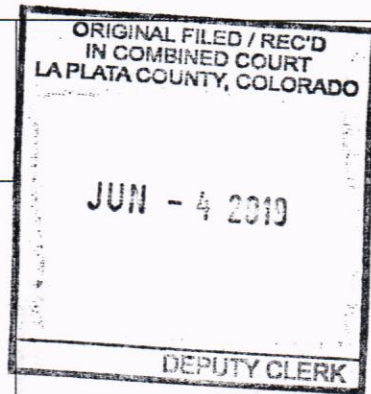


DISTRICT COURT, LA PLATA COUNTY, COLORADO
Court Address: 1060 E. Second Ave., Durango, CO 81301
Phone Number: (970) 247-2304



Plaintiff: PEOPLE OF THE STATE OF COLORADO

v.

Defendant: MARK ALLEN REDWINE

▲ COURT USE ONLY ▲

Christian Champagne - District Attorney, #36833
Matthew Durkin, Special Deputy District Attorney, #28615
Fred Johnson, Special Deputy District Attorney, #42479
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Phone Number: (970) 247-8850
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Case Number: **17 CR 343**

**PEOPLE'S RESPONSE TO [D-117]:
DEFENDANT'S MOTION FOR RELIEF DUE TO THE STATE'S
DESTRUCTION AND ALTERATION OF PHYSICAL EVIDENCE
[PUBLIC ACCESS]**

NOW COME the People, by and through Christian Champagne, District Attorney, in the County of La Plata, and requests that this honorable Court deny the Defendant's Motion for Relief Due to the State's Destruction and Alteration of Physical Evidence [D-117]. AS GROUNDS for this motion, the People state as follows:

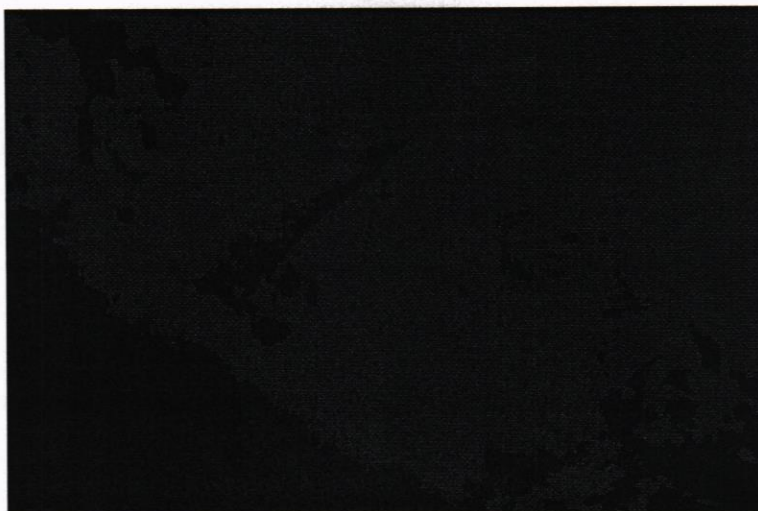
Offer of Proof

1. On November 18 – 19, 2012, Dylan Redwine was murdered. On November 18, 2012, Dylan Redwine arrived in Durango, for a court ordered visit with the defendant. Video surveillance showed that the defendant and Dylan Redwine stopped at several locations in the Durango area before they drove to the defendant's home near Vallecito Reservoir. Phone records also show that path of travel and communication from Dylan to several others until later that evening. These are the last images and communication from Dylan Redwine.
2. On November 19, 2012, the defendant reported Dylan Redwine missing, which started search and rescue operation that lasted for weeks.
3. By June 2013, Dylan Redwine had still not been found or recovered. Between June 22 – 24, 2013, the La Plata County Sheriff's Office conducted a massive search of Middle Mountain and recovered several human bones including a right and left femur, right clavicle, right tibia,

and some toes in coyote scat. On June 27, 2013, several of the bones were identified by DNA testing as being Dylan Redwine. (Bates 1823 – 1825) Until the testing was completed, there had been no trace of Dylan Redwine since November 18, 2012.

