DISTRICT COURT LA PLATA COUNTY, COLORADO 1060 EAST SECOND AVENUE DURANGO COLORADO 81301	DATE FILED: September 21, 2018 1:16 PM FILING ID: 2430E3039A7F0 CASE NUMBER: 2017CR343
THE PEOPLE OF THE STATE OF COLORADO, v. Mark Redwine Defendant	σ COURT USE ONLY σ
Douglas Wilson, Colorado State Public Defender Justin Bogan 33827 John Moran 36019 175 Mercado Suite 250 Durango Colorado 81301	**Case No.: 17CR343**

[D 93]
MOTION TO DISMISS INDICTMENT PURSUANT TO 16-5-204(4)(K)

Mark Redwine respectfully requests this Honorable Court to dismiss the indictment levied against him by the Grand Jury pursuant to C.R.S. 16-5-204(4)(k). The indictment is not supported by the record.

1. This criminal prosecution was instituted against Mr. Redwine as a result of an Indictment returned by a grand jury impaneled and sitting in La Plata County, Colorado. Per the transcripts that were provided to defense counsel, Grand Jury Proceedings were initiated on July 17, 2017. The Grand Jury returned an indictment against Mark Redwine on July 20, 2017. The indictment alleges Mr. Redwine committed the crimes of Second Degree Murder (F2) and Child Abuse Resulting in Death (F2).

2. Mark Redwine requests this Court to review the Grand Jury Transcripts, in their entirety, and make findings of fact and law as to whether the record supports the charges of Second Degree Murder and Child Abuse Resulting in Death. He makes this request according to C.R.S. 16-5-204(4)(k), which states:

> 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.
>
> Id.

3. The role of a District Court reviewing the record of a Grand Jury Indictment is much like the role of a court conducting a preliminary hearing in determining the existence or absence of probable cause. People v. Summers 197 P.2d 969; see also Hunter v. District Court, 543 P.2d 1265 (1975). The court must draw all inferences in favor of the prosecution and when there is a conflict in the testimony a question of fact exists for determination at trial. This rubric applies with even greater force when the district court is reviewing a probable cause determination made by a grand jury which had the opportunity to observe the witnesses. Id.

4. The District Court is obliged to view the testimony, conflicts in the testimony, and inferences in the light most favorable to the prosecution (supporting the indictment). People v. T & S Leasing, Inc., 763 P.2d 1049 (upholding the District Court's dismissal of three of six felony charges levied by the Grand Jury).

4. Evidence sufficient to support a conviction is not necessary at the Grand Jury stage of the proceedings. People v. Luttrell, 636 P.2d 712; People v. Armijo, 589 P.2d 935 (1979); People v. Treat, , 568 P.2d 473 (1977); People v. District Court, 526 P.2d 289 (1974). If the testimony conflicts, the trial court must draw an inference for the prosecution. People v. Johnson, 618 P.2d 262 (1980); Miller v. District Court, 566 P.2d 1063 (1977).

5. Thus the burden to which the District Court must hold the indictment and attendant record is the same as that of a preliminary hearing. That is, the evidence must establish probable cause as to each element of the crime. People v. Moyer, 670 P.2d 785, Hunter v. District Court, 543 P.2d 1265 (1975); People v. Quinn, 516 P.2d 420 (1973). ("The probable cause standard requires evidence sufficient to persuade a person of ordinary prudence and caution to have a reasonable belief that the defendant committed the crime charged." citing Miller v. District Court, 641 P.2d 966).

6. In this matter, the record of the Grand Jury proceedings is woefully deficient. When reviewing the record as a whole, it is apparent there is not probable cause to sustain gthe two charges in this matter. The following paragraphs diagram some of the more egregious short comings, but Mr. Redwine's request for probable cause review is not limited to the issues outlined below.

7. Much of Investigator Golbricht's testimony was based upon irrelevant assertions, incorrect facts, and her own baseless opinions. Her testimony offered next to no direct evidence to speak of to the jurors, but did seek to inflame the jurors' passions and overstate the strength of the prosecution's case.

