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DISTRICT COURT, LA PLATA COUNTY, COLORADO Court Address: 1060 East 2nd Avenue, Room 106, Durango, CO, 81301-5157	DATE FILED: NOVEMBER 20, 2018 17CR343
The People of the State of Colorado, Plaintiff, v. MARK ALLEN REDWINE, Defendant.	Case Number: 17CR343 Division: 1

**MOTION OF THE INNOCENCE PROJECT FOR
LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF DEFENDANT**

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The Innocence Project, Inc., by and through its counsel, respectfully moves this Court for leave to file an *amicus curiae* brief in the above-captioned matter on behalf of Defendant Mark Redwine, a copy of which is attached as Exhibit A. Both the federal and Colorado rules of criminal procedure are silent on the filing of *amicus* briefs at the trial court level. *See generally* Fed. R. Crim. P.; Colo. Crim. P. Nevertheless, Colorado's federal and state district courts have discretion to permit *amicus* briefs, and have a longstanding practice of permitting *amici* to file such briefs. *See* Stephen Masciocchi, *Overuse, Underuse of Amicus Briefs*, Law Week Colorado, Vol. 15, No. 23 (June 5, 2017). In addition, federal district court judges in Colorado have solicited *amicus* participation in cases involving novel questions of law or matters of significant public import. *See id.* Accordingly, the Innocence Project believes that the evidentiary issues implicated in this case concerning cadaver dog evidence raise important and relatively novel questions of law in the State of Colorado. *See id.* In support of this motion, the Innocence Project states the following:

1. The Innocence Project, Inc. (the "Innocence Project") is a national litigation and public-policy organization dedicated to exonerating wrongfully convicted persons through DNA testing, and improving the criminal justice system to prevent future miscarriages of justice. The Innocence Project has become keenly aware of the role that unreliable and improper scientific evidence has played in obtaining wrongful convictions. To date, 362 people in the United States have been exonerated by DNA testing, including 20 who served time on death row. The improper use of forensic science contributed to the original wrongful conviction in approximately half of these cases. Drawing on these lessons, the Innocence Project promotes study and reform designed to enhance the truth-seeking function of the criminal justice system and ensure that future wrongful convictions are prevented.

2. The Innocence Project offers this brief to the Court because this case involves important issues concerning the admissibility and reliability of so-called “cadaver dog” evidence in criminal investigations and judicial proceedings. The admissibility and reliability of such evidence is directly relevant to the Innocence Project’s mission of preventing wrongful convictions and future injustices, and ensuring that criminal convictions do not rest upon the inaccurate use of scientific evidence. The risk of a wrongful conviction based upon unvalidated and/or scientifically unfounded forensic evidence is particularly acute where, as here, the “cadaver dog” evidence upon which the Prosecution relies has not been subjected to rigorous scientific testing, and has had its accuracy, fairness, and reliability seriously called into question by courts, as well as academics and others in the scientific community.

3. In addition, the Innocence Project is particularly concerned with the proper role of testimony involving specialized instruments and investigative methods in the judicial process. Where appropriately grounded in evidence-based science, or where the particular instruments and methods sought to be introduced have been proven reliable and trustworthy, such testimony has the powerful ability to aid in the truth-seeking function of the courts. Yet, where such testimony is not properly grounded on firm scientific evidence, or where investigative instruments and methods have not been tested, certified, or otherwise deemed reliable, but are presented at trial as unmitigated fact, the weight that such evidence has with a lay jury presents a substantial and unacceptable risk of wrongful conviction.

4. The cadaver dog evidence sought to be admitted in this case is seriously flawed in several critical ways that compel its exclusion. The Innocence Project does not doubt the ability of dogs to detect scents imperceptible to human beings. What never has been proven with any degree of scientific reliability, however, is the ability of a dog to detect the scent of a particular object at a