

STATE OF MICHIGAN  
WAYNE COUNTY CIRCUIT COURT  
CRIMINAL DIVISION

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

-vs-

Case # 01-09786

Hon. Timothy Kenny

KEVIN SIMPSON,

Defendant.

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Patricia Leonard, Assistant Wayne County Prosecutor  
Wayne County Prosecutor's Office  
12<sup>th</sup> floor – Frank Murphy Hall of Justice  
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Attorney for Defendant  
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Detroit, MI 48226  
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**MOTION IN LIMINE RE**  
**TESTIMONY OF ALLEGED THREATS**

Now comes Kevin Simpson, Defendant herein, by and through his attorney Steven Fishman, and in support of his motion *in limine* regarding alleged threats against the witness Michael Redmond states as follows:

1. Defendant Simpson is charged with two counts of second-degree murder and felony-firearm.
2. Michael Redmond was the prosecution's only witness at the preliminary examination.
3. At the examination, the prosecution was allowed to ask questions of witness Redmond

concerning alleged threats made against him and his family. Defense counsel's objections to that testimony were overruled by the examining magistrate.

4. Defendant Simpson contends that testimony concerning the alleged threats should be inadmissible at trial because it is irrelevant (MRE 401 & 402), hearsay (MRE 801) and unfairly prejudicial (MRE 403).

WHEREFORE, for the reasons set forth in the attached brief, Defendant Simpson requests that this Court grant his motion *in limine*, and exclude the testimony of Michael Redmond concerning alleged threats against him and his family.

Respectfully submitted,

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Steven Fishman (P23049)  
Attorney for Defendant Simpson  
615 Griswold, Suite 1125  
Detroit, MI 48226

Dated: December 6, 2001

**BRIEF IN SUPPORT OF**  
**MOTION IN LIMINE RE**  
**TESTIMONY OF ALLEGED THREATS**

**Statement of Facts**

Kevin Simpson is charged with two counts of second-degree murder and felony-firearm. At the preliminary examination, the only witness to testify was Michael Redmond. After questioning Mr. Redmond about the details of the alleged murders, the prosecution attempted to introduce evidence of alleged threats made against Mr. Redmond and his family (T, 21). Defense counsel's objection was overruled by the magistrate (T, 22).

Mr. Redmond then testified that approximately a week and a half earlier, an incident occurred at his home that involved his brother-in-law (T, 22-23). Defense counsel objected to the contents of the conversation between Mr. Redmond and his brother-in-law concerning the alleged incident (T, 23). Mr. Redmond then testified that after the conversation, he had returned to the home and observed that the back of the house had been "shot up" (T, 24).

Defendant Simpson now moves this Court *in limine* for the exclusion of Mr. Redmond's testimony concerning the alleged threats against him and his family.

**Argument**

MRE 401 defines relevant evidence as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. MRE 402 states that "[e]vidence which is not relevant is not admissible.

MRE 403 provides that even relevant evidence may be excluded "if its probative value is

substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury....”

In People v Crawford, 458 Mich 376 (1998), the Supreme Court excluded evidence pursuant to MRE 403 “because the danger of unfair prejudice substantially outweighed whatever **marginal** probative value it might have had.” Id., at 397-98. The Court went on to discuss the prohibition of the rule as follows:

Rule 403 does not prohibit prejudicial evidence; only evidence that is unfairly so. Evidence is unfairly prejudicial when there exists a danger that **marginally probative** evidence will be given undue or preemptive weight by the jury.

Id., at 398.

In the instant case, the alleged evidence of threats against Mr. Redmond and/or his family is not even “marginally” probative. In fact, the only non-hearsay testimony that was elicited at the examination was that at some point in the prior week and a half, Mr. Redmond had returned to the family house and observed that the back of the house had been “shot up” (T, 24). Though Mr. Redmond began testifying about an event that allegedly occurred at the back of the house involving his brother-in-law (T, 22-23), it was quickly established through defense counsel’s objection that the testimony was inadmissible hearsay:

Q. Has anything happened in the last couple weeks that has served as either a direct or indirect threat to you?

A. If I’m not mistaken, about a week and-a-half ago. I wasn’t staying home. My sister and her husband – we all weren’t staying there because of what’s

been going on. My brother-in-law got off work to go home and get some clothes.  
Because like I said, we weren't staying there –

(Argument over defense objection omitted)

He was coming home from work to get some clothes because we hadn't been staying there. Nobody had been there so he was going home. As he was putting his key in the back door he heard a sound. He turned around and –

MR. FISHMAN: I object again. He wasn't even there. This is all hearsay anyway.

THE COURT: **Were you there, sir?**

THE WITNESS: **No, I wasn't.** (T, 23-24)

In addition to there being no admissible testimony concerning the alleged shooting, there was absolutely no connection shown between the alleged shooting at the back of the house and Defendant Simpson. At the time of the shooting, Defendant Simpson was in jail with no bond awaiting his preliminary examination. In response to defense counsel's relevance objection at the examination, the prosecutor conceded that he could not prove that the alleged incident was related to Defendant Simpson, but argued that it was admissible anyway:

MR. RESTUCCIA: Well, I think that's right, **that you can't say that Mr. Simpson did it directly.** Although there's no question that he has the ability to contact people. Assuming something did happen.....I think there is a response to just what he said, **that maybe he's perfectly innocent of any involvement.** But

that doesn't mean that's necessarily the case. **I mean it is possible that this is some evidence that he has arranged things while in prison.** I think what happens is I think it just goes to weight, not admissibility. (T,

22)

Even if this Court were to both ignore the hearsay problem and hold that the mere possibility that Defendant Simpson may have "arranged things while in prison" made the testimony about the alleged shooting incident probative, the prosecution could not overcome the holding in Crawford that marginally probative evidence must be excluded where its probative value is substantially outweighed by the danger of unfair prejudice. In the instant case, the danger that the jury would be both distracted from the true issues and prejudiced against Defendant Simpson is clear; after all, the reason the prosecution wants to introduce evidence of another alleged shooting incident is to make Defendant Simpson look like the type of person who would be involved in the charged murders. The marginally probative nature of the evidence is also clear – there is no witness that provide any information that would tend to connect Defendant Simpson, who was in jail at the time, to the alleged shooting. The proposed evidence concerning threats against the witness Michael Redmond and/or his family should, therefore, be excluded at trial.

**Conclusion**

Wherefore, for the reasons set forth above, Defendant Simpson requests that this Court grant his motion *in limine*, and exclude the testimony of Michael Redmond concerning threats allegedly made against him and/or his family.

Respectfully submitted,

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Dated: December 6, 2001