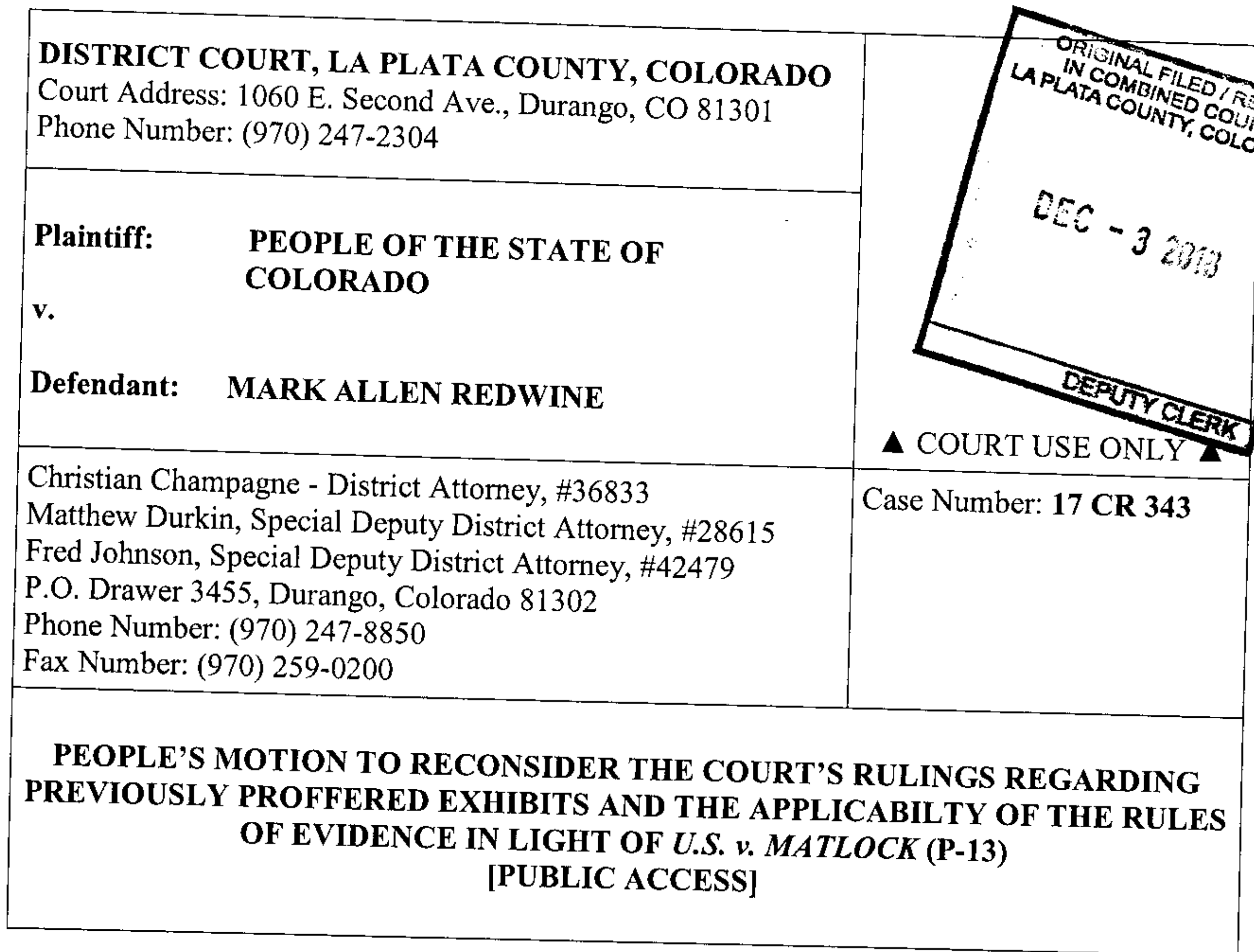

DISTRICT COURT, LA PLATA COUNTY, COLORADO Court Address: 1060 E. Second Ave., Durango, CO 81301 Phone Number: (970) 247-2304	
Plaintiff: **PEOPLE OF THE STATE OF COLORADO** v. **Defendant:** **MARK ALLEN REDWINE**	▲ COURT USE ONLY ▲
Christian Champagne - District Attorney, #36833 Matthew Durkin, Special 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: **17 CR 343**

