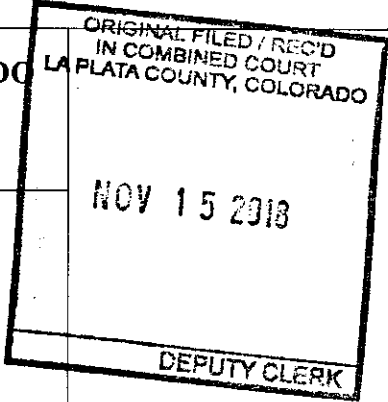


<b>DISTRICT COURT, LA PLATA COUNTY, COLORADO</b> Court Address: 1060 E. Second Ave., Durango, CO 81301 Phone Number: (970) 247-2304		
<b>Plaintiff: PEOPLE OF THE STATE OF COLORADO</b>  <b>v.</b>  <b>Defendant: MARK ALLEN REDWINE</b>	▲ COURT USE ONLY ▲	
Christian Champagne - District Attorney, #36833 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: <b>17 CR 343</b>
<b>PEOPLE'S RESPONSE TO [D-37] DEFENDANT'S MOTION TO SUPPRESS ALL EVIDENCE PERTAINING TO SEARCH AND RESCUE CANINE CAYANNE [SIC] AND HANDLER ROY VREELAND [PUBLIC ACCESS]</b>		

NOW COME the People, by and through Christian Champagne, District Attorney, in the County of La Plata, respectfully respond to the Defendant's motion to suppress evidence related to canine handler Roy Vreeland and canines Cayanne as follows:

**Background**

1. 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.
2. The Defendant is currently set for trial on February 25, 2019.
3. The Defendant now motions the court to suppress material and incriminating evidence related to canine Cayanne's positive alerts to a source of human remains in Mark Redwine's home. Additionally, canine Cayanne was one of three dogs that tested known scent articles from Dylan Redwine to determine if his scent was on the pillow case the Defendant had told authorities Dylan Redwine had slept upon, and which the Defendant provided to Search and Rescue as a scent article; Dylan Redwine's scent was not on the pillow case.

## Facts

4. On November 18, 2012, the Defendant picked up Dylan Redwine from the Durango airport for a court ordered Thanksgiving visit and drove him to his home in Vallecito. The Defendant and Dylan Redwine were both seen on Walmart video surveillance stopping on the way to Vallecito. After the evening of November 18, 2012 no one ever saw Dylan Redwine alive again, and after an iPod text 9:37pm that evening, no one ever heard from Dylan Redwine again.
5. The Defendant confirmed in statements to police that on the evening of November 18, 2012, Dylan Redwine was in his living room. The Defendant claimed Dylan Redwine spent the night sleeping on the couch and that he was alive the next morning when the Defendant left around 7:30am. The Defendant further provided a pillow case to Search and Rescue employees that he claimed Dylan Redwine had slept upon so that they could track Dylan Redwine's scent.
6. On November 28, 2012, as part of the investigation into Dylan Redwine's whereabouts authorities executed a search warrant of the Defendant's home. Although no blood was visible to the naked eye, when luminol was applied several locations in the Defendant's living room indicated [REDACTED].  
[REDACTED]
7. During the investigation the Defendant's clothing from the night Dylan Redwine went missing was also collected, and confirmed to be the correct clothing by both the Defendant and the video footage at Walmart.
8. Cadaver dogs were deployed at the time of the search, and indicated the [REDACTED].  
[REDACTED]
9. In late June of 2013, after the gates opened from the winter road closure, a search of Middle Mountain Road led to the discovery of several of Dylan Redwine's remains roughly 8 miles up the road from the Defendant's residence. Middle Mountain is an unpaved mountain road, and Dylan Redwine's remains were located roughly 100 yards off of the road into the woods, at a location which can be easily reached by following an ATV trail and established foot path. His skull was not located amongst the remains.
10. The Defendant had previously been seen up in the area of the closed gate by witness Mike Hall, driving his Dodge pick-up truck. He has also driven the Dodge truck into town to run errands the morning after Dylan Redwine went missing.

11. Following the discovery of the first of Dylan Redwine's remains during the search of Middle Mountain Road in late June of 2013, Dylan's half-brother [REDACTED].
12. In August of 2013, La Plata County Sheriff's deputies obtained the assistance of experienced human remains detection dog handler Carren Corcoran and her canine Molly to complete a follow-up search of the Defendant's residence to determine if human remains had been present in the home. The Defendant gave consent for the search, and [REDACTED].
13. In November of 2015, hikers found Dylan Redwine's skull about ½ mile off of Middle Mountain Road, several miles further up from where his other remains had been located. Forensic Anthropologist Diane France noted perimortem injuries consistent with blunt force trauma on two locations on Dylan Redwine's skull, as well as tool markings consistent with human tampering by a sharp object. Wildlife experts opined that based on the locations of the two areas where remains were found, no known animals in the area would be responsible for moving Dylan Redwine's skull to the location where it was recovered.

