

DISTRICT COURT, LA PLATA COUNTY, COLORADO Court Address: 1060 E. Second Ave., Durango, CO 81301 Phone Number: (970) 247-2304	<div style="border: 1px solid black; padding: 5px; text-align: center;"> ORIGINAL FILED / RECD IN COMBINED COURT LA PLATA COUNTY, COLORADO JUN - 9 2019 DEPUTY CLERK </div> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
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 MOTION FOR ORDER REGARDING SCOPE OF DEFENSE WITNESS TESTIMONY BASED ON DEFENSE EXPERT DISCLOSURES, OR IN THE ALTERNATIVE, TO COMPEL FURTHER DISCOVERY OF REPORTS AND OPINIONS (P-25) [PUBLIC ACCESS]	

NOW COMES the People, by and through Christian Champagne, District Attorney, in the County of La Plata, and respectfully submit the following Motion regarding the scope of the Defendant's expert testimony at the upcoming *Brooks* hearing on human remains detection canines:

Legal Background

On February 11, 2019, the Court ruled that the Colorado Supreme Court case *Brooks v. People*, 975 P2d 1105 (Colo. 1999), set forth the proper standard for the pretrial determination of whether dog sniff evidence is admissible at trial. Accordingly, the Court ordered a pretrial hearing on the reliability factors in *Brooks*. In conjunction with ordering the *Brooks* hearing, the Court ordered that both the prosecution and the defense provide witness disclosures.

C.R.Crim.P 16(II)(b)(1) and (2) provide that the Court may order the Defendant to disclose to the prosecution any reports or statements of experts, including the witness's opinions and bases and reasons therefor. "The intent of this section is to allow the prosecution sufficient meaningful information to conduct effective cross-examination under C.R.E. 705." *Id.*

Here, the Court ordered in C-28 that the parties disclose the witnesses they intend to call at the hearing, along with the "reports" and the "interviews" of those witnesses.

Facts

The Defendant has endorsed two expert witnesses in this case, Dr. James Ha and Dr. Mary Cablk. For the Court's convenience in evaluating those endorsements and disclosures regarding proposed expert testimony, the People have attached both endorsements and the disclosures by the Defendant as People's Exhibits 1 and 2, respectively. These are the only reports or summaries the People have received for these experts. Curriculum Vitae were also included with the Defendant's endorsements.

Regarding Dr. James Ha, the Defendant filed an Expert Endorsement and Disclosure on February 25, 2019 which included a "Written Summary of Testimony," written by counsel and not by the witness, and essentially only stating that Dr. Ha would opine on aspects of the *Brooks* factors.

Notably, counsel's summary did not include any actual opinion of the application of the *Brooks* factors to the facts of this case or the handlers in the case.

This provided the People with absolutely no information to prepare for the hearing. It is a given that the witness will talk about the *Brooks* factors as anything else would be subject to a relevance objection. However, what he has to say about the *Brooks* factors is what would constitute an expert opinion subject to disclosure.

No reports or interviews with the expert witness were included, pursuant to Court Order C-28.

In an effort to prepare for the last hearing, the People reached out to Dr. Ha only to have him tell the People that he had been instructed by the defense that all correspondence with him had to be directed through the defense. Setting aside whether it is appropriate for counsel to affirmatively obstruct access to a witness in a case (and to be fair, this was Dr. Ha's account of what he was told, so the People do not intend this as an accusation in the event he was mistaken), the People did reach out to the Defendant's attorneys' office months ago in the interests of being efficient and cooperative. The office of the Defendant's attorneys indicated they would provide dates and times to meet, however, to date the People have still not been given the dates or any access to the expert.

Finally, Dr. Ha confirmed that at the time of that communication regarding scheduling, which was after the "Written Summary of Testimony" was prepared by defense counsel, he had not actually reviewed any materials in the case. In other words, it appears that defense counsel's "Written Summary of Testimony" cannot be attributed to Dr. Ha in any meaningful way in terms of preparing cross-examination for the hearing.

The People had anticipated that further reports or interviews with the expert might be provided if the Defendant still wished to call him as a witness prior to the May 27th deadline, however, they were not, compelling the People to file this motion essentially for clarification.

Regarding Dr. Cablk, the Defendant filed an endorsement on May 24, 2019 which included an