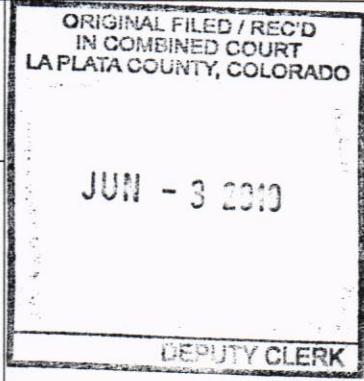


DISTRICT COURT, LA PLATA COUNTY, COLORADO
Court Address: 1060 E. Second Ave., Durango, CO 81301
Phone Number: (970) 247-2304



Plaintiff: PEOPLE OF THE STATE OF COLORADO

v.

Defendant: MARK ALLEN REDWINE

▲ COURT USE ONLY ▲

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Matthew Durkin, Special Deputy District Attorney, #28615
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Case Number: **17 CR 343**

PEOPLE'S RESPONSE TO [D-121] DEMAND FOR DISCOVERY, COLORADO BUREAU OF INVESTIGATIONS, COLD CASE REVIEW TEAM [PUBLIC ACCESS]

NOW COME the People, by and through Christian Champagne, District Attorney, in the County of La Plata, and respond to defense motion [D-121], and move this honorable Court to deny the defense request. AS GROUNDS for this response, the People state as follows:

1. The defense filed their motion entitled *[D-121] Demand for Discovery, Colorado Bureau of Investigations, Cold Case Review Team*. In said motion, the defense claims that they are entitled to discovery relating to the cold case team meeting held on May 19, 2015.
2. In our letter dated April, 16, 2019, the People denied the defense request for discovery relating to this meeting, stating as follows:

Regarding your specific questions pertaining to the CBI Cold Case Review Team presentation, the information utilized for the presentation is all based on materials previously discovered to you. Any documentation pertaining to that meeting is work product and not subject to discovery; they contain the opinions, theories, and conclusions of the prosecution team and are protected under Crim.P. Rule 16 (I)(e)(1) and the work product doctrine. Furthermore, your request regarding the "44 other suspects and persons of interest who were investigated and cleared" is answered by a thorough review of the discovery you have already been provided, and any summary thereof is protected work product.

3. The CBI cold case review team consists of several prosecutors, investigators, and other related experts who agree to review the discovery in a given case and give their opinions as to potential leads and other avenues of investigation. Members of the potential prosecution team are often asked to be present so that they may consider possible prosecution and garner the insights of those at the table. In any event, the entirety of the meeting is based on law enforcement's previously conducted investigation; no new evidence is developed, rather it is a discussion of pre-existing evidence. As such it is based entirely on the discovery already in the possession of the defense.
4. Defense counsel's representation of the main case supporting its argument is less than complete. In *People v. Angel*, 277 P.3d 231 (Colo. 2012), the Colorado Supreme Court actually upheld the prosecution's application of the work product doctrine to internal documentation regarding an investigation into an officer-involved shooting, including PowerPoint presentations and handwritten notes from a witness interview. The Court specifically held that:

We find the reasoning employed in both *Grolier* and *Gilmore* to be consistent with the purpose of Crim. P. 16(I)(e)(1), which is to provide prosecutors with a degree of privacy in which they may candidly and thoroughly evaluate legal claims and strategies. See *Martinez*, 970 P.2d at 474–75. If we were to hold that Crim. P. 16(I)(e)(1) applies only to protect opinion work product created in anticipation of the case before the court, then a prosecutor, when investigating a criminal episode in the future, would have a substantial incentive to refrain from candidly and thoroughly evaluating a case for fear that her mental impressions, legal analysis, and trial strategies would be discoverable by defendants in future cases. Accord *Grolier*, 462 U.S. at 31, 103 S.Ct. 2209 (Brennan, J., concurring in part and concurring in judgment) (“[Agencies] have an acute interest in keeping private the manner in which they conduct and settle their recurring legal disputes.”). The result of such a rule would guarantee that “much of what is now put down in writing would remain unwritten” and “the cause of justice would be poorly served.” *Hickman*, 329 U.S. at 511, 67 S.Ct. 385. Finally, such a rule would violate the spirit of the Colorado Rules of Criminal Procedure “to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.” Crim. P. 2. Accordingly, we refuse to reach such a conclusion.

In light of the vital purposes underlying Colorado's prosecutorial opinion work product protection, we reverse the order of the trial court below and hold that, pursuant to Crim. P. 16(I)(e)(1), all prosecutorial opinion work product prepared in anticipation of any potential prosecution is protected from discovery.

Id. at 237-238.