

DISTRICT COURT LA PLATA COUNTY COLORADO 1060 EAST SECOND AVENUE DURANGO COLORADO 81301	DATE FILED: November 28, 2018 10:02 AM FILING ID: 9066ECF9C4310 CASE NUMBER: 2017CR343
PEOPLE OF THE STATE OF COLORADO PLAINTIFF VS. MARK ALLEN REDWINE	σ COURT USE ONLY σ
Megan Ring, Colorado State Public Defender Justin Bogan #33827 John Moran #36019 Deputy Public Defender 175 Mercado Street, Suite 250 Durango, Colorado 81301	Case No. 17CR343 Division : 1
<p style="text-align: center;">[D103]</p> <p style="text-align: center;">OBJECTION, MOTION FOR OMNIBUS HEARING, AND MOTION TO CONTINUE MOTIONS HEARING FILED IN RESPONSE TO PROSECUTION'S "PROPOSED SCHEDULE FOR UPCOMING MOTIONS HEARINGS ON DECEMBER 3, 2018" [P-12] (PUBLIC ACCESS)</p>	

Undersigned counsel, objects to the prosecution's proposed motions hearing schedule, moves to continue, and moves for an order setting an omnibus hearing to ensure compliance with discovery obligations going forward.

Scheduling Agreements of the Parties

1. The defense does not agree that one week is adequate. There is simply no way all issues raised by the parties can be litigated in one week. As the legal filings mount, it is apparent that more time, for preparation at a minimum, will be necessary than was previously anticipated because fairness requires Mr. Redwine be given sufficient time for review, expert consultation and preparation. The prosecution's request that the Court rule now without argument and without time for defense review of prosecution motions flies in the face of fundamental fairness.
2. Defense believes it will take three weeks at a minimum to litigate all issues raised.

Request for Continuance and Omnibus Hearing

3. Since the September 21, 2018 first motions filing deadline the prosecution has provided 2,447 pages of discovery, pages 19,693-22,140. Defense counsel moves this Honorable Court to exclude all said discovery reasonably available or foreseeably discoverable prior to the motions filing deadline.
4. Despite public protestations that the prosecution is seeking to resolve this matter expeditiously they continue to dump information - much of which has been available for years – almost 18 months after Mr. Redwine’s arrest.
5. Counsel moves this court for an order requiring the prosecution to demonstrate that: 1) waiting to disclose information is not done in bad faith and; 2) why late disclosed information should not be excluded.
6. Counsel for Mr. Redwine is not in a position to represent to this Court that the motions hearing is adequately prepared given the continual dump of information. “Sufficient time for trial preparation is a necessary antecedent to providing effective assistance of counsel. *See People v. Moreland*, 193 Colo. 237, 567 P.2d 355 (1977); *Lorenz v. People*, 159 Colo. 494, 412 P.2d 895 (1966).” *People v. Scales*, 763 P.2d 1045, 1048 (Colo. 1988) (en banc); U.S. Const. amend. VI; Colo. Const. art. II, § 16; *Chapman v. California*, 386 U.S. 18 (1967).
7. There is no way to ensure adequate preparation and review of the constantly growing mountain of documents. *See People v. Scales*, 763 P.2d 1045 (Colo. 1988).” *People v. Jefferson*, 981 P.2d 613, 615 (Colo. Ct. App. 1998), *cert. denied*, Aug. 9, 1999.
8. Moving forward, to prevent the delay occasioned by the prosecution’s failure to timely provide information, Mr. Redwine moves for an omnibus hearing consistent with CRCP R. 16 Part IV(a)(1)(II) before any motions hearing proceeds.
9. [P-13] filed by Prosecutor Champagne suggests that the documents they have filed with the Court since the original motion filing deadline reduces the amount of time necessary to hear motions. *People v. Anderson*, 649 P.2d 720 (Colo. Ct. App. 1982), *cert. denied*, July 19, 1982 (“Defense counsel needs reasonable flexibility regarding tactical choices and is in the best position to evaluate his trial preparation.”). Quite the contrary is true as it relates to providing Mr. Redwine effective assistance of counsel.
10. By way of example [REDACTED]
[REDACTED]
[REDACTED] The filings provided since the beginning of November serve to increase the amount of time and resources that must be dedicated by counsel for Mr. Redwine.
11. Since the October filing deadline the prosecution has provided the court with no fewer than 54 pleadings. 52 of those filings have come in the month of November and at least 18 in the last seven days. As the Court is aware these pleadings has somewhere in the neighborhood of 1,000 pages of attachments. All of the pleadings the prosecution has filed in November have not been reviewed by defense counsel. *Contra, see generally Strickland v. Washington*, 466 U.S. 668 (1984).

Defendant’s Motions and Requirement For Hearings

12. Mr. Redwine relies upon arguments made in previously filed motions and respectfully requests this Court grant him the hearings requested.
13. Defense counsel objects to the prosecution's assertion that matters should be resolved without hearings. Assuming some issues could be resolved on review of pleadings there has been insufficient time for the defense to reply to let alone for the Court to review the filings.
14. As addressed in [D-46], Mr. Redwine objects to the admission of 404(b) evidence from Denise Hess or Kathy Berri and requests a hearing on this matter. Although the prosecution may proceed by offer of proof, this Court still retains complete discretion to find that an offer of proof is insufficient and order the presentation of evidence. People v. Groves, 854 P. 2d 1310 (Colo. App. 1992).
15. Because the Prosecution seeks to introduce 404(b) evidence in this case, the Court should require the district attorney to present actual live testimony in support of its request. Allowing the prosecution to proceed by offer of proof would severely prejudice defense counsel's ability to defend against any attempt to admit similar transaction evidence by denying effective confrontation and cross-examination of the prosecution's evidence.
16. The prosecution moves the Court to allow unreliable science to be presented to the jury and seeks to abandon the requirement that the proponent demonstrate it is admissible. Much of the prosecution's effort at doing so is in the pleadings filed within the last three weeks. Counsel for Mr. Redwine has had inadequate time to review prosecution pleadings allegedly demonstrating adherence to *Shreck* principles and to consult with experts to determine if the prosecution's offers of proof are accurate and the witnesses reliable and helpful. This again increases time necessary where the prosecution only seeks to demonstrate the reliability of experts, despite the requirements of *Shreck*, at the eleventh hour.

People's Proposed Witness Schedule

17. While Mr. Redwine does not believe the Prosecution's proposed witness schedule is realistic, he does not object to the Prosecution calling witnesses in any order they choose – subject to approval by this Court.

WHEREFORE, Mr. Redwine makes this motion pursuant to the Due Process, Trial by Jury, Right to Counsel, Equal Protection, Cruel and Unusual Punishment, Confrontation, Compulsory Process, Collateral Estoppel, Double Jeopardy, Right to Remain Silent and Right to Appeal Clauses of the Federal and Colorado Constitutions, and the First, Fourth, Sixth, Eighth, Ninth, Tenth, and Fourteenth Amendments to the United States Constitutions and Article II, Sections 3, 6, 7, 10, 11, 16, 18 20, 23, 25 and 28 of the Colorado Constitution.

Respectfully submitted,

/s/ John Moran

John Moran, No. 36019

Deputy State Public Defender

Dated: November 28, 2018

/s/ Justin Bogan

Justin Bogan, No. 33827

Deputy State Public Defender

Dated: November 28, 2018

Certificate of Service

I hereby certify that on November 28, 2018

I served the foregoing document by e-filing
same to all opposing counsel of record.

/s/ Justin Bogan /s/ John Moran