

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

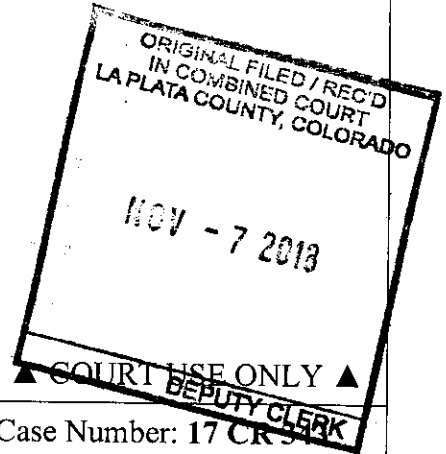
**Plaintiff: PEOPLE OF THE STATE OF COLORADO**

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

Case Number: 17 CR 5



**PEOPLE'S REPLY TO DEFENDANT'S RESPONSE TO MOTION FOR SCENE VIEW  
(D-17/P-3)  
[PUBLIC ACCESS]**

COME NOW the People, by and through Christian Champagne, District Attorney in and for the Sixth Judicial District of the State of Colorado, and moves this Honorable Court to order that the jury be allowed to view the crime scenes during trial. AS GROUNDS for this motion, the People state as follows:

**PROPOSED SCENE VIEW**

1. The La Plata County Sheriff's Office will be responsible for coordinating and executing orders from the Court regulating the jury view of the scene. This would include transportation in unmarked, or chartered vehicles, from the courthouse to each of the scenes. Provisions, including food and water, will be provided by the Court, but will be supplied by the La Plata County Sheriff's Office. Any other necessities, including bathroom breaks or arrangements, or individual needs of jurors, will be provided by the Court, but will be managed by the La Plata County Sheriff's Office.
2. Likewise, the La Plata County Sheriff's Office will be make the same arrangements for the parties and the public. This will include transportation in an unmarked or chartered vehicle that will transport the parties, and another unmarked or chartered vehicle that will be available for the public.

3. Scene One: The defendant's house, 2343 CR 500, Bayfield, Colorado. The jury would be driven to the defendant's house to view its location, elevation, topography, and surroundings. They jury would not have access to the interior of the house. An approved instruction would be read to the jury notifying them of the location. No testimony will be taken at Scene One.
4. Scene Two: First Recovery Site, Middle Mountain Road. The jury would be driven in an unmarked, or chartered vehicle, to the location of where a majority of the Dylan Redwine's remains were found. At this location, the jury would view the location, elevation, topography, and surroundings. An approved instruction would be read to the jury notifying them of the location. No testimony will be taken at Scene Two.
5. Scene Three: Second Recovery Site, Middle Mountain Road. The jury would be driven in an unmarked, or chartered vehicle, to the location of where Dylan Redwine's skull was found. At this location, the jury would view the location, elevation, topography, and surroundings. An approved instruction would be read to the jury notifying them of the location. No testimony will be taken at Scene Three.
6. After the jury has viewed each of the scenes, they will be driven back to the La Plata County Courthouse, where testimony will be resumed.

### SCENE VIEW

7. Colorado courts have consistently held that the decision to allow a jury to view the actual scene of a crime is within the sound discretion of the trial court. *People v. Favors*, 556 P.2d 72, 75-76 (Colo. 1976); *Day v. People*, 381 P.2d 10, 12 (Colo. 1963); *People v. Cisneros*, 720 P.2d 982, 984 (Colo. App. 1986); *People v. Garcia*, 981 P.2d 214, 218 (Colo. App. 1998).
8. In *People v. Favors*, 556 P.2d at 75-76, the Colorado Supreme Court found it proper to deny a jury view when it was requested to show the obstructed view through a screen door, that was introduced as an exhibit at trial. Furthermore, the lighting was a disputed issue at trial and "would have been difficult, if not impossible, to duplicate." *Id.*, 556 P.2d at 76. In the decision, they held that "it is commonly recognized that the trial court may permit the jury to view the actual scene of the crime "and that it "is well-established that the decision as to whether a 'view' by the jury will be permitted is within the sound discretion of the trial court." *Id.*, citing *Swift v. People*, 171 Colo. 178, 465 P.2d 391 (1970); *Day v. People*, 152 Colo. 152, 381 P.2d 10 (1963), cert. denied, 375 U.S. 864, 84 S.Ct. 134, 11 L.Ed.2d 90 (1964); 3 C. Torcia, Wharton's Criminal Evidence s 634 (1973); 4 Wigmore on Evidence s 1164 (Chadbourne Rev. 1972); Annot., 124 A.L.R. 841

(1940); *cf. Scott v. Tubbs*, 43 Colo. 221, 95 P. 540 (1908); *D.T. & F.W. R.R. Co. v. Pulaski Irrigation Ditch Co.*, 11 Colo.App. 41, 52 P. 224 (1898).