A. IRRELEVANT ASSERTIONS: WALMART:

A:

Transcript; Vol I; pg. 9

That a teenage son and his father's interactions were not up to the subjective standard set by Investigator Golbricht is irrelevant to a determination of probable cause in this matter.

B. INCORRECT FACTS: MARK DID NOT REPORT DYLAN MISSING:

Q
A:
Q:

Transcript; Vol. I, pg. 10

Mark Redwine reported his son missing to the Bayfield Marshalls. Though this assertion was later contradicted by Investigator Golbricht and other witnesses, it demonstrates the ease with which Investigator Golbrict made a statement that was not born out in the actual facts and investigation of the case.

C. INCORRECT FACTS: MISCHARACTERIZING THE QUALITY AND QUANTITY OF THE DNA EVIDENCE

A:

Transcript, Vol. I., pg. 16

A juror listening to Investigator's testimony would be left with the impression that apparent DNA and blood *that matched the profile* of Dylan Redwine were found throughout Mark Redwine's house. That is not the case.

Colorado Bureau of Investigation reports that miniscule amounts of DNA evidence were found in Mark Redwine's house. However, CBI's findings and Investigator's Golbricht's testimony differ. DNA was found on the couch in Mark Redwine's house. That DNA was found to be consistent with a mixture of at least three individuals, of which Mark Redwine, Cory Redwine, and Dylan Redwine *could not be excluded.* The microscopic blood found on the coffee table is a mixture of which Mark Redwine and Dylan Redwine *could not be excluded.* The DNA mixture on the floor, underneath the rug, is one in which Dylan Redwine and Mark Redwine

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cannot be excluded. The DNA mixture on the floor not under the rug, is not derived from blood and Cory and Dylan *cannot be excluded* from it. **There is only one microscopic droplet** of purported blood, on the loveseat, of **which the DNA profile matches** Dylan Redwine. (Discovery 11122).

D: INCORRECT FACTS: MISCHARACTERIZING THE QULAITY AND QUANTITY OF THE "HUMAN REMAINS DETECTION DOGS"

Q:

A:

Q:

A:

Transcript. Vol. I pg 16.

Neither the Investigator nor the prosecution revealed to the Grand Jury about the lack of reliability of the dog sniff evidence. See Defense Motions 36-40.

E. INCORRECT FACTS: MISCHARACTERIZING THE PURPORTED SHARP INSULTS ON THE RIGHT ZYGOMATIC ARCH OF DYLAN REDWINE

Q:

A:

Transcript; Vol. I, pg. 18.

Dr. Diane France, under microscope, detected two sharp insults to the right zygomatic arch of Dylan Redwine. Dr. France opines that the insults are consistent with sharp trauma. Her report does not say "knife mark." Dr. Mulhern describes the two marks as "sharp defects" consistent with "sharp trauma." Dr. Mulhern does not use the term "knife" in her analysis.

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F. UNFOUNDED EXPERT TESTIMONY ABOUT FORENSIC ANTHROPOLOGY, VERTEBRATE BIOLOGY, VICTIM/PERPETRATOR DYNAMICS, ERGONOMICS, HOW MURDERS DISPOSE OF BODIES AND THE ULTIMATE ISSUE IN THE CASE:

Q:

A:

Q:

A:

Q:

A:

Transcript; Vol. I., 18-19.

8. Lieutenant Cowing offered testimony about the limited, poor quality video of Dylan Redwine and Mark Redwine at the Durango Airport and Durango Walmart. These were incorrectly characterized as "Dylan's last steps" by the prosecution. Transcript; Vol. II pgs. 166-183. This testimony offers no insight to probable cause for the two charges levied against Mr. Redwine. The unreasonable inference the prosecution floated in front of the grand jury was Mark Redwine knowingly killed his youngest son as evidenced by the fact the two did not speak while they were shopping at Walmart the day before he went missing.

9. Lyle Willmarth offered testimony opining on the behavior of mountain lions and black bears. Said testimony was based upon his experience "in the field" as a guide and employee of Colorado Parks and Recreation. He cites to no articles, books, periodicals, or studies that support his theories that: mountain lions do not scavenge except when they are starving, and no animals could have deposited Dylan Redwine's remains at the three recovery cites, amongst other theories. Transcript; Vol II, pgs 329 -336.