ORIGINAL FILED / REC'D
IN COMBINED COURT
LA PLATA COUNTY, COLORADO
DEC - 3 2018
DEPUTY CLERK

PEOPLE'S MOTION TO RECONSIDER THE COURT'S RULINGS REGARDING PREVIOUSLY PROFFERED EXHIBITS AND THE APPLICABILTY OF THE RULES OF EVIDENCE IN LIGHT OF *U.S. v. MATLOCK* (P-13)
[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 reconsider its ruling that hearsay is inadmissible and that the Colorado Rules of Evidence (CRE) remain in full force and effect in a motions hearing. AS GROUNDS for this motion, the People state as follows:

1. In the motions hearing held on December 3, 2018, the Court held that exhibits offered by the People were not admissible because they were hearsay. Specifically, during a motion to suppress statements of the defendant as violative of *Miranda* and as involuntary, the People offered the reports of John Grusing of the FBI as an exhibit as they contained an extensive summary of the statement of the defendant; there was no recording or transcript of the statement. The defendant objected as the document contained hearsay, specifically referring to portions of the report that referred to other actions of the FBI not directly summarizing the statement of the defendant. The court held that the report was inadmissible as hearsay.

2. During the argument on the topic, the People cited CRE 1101 and 104, and argued that the rules of evidence are relaxed during a motions hearing, allowing hearsay to be admitted. The court rejected this argument.

3. The People now, after having had time to research the issue, respectfully ask the court to reconsider its ruling, based on the following legal authority.

4. In *U.S. v. Matlock*, 415 U.S. 164, 172-73 (1974), the Supreme Court of the United States directly addressed this issue, stating, in no uncertain terms, "…the rules of evidence normally applicable in criminal trials do not operate with full force at hearings before the judge to determine the admissibility of evidence." In *Matlock*, the court was specifically addressing the admissibility of hearsay evidence at a motions hearing. *Id.* The court cited *Brinegar v. United States*, 338 U.S. 160, 69 S.Ct. 1302, 93 L.Ed. 1879 (1949), in which hearsay evidence was used in a suppression hearing regarding a search. *Id.* In *Matlock*, the court quoted the *Brinegar* court, which stated:

   > "There is a large difference between the two things to be proved, as well as between the tribunals which determine them, and therefore a like difference in the quanta and modes of proof required to establish them."

   Id., at 173, 69 S.Ct., at 1309.

5. In addressing the Rules of Evidence specifically, the *Matlock* court stated:

   > That the same rules of evidence governing criminal jury trials are not generally thought to govern hearings before a judge to determine evidentiary questions was confirmed on November 20 last year when the Court transmitted to Congress the proposed Federal Rules of Evidence. Rule 104(a) provides that preliminary questions concerning admissibility are matters for the judge and that in performing this function he is not bound by the Rules of Evidence except those with respect to privileges. Essentially the same language on the scope of the proposed Rules is repeated in Rule 1101(d)(1).

   Matlock, 415 U.S. at 173-75.

6. In Colorado, CRE 104(a) and 1101(d)(1) mirror almost exactly the Federal Rules of Evidence.

7. The Federal Rules of Evidence (FRE) and the CRE Rule 104(a) state, respectively:

   a. **FRE 104(a) In General:** The court must decide any preliminary question about whether a witness is qualified, a privilege exists, or evidence is admissible. In so deciding, the court is not bound by evidence rules, except those on privilege.

   b. **CRE 104(a) Questions of Admissibility Generally.** Preliminary questions concerning the qualification of a person to be a witness, the

existence of a privilege, or the admissibility of evidence shall be determined by the court, subject to the provisions of subdivision (b). In making its determination it is not bound by the rules of evidence except those with respect to privileges. (CRE 104(b) concerns conditional relevance/admission of evidence and does not affect the analysis at issue.)

8. Similarly, FRE and the CRE Rule 1101(1)(d) state, respectively:

   a. **FRE 1101(d) Exceptions.** These rules--except for those on privilege--do not apply to the following:

      (1) the court's determination, under Rule 104(a), on a preliminary question of fact governing admissibility.

   b. **CRE 1101 (d) Rules Inapplicable.** The rules (other than with respect to privileges) do not apply in the following situations:

      (1) Preliminary Questions of Fact. The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Rule 104.

