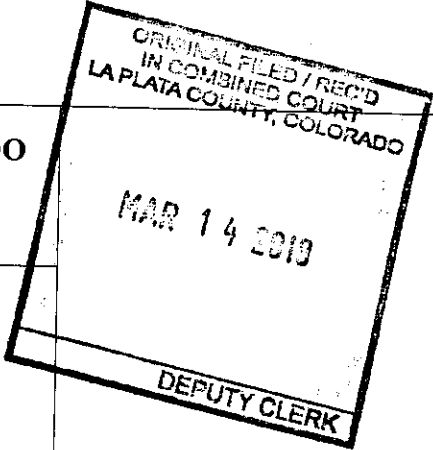


DISTRICT COURT, LA PLATA COUNTY, COLORADO Court Address: 1060 E. Second Ave., Durango, CO 81301 Phone Number: (970) 247-2304		
Plaintiff: PEOPLE OF THE STATE OF COLORADO v.	Defendant: MARK ALLEN REDWINE	
Christian Champagne - District Attorney, #36833 Matthew Durkin, Special Deputy District Attorney, #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		▲ COURT USE ONLY ▲ Case Number: 17 CR 343
PEOPLE'S OBJECTION TO RECENT AND FUTURE CONTINUANCES AND REQUEST FOR STATUS CONFERENCE FORTHWITH TO RESET JURY TRIAL (P-17) [PUBLIC ACCESS]		

NOW COME the People, by and through Christian Champagne, District Attorney, in the County of La Plata, and seek to give this honorable Court notice of the People's position and the victim's position regarding recent and future continuances in this matter. AS GROUNDS for this motion, the People state as follows:

Procedural Background

1. On June 29, 2018, the defendant accepted a motions date in October 2018 and a trial date was set in December 2018. On September 21, 2018, the defendant filed over one hundred motions, including motions challenging canine experts and DNA analysis.
2. One week before the motions date was set to commence in October 2018, the motion were reset for two weeks of the original trial date in December 2018, and trial was continued to February 2019. In a status conference prior to the rescheduled motions date in December 2018, the defense claimed that it would take more than three weeks to litigate the motions including the expert motions on canine searches and DNA. During the motions hearing, it was determined that some expert motions would be continued to another date.
3. On January 10, 2019, the defendant agreed to litigate the remaining motions regarding canine and DNA experts during a weeklong motions hearing to begin on

March 11, 2019. This motions hearing was set to begin over five months after the defendant filed his motions, which is nearly an entire speedy trial cycle. Furthermore, these motions were set to begin nearly two years after the indictment in July 2017, and over six years since Dylan Redwine was murdered.

4. On March 5, 2019, the Court held a status conference on this case. The subject of the status conference was the motions hearing scheduled to begin on March 11, 2019.
5. Well prior to March 5, 2019, the Court had issued rulings on the various motions that were at issue. Specifically, on February 11, 2019 the Court issued its “Order Regarding Dog Sniff Evidence D-36, D-37, D-38, D-39, D-40 and P-14,” indicating that the dog related evidence would be subject to a hearing under *Brooks v. People* 975 P.2d 1105 (Colo. 1999). Similarly, on February 19, 2019, the Court issued its “Order Regarding Defense Motions D-18 through D-34,” confirming that the People’s proposed STRMix DNA evidence would be subject to a hearing under *People v Shreck*, 22 P.3d 68 (Colo. 2001).
6. To be very straightforward, these rulings were no surprise to anyone involved in this case. In fact, in motions hearings held in December 2018, the People essentially conceded that the STRMix should be subject to a *Shreck* hearing as it had not yet been admitted in Colorado (a fact that has changed since the December hearings). Further, the defense clearly was/is prepared to address the reliability of the dog sniff evidence, as shown by their surprise *amicus curiae* filing, a pleading that appears to have been coordinated with Innocence Project months before the December hearings.
7. In preparation for the motions hearing, the People had coordinated witnesses from across the county to convene at the hearing and address the issues that everyone knew were going to be heard. On March 5, 2018, the People entered the Status Conference with no notice of any intention to continue the motions hearing and were prepared to discuss basic procedural matters. The Prosecution team had carefully scheduled other obligations around this critical hearing. At the status conference, the People laid out a succinct and detailed plan for the proposed testimony prior to yielding the podium to defense counsel.
8. The defense team showed up and announced that they were unprepared for the hearing. This was a hearing they had requested, based upon motions they had filed. They blamed the Court, claiming that the rulings were dilatory, despite all parties being on notice of the relevant issues. The claimed that unendorsed and unidentified experts were unavailable to appear on such short notice, despite the fact that these *defense* motions were filed in *September of 2018, a full 6 months prior to the hearing date*. The defense failed to provide any information on when these unidentified experts were contacted, or when these alleged conflicts were known. Pursuant to Court Order 20, the defense failed to endorse or disclose any witnesses that they were planning to call at the March 11, 2019, hearing.

