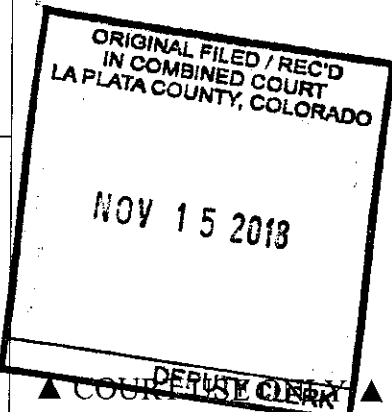


DISTRICT COURT, LA PLATA COUNTY, COLORADO Court Address: 1060 E. Second Ave., Durango, CO 81301 Phone Number: (970) 247-2304	
Plaintiff: PEOPLE OF THE STATE OF COLORADO v. Defendant: MARK ALLEN REDWINE	
Christian Champagne - District Attorney, #36833 Matthew Durkin, Special Deputy District Attorney, #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 343
PEOPLE'S RESPONSE TO [D-98] DEFENDANT'S MOTION TO DISMISS THIS CASE BASED ON PROSECUTION'S UNREASONABLE DELAY IN BRINGING CHARGES [PUBLIC ACCESS]	

NOW COME the People, by and through Christian Champagne, District Attorney, in the County of La Plata, and as their response to the Defendant's motion state as follows:

Background

1. In November of 2012, 13 year old Dylan Redwine went missing while under the supervision of his father, the Defendant. After the evening of November 18, 2012, no one ever heard from or saw Dylan Redwine alive. On the afternoon of November 19, 2012, the Defendant reported Dylan Redwine missing. Ten days later, when a search warrant was executed on the Defendant's home, law enforcement officers did not see any

2. After roughly seven months of searches, law enforcement officers located some of Dylan Redwine's remains roughly 8 miles up a dirt, mountain road from the Defendant's home. His skull was not located, nor were the majority of his belongings or body parts. Law enforcement officers followed up on hundreds of tips, and looked into numerous potential suspects. The Defendant repeatedly denied any involvement in Dylan Redwine's death. Further, he offered explanations other than homicide involving wildlife or that Dylan

Redwine could have hiked himself 1,500 vertical feet up a mile and a half through steep woods and cliffs to get cell service, even going so far as to simulate a different walk on a U-Tube video.

3. In November of 2015, hikers found a child's skull at a different location off of Middle Mountain Road. This second location was roughly a mile and a half from the first remains site as the crow flies, and roughly 1,500 vertical feet up and over a thickly wooded mountain. However, the second location was much more easily accessible after driving several miles up Middle Mountain Road from the first location.
4. Law enforcement officers sent the child's skull for testing to determine if it was Dylan Redwine's skull. On May 25, 2016, law enforcement officers received confirmation from the University of North Texas Center for Human Identification that in fact the skull was Dylan Redwine's skull.
5. Law enforcement officers consulted numerous experts familiar with wildlife in the area, and those experts opined that animals in the area would not transport a skull in that manner.
6. Law enforcement officers sought the consultation of several expert in the case to interpret markings on the skull, including tool marks expert, pathology experts and anthropology experts. Expert forensic anthropologist Dr. Diane France ultimately opined that [REDACTED]
[REDACTED]
7. On April 6 of 2016, based in part on consultation with the various experts in the case, La Plata County Coroner Jann Smith amended the death certificate to reflect the manner of death as homicide.
8. Investigation, witness preparation, and report gathering continued in the months to follow and the continuous investigation is contained in the discovery provided to the Defendant.
9. On July 17, 2017, a grand jury was impaneled in La Plata County and began to hear and investigate evidence of the murder of Dylan Redwine. On July 20, 2017, the La Plata County Grand Jury indicted the Defendant for the crimes of Murder in the Second Degree and Child Abuse Resulting in Death.
10. The Defendant is currently set for trial on November 26, 2018.
11. The Defendant does not contest in his motion that both charges were brought within the statute of limitations.
12. The People have announced ready to set for trial on this case since the initial indictment was presented in court, however, the Defendant has motioned to continue numerous

times. It has been nearly a year and a half since the indictment was returned without trial, based on the Defendant's motions to continue.

