

*Handwritten initials*

**IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS  
THIRD JUDICIAL DISTRICT**

FILED BY ELLEN  
KS. DISTRICT COURT  
THIRD JUDICIAL DIST.  
TOPEKA, KS. *EL*

2010 FEB 19 P 2:00

STATE OF KANSAS, )  
Plaintiff, )  
)  
)  
v. )  
)  
)  
STEPHANIE ANN MENARD )  
Defendant. )  
)  
)

**Case No. 09CR2360  
Division 14**

**DEFENDANT MENARD'S MOTION IN LIMINE**

COMES NOW the Defendant, Stephanie Ann Menard, by and through her court appointed attorney, Timothy E. Keck, and files her Motion In Limine. For her cause Stephanie Menard states as follows:

1. On October 28, 2009 Stephanie Ann Menard, Derrick Haase, Scott Mosher, and Michelle Eberhardt were charged in separate complaints with Murder in the First Degree under K.S.A. 21-3401(a) and Conspiracy to commit Murder in the First Degree pursuant to K.S.A. 213401(a) and K.S.A. 21-3302.
2. The charges in this matter stem from the killing of Gerald Eberhardt on October 25, 2009.
3. On October 25, 2009 at about 2:58 a.m. the Shawnee County Sheriff's Department was dispatched to 2538 S.E. Shawnee Heights Road, Tecumseh, Shawnee County, Kansas. This is the home of Michelle and Gerald Eberhardt who were husband and wife.

4. The call received by dispatch was from Michelle Eberhardt. She claimed that she had been taking a shower in the basement of 2538 S.E. Shawnee Heights Road when she heard a "pop" sound. She reported that she went to the master bedroom where she found Gerald Eberhardt shot with an apparent gunshot wound to the head. Michelle Eberhardt reported that she did not think Gerald had shot himself, and that she and Gerald were the only people in the home.
5. Gerald Eberhardt was killed by a single gunshot wound to the head.
6. Subsequent investigation by the Shawnee County Sheriff's Department included extensive and exhaustive interviews with Michelle Eberhardt, Scott Mosher, Derrick Haase and Stephanie Menard, among several other subjects all conducted on October 25, 2009.
7. Scott Mosher is the 19 year old son of Michelle Eberhardt and the step son of Gerald Eberhardt. Scott, Michelle, and Gerald all lived at 2538 Shawnee Heights Road.
8. Interviews with Michelle and Scott and Court records show that they have a tumultuous history since Michelle and Gerald Eberhardt married. Among the multitude of issues between Scott and Gerald are two incidents that Scott describes to Detectives in his interview with them. One incident occurred when Scott was 12 years old and he claims Gerald Eberhardt beat him, choked him, and held a gun to him during a domestic dispute. Another incident occurred more recently, in 2008 when there was a domestic dispute between Gerald and Michelle Eberhardt and Scott stepped in and "beat his (Gerald's) ass." Scott served a sentence for domestic battery as a result of this second incident. In his interview,

Scott claimed there were many other incidents of domestic violence. Scott confessed that he committed the murder of Gerald Eberhardt fueled by his anger with Gerald for the pattern and history of domestic violence. Scott went on to confess that he and his mother had planned the killing of Gerald Eberhardt.

9. The investigation further revealed that in the week before Gerald's death on October 25, 2009, Michelle and Scott had tried to hire an acquaintance of Scott's by the name of James to kill Gerald. A few days before October 25, 2009 Scott and Michelle had agreed with James to have Gerald killed for \$2,000. The plan between Scott, Michelle and James was that Scott and Michelle would leave \$2,000 in Scott's inoperable car which was parked on the property while they left the house to establish an alibi. While they were gone, James or someone on James' behalf was supposed to go to the Eberhardt home, kill Gerald, and take the \$2,000.00.
10. The State's theory of the case against Stephanie Menard is that she was an aider and abettor. The state claims that she drove the car with Scott Mosher and Derrick Haase to 2538 S.E. Shawnee Heights Road to complete the killing of Gerald Eberhardt. The State's theory is that Stephanie Menard knew and assisted in the plan by driving Scott Mosher and Derrick Haase to that address and then drove them to the Lake Shawnee where they disposed of the gun used in the killing.
11. During Michelle's interview she admitted her involvement in the death of Gerald Eberhardt. She did not implicate Stephanie Menard.
12. Derrick Haase was interviewed. He admitted some involvement in the death of Gerald Eberhardt, but did not implicate Stephanie Menard.

