

DISTRICT COURT, LA PLATA COUNTY, COLORADO Court Address: 1060 E. Second Ave., Durango, CO 81301 Phone Number: (970) 247-2304	ORIGINAL FILED / REC'D IN COMBINED COURT LA PLATA COUNTY, COLORADO NOV 21 2013 DEPUTY CLERK
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 MOTION TO STRIKE AMICUS FILINGS (P-11) [PUBLIC ACCESS]	

NOW COME the People, by and through Christian Champagne, District Attorney, in the County of La Plata, and move this Honorable Court to strike amicus filings as they are improperly filed by special interests that are not party to the case and as such, lack any standing. AS GROUNDS for this motion, the People state as follows:

1. It is well established that in "American jurisprudence at least, a private citizen [ordinarily] lacks a judicially cognizable interest in the prosecution or nonprosecution of another." *Linda R.S. v. Richard D.*, 410 U.S. 614, 619, 93 S.Ct. 1146, 1149, 35 L.Ed.2d 536 (1973).
2. The Colorado Court of Appeals applied this principle and held "that a private citizen lacks standing to request the issuance of a warrant for the arrest of another person." *Kailey v. Chambers*, 261P.3d 792, 798 (Colo. App. 2011); citing *Linda R.S. v. Richard D.*, 410 U.S. at 619, 93 S.Ct. at 1149, 35 L.Ed.2d 536 (1973); see *DeMillard v. No Named Defendant*, 407 Fed.Appx. 332, 333 (10th Cir.2011); *Larry v. Uyehara*, 270 Fed.Appx. 557, 558 (9th Cir.2008); see also *Kelly v. Dearington*, 23 Conn.App. 657, 583 A.2d 937, 940-41 (1990) (concluding that a citizen has no standing to obtain review of a prosecutor's refusal to seek arrest warrant).
3. Even victims of charged crimes lack standing to appeal the trial court's dismissal of charges. This precedent is based upon the foundation that "a plaintiff must allege an injury to a legally protected or cognizable interest to have standing to sue." *Gansz v. People*, 888 P.2d 256, 257 (Colo. 1995); citing *Maurer v. Young Life*, 779 P.2d 1317

(Colo. 1989); *Conrad v. City and County of Denver*, 656 P.2d 662 (Colo. 1982); *Wimberly v. Ettenberg*, 570 P.2d 535 (Colo. 1977).

4. In dismissing a private citizen's criminal complaints, the 10th Circuit Court of Appeals reaffirmed that "the law is crystal clear: 'a private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another'." *Keyter v. 535 Members of 110th Congress*, 277 Fed.Appx. 825, 827 (10th Cir. 2008); *Diamond v. Charles*, 476 U.S. 54, 64, 106 S.Ct. 1697, 90 L.Ed.2d 48 (1986)(quoting *Linda R.S. v. Richard D.*, 410 U.S. 614, 619, 93 S.Ct. 1146, 1149, 35 L.Ed.2d 536 (1973)); accord *Doyle v. Okla. Bar Ass'n.*, 998 F.2d 1559, 1567 (10th Cir. 1993).
5. The principle "that in a criminal prosecution a private citizen generally lacks standing to contest the policies of the prosecuting attorney when the private citizen is neither prosecuted nor threatened with prosecution" is well established around the country. *State v. Leingang*, 763 N.W.2d 769, 774 (N.D. 2009); *Commonwealth v. Malloy*, 450 A.2d 689, 693 (Pa. Super. 1982); *Manning v. Municipal Court*, 372 Mass. 315, 361 N.E.2d 1274 (Mass. 1977).
6. Inherently, non-parties to a criminal proceeding are without any interest or standing. By definition, an "amicus curiae" is "a person who is not party to the law suit but who is permitted, upon petition, to submit information or arguments for the court's consideration". *Gilbert Law Dictionary* (1997). It is well understood that constitutional rights are personal. Persons not charged cannot claim that a personal due process right has been affected. Likewise, the defendant's constitutional rights are not infringed by refusing to admit unfettered input from potentially endless sources.
7. The Colorado Rules of Criminal Procedure, which govern the procedure in all criminal proceedings in all courts of record, do not provide for an amicus brief in the trial court. Colo. R. Crim. P. 1. The Colorado Rules of Criminal Procedure "are intended to provide for the just determination of criminal proceedings. They shall be construed to secure the simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay." Colo. R. Crim. P. 2.
8. If no procedure is specifically prescribed by rule, the court may proceed in any lawful manner not inconsistent with these Rules of Criminal Procedure or with any directive of the Supreme Court regarding conduct of formal judicial proceedings in the criminal courts, and shall look to the Rules of Civil Procedure and to the applicable law if no Rule of Criminal Procedure exists. Colo. R. Crim. P. 57(b). This rule specifically omits the trial court from seeking guidance from the Colorado Appellate Rules (C.A.R.).
9. Colo. R. Civ. P. 14 governs third party plaintiff and defendant practice, but cannot be applied to criminal procedure as a private party simply has no cognizable interest or standing in the case. *Gansz v. People*, 888 P.2d at 257.

10. Although not included in the Colorado Rules of Criminal Procedure, in an appeal “an amicus curiae may file a brief only by leave of court or at the court’s request”. C.A.R. 29(a). Neither of those conditions have occurred.
11. However, assuming *arguendo*, those conditions could be met, “the motion to file an amicus brief must identify the movant’s interest and state the reasons why an amicus brief would be helpful to the court.” This appellate rule leads to the same end that it is impossible to articulate an interest in “American jurisprudence ... a private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another”. *Linda R.S. V. Richard D.* 410 U.S. at 619, 93 S.Ct. at 1149.
12. In a criminal trial, the trial court must follow the criminal rules of criminal procedure and the rules of evidence, to determine if evidence is admissible for the factfinder. Through the trial court process, each proponent of evidence or legal argument is held accountable by the trial court who assesses the credibility and strength of each argument. Ultimately, the factfinder must consider credibility and weight of all the evidence that it is given to determine guilt or innocence.
13. Should non-parties be allowed to submit information or arguments to the court without withstanding the crucible of impeachment or cross examination, or within the structure of the rules of evidence or procedure, it leaves the court without any sense of reliability as to any statement, purported evidence, and even legal argument. If non-parties are allowed to participate in criminal proceedings, the integrity of the each individual trial has the potential of disintegrating into a circus environment.
14. Therefore, the perfect order of the rules that do not provide for an amicus curiae in a criminal trial is brilliant.
15. That order must be kept in the case before the Court. At this point, the motions filing deadline passed on September 21, 2018. If non-parties to the case are not bound by the same rules as the parties themselves, then the case may be subject to an endless number of pleadings and potential requests for continuances.

WHEREFORE, the People ask this Honorable Court to deny any amicus pleadings.

Respectfully submitted this November 21, 2018.

CHRISTIAN CHAMPAGNE
DISTRICT ATTORNEY
6th JUDICIAL DISTRICT

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

CERTIFICATE OF SERVICE

I hereby certify that on November 21, 2018, I delivered a true and correct copy of the foregoing to the parties of record via e-service.

/s/ Christian Champagne
Christian Champagne