13. The Defendant now motions the court to dismiss the indictment due to the delay in bringing charges.
14. The People hereby move to incorporate the transcripts and exhibits of the Grand Jury proceedings, as previously reviewed by the Court for probable cause, into the record in support of the People's response.

Law

15. Unlike the right to a speedy trial, there is no constitutional right to a speedy arrest. *People v. Hall*, 729 P.2d 373, 375 (Colo. 1986) (citing *People ex rel. Coca v. District Court*, 530 P.2d 958 (1975)). However, the courts have recognized that a point can be reached where the delay is so great that the prejudice caused by this delay becomes so great that due process and fundamental fairness require that the charges be dismissed. *People v. Hutchinson*, 557 P.2d 376 (1976).
16. The statute of limitations is the primary guarantee against the bringing of stale criminal charges. *U.S. v. Marion*, 404 US 307 (1971). The statute of limitations already accounts for the possibilities inherent in any extended delay such as faded memories, inaccessible witnesses, and lost evidence. *Id.* at 326. Therefore, the real possibility of these prejudices alone is insufficient to demonstrate that a defendant cannot receive a fair trial. *Id.* There is no limitation in Colorado in which an arrest warrant must be executed and no constitutional requirement that the arrest warrant be executed at the earliest opportunity. *Coca*, 530 P.2d at 960.
17. The Defendant cites to several cases in his motion, and the relevant citations begin with *U.S. v. Marion*, 404 U.S. 307 (1971) followed by *U.S. v. Lovasco*, 431 U.S. 783 (1977).
18. In *Marion*, the United States Supreme Court addressed a dismissal of an indictment for what was characterized as a lack of speedy prosecution where an indictment was returned roughly 3 years after the final predicate act in a business fraud case. *Marion*, 404 U.S. 308-309. The Defendant in that case asserted that the 3 year delay was bound to have seriously prejudiced the Defendant. *Id.* The Court reversed, finding that there was no actual prejudice shown and declining to dismiss based on speculative claims of possible prejudice. The Court further noted that the statute of limitations protected the Defendant's rights to fairness in this respect, except where pre-indictment delay causing "substantial prejudice to the [defendant's] rights to a fair trial and that the delay was an intentional device to gain tactical advantage over the accused." *Id.* at 323-324.
19. Subsequently in *U.S. v. Lovasco*, 431 U.S. 783 (1977), the United States Supreme Court addressed a firearms possession case where the trial court dismissed the indictment, which was affirmed by the Court of Appeals. That case involved a 17 month delay where little additional information was uncovered and, notably, two material defense witnesses

died during that period of time. The United States Supreme Court again reversed, and gave a lengthy explanation for why the trial court should not have dismissed. The Court explained that the “Due Process Clause does not permit courts to abort criminal prosecutions simply because they disagree with a prosecutor’s judgement.” *Id.* at 790. The lengthy discussion explains that “determination of when evidence available to the prosecution is sufficient to obtain a conviction is seldom clear-cut,” noting the ethical obligations not only of having probable cause before filing but also being satisfied that there is proof beyond a reasonable doubt for trial. *Id.* at 790-794. Having courts review this decision by prosecutors would impact prosecutors’ ability to bring only cases with enough evidence, their ability to continuing investigating other suspects in the case, and their ability to exercise discretion not to prosecute certain cases in the interests of justice. *See id.* at 790-794.

20. The Colorado Supreme has also addressed this issue, and the Defendant has cited three of those cases in his motion. First, in *Coca v. District Court*, 530 P.2d 958 (Colo. 1975), the Court heard a theft case involving a five month delay while the complaint had been filed and the Defendant was in custody but not arrested. The Defendant in that case challenged speedy trial, and the Court determined that the failure to make a speedy arrest did not warrant dismissal. Importantly, the Court laid out key factors related to when a defendant may have a valid claim of prejudice based on pre-indictment delay that could warrant dismissal:

Certain key factors, among others, are whether defense witnesses have become unavailable by reason of delay; whether the delay was purposeful and intended to prejudice the defendant; the kind of evidence and the quantum which is available to prove the prosecution’s case; and whether the justice dictates that the case be dismissed. *Id.* at 285.

