

DISTRICT COURT, LA PLATA COUNTY, COLORADO		DATE FILED: July 12, 2019 9:54 AM
Court Address: 1060 East 2nd Avenue, Room 106, Durango, CO, 81301-5157		
The People of the State of Colorado v. MARK ALLEN REDWINE		<p style="text-align: center;">△ COURT USE ONLY △</p> Case Number: 2017CR343 Division: 1 Courtroom:
Bullcoming Order Regarding the Peoples Motion to Admit Laboratory Test Results (P-24)		

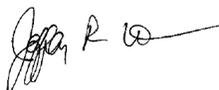
The prosecution has filed a motion seeking an order from the Court to admit DNA laboratory results without the testimony of the Colorado Bureau of Investigation ("CBI") laboratory technician who initially performed the DNA analysis in this case. The prosecution instead intends to call the CBI DNA assistant technical leader who performed "[a] mandatory review" of the analysis. P-24, p. 2. The defendant objects both on the basis of CRS 16-3-309(5) and on confrontation grounds. If proper notification is made, CRS 16-3-309(5) requires the lab technician who performed the analysis to testify in person at trial as a condition for the admission of the laboratory report.

The prosecution has cited *Marshall v. People*, 309 P.3d 943 (Colo. 2013), to argue that the testimony of the supervisor is sufficient to satisfy the requirements of both CRS 16-3-309(5) and the Confrontation Clause of the Sixth Amendment to the United States Constitution. While the supervisor's testimony may be enough to satisfy both CRS 16-3-309(5) and the Confrontation Clause, the Court does not have enough information to issue such a pretrial ruling solely based upon the allegations contained in the people's motion. The only information provided to the Court in the motion was that in addition to the supervisor conducting a mandatory review of the analysis was that the review was performed after some unidentified person or persons conducted ". . . significant validation, training, and implementation process pursuant to national standards." P-24, p. 2.

To satisfy CRS 16-3-309(5), *Marshall* requires that the supervisor's actions be ". . . the final and necessary step before the results could be certified as accurate." *Marshall*, p. 48. The Court is unable to tell from P-24 what exactly the supervisor did during the DNA analysis and whether her actions were required prior to certifying the laboratory analysis as accurate. More troubling to the Court, however, is whether the admission of the laboratory results based solely on the supervisor's testimony would violate the defendant's confrontation rights. In *Bullcoming v. New Mexico*, 131 S. Ct. 2705, (2011), the United States Supreme Court held that if a supervisor is going to be used to introduce laboratory results, the supervisor could not simply be a surrogate ". . . who did not sign the certification or personally perform or observe the performance of the test reported in the certification. . . [and] could not convey what [the non-testifying analyst] knew or observed about the events his certification concerned." *Marshall*, p. 946, citing *Bullcoming* at 2715. The Court cannot make a pretrial ruling based on the information provided that the use of a supervisor to admit DNA analysis in this case does not violate the confrontation clause.

If at trial, the supervisor can demonstrate that she was more than a surrogate and has knowledge of the actual analysis conducted in this case sufficient to satisfy *Bullcoming* and can demonstrate that her work in the analysis was a final and necessary step before certifying the results, the Court will admit the laboratory results into evidence at the trial. Alternatively, the prosecution is free to file a motion pursuant to C. R. Crim. P.(15)(a) requesting the Court authorize a deposition of the laboratory technician who initially performed the DNA analysis.

Issue Date: 7/12/2019



JEFFREY RAYMOND WILSON
District Court Judge