4. On September 25, 2013, the bones were examined by Dr. Dawn Mulhern, Coroner Jann Smith and Dr. Robert Kurtzman. The bones were handled carefully and displayed signs of animal marks and DNA testing. No chemical or forensic sampling or testing was done at this time. (Bates 714)
5. On October 25, 2013, Dr. Dawn Mulhern, Forensic Anthropologist at Ft. Lewis College, examined the remains. She documented her findings that the bones were consistent with a young adult and showed signs of animal scavenging activity. No chemical or forensic sampling or testing was done at this time. (Bates 2756 – 2761)
6. In April 2014, Dr. Diane France, Forensic Anthropologist, reviewed the remains at the Arapahoe County Coroner's Office, and documented similar findings. No chemical or forensic sampling or testing was done at this time. (Bates 2797 - 2799)
7. On July 14, 2014, a right scapula was found near the first recovery site and was examined by Dr. Dawn Mulhern. On July 30, 2104, Dr. Mulhern documented her findings that it was consistent with a young adult and showed signs of animal activity. No chemical or forensic sampling or testing was done at this time. (Bates 2744 – 2755)
8. In November 2015, three years and many winter and summer seasons after Dylan Redwine's murder, a cranium was found further up Middle Mountain Road from the original recovery site in 2013 – 2014. Upon recovery, the cranium was examined at the Arapahoe County Coroner's Office by Dr. Diane France. As part of her examination, she noted its original state, gently washed the cranium, further examined the cranium, noted signs of animal activity, a fracture consistent with perimortem trauma, and two sharp injuries on the root of the right zygomatic. Dr. France also reported that two forensic pathologists that were present agreed with the assessment of the two sharp marks. (See Figure 1)

Figure 1: 2015 Photograph of two sharp injuries to zygomatic

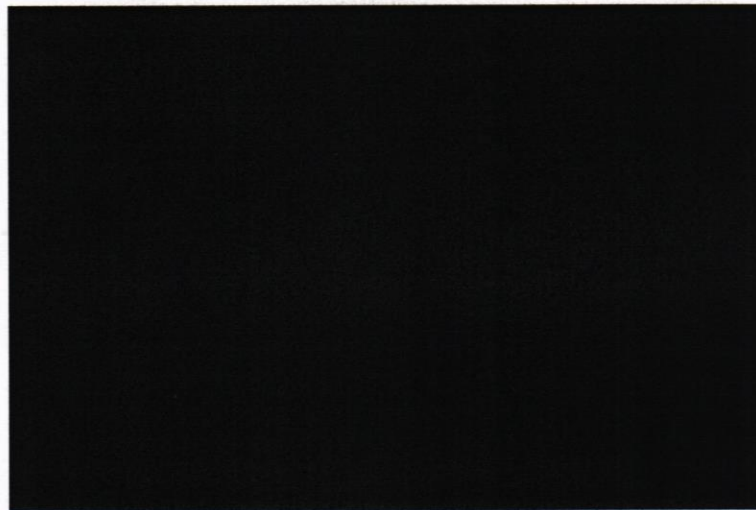


9. Later, she also attempted to document the state of the cranium by molding, however, the molding did not hold, as it was removed from the cranium. Dr. France has used this molding for decades as a means of preserving the item without damage. She documented the original state of the cranium, and her findings, in writing and with numerous photographs of every aspect of the cranium. These photographs included overall photographs, including areas of the cranium without any notable markings, as well as close-up photographs of the injuries, fractures, and signs of animal activity. The examination of the cranium was completed according to her training, and experience, and according to the accepted practice in her field. Dr. France does not believe that the cranium was altered during her examination. (Bates 18288 - 18291)
10. In April 2016, the cranium had not yet been tested to determine identity. Based upon the condition of the evidence, the cranium had to be tested by the University of North Texas Center for Human Identification (UNTCHI). Like other items of evidence, parts of the bone material had to be removed to conduct the test. To minimize the effect of the DNA sample necessary for testing, Dr. France recommended that UNTCHI “take the DNA sample from the middle/posterior of the occipital bone”. (Bates 18283).
11. UNTCHI followed Dr. France’s recommendation and removed a portion of the cranium for DNA testing. The DNA testing was not consumptive. Following the examination and testing, it was determined that the cranium was Dylan Redwine. There were no findings in their reports as to any alteration of the cuts. (Bates 609, 638, 18235 – 18349)
12. In April 2017, the FBI examined the cranium, specifically the two sharp cuts on the right zygomatic. The FBI determined that the cuts were consistent with a sharp object, but could not reach any further findings due to the microscopic size of the cuts. There were no findings in their reports as to any alterations of the cuts. No forensic or chemical testing was completed at this time. (Bates 19877 – 19879).
13. In July 2017, Dr. Dawn Mulhern testified at grand jury that she had reviewed her reports, and the reports of Dr. Diane France, including the photographs, and came to the same opinion

that the cuts to the zygomatic were from a sharp instrument and consistent with perimortem trauma.

