

DISTRICT COURT, LA PLATA COUNTY, COLORADO Court Address: 1060 E. Second Ave., Durango, CO 81301 Phone Number: (970) 247-2304	<div style="border: 2px solid black; padding: 5px; text-align: center;"> <p>ORIGINAL FILED / REC'D IN COMBINED COURT LA PLATA COUNTY, COLORADO</p> <p>SEP 14 2018</p> <p>LA PLATA COUNTY CLERK</p> </div>
Plaintiff: PEOPLE OF THE STATE OF COLORADO v. Defendant: MARK ALLEN REDWINE	
Christian Champagne - District Attorney, #36833 Matthew Durkin, Special Deputy District Attorney, #28615 Fred Johnson, Special Deputy District Attorney, #42479 P.O. Drawer 3455, Durango, Colorado 81302 Phone Number: (970) 247-8850 Fax Number: (970) 259-0200	Case Number: 17 CR 343
PEOPLE'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS INDICTMENT DUE TO PRE-INDICTMENT PUBLICITY [D-16] [PUBLIC ACCESS]	

NOW COME the People, by and through Christian Champagne, District Attorney, in the County of La Plata, respectfully request that the Court deny the Defendant's motion to dismiss the indictment. As support therefore, the People state the following:

Background

1. On July 17, 2017, a grand jury was impaneled in La Plata County and began to hear and investigate evidence of the murder of Dylan Redwine. On July 20, 2017, the La Plata County Grand Jury indicted the Defendant for the crimes of Murder in the Second Degree and Child Abuse Resulting in Death.
2. The Defendant is currently set for trial on November 26, 2018.
3. The Defendant now motions the court to dismiss the indictment due to pre-indictment publicity. In essence, he asserts without factual support that the grand jury was not fair, impartial, and unbiased in reaching True Bills.

Law

4. C.R.S. 16-5-204(4)(k) provides for the appropriate challenge available to a Defendant after a

grand jury has returned an indictment:

The district court before which the indicted defendant is to be tried shall dismiss any indictment of the grand jury if such district court finds, upon the filing of a motion by the indicted defendant based upon the grand jury record without argument or further evidence, that the grand jury finding of probable cause is not supported by the record.

5. The function of conducting a review of the Grand Jury record under section 16-15-204(4)(k) is similar to the role of the court in a preliminary hearing. *People v. Summers*, 593 P.2d 969 (Colo. 1979); *People v. Luttrell*, 636 P.2d 712 (Colo. 1981). The court must draw all inferences in favor of the prosecution, the intent to commit crimes may be inferred from the conduct of the defendant and the circumstances of the case, and conflicts in testimony or factual disputes should be resolved at trial and not by the district court when the grand jury's finding of probable cause is adequately supported. *Id.*
6. The record of the grand jury proceedings referenced above does not include the colloquy between the District Attorney and the Grand Jury. *See People v. District Court*, 610 P.2d 490, 493 (Colo. 1980). The statutory section sets out the limits as to how far the Court should intrude into grand jury proceedings. Rarely will the actions of the district attorney provide a basis for challenging the grand jury's true bill. *Cf. State v. Fisher*, 112 N.J. Super. 319, 271 A.2d 24 (1970).
7. C.R.S. 16-5-204(4)(n) states that, beyond a probable cause review by the Court, "any other motions testing the validity of the indictment may be heard by the court based only on the record and argument of counsel; unless there is cause shown for the need for additional evidence."
8. For several decades, a presumption of regularity has attached to grand jury proceedings. E.g. *People v. Clifford*, 98 P.2d 272, 275 (Colo. 1939). The defendant has an affirmative burden to produce distinct evidence to overcome this presumption of regularity and this burden can never shift to the prosecution. *Id.* at 275-276.
9. Therefore, the Court should review the Defendant's Motion to Dismiss the Indictment for Pre-Indictment Publicity only on the record before it. Other extraneous information which is not part of the record should not be considered.

Defendant's Claims

10. The Defendant has been provided the record in this case, and the People have no objection to him additionally receiving a redacted copy of the jury selection transcript consistent with the law explained in the People's Response to Defendant's Request for Grand Jury Materials [D-14].
11. At this time, however, the Defendant makes no specific factual allegation in his motion as to why he believes any of the specific jurors in this case were exposed and influenced by a specific news report.

