

DISTRICT COURT, LA PLATA COUNTY, COLORADO 1060 East Second Avenue Durango, Colorado 81301	DATE FILED: July 26, 2018 9:01 AM FILING ID: C45104FDA8B60 CASE NUMBER: 2017CR343 COURT USE ONLY
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff, v. MARK REDWINE, Defendant	Case Number: 17CR343 Division: 1
Douglas K. Wilson, Colorado State Public Defender John Moran, Attorney No. 36019 Justin Bogan, Attorney No. 33827 Deputy Public Defender 175 Mercado Street, Suite 250, Durango, CO 81301 Phone: (970) 247-9284 Fax: (970) 259-6497 E-Mail: Justin.Bogan@coloradodefenders.us Email: John.Moran@coloradodefenders.us	
[D15] MOTION FOR ORDER REQUIRING DISCLOSURE REGARDING OBSOLETE TESTING RESULTS NECESSITATING “DESTRUCTIVE” RETESTING OF “ALL ORIGINAL SAMPLES”	

Mr. Redwine requests that this Court order the prosecution to disclose why “CBI must reanalyze **all** of the original samples” because “some of the original results are obsolete.” See Unnumbered PEOPLE’S SECOND RESPONSE TO D-6 AND NOTICE OF CONSUMPTIVE TESTING, page 1 para. 3, (June 28, ’18)(emphasis added). The prosecution wants to perform destructive testing on “all samples” because some are obsolete.

**DESTRUCTIVE RETESTING OF ALL ORIGINAL SAMPLES BECAUSE OF
 OBSOLESCENCE RENDERING RESULTS UNRELIABLE IS A DRASTIC MEASURE
 REQUIRING FURTHER EXPLANATION**

1. Juries around the state of Colorado have been promised for many years that the lab results provided by CBI are reliable. It is exculpatory if those results and the processes used are now “obsolete.” *Id.* The prosecution is obligated to disclose evidence favorable to the accused where evidence is material either to guilt or punishment, irrespective of good or bad faith. *Brady v. Maryland*, 373 U.S. 83 (1963); CRCP 16(I)(a)(2). Mr. Redwine moves this Court for an order requiring disclosure of:

- a. What specific results in this case are now considered “obsolete”?
- b. What formerly employed “DNA instruments” have been “enhanced”?
- c. What formerly employed “DNA instruments” are now “obsolete”?

- d. What formerly employed “processes” have been “enhanced”?
- e. What formerly employed “processes” are now “obsolete”?
- f. What formerly employed “software” has been “enhanced”?
- g. What formerly employed “software” has been rendered “obsolete”?
- h. What or whom is the source of the prosecution’s information?

2. The request is for mandatory disclosure material because previous. *U.S. v. Bagley*, 473 U.S. 667 (1985); *Giglio v. U.S.*, 405 U.S. 150 (1972); *People v. District Court of El Paso*, 790 P.2d 332 (Colo. 1990). Impeachment evidence is to be treated the same as exculpatory evidence. *Id.* Inconsistent statements need to be disclosed and such disclosure is mandatory. *Id.*; CRCP 16(I)(a)(2).

3. CRCP 16(I)(a)(III) requires disclosure of “[a]ny reports or statements of experts made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons.” The statements presumably by CBI experts that old equipment, processes and software render results obsolete must be disclosed under the rule.

4. Mr. Redwine hereby moves for an order requiring disclosure of material held by other governmental personnel i.e. CBI employees past and present participating in this case and declaring previous DNA results and processes obsolete. CRCP R. 16(I)(c)(1), (2). Mr. Redwine moves for disclosure of materials held by CBI relating to the obsolescence of previously used technologies and why original results in the instant case are unreliable.

5. The proposed destructive testing implicates serious Due Process protections for Mr. Redwine. *See generally U.S. Const., amends. V, VI, XIV; Colo. Const., art. II, §§ 3, 6, 7, 11, 16, 18, 20, 23, 25, and 28 of the Colorado Constitution; People v. Greathouse*, 724 P.2d 334 (Colo. 1987). The evidence the prosecution is proposing to destroy is favorable to Mr. Redwine and material. *US v. Bagley*, 473 U.S. 667 (1985); *Giglio v. U.S.*, 405 U.S. 150 (1972).

WHEREFORE Mr. Redwine moves for an order of this Honorable Court for disclosures related to obsolescence and the basis for the need to reanalyze all original samples by means of destructive testing.

Respectfully submitted,

/s/ John Moran
John Moran, No. 36019
Deputy State Public Defender
Dated: July 26, 2018

/s/ Justin Bogan
Justin Bogan, No. 33827

Deputy State Public Defender
Dated: July 26, 2018

Certificate of Service
I hereby certify that on July 24,
2018, I served the foregoing
document by e-filing same to all
opposing counsel of record.
/s/ John Moran
/s/ Justin Bogan