21. Again, fundamental factors included actual prejudice and purposeful delay by the prosecution intended to cause that prejudice.
22. In *People v. Hutchinson*, 557 P.2d 376 (Colo. 1976), the Colorado Supreme Court again reversed a decision by the trial court to dismiss a case based on pretrial delay. In *Hutchinson*, a drug distribution case where the defendant alleged that a government informant was no longer available, the court found both that there was no showing of actual prejudice and that there was an absence of a showing that the delay was an intentional device to gain a tactical advantage over the defendant at his trial. *Id.* at 377.
23. The Court explained the type of situation which could possibly warrant a dismissal; an allegation that a potential key defense witness might no longer be available to testify because of a purposeful delay by the state, if true, might be sufficiently prejudicial to the defendant to require dismissal of his charges. *Id.* In doing so, the court specifically noted that a “mere displeasure on the part of the trial court with a delay in the district attorney’s issuance of the arrest warrant does not justify the dismissal of charges against the defendant, at least in the absence of a showing that the delay was an intentional

device to gain a tactical advantage over the defendant at his trial. Here, there was no evidence that the delay was intentional.” *Id.*

24. Pertaining to actual prejudice, the Court further held that a generalized assertion by a defendant that a pre-arrest delay caused his memory to dim is not a specific enough prejudice to mandate dismissal. *Id.* (citing *People v. Duran*, 535 P.2d 505 (Colo. 1975)).
25. Finally, the Defendant cites *People v. Hall*, 729 P.2d 373 (Colo. 1986), where the Colorado Supreme Court affirmed the dismissal of a drug distribution case following a two year delay during which no investigation was conducted. In that case, three defense witnesses were now unavailable, and the reason for the delay was a “sheer lack of interest” by the prosecution who only filed after the defendant turned herself in on the two year old warrant. *Id.* at 374-376. Further, the government had lost track of their own informant who was one of the eye/ear witnesses the defendant needed to call for trial. *Id.* In weighing the factors from *Coca*, although the Court found that the delay was not purposeful, the Court noted the lost government informant, the lack of interest by the prosecution, and the fact that the reason for the delay was no longer a valid reason a week after the alleged crimes occurred. *Id.* Ultimately, the Court called the delay “unreasonable,” noted prejudice, and affirmed the dismissal. *Id.* at 376. Finally, the Court noted that because the trial court appropriately applied the correct factors, the trial court was “entitled to deference” and emphasized that the dismissal was not required as a matter of law. *Id.*
26. The standard of review is abuse of discretion. See *People v. Melanson*, 937 P.2d 826 (Colo. App. 1996).

Argument

27. The Defendant’s motion should be denied under the proper analysis of *Coca* and the other cases that follow.
28. First, the Defendant’s case is factually different than the only case cited by the Defendant where the Court found a due process violation warranting dismissal.
29. That single case, *Hall*, was a drug distribution case with two year delay which resulted in three unavailable material defense witnesses, one of whom was an unavailable state informant. That case had no further documented investigative efforts into that defendant’s case during the period of delay, and no apparent explanation for the delay. Other cases cited discuss drug distribution and fraudulent business practices in cases where the information known to the government is the same at the time of the acts and at the time of the delayed filing.
30. *Hall* is not a cold case homicide. It was not a case involving an active, ongoing investigation. It was not a case that falls under the Victim’s Rights Act.