13. Scott Mosher was questioned about Stephanie Menard's involvement. When asked if Stephanie knew why they were going back to his mother's house, Scott responded that "she (Stephanie) kind of knew." Further questioning about Stephanie's involvement leaves serious questions about what Scott's perspective is concerning Stephanie's involvement.
14. The evidence in the case against Stephanie Menard is the statement Scott Mosher gave to police that Stephanie "kind of" knew what was going to happen to Gerald Eberhardt and Stephanie Menard's own statement. There are no other witnesses that implicate Stephanie Menard in this matter.

#### AUTHORITIES AND ARGUMENT

15. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district where in the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; *to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor*, and to have the Assistance of Counsel for his defence. U.S. Const. amend. VI.
16. In all prosecutions, the accused shall be allowed to appear and defend in person, or by counsel; to demand the nature and cause of the accusation against him; *to meet the witness face to face, and to have compulsory process to compel the attendance of the witnesses in his behalf*, and a speedy public trial by an impartial jury of the county or district in which the offense is alleged to have been

committed. No person shall be a witness against himself, or be twice put in jeopardy for the same offense. Kansas Const. Kan. Bill of Rights Sect. 10.

17. The Defendant in this case requests the Court prohibit the State from presenting evidence in four areas: 1) Allowing any statements or portions thereof of any witnesses that do not testify at trial, including co-defendants, unless that witness testifies at the trial itself; 2) That the Court limit the number and nature of the photographs and other evidence at trial so that it does not violate Stephanie Menard's right to a fair trial; 3) That the Court prohibit the State from presenting evidence of the relationship between Scott Mosher, Michelle Eberhardt and Gerald Eberhardt; 4) That the Court prohibit the State from presenting evidence of the attempt by Michelle Eberhardt, Scott Mosher and Carl "James" Baldwin to kill Gerald Eberhardt the week before his actual death.

**The State should be prohibited from presenting any statements from any witnesses who do not testify at the trial**

18. The Defendant has an unqualified right under the U.S. and Kansas Constitutions to confront any witnesses that the state intends to use at trial. The state should be prohibited from admitting any statements of any witnesses at the trial that don't actually testify and the Defendant is allowed to cross examine.
19. The Defendant specifically requests the Court prohibit the State from presenting any testimony from any witnesses that attempt to repeat the statements of Derrick Haase, Scott Mosher, or Michelle Eberhardt.

**The state should be limited in the number and nature of the crime scene photographs they use at trial as it would be unduly prejudicial to the Defendant**

20. At Preliminary Hearing the state produced several photos of the deceased, including one taken at the coroner's office with the top of the deceased's head removed. There is no question that Gerald Eberhardt is deceased, and that Scott Mosher killed him. The production of these photos is meant only to incite the jury against the Defendant and the prejudicial effect of these photos outweighs the value they add to the obvious point the State has to make that Gerald Eberhardt is deceased.

**The State should be prohibited from presenting evidence of the relationship between Scott Mosher, Michelle Eberhardt and Gerald Eberhardt**

21. K.S.A. 60-401(b). Defines "Relevant evidence" means evidence having any tendency in reason to prove any material fact.

22. The relationship between Scott Mosher Michelle Eberhardt, and Gerald Eberhardt is not relevant to the case against Stephanie Menard. The Court should not allow any testimony about these issues.

**The Court prohibit the State from presenting evidence of the attempt by Michelle Eberhardt, Scott Mosher and Carl "James" Baldwin**

23. Also irrelevant is the relationship between Carl "James" Baldwin, Michelle Eberhardt and Scott Mosher. There is no credible evidence that Stephanie Menard had any knowledge of or participation in this exchange.

24. This evidence should not be allowed at the trial of Stephanie Menard.

WHEREFORE the Defendant Stephanie Menard pray the Court grant her Motion in Limine and grant her all other and further relief the Court deems just and proper.

Respectfully submitted,

ARNOLD & KECK, LLC

By 

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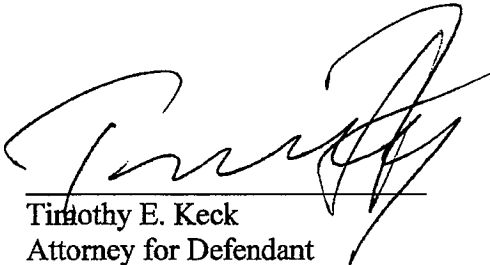
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Attorney for Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing was delivered by fax on this 14<sup>th</sup> day of February, 2010 to the following:

Jacqui Spradling  
Deputy District Attorney  
200 SE 7<sup>th</sup> St, Ste 214  
Topeka, KS 66603

  
Timothy E. Keck  
Attorney for Defendant