9. The defendant gave no notice, filed no motions to continue, but clearly had a plan to surprise the court and opposing counsel with a motion to continue at the eleventh hour. The victims were not present for the hearing, as they did not know that the hearing would be a motion to continue for which they would have had input. The People registered their objection on the record. The Court continued the hearing.
10. The People had five different witnesses scheduled to appear, all with busy schedules, one of whom was flying in from New Zealand and one of whom had planned a trip to drive out from Wisconsin. They were told, yet again, to cancel their plans and attempt to re-adjust their professional schedules immediately for a new, possible future date that the People had no opportunity to pre-clear with them. Currently, at least two prosecution witnesses are unavailable for the newly scheduled motions hearings.
11. The prosecution team, who had rearranged other trials and hearings to be available for this week of motions as scheduled, was put in a position where the team had to consider whether to divide itself up to work on the defendant's schedule.
12. Most importantly, following the continuance, the People had unenviable job of calling the victim Elaine Hall and explaining to her that the hearings had been continued without her input. She was surprised and upset. Her silence was deafening as she attempted to process the fact that justice for her family, for her son Dylan, murdered at the age of 13, was being delayed yet again. Unfortunately, this predicament embodies the quote that "[j]ustice delayed is justice denied."
13. This feeling is entirely understandable. This case has been continued again and again at the request of the defense. The People have attempted to strike a reasonable balance between pushing for justice in a timely manner and giving the defense ample time to prepare what is admittedly a complex case. However, a cataloging of the various continuances begins to tell a story of unjustified delay, as follows:
 - a. The Indictment in this case was presented to the court on July 20, 2017;
 - b. The defense moved for continuance after continuance, delaying the arraignment for almost a year, until June 28, 2018;
 - c. The first trial date was scheduled for November 26, 2018;
 - d. On September 21, 2018, the defendant filed 100 motions (including their canine motions and the DNA *Shreck* motions) and then asked to continue the trial and waived speedy trial. The second trial date was schedule for February 25, 2019;
 - e. On December 7, 2018, the defendant again waived speedy trial and the case was continued until January 10, 2019 to set a new trial date;

- f. On January 10, 2019, the defendant again waived speedy trial. The parties agreed to a third trial date on June 24, 2019;
 - g. By March 1, 2019, the defendant had not endorsed or identified any witnesses pursuant to Court Order :
 - h. On March 5, 2019, the defendant again indicated he could not be ready for trial on June 24, 2019 and that he would be accept a trial date in fall 2019.
14. As a final maneuver that can only be characterized as gamesmanship at this point, on the very same day that the *Brooks* hearing would have been occurring had the defense announced prepared for their own motion, they instead filed an addition brief (D-109) regarding the canine evidence in the case. Notably, given the nature of this brief the defendant failed to give appropriate deference to the Court's Order regarding Dog Sniff Evidence issued on February 11, 2019, the Court's Order C-28 re-affirming that *Brooks v. People* would be the basis for the reliability hearing on canines, and the Colorado Supreme Court language on the topic in general.
15. Also notably, D-109 is an almost identical cut and paste of the same brief that had been previously submitted by the Innocence Project months ago, prior to the December motions hearing, which counsel chose not to bring to the Court's attention. The delay is unjustified, and the issue is ruled upon, yet the defendant refuses to acknowledge it and attempts to use purposeful delays to his advantage.

Victims' Rights Act Implications

16. If the court indeed sets the case out into the fall of 2019, the case will have been pending for more than two full years without resolution. Mark Redwine will have been sitting in a jail cell, awaiting justice for more than two full years. Elaine Hall and her family will be waiting, hoping, praying for justice for more than two full years after the court proceedings began and a grand jury found probable cause that the Defendant was responsible for Dylan's murder, and almost seven years after Dylan's disappearance. They still have not heard the evidence presented in open court and have to wonder every night what happened to 13 year old Dylan.
17. In the legislative declaration that commence the Victim's Rights Act, (§24-4.1.301, C.R.S et seq.), the legislature noted that:
- It is the intent of this [act], therefore, to assure that all victims of and witnesses to crimes are honored and protected by law enforcement agencies, prosecutors, and judges in a manner no less vigorous than the protection afforded criminal defendants. (emphasis added).
18. Indeed, the Victim's Rights Act guarantees:

- a. The victim has the right to justice and due process. §24-4.1.302.5(1), C.R.S.
 - b. The victim has the right to be treated with fairness, respect, and dignity. §24-4.1.302.5(1)(a), C.R.S.
 - c. The victim has the right to be assured that in any criminal proceedings, the court, the prosecutor, and other law enforcement officials will take appropriate action to achieve **a swift and fair resolution of the proceedings**. §24-4.1.302.5(1)(o), C.R.S. (emphasis added).
 - d. The victim has the right to be informed of and heard regarding “... **any pending motion that may substantially delay the prosecution**. The district attorney shall inform the court of the victim's position on the motion, if any. If the victim has objected, the court shall state in writing or on the record prior to granting any delay that the objection was considered.” §§24-4.1-302.5, 303(3), C.R.S. (emphasis added).
 - e. The victim has the right to expect that all members of the criminal justice system, including law enforcement, prosecutors, and the courts, shall ensure that victims of crimes are afforded their rights. §24-4.1.303(1), C.R.S.
19. On March 5, 2019, the victims in this case were robbed of their rights. A continuance, which the defense was clearly aware of, but chose to give no notice to opposing party or the Court, was foisted upon all of us. In the shock and surprise at the audacity of the day's proceedings, the victim's rights were trampled and forgotten.
20. Barring unforeseen circumstances, the general position of the victim and her family is that no more continuances should be granted by the court, and this case should be brought as swiftly to its conclusion as possible.