10. Dr. Mulhern posited during her testimony that the fractures observed on cranium were "perimortem" injuries; meaning the fractures occurred "around the time of death." Transcript Vol. III pg. 350, 389. The perimortem period extends as long as the bone is fresh, and has characteristics of fresh bone, and could be up to weeks or months after death. Id. at 350, 390. Dr. Mulhern could not theorize a cause of death based upon the cranium, and could only offer that one of the insults to the cranium was "consistent, again, with something like blunt force trauma." Id. 395. The doctor did NOT theorize with specificity what could have caused the injuries to the cranium not who could have caused the injuries. The doctor testified about two marks on the right zygomatic arch of the cranium. She testified that those marks were caused by a sharp manmade instrument. Id. 402-3. She did not provide a theory as to who made those marks or under what circumstances. Repeatedly during her testimony the prosecution incorrectly referred to the perimortem period as "at the time of death," which mischaracterized her testimony, the evidence, and the definition of the term "perimortem." Id.

11. Agent Clayton testified to the application of luminol to Mark Redwine's livingroom. First, the Agent acknowledged that luminol is a presumptive test for the presence of blood, " I may spray luminol, in a squeeze bottle, just spray it in a fine mist, and if it settles and if it reacts with something,it's indicating the presence of something that may be blood, it may be a copper salt, a cupric salt chemically, bleach it will react to. So it's just indicating this area is of interest." Transcript Vol. III pg 422. He later proclaims that a positive reaction to luminol is proof of the presence of blood, "You'll see a variety of areas that are blue that indicating the presence of blood." Id at 442.

12. The Agent also mischaracterizes exhibit 184 as showing a large area reflecting a positive reaction to luminol:

A:

Q:

A:

Id. at 449.

Exhibit 184 shows between 7 and 8 blue drops. The Agent's opinions about the presence of blood in Mark Redwine's living room contradict his own agency's findings, which were known at the time the grand jury proceedings.

Q:

A:

CBI's serological tests determined there was only blood in three of the five areas testified about by the Agent. Discovery 11122. Knowing that the CBI Lab had determined that there were mere microscopic picograms of DNA gathered from the living room in five locations, and that only three of those DNA locations contained blood, the prosecution and the Agent doubled down on the inaccurate narrative that there was a large amount of blood in Mark Redwine's living room:

Q:

A:

Q:

A:

Id. at 457; Discovery 11122.

13. Investigator Ezzell testified about cadaver dogs during the grand jury proceedings. The prosecution relied heavily on the notion that a number of canines "alerted" to something in Mark Redwine's house. Both the prosecution and Investigator Ezzell posit that the dogs "alerted" to the scent of a dead body in in Mark Redwine's house. The Investigator testified about Ms. Corcoran's dog's alerts.

A:

Q:

A:

Q:

A:

Q:

A:

Transcript; Vol. III, pg 592.

Again, the Investigator did not inform the grand jury of the lack of reliability of the dog sniff evidence in this case. See Defense Motions 36-40.

14. Mr. Redwine moves for a hearing on this motion when he may present the substantial amount of pre-indictment publicity that occurred in this case.

15. Mr. Redwine makes this motion, and all other motions and objections in this case, whether or not specifically noted at the time of making the motion or objection, on the following grounds and authorities: the Due Process, Trial by Jury, Right to Counsel, Equal Protection, Cruel and Unusual Punishment, Confrontation, Compulsory Process, Right to Remain Silent, and Right to Appeal Clauses of the Federal and Colorado Constitutions, and the First, Fourth, Sixth, Eighth, Ninth, Tenth, and Fourteenth Amendments to the United States Constitution and Article II, Sections 3, 6, 7, 10, 11, 16, 18, 20, 23, 25, and 28 of the Colorado Constitution.

___/s/___John Moran
John Moran 36019
Deputy State Public Defender
Dated: September 21, 2018

___/s/___Justin Bogan
Justin Bogan, #33827
Deputy State Public Defender
Dated: September 21, 2018

Certificate of Service
I hereby certify that on, Sept. 21 2018, I served the foregoing document by ICCES to all opposing counsel of record.
_____/s/__Justin Bogan_____