9. Thus, just as the rules of evidence in the Federal courts are practically identical to those in the Colorado courts, the outcome on this topic too should be identical, i.e. the rules of evidence are relaxed and are not in full force and effect in preliminary matters regarding admissibility of evidence.

10. The *Brinegar/Matlock* rationale applies perfectly in this situation. In those cases, the courts reason that the where the court is determining preliminary matters of admissibility, the exclusionary provisions of the rules of evidence need not apply, stating:

> There is, therefore, much to be said for the proposition that in proceedings where the judge himself is considering the admissibility of evidence, the exclusionary rules, aside from rules of privilege, should not be applicable; and the judge should receive the evidence and give it such weight as his judgment and experience counsel.

Matlock, 415 U.S. at 173-75; *See also People v. Montoya*, 753 P.2d 729, 735 (Colo. 1988) (CRE 104(a) embodies the policy determination that the trial judge will generally be fully cognizant of any inherent weakness in proffered evidence and will take such weakness into account in evaluating its weight on the preliminary question of admissibility.)

11. What the United States Supreme Court is stating in *Matlock* is that an experienced Judge, unlike a jury of lay-people, can be trusted to use their judgment and experience to give the evidence the weight it deserves, exclude irrelevant information, and assess and apply its relevant facts and information impartially to the issue at hand, and therefore the exclusionary rules detailed in the rules of evidence need not apply.

12. *U.S. v. Matlock* has given birth to a long progeny of cases that stand for the proposition that the rules of evidence, including hearsay, do not apply at motions hearings. *U.S. v. Connor*, 699 F.3d 1225 (10th Cir. 2012) (the rules of evidence do not operate with full force at motions based on the assumption that the judge, unlike a jury, can give the evidence "such weight as his judgment and experience counsel."); *United States v. Sanchez,* 555 F.3d 910, 922 (10th Cir. 2009) (holding "the law is clear that hearsay evidence is admissible at suppression hearings"); *United States v. Miramonted,* 365 F.3d 902, 904 (10th Cir. 2004) (relying on *Matlock* for the proposition that "[r]ules of evidence applicable in criminal jury trials do not govern at hearings before a judge to determine pre-trial evidentiary matters, such as the admissibility of evidence at trial"); *U.S. v. Merritt,* 695 F.2d 1263, 1270 (10th Cir. 1982) (Police should be permitted to offer hearsay as testimony to support reasonable suspicion in hearings on preliminary matters.)

13. Although there does not appear to be a case in Colorado that directly cites *Matlock* for the proposition that the rules of evidence are relaxed in preliminary matters, the concept is well known in Colorado case law. *See People v. Fry*, 92 P3d 970 (Colo. 2004) (holding that rules of evidence are relaxed in preliminary hearings); *People v. Bowers*, 802 P.2d 511, 523, ("[CRE 104(a); CRE 1101(d)(1)] state that a trial court is not bound by the rules of evidence, except with respect to privileges, in determining preliminary questions concerning the admissibility of evidence."); *Montoya*, 753 P.2d at 735.

14. In the present matter, in a hearing regarding the admissibility of evidence, the People have proffered exhibits containing police reports for the purpose of presenting to the court the details of a statement made by the defendant. The Court denied the admission of the statement on the grounds that it is hearsay. Based on the holding in *Matlock*, its clear guidance on the interpretation of CRE 1101 and 104, and its distinct progeny of cases, all of which counsel the court to allow admission of the hearsay statements and relax the rules of evidence in a motions hearing such as this, the People respectfully ask the court to reconsider its ruling denying the previously proffered evidence and take these arguments into account in future rulings in this case.

WHEREFORE, the People respectfully ask the court to reconsider its ruling denying previously proffered exhibits on the grounds that they are hearsay and to apply the provided analysis on future requests in this case.

Respectfully submitted this December 3, 2018.

CHRISTIAN CHAMPAGNE
DISTRICT ATTORNEY
6th JUDICIAL DISTRICT

/s/ Christian Champagne
Christian Champagne #36833
District Attorney

CERTIFICATE OF SERVICE

I hereby certify that on December 3, 2018, I delivered a true and correct copy of the foregoing to the parties of record via e-service.

/s/ Christian Champagne
Christian Champagne