14. On March 3, 2018, all of Dylan Redwine's remains, including his cranium, were transported to Grand Junction, for examination by Dr. Robert Kurtzman, a forensic pathologist. Dr. Kurtzman found that Dylan Redwine had been murdered, but could not make findings as to the cause of death. His conclusions were based upon reviewing police reports, forensic anthropologist reports, maps, photographs of the scene, and an inspection of Dylan Redwine's remains. During his examination of the remain, Dr. Kurtzman also documented the condition of the items with multiple photographs.
15. Specifically, Dr. Kurtzman agreed that there were two angled, linear, kerf marks on the right zygomatic. Both injuries were perimortem, angled to the cortical surface, and have a sharp apex at the base, which are consistent with a sharp force object and not representative of postmortem animal predation. Furthermore, he noted that residual casting material is present on the cranium and one of the cuts appears to have a different appearance. (See Figure 2) These circumstances did not prevent him from making his findings. (Bates 18184-18185)

Figure 2: 2018 Photograph of two angled kerf marks on zygomatic



16. The explanation for the change in appearance is undetermined and is not limited to the frail state of the cranium, flaking due to the cuts and condition of the cranium, and perhaps lighting and/or angle of the photographs.
17. Based upon the current condition of Dylan Redwine's cranium, reports, and photographs, two forensic anthropologists, and a forensic pathologist, were able to make findings consistent with their training and experience. Also, a tool mark expert was able to review the cranium and photographs, and made findings that the two cut marks were consistent with a sharp instrument, but could not make more definitive findings based upon the miniscule size of the marks, and not for any other reason.

Legal Argument

18. There has been no destruction of evidence. One cut mark appears the same seven years after the homicide. While the other cut, appears to have a different appearance in a photo. A portion of the cranium had to be removed for DNA testing, while the rest of the cranium remains intact. All features of the cranium have been extensively documented with photographs by multiple experts.
19. The explanation for the change in appearance is undetermined and is not limited to the frail state of the cranium, flaking due to the cuts and condition of the cranium, and perhaps lighting and/or angle of the photographs.
20. When considering whether there is a Due Process violation for a failure to preserve potentially exculpatory evidence, the defendant must establish that:
 - (1) The evidence was suppressed or destroyed by the prosecution; and
 - (2) The evidence was material.

People v. Greathouse, 742 P.2d 334, 338 (Colo. 1987).
21. Materiality is defined as possessing an exculpatory value that was apparent before it was destroyed and be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means. *People v. Enriquez*, 763 P.2 1033, 1035-36 (Colo. 1988).
22. Therefore, to establish a due process violation for failure to preserve potentially exculpatory evidence, the defendant must establish that:
 - (1) The evidence was suppressed or destroyed by the prosecution;
 - (2) The evidence possessed an exculpatory value that was apparent before it was destroyed; and
 - (3) The defendant was unable to obtain comparable evidence by other reasonably available means. *Enriquez*, 742 P.2d at 338.
23. Each part of the three-part test must be established. *Id.*
24. **Evidence Has Not Been Destroyed.** The defendant cannot establish the first part of the test. Dylan Redwine's cranium remains in evidence. Evidence of the cut marks, the fractures, and signs of animal activity remain on his cranium. Therefore, there is no due process violation, and the defendant's motion must be denied.
25. **Comparable Evidence Exists.** As recently as March 2018, experts have been able to review Dylan Redwine's cranium, reports, and a plethora of photographs that have been taken over the years to form opinions and make findings. Therefore, there is no due process violation and the defendant's motion must be denied.
26. Finally, the due process clause of the fourteenth amendment does not require the state to forgo testing to preserve evidence that might be favorable to the defendant. The Supreme

Court of Colorado has held that “when dealing with such evidence, unless an accused can show bad faith on the part of the police, failure to preserve useful evidence does not constitute a due process deviation.” *People v. Wyman*, 788 P.2d 1278 (Colo. 1990); citing *Arizona v. Youngblood*, 488 U.S. 51, 109 S.Ct. 333, 337, 102 L.Ed.2d (1988).

27. Accusations not based in fact do not support a finding of bad faith. In fact, law enforcement has conducted examinations and testing necessary to determine if the items are human bone, if those items are Dylan Redwine, and minimal examinations to obtain relevant evidence from Dylan Redwine’s remains. Without a showing of bad faith, there is no due process violation and the defendant’s motion must be denied.

WHEREFORE, the People respectfully request that the Court deny the defendant’s motion for relief.

Respectfully submitted this June 4, 2019.

CHRISTIAN CHAMPAGNE
DISTRICT ATTORNEY
6th JUDICIAL DISTRICT

/s/ Christian Champagne
Christian Champagne #36833
District Attorney

CERTIFICATE OF SERVICE

I hereby certify that on June 4, 2019, I delivered a true and correct copy of the foregoing to the parties of record via e-service.

/s/ Christian Champagne
Christian Champagne