31. In fact, the cases generally cited by the Defendant are not cases contested on the identity of a suspect in a homicide case. The suspects known and the cases were fully developed. Further, they were much less complicated in terms of the charges, facts, and witnesses involved. Certainly they did not involve over 20,000 pages of discovery and hundreds of discs. Still, the Courts reversed the dismissal in all but one of those cases.
32. It is not uncommon for cold case homicides to be investigated for many years given their unique nature and this is recognized by the absence of a statute of limitations. In this context, more relevant to this Court's determination than the *Hall* case is *People v. Melanson*, 937 P.2d 826 (Colo. App. 1996), an 18 year old cold case where the Court of Appeals applied the *Coca* factors and found no due process violation. The court noted that "although statutes of limitations exist to guard against the prejudice of stale prosecutions, there is no statute of limitations for first degree murder because of its grave and heinous nature." *Id.* at 832.
33. In *Melanson*, the police actually had the evidence of the victim's hair in their custody but didn't think to test it until many years later, ultimately linking the defendant to the murder. Despite overlooking the evidence that had been in their possession for years, the People explained in that case that a reason for the delay was the fact that the majority of the victim's remains were not recovered and they were important to the People's ability to prove the case. The court found that the search for the victim's body and remains was a legitimate reason to wait to file charges. *See id.* (citing *People v. Small*, 631 P.2d 148 (Colo.), cert. denied, 454 U.S. 1101, 102 S.Ct. 678, 70 L.Ed.2d 644 (1981) (when the government takes time before seeking an indictment for purposes of conducting further criminal investigation, fundamental fairness is not violated unless this procedure shocks the community's sense of fair play and decency).
34. The court further analyzed several facts under the *Coca* analysis that bear similarities to this case: alleged prejudice from unreliable witnesses or witnesses who were not eye/ear witnesses to the events in the allegations did not amount to actual prejudice, there wasn't a showing that the delay was intended to cause unfair prejudice to the Defendant where there were legitimate investigative purposes, the specific need to recover remains was a legitimate reason for a delay, and well documented reports cured concerns about fading memories. *See id.* at 832-833.
35. In *Melanson*, despite the delay being much longer than this case, the Court finding negligence on the part of law enforcement that is not present in this case, and the evidence being substantially the same at the time over the course of the delay which is not true in this case, the Colorado Court of Appeals affirmed the trial court's finding that no due process violation had occurred. *Id.*
36. All cited cases except arguably *Hall* discuss and require a showing of purposeful delay by the prosecution to secure an unfair tactical advantage (even *Hall* cites this as a factor). As discussed below, there is no specific allegation of bad faith in the Defendant's motion, nor was there any actual deliberate delay for purposes of gaining an advantage. Rather, unlike in *Hall* where the government was disinterested and arguably negligent through a

“sheer lack of interest” in proceeding with their case, law enforcement has demonstrated due diligence in this ongoing investigation.

37. Finally, unlike the cases cited in the Defendant’s motion, the case before this Court requires an additional consideration under the Victims’ Rights Act and the rights of the victim’s family to have the case prosecuted. C.R.S. §24-4.1-302.5.
38. Second, the Defendant fails to establish actual prejudice to his case caused by the delay.
39. It should be noted the assertion that Martin Webster’s “confessed” as characterized by the Defendant in his motion is misleading. He never spoke to police. Only one person has claimed that he made such a statement to them, James Croxell, a convicted felon who asked to be released from DOC for providing the information about a man he acknowledged he knew was already dead and therefore could not say otherwise.
40. James Croxell’s statement about what he claims Mr. Webster said is hearsay and is not admissible in this case. All other persons who knew Martin Webster that could be located and potentially corroborate inmate Croxell were interviewed and did not corroborate inmate Croxell’s claims. Further, witnesses have referenced Croxell as a known liar. There is no physical evidence linking Martin Webster to the homicide in corroboration of inmate Croxell. In fact, inmate Croxell went so far as to telling another inmate to make the same claim about Martin Webster to authorities as a way to get out of DOC; that inmate ultimately admitted during an interview that he had received the information from inmate Croxell.
41. In this sense, the fact that Martin Webster would even be a material witness for the defense is speculative and undermined by the unreliability of Croxell’s statement. As the Court of Appeals did in *Melanson*, this Court should consider this in evaluating any claim of actual prejudice.
42. In fact, the Defendant’s sole argument is that a person that the People did not learn about until after he was deceased is now deceased. Nothing about the timing of the filing of this case could have made Martin Webster available. If the case were filed following the discovery of Dylan Redwine’s first remains in June 2013 as the Defendant suggests it should have been in his motion, the case would have been tried with no knowledge of Martin Webster at all. Jailhouse informant James Croxell knew Martin Webster was deceased and unavailable at the time he reached out from Department of Corrections and interviewed in January of 2016, as he stated in that interview. It was with that knowledge that he accused Martin Webster of confessing to the murder of an unnamed child in an attempt to get out of prison.
43. Importantly, during the majority of the time law enforcement was investigating this case pre-indictment, the People were not aware of Martin Webster at all. His death was in April of 2014. Even if the People had filed the day Dylan Redwine’s skull was discovered, before consulting experts and learning the strength of their case, Martin Webster would not have been available.

