT, EAGLE COUNTY, COLORADO P.O. Box 597 Eagle, CO 81631	FILED IN THE COMBINED CLERKS OFFICE  OCT 14 2003  EAGLE COUNTY, COLORADO BY <u>      SKE      </u>
PEOPLE OF THE STATE OF COLORADO vs. KOBE BEAN BRYANT, Defendant(s)	Case No: 03CR204  Division: 1
<b>PEOPLE'S REQUEST FOR <i>IN CAMERA</i> PROCEEDINGS          PURSUANT TO 18-3-407 AND 16-5-301(2)</b>	

COMES NOW, Mark Hurlbert, District Attorney in and for the Fifth Judicial District of the state of Colorado, by and through his duly appointed Deputy District Attorney, Ingrid S. Bakke, and requests this Court to proceed *in camera* regarding any testimony which falls within the protections and procedures of 18-3-407 and 16-5-301(2) for the following reasons:

1. The above captioned case is currently set for a second day in order to conclude the preliminary hearing.
2. Prior to the preliminary hearing the defendant requested that the hearing be closed in order to protect the defendant's right to a public trial by an impartial jury of the county or district in which the offense is alleged to have been committed.
3. This Court has granted the defendant's motion in part. Specifically, the defendant argued that the statement by the defendant to Detective Winter's is "presumptively inadmissible as trial evidence." Although it is the People's position that the manner in which the conversation was recorded was appropriate and that in no way was the defendant in custody for purposes of Miranda, in all fairness no absolute legal conclusions may be drawn until there is a pretrial hearing. Consequently, when the defendant's statements were offered at the preliminary hearing this Court closed the hearing in order to protect the defendant's right to trial and not taint the potential jury pool with information which may not be admissible at trial.

4. Prior to the preliminary hearing this Court met with counsel to discuss its concerns regarding media coverage of the preliminary hearing in relation to any sensitive evidence presented at the hearing. The People understood and acknowledged that concern and indicated such protection may also have to be afforded to the prosecution as it relates to sensitive information regarding the victim. This statement by the People certainly invited a response by the defense as to their intentions to elicit information regarding the victim's sexual history. The People certainly anticipated an attack on the evidence presented at the hearing. But, given the nature and number of discussions the parties and this Court have had regarding concern for sensitive information being elicited at the preliminary hearing and the effect of dissemination by the media for scrutiny by the public, the fact that a statute specifically exists to protect a victim and witnesses from needless harassment regarding sexual conduct, and, that attorneys are expected to proceed in an ethical manner, it was quite unexpected that Ms. Mackey would in such a deliberate and calculated manner attempt to elicit such evidence regarding the victim without notice in open court attended by the media. What was even more unexpected was her conscious misrepresentation of the evidence in order to smear the victim publicly.
5. 18-3-407 C.R.S. was created in order to provide sexual assault victims greater protection from humiliating and embarrassing "fishing expeditions" into their past sexual conduct without a preliminary showing that evidence thus elicited will be relevant to some issue in the pending case. People v. McKenna, 585 P.2d 275. By statute such evidence is presumptively inadmissible as trial evidence.
6. In McKenna the Court further stated in regard to the legislative purpose that:

The statute represents one means chosen by the general assembly to overcome the reluctance of victims of sex crimes to report them for prosecution. It reflects a major public policy decision that victims of sexual assault should not be subjected to psychological or emotional abuse in court as the price of their cooperation in prosecuting sex offenders.

These reforms constitute legislative recognition of the changing perception of rape as, not primarily a sex offense but rather a hostile crime of violence and domination calculated to humiliate, injure and degrade the female.

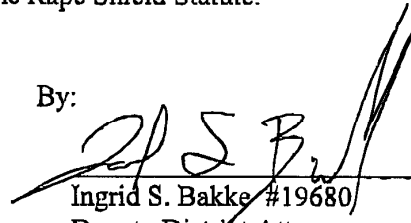
Furthermore, the statute is a response to statistics indicating that, while the incidence of rape is increasing, both the percentage of rapes committed which are prosecuted and the percentage of prosecutions resulting in convictions remain very low when contrasted with comparable statistics for other serious crimes (id at pg. 4-5).
7. To allow the defense to address sexual history matters of a victim at preliminary hearing, in open court, which are later deemed inappropriate evidence at trial would completely abrogate the Rape Shield Statute and its purpose.

8. Attached to this motion and filed under seal in order to protect the victim from any further embarrassment and harassment is an offer of proof of the evidence which arguably is protected by the Rape Shield Statute and should be discussed *in camera*. (It should be noted that even the statute itself requires that any hearing to determine relevancy be held *in camera* pursuant to 18-3-407(2)(c).) 16-5.301(2) also allows this Court to exclude any member of the public at the request of any party to the proceeding where the defendant is charged with an unlawful sexual offense.
9. It is the People's position that the evidence, which falls under this statute, is not an exception to the rule. If such evidence is allowed to be presented in a public forum and is later determined to be inadmissible the effect of such evidence being disseminated to the potential jury pool will be at best difficult to overcome and would create a situation analogous to the Court's concern regarding any statements made by the defendant and a potential suppression issue. The bell cannot be unrung. It will be difficult enough to overcome Ms. Mackey's misstatement of the facts as it is.
10. The People are requesting an *in camera* opportunity to argue why such evidence, particularly at the probable cause stage, is **irrelevant**. If the Court finds for some reason the admission of such evidence goes directly towards the issue of probable cause and may somehow provide grounds for this Court to find, taking all of the evidence in the light most favorable to the People, there is insufficient evidence to believe a crime has been committed and that the defendant committed the crime, then such evidence should be presented *in camera* and follow the intent of the Rape Shield Statute.

Respectfully submitted,

Mark Hurlbert  
DISTRICT ATTORNEY

By:

  
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Ingrid S. Bakke #19680  
Deputy District Attorney  
October 13, 2003

IT IS SO ORDERED. Done this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Judge