9. *Favors* is distinguishable from this case before the Court. Large areas of mountainous terrain, cannot be introduced as an exhibit in court, nor can a multitude of photographs, videos, and even maps, properly demonstrate. Also, since the location, geography, and elevation cannot be altered, there is no concern about replicating the area.
10. In the current case before the Court, it appears that all questions of fact are in dispute. This stands in stark contrast to *People v. Day*, 381 P.2d 10, 12 (Colo. 1963), in which the jury view was denied because “no disputed questions of fact were presented with reference to which a visitation to the premises could possibly have been of any benefit.”
11. In *People v. Cisneros*, 720 P.982, 984 (Colo. App. 1986), the trial court did not abuse its discretion in denying the motion for jury view when the defendant refused the trial court’s invitation “to present a scale diagram or to present actual measurements to show the distance from which one of the eyewitnesses saw the shooting.” In the case before the Court, three scenes are many miles apart with 1,000’s of feet of elevation gain and loss. It is impossible to convey those actual dimensions in a courtroom setting.
12. Similarly, photographs cannot adequately depict the multitude of dimensions (location, geography, topography, elevation, etc.) associated with several crime scenes within a mountainous area. Therefore, this is distinguishable from *People v. Garcia*, 981 P.2d 214, 218 (Colo. App. 1998), in which the trial court denied the motion to view a vehicle because they had four photographs of the vehicle and credible testimony about the effect of shadows through the rear windshield.
13. In *U.S. v. Culpepper*, 834 F.2d 879, 883 (10<sup>th</sup> Cir. 1995), the defendant was convicted of possession of marijuana with the intent to distribute to an undercover agent in a field. The trial court denied the motion for a jury view to go to the field because there were photographs taken the day after the event were sufficient due to “an exceedingly rainy fall would have changed the field’s condition substantially.” In the instant case, there is no claim that the relevant dimensions and characteristics between several crime scenes has changed at all. Meanwhile, their probative value has increased as all facts remain in dispute.
14. In *U.S. v. Chiquito*, 175 Fed. Appx. 215, 218 (10<sup>th</sup> Cir. 2006), the defendant was convicted of shooting the victim at night, at a home, on a Navajo reservation. The prosecution introduced several photographs of the area, including aerial photographs and panoramic video. The trial court denied the defendant’s motion for a scene view to show

the jury “the distances between the places involved, [and] the desolation of the places involved” and because “no measurements were taken when the evidence was taken.” In its denial, the trial court noted that “a daytime visit would not necessarily portray the scene as it appeared” and the jury view would be logistically difficult because it was 100 miles from the courthouse. The trial court denial is within its discretion “so long as sufficient evidence is available to describe the scene, such as testimony, diagrams and photographs.” *Id.* Testimony, diagrams and photographs, cannot adequately portray individual geographical and topographical characteristics and differences between three crime scenes in a mountainous region. Also, the proposed scene view is approximately 25 miles away, and can be managed in one day.

### **PUBLIC TRIAL**

15. The defendant next contends that a scene view will violate his Sixth Amendment right to a public trial. Accommodations for the public may be made.
16. To validly close a courtroom:
  - a. The party seeking to close the [proceeding] must advance an overriding interest that is likely prejudiced;
  - b. The closure must be no broader than necessary to protect that interest;
  - c. The trial court must consider reasonable alternative to closing the proceeding; and,
  - d. The trial court must make findings adequate to support the closure. *Presley v. Georgia*, 558 U.S. 209, 215, 130 S.Ct. 721, 175 L.Ed.2d 675 (2010); *Waller v. Georgia*, 467 U.S. 39, 104 S.Ct. 2210, 81 L.Ed.2d 31 (1984).
17. By allowing the public access to the scene view, the defendant’s Sixth Amendment right to an open and public trial is preserved. This honors each of the factors set forth by the United States Supreme Court. Accommodations to the public maintains a public trial; any limits on public access to the trial will be no broader then necessary to manage the scene view; and demonstrates that the Court has taken “every reasonable measure to accommodate the public attendance at the criminal trial. *Presley v. Georgia*, 558 U.S. at 215.
18. Finally, the defendant claims that a scene view could expose the juror to feedback from the community. With his right to a public trial, this possibility exists regardless of whether the Court conducts a scene view.

Wherefore, the People respectfully request that the Court allow the jury to view the crime scenes to provide the only means to fully understand the geographical and topographical characteristics of the scene.

Respectfully submitted this November 7, 2018.

CHRISTIAN CHAMPAGNE  
DISTRICT ATTORNEY  
6<sup>th</sup> JUDICIAL DISTRICT

/s/ Matthew Durkin  
Matthew Durkin #28615  
Special District Attorney

#### **CERTIFICATE OF SERVICE**

I hereby certify that on November 7, 2018, I delivered a true and correct copy of the foregoing to the parties of record via e-service.

/s/ Christian Champagne  
Christian Champagne