44. Because a delay in filing could not have caused the alleged prejudice even if prejudice did occur, the Defendant's allegations in his motion fail on their face.
45. Put differently, it is not the actions of the People that make Martin Webster unavailable, it is the calculation of James Croxell puts the man at issue after he is no longer available to defend himself against the jailhouse informant's allegation. This is different than if, for example, the People had information about Martin Webster but knew he was terminally ill and purposefully waited until his death to proceed.
46. The only prejudice is to the People and law enforcement in not being able to interview Martin Webster and instead having to conduct an extensive investigation to be diligent in checking on whether he was involved or not. The only bad faith is on the part of inmate Croxell in the timing of his statement to police, and that is not a government action.
47. Third, the nature of the crime the Defendant is alleged to have committed and indicted for demonstrates a pattern of the Defendant has taking substantial efforts to cover up evidence of his crime thus making it more difficult for law enforcement to conduct their investigation.
48. Dylan Redwine's body was disposed of in a manner where his remains were concealed and placed in different locations. His skull was moved and despite ongoing continuous search efforts it was only located by chance many years after his murder. Many of his belongings and remains were never recovered at all. Tool marks consistent with a knife indicate human tampering.
49. [REDACTED] The Defendant has repeatedly offered explanations about what happened to Dylan Redwine that redirected search efforts or that deflected involvement.
50. This has been a significant factor in the timing of the prosecution of the case.
51. Fourth, in addition to no showing of actual prejudice, none of the other factors from *Coca* are present to warrant a dismissal. As explained in both *Marion* and *Lovasco*, proof of prejudice is necessary for such a claim, however, it is not in and of itself sufficient. *Lovasco*, 431 U.S. at 789-790.
52. Specifically addressing the factors from *Coca*, first, even if Martin Webster would have been a witness for the defense, his unavailability is not a result of any delay in filing the case as he died before the People or the Defendant were aware of his existence. Second, the delay was not purposeful, and the Defendant does not allege with any specificity in his motion that the People delayed for an advantage in the case. Third, the kind of evidence and the quantum available to prove the People's case developed over the time period that the Defendant is now asserting was a "delay." For example, had the

Defendant been charged back in June of 2013 as he suggest he should have been, the People would not have evidence [REDACTED]

[REDACTED]. In other words, unlike the cases cited by the Defendant in his motion, law enforcement was not negligently failing to bring charges but rather working continuously through the pre-indictment time period to procure additional evidence. Fourth, and most importantly, justice does not dictate dismissal, it dictates that the Defendant stand trial before members of his own community so they can determine whether he is guilty or not guilty of murdering Dylan Redwine.

53. Finally, the Defendant and his defense team acknowledge the amount of time it takes to prepare the evidence and discovery in this case each time they ask for an additional continuance. The People would not bring a case to the Grand Jury until they had a complete understanding of the case and complete belief in the truth of the charges they brought forth for consideration. Such a decision cannot be taken lightly and cannot be done without diligence. Based on the current trial setting, the Defendant and his defense team have requested over a year and a half to prepare, and have further indicated they will seek at least one more continuance stretching the time from indictment to trial to roughly two years. That is more time than the time it took from the discovery of Dylan Redwine's skull to the time an indictment was sought and secured. That is more time than the period between when Dylan Redwine went missing and Martin Webster died (the only prejudice asserted by the Defendant). The delay was not unreasonable, it was necessary and appropriate.

54. The burden of proof is on the People, and fading memories and unavailable witnesses impact the People's case more than the Defendant's case. For example, Denise Hess who would be a witness to the trigger of violence that was a motive for the crime, is now deceased. To the extent that the Defendant asserts that these issues prejudice him, he has contradicted himself several times by requesting his trial be continued and delayed.

WHEREFORE, the People respectfully request this Honorable Court DENY the Defendant's Motion to Dismiss This Case.

Respectfully submitted this March 14, 2019.

CHRISTIAN CHAMPAGNE
DISTRICT ATTORNEY
6th JUDICIAL DISTRICT

/s/ Fred Johnson
Fred Johnson, #42479
Special Deputy 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