#### **Offer of Proof**

14. The People have attached the following exhibits as an offer of proof:
  - a. People's Exhibit 1: Report documenting Roy Vreeland's background relevant to canine handling.
  - b. People's Exhibit 2: Report documenting some of the cadaver canine work done by Roy Vreeland as referenced in the Defendant's Motion.
15. Additionally, the People hereby move to incorporate the transcripts and exhibits of evidence presented to the Grand Jury and reviewed by this Court for probable cause as an additional offer of proof in support of the attached offer of proof.
16. At this time, based on the limited information provided by witness Roy Vreeland with regard to training records for his canine Cayanne, the People do not anticipate calling him as an expert witness in this case. He will be called as a fact witness. Because the People are not yet within 35 days of trial, the People would ask the court to reserve ruling on the issue of the admissibility of expert testimony by Roy Vreeland in the event he is able to provide adequate records to support a finding under C.R.E. 702 and *Brooks*.

## Law

17. The proper legal analysis in determining the admissibility of the experience based expert testimony of canine handler Roy Vreeland is pursuant to C.R.E. 401, 403, and 702.
18. C.R.E. 401 defines relevant evidence as evidence that has any tendency to make the existence of a fact of consequence more probable or less probable.
19. C.R.E. 403 states that even when evidence is found to be relevant, it may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. A trial court has a responsibility to guard against prejudice and promote judicial efficiency by excluding evidence that is insufficiently probative to assist in the search for truth. *People v. Saiz*, 32 P.3d 441, 449 (Colo.2001). Unfairly prejudicial evidence has an undue tendency to suggest a decision on an improper basis, commonly but not necessarily an emotional one, such as sympathy, hatred, contempt, retribution, or horror. *Masters v. People*, 58 P.3d 979, 1001 (Colo. 2002).
20. C.R.E. 702 states that “[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.” Under C.R.E. 702, evidence that is reasonably reliable and that will assist the trier of fact should be admitted. *Brooks v. People*, 975 P.2d 1105, at 1114 (Colo. 1999).
21. The Colorado Supreme Court has previously found in *People v. Brooks* that scent tracking evidence is admissible. *Brooks*, 975 P.2d 1105. In *Brooks*, the Colorado Supreme Court determined that scent tracking evidence did not involve the scientific devices, processes, or theories; rather, it is an experience-based knowledge that was not dependent on scientific explanation. *Id.* at 1111-1112.
22. In doing so, the Court expressly rejected the application of the “general acceptance” standard of admissibility embodied in *Frye v. United States*, 293 F. 1013 (D.C.Cir.1923), and expressly rejected the application of the scientific validation factors enumerated in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993), holding that these standards do not apply to scent tracking evidence.
23. The Court went on to say that when proposed expert testimony involving experience-based specialized knowledge like scent tracking evidence draws an objection from the opposing party on the grounds that the subject matter is not sufficiently reliable to be presented to the jury, the evidence should undergo a two-tiered analysis pursuant to C.R.E. 702. *Id.* at 1109.
24. First, the court should determine if the testimony on the subject indicated would be useful to the jury. *Id.* at 1114. If the court so concludes, and determines that the witness is qualified to opine on the matter, the court must then apply its discretionary authority under CRE 403. *Id.*

25. In *Brooks*, the Court went further to identify factors specific for scent tracking dogs that could be applied in the analysis. However, *Brooks* did not involve cadaver dogs, and as explained below the court in *Brooks* was very careful to note that these factors should not supplant a more appropriate C.R.E. 702 and 403 analysis specific to each case. Some of the factors are nonetheless instructive in the context of cadaver dogs.

26. For scent tracking dogs, the Court adopted the majority rule that other courts have utilized specifically when determining if scent tracking evidence has evidentiary reliability: whether the dog is a breed that is characterized by acute power of scent; whether the dog has been trained to follow a track by scent; whether the dog was found by experience to be reliable in pursuing human tracks; whether the dog was placed on the trail where the person tracked was known to have been; and whether the tracking efforts took place within a reasonable time. *Id.* As it pertains to cadaver dogs, by way of example, a factor such as the training of the dog could be applied, whereas whether the dog was placed on the trail would not apply.

27. Further, in *Brooks*, specific to scent tracking dogs, the Court adopted the requirement from some other courts that the scent tracking evidence must be corroborated by some other independent evidence. In doing so, the Court cited to three cases, all of which stand for the proposition that a conviction based on the evidence of a scent tracking dog alone cannot stand without some other corroborating evidence in the case. *See id.* (citing to *State v. Wainwright*, 18 Kan.App.2d 449, 856 P.2d 163, 166 (1993); *People v. McPherson*, 85 Mich.App. 341, 271 N.W.2d 228, 230 (1978); *State v. Loucks*, 98 Wash.2d 563, 656 P.2d 480, 482 (1983)). It is an important distinction to note that in these scent tracking cases, the court was concerned with a conviction based on an identification of the defendant by a dog with no other corroboration in the case. As it pertains to cadaver dogs, they do not identify a suspect by his or her scent but instead indicate the presence of human remains within the context of a case that would require other evidence.