Relief Requested

21. With regard to the sudden and unexpected resetting of the motions hearing, the People were forced to reach out to witnesses after the settings rather than preclearing dates. The People's witnesses are not available for the date set for the DNA hearing and the attorneys are not all available for either of the hearings. The People are requesting to reset these motions to a time when witnesses are available and the entire prosecution team is available, which is only fair given the circumstances. Further, the People believe that given the extensive litigation already done in this case and the limited issues remaining, that the Court can set one final motions hearing to address the remaining issues. All parties were expected to be available during the previously scheduled June trial dates, and a late June motions hearing would give plenty of to schedule and prepare, as well as sufficient time to order transcripts prior to the jury trial.

22. The People hereby request that the Court reset the final motions hearing for the week of June 24, 2019, or as soon as practicable in the weeks immediately following that date in accordance with expert witness schedules, to be discussed at a status conference forthwith.
23. Further, the defendant has known what witnesses he anticipates calling at these hearings for some time now given the previously set hearings on the same issues. There is no reason why he should not give sufficient notice to the People so that they can be prepared for a fair and thorough hearing.
24. The People hereby request that the defendant be required to disclose which witnesses he will call at the upcoming hearing 28 days before the hearing and comply with the Court's order regarding expert disclosures. The People respectfully request that the Court clarify for the defense that this include any reports generated by the experts themselves, regardless of whether defense counsel chooses to write their own summary of expected testimony.
25. With regard to the trial setting, as of today, the People have no choice but to prepare as though the defendant could decline to waive speedy trial and this case could proceed to trial on June 24, 2019. The People in no way insinuate that he will engage in deceptive tactics given the representations of counsel, but nonetheless have to be prepared if he changes his mind. This puts the People in an uncertain and precarious situation. This is an untenable situation with potentially as many as 100 witnesses to serve with subpoenas and prepare for testimony. In fact, at each setting the People have had to work hard to issue subpoenas and coordinate with schedules in the event the setting proceeded to trial, as well as block off month long periods of time on regular court dockets and with other work and personal obligations, only to start anew with each continuance.
26. Given the impending third continuance of this jury trial, it is the People's position that the fourth and final trial setting should be set in August prior to the various professional conferences that will be set in September. A delay further into the fall would be unjustified from a VRA standpoint and would cause further scheduling issues for the People.
27. The People hereby request that the defendant be given the opportunity to waive speedy trial as soon as is practicable so that the jury trial be firmly set in the month of August.
28. For these reason, the People are requesting an additional status conference as soon as practicable for the defendant to waive his right to speedy trial and to reset the jury trial for what should be, barring exigent circumstances, a hard and fast date that all parties can prepare for. Additionally, the People request that all parties be ordered to consult with their witnesses in advance of that status conference so that a motions hearing date can be set that works for everyone involved.

29. In summary, given the numerous continuances and age of this case, the People propose that the Court order the following schedule:
- a. Additional status conference to take place in March, prior to the other scheduled status conferences, with a decision of waiver of speedy trial and resetting of the motions hearing and jury trial,
 - b. Witness disclosures including expert reports for the Motions Hearing ordered due no later than May 27, 2019.
 - c. Motions Hearing on all remaining issues to be set the week of June 24, 2019 during the time period all parties had blocked off for trial, or as soon as practicable in the consecutive weeks according to witness availability.
 - d. Jury Trial setting in August of 2019, at which time the defense will have had over 2 years to prepare.
30. The People believe the schedule as outlined above would be in line with the spirit of all of the Court's previous orders, would be fair notice to the victims in the case of what to reasonably expect consistent with the purposes of the Victims' Rights Act, would provide ample time to the defendant to be prepared to defend his case, and would ensure reasonable certainty to the People to prepare to present this case.
31. The People understand the Court's position up to this point of ensuring fairness to the defense team and the defendant, and the People have been reasonable in allowing for this additional time as well, but two years is more than enough time to prepare for even the most complicated case. Any further delays will prejudice both the People's case and the victim's right to justice.

WHEREFORE, the People seek to give notice to the Court of the People's position and the victim's position regarding recent and future continuances.

Respectfully submitted this March 14, 2019.

CHRISTIAN CHAMPAGNE
DISTRICT ATTORNEY
6th JUDICIAL DISTRICT

/s/ Christian Champagne
Christian Champagne #36833
District Attorney

CERTIFICATE OF SERVICE

I hereby certify that on March 14, 2019, I delivered a true and correct copy of the foregoing to the parties of record via e-service.

/s/ Christian Champagne
Christian Champagne