12. Further, as a threshold matter, the Defendant cites no law to support his assertion that the Grand Jury indictment should be dismissed because publicity generally exists regarding the case. In fact, none of the cases in his motion directly address publicity and grand juries. Rather, he cites to two cases that specifically deal with trial juries, and neither case is factually or procedurally similar to this case.
13. As cited by the Defendant, *Wiser v. People*, 732 P.2d 1139 (Colo. 1987) is a case wherein a trial juror during deliberations improperly consulted a dictionary for a definition of burglary. In *Wiser*, the court held that an objective test was required to determine whether there was a reasonable possibility that extraneous information of influence affected the jury trial verdict to require a new trial, and even in the face of actual extraneous information being accessed, the court upheld the conviction. *Id.* at 1142-1143.
14. *Harper v. People*, 817 P.2d 77 (Colo. 1991) is a case where a trial court declined to inquire of the jury about exposure to a local newspaper article that was published mid-trial describing opening statements and going on to describe inadmissible other acts evidence. In *Harper*, the court reversed and held that a three step process should be applied under these specific circumstances, where there is “possible juror exposure to mid-trial prejudicial publicity.” *Id.* at 86.
15. Both *Wiser* and *Harper* are inapplicable to the Defendant’s case. They both dealt with exposure to specific extraneous material or specific prejudicial publicity mid-trial or during deliberations. In both cases the defendant made a showing that there was either actual exposure to extraneous information or that there was a reasonable possibility that the jury was exposed to a specific prejudicial news article released during the pendency of the case.
16. *Wiser* and *Harper* do not set forth requirements for jury selection, nor do they address the Grand Jury process which has specific, different rules.
17. Here, the Defendant does not cite to any specific juror conduct such as consulting outside sources during deliberations as was the case in *Wiser*. Further, the Defendant does not cite to any prejudicial publicity that occurred during or because of the grand jury process. By its secret nature, the grand jury proceedings would not have generated the type of additional publicity that a public jury trial generated in *Harper*. In fact, the Defendant makes no factual assertions whatsoever to support his legal assertion that any of the jurors were influenced by the media or outside sources of information in this case. Because of this, any claims that the jury may have been influenced by publicity in the years leading up to the indictment are entirely speculative.
18. Further, the Defendant’s claims are so broad as to suggest that there could not be a fair and impartial grand jury. Even where the Defendant cites to general publicity surrounding this case, he makes no attempt to identify why that publicity would be significantly more accessible to the local jury pool than to a state wide jury pool. Many of the news outlets are statewide, national, or international in nature. For example, in his motion the Defendant cites to Facebook and ABC Denver 7. The Defendant’s argument would therefore suggest that there is no place in the state that a grand jury or trial jury could be seated to fairly hear this

case. Even the general claim that there could not be twelve fair and unbiased people in La Plata County is overbroad and unreasonable.

19. Additionally, for purposes of challenging the validity of the indictment pursuant to C.R.S. 16-5-204(4)(n), the extraneous information in the Defendant's motion about general publicity is not part of the record in this case and therefore should not be considered for purposes of dismissing the indictment unless a specific news article or social media post is referenced in the record. Speculation as to what could have been read is not a valid consideration.
20. Finally, the People incorporate by reference all arguments and exhibits in the People's Response to Motion for Change of Venue.
21. In conclusion, the tests applied in *Wiser* and *Harper* do not apply to the grand jury selection process in the Defendant's case.
22. Most importantly, it should be noted that appropriate instructions were given by the court to the grand jury panel, appropriate inquiries were made of the grand jury panel regarding publicity in this case, and appropriate precautions were taken by the court and the People to ensure that the jurors who were seated could be fair and impartial without being influenced by prior media coverage.
23. A review of the record, which is the only appropriate review under the statute, demonstrates that none of the jurors indicated they had been exposed to pre-indictment publicity that would impact their ability to be fair and impartial in their duty as grand jurors. Therefore, any request to dismiss the indictment on this basis should be denied.

WHEREFORE, the People respectfully request that the Court deny the Defendant's Motion to Dismiss the Indictment Due to Pre-Indictment Publicity.

Respectfully submitted this March 13, 2019.

CHRISTIAN CHAMPAGNE
DISTRICT ATTORNEY
6th JUDICIAL DISTRICT

/s/ Christian Champagne
Fred Johnson, #42479
Special Deputy District Attorney

CERTIFICATE OF SERVICE

I hereby certify that on September 14, 2018, I delivered a true and correct copy of the foregoing to the parties of record via e-service.

/s/ Christian Champagne

Christian Champagne