28. Finally, although *Brooks* is instructive as to defining the nature of the expert testimony and evidence, and makes clear that the analysis falls under C.R.E. 702 and 403, the factors outlined in *Brooks* are specific to scent tracking dogs. In fact, when adopting the factors and corroboration requirement the Court specifically cautioned as follows:

It is important to note that these foundational considerations are best utilized as a mechanism for conducting proper CRE 702 and CRE 403 analysis, and not as a substitute for the general philosophy embodied in our rules of evidence. As such, the emphasis the court might wish to afford each of these points might vary depending on the facts of a particular case. *Id.* at 1114-1115.

29. Although human remains detection dogs alert to a different scent than tracking dogs and provide different evidence than tracking dogs, the Colorado Supreme Court's reasoning in *Brooks* indicates that expert testimony regarding human remains detection dogs is also that of experience-based specialized knowledge which is not dependent on scientific explanation. As stated in *Brooks* in rejecting a *Frye* or *Daubert* analysis, the dog handler's expertise "is based on years of experience and individualized 'know-how' instead of some purportedly

universal scientific principle.” *Brooks*, 975 P.2d at 1112.

30. It should be noted that in *People v. Shreck*, 22 P.3d 68 (Colo. 2001), which was decided after *Brooks*, also referenced the decision in *Brooks* and reiterated that as an experience-based specialized knowledge that was not dependent on scientific explanation, C.R.E. 702 and C.R.E. 403 should be applied to determine whether canine scent tracking evidence is admissible. *Shreck*, 22 P.3d at 78.
31. In *Shreck*, the Court held that when determining whether scientific evidence is admissible under Rule 702, “the inquiry is whether the scientific evidence proffered is both reliable and relevant.” *People v. Shreck*, 22 P.3d 68, 77 (Colo. 2001). However, the *Shreck* opinion does not provide a blanket vehicle by which defendants may demand full evidentiary hearings before expert testimony can be admitted, even where the evidence at issue is novel and scientific in nature, which is not the case here. *Shreck*, 22 P.3d at 77. *Shreck* simply stands for the well-settled proposition that the trial court must make preliminary findings before admitting any kind of expert testimony to which the opposing party objects. *Id.*
32. Therefore, pursuant to the Colorado Rules of Evidence and also in consideration of *Brooks*, the proper analysis is whether the evidence is relevant under C.R.E. 401, whether there is an adequate foundation for expertise under C.R.E. 702 making the evidence reliable, and whether the evidence passes a C.R.E. 403 balancing test. The factors enumerated in *Brooks* may be considered in the analysis, including that there is some corroborating evidence in the case, but the Court should specifically tailor the C.R.E. 702 and C.R.E. 403 analysis to the relevance of human remains detection dog evidence and the reliability of the human remains detection dog handler. Where the requirements of C.R.E. 401, 403, and 702 are satisfied, the evidence is admissible at trial.

### **Legal Argument**

33. As a preliminary matter, Defendant’s motion in no way bears on his constitutional rights. Thus, while the Defendant cites provisions of the Federal and Colorado Constitutions in support of his motion, the relevant arguments are those relating to CRE 401, 403, 702, and *Brooks v. People*, 975 P.2d 1105 (Colo. 1999). Likewise, *Frye* and *Daubert* simply do not apply to this type of evidence or experience based testimony, and the Defendant’s assertion that the Court should construct a test which relies upon *Daubert* is legally incorrect under *Brooks* and *Shreck*.
34. Under C.R.E. 401 the evidence that a trained human remains detection dog alerted to the presence of a source of human remains in the Defendant’s home is relevant. Additionally, the evidence that a scent identification canine ruled out Dylan Redwine’s scent on the pillow case provided by the Defendant is relevant. The Defendant is alleged to have murdered his 13 year old son in his home and transported his son’s body up Middle Mountain Road to hide the crime and evidence from detection. The fact that a human remains detection dog alerted in his home and in the pick-up truck in his driveway makes it more likely that the Defendant committed the crime as alleged. Further, the fact that the Defendant stated Dylan Redwine was asleep through the night and into the morning on that pillowcase when he left him alive and safe is less likely based on the findings of the canine, making it more likely that the

Defendant committed the crime as alleged.

35. At this time, however, the People have insufficient information and records from Roy Vreeland and canine Cayanne to qualify Roy Vreeland as an expert in canine handling for purposes of scent identification and human remains identification. Until the People have sufficient information, they will not seek to qualify him as such an expert nor will they seek to elicit expert testimony from him.
36. However, the People do request that the Court reserve ruling on this issue until 35 days before trial in the event the People can procure sufficient training records and foundation under C.R.E. 702 and *Brooks*.

WHEREFORE, the People respectfully request this Honorable Court RESERVE RULING on Defendant's Motion to Suppress evidence related to canine Cayanne and handler Roy Vreeland at this time and until 35 days before trial.

Respectfully submitted this March 14, 2019.

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

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

#### **CERTIFICATE OF SERVICE**

I hereby certify that on November 15, 2018, I delivered a true and correct copy of the foregoing to the parties of record via e-service.

/s/ Christian Champagne  
Christian Champagne