

<b>DISTRICT COURT, LA PLATA COUNTY, COLORADO</b> 1060 East Second Avenue Durango, Colorado 81301	DATE FILED: November 7, 2020 11:53 AM
<b>THE PEOPLE OF THE STATE OF COLORADO,</b> Plaintiff,  v.  <b>MARK REDWINE,</b> Defendant	σ COURT USE ONLY σ
Megan Ring, Colorado State Public Defender Justin Bogan, Attorney No. 33827 John Moran, Attorney No. 36019 Deputy Public Defender 175 Mercado Street, Suite 250, Durango, CO 81301 Phone: (970) 247-9284 Fax: (970) 259-6497 E-Mail: Justin.Bogan@coloradodefenders.us Email: John.Moran@coloradodefenders.us	Case Number: 17CR343  Division: 1
<p style="text-align: center;"><b>[D-180]</b>  <b>MOTION FOR MISTRIAL BASED UPON</b>  <b>FACT THAT MULTIPLE MEMBERS OF THE REDWINE DEFENSE TEAM ARE</b>  <b>EXPERIENCING SYMPTOMS OF COVID 19</b></p>	

Defendant, Mark Redwine respectfully requests this Court to declare a mistrial based upon D-180, NOTICE THAT MULTIPLE MEMBERS OF THE REDWINE DEFENSE TEAM ARE EXPERIENCING SYMPTOMS OF COVID 19.

Specifically, multiple members of the Redwine Defense Team must quarantine and/or self isolate for a minimum of ten (10) days and possibly up to fourteen (14) days starting on November 5, 2020 per state and federal public health orders and guidelines. This quarantine will put the trial “on hold” until at least November 15, and possibly until November 18, 2020. The parties are still in this process of jury selection, meaning any jury would not start to hear evidence until November 17 through November 20, at the earliest. Based upon the litigants estimations of time to put on our cases, testimony would then go well into mid and probably late December.

When considering the recent data regarding local Covid-19 infections, it is unlikely that the Defense Team are the only trial participants who will become symptomatic over the course of the next several weeks requiring another quarantine and halt to the trial. See: <https://sjbpublichealth.org/sjbph-data-dashboard/> (reporting 95 new cases in La Plata County in the last seven days and a local test positivity rating that doubled between October 18 and October 25, jumping from 1.88% to 3.68%).

As noted in D-180, members of the Defense Team are experiencing symptoms consistent with Covid-19. The symptoms include fever, night sweats, coughing, fatigue, body aches, runny nose, congestion, and sore throat. Most pronounced symptom onset occurred November 5, 2020. Mr. Bogan and Mr. Moran have been in court on this matter during the jury selection process on October 29, 30, and November 2, 3, 4.

Multiple members of the Redwine defense team were tested for Covid-19 on November 6, 2020. The results will be available on Sunday, November 8, 2020.

Because multiple members of the Redwine defense team are Covid-19 symptomatic, and due to the Court's announcement that Judge Wilson is awaiting results from a second Covid-19 test, the Durango Office of the Colorado State Public Defender is closed for all activity. No one is permitted in the office until further notice. This decision flows from the fact that the symptomatic members of the Redwine defense team have been in court together and in the Durango Office of the Colorado State Public Defender, using common areas, possibly exposing other people to Covid-19.

A negative Covid-19 test will not relieve the members of the defense team of their duty to quarantine. "Some people may not become ill for up to 14 days. For that reason, people who believe they have been exposed to COVID-19 should **quarantine** for 14 days from the date of their exposure, even if they **test negative** before the full two weeks have passed." CDPHE, page updated Oct. 29, 2020. available at <https://covid19.colorado.gov/are-you-sick/testing-for-covid-19#:~:text=Some%20people%20may%20not%20become,full%20two%20weeks%20have%20passed.>

PCR testing conducted one day after exposure has a 100% false negative rate. Available at <https://www.cdc.gov/coronavirus/2019-ncov/community/organizations/testing-non-healthcare-workplaces.html#ftnt-1> (emphasis appears in original). The recency of symptom onset and possible exposure means negative PCR tests are not conclusive support for precaution removal. Available at *Id.* citing: <https://www.acpjournals.org/doi/full/10.7326/M20-1495> external icon

("The rate of false negative nucleic acid tests, a type of viral test, after exposure have been reported as: day 1: 100%; day 4: 67%; day 5: 38%; day 8: 20%; day 9: 21%; and then rising to 66% on day 21.") *Id.*

Colorado Department of Public Health and Environment mandates quarantining for 14 days for individuals who are symptomatic of Covid-19. Specifically CDHPE states on its webpage, “Stay at home or stay in your same location for 14 days after your last exposure so you don’t spread the disease to healthy people.”

See <https://covid19.colorado.gov/how-to-quarantine>

According to CDHPE people should self isolate who have a positive COVID-19 test, have symptoms of COVID-19, **or are getting ill and think they might have COVID-19.** Likewise, CDHPE mandates that people should quarantine who have had close contact with a person who either has a positive test or symptoms -- even early symptoms -- of illness. Id.

Colorado Public Health Order 20-36 (issued on 11/02) states, among other things, the following:

“Individuals at Risk of Severe Illness from COVID-19 are urged to stay in their residence at all times except as necessary to seek medical care. Individuals at Risk of Severe Illness from COVID-19 cannot be compelled to work for any business or government function, including a Critical Business or Critical Government Function, during the pendency of this pandemic emergency. People who are sick must stay in their residence at all times except as necessary to seek medical care, and must not go to work, even for a Critical Business, identified in Appendix A of this Order.

D. Individuals who are sick or are experiencing flu-like symptoms should get tested for COVID-19. If an individual has tested positive for COVID-19 and/or has developed symptoms of COVID-19, including early or mild symptoms (such as cough and shortness of breath), they should be in isolation (staying away from others) until they are released by public health. ***In most cases, individuals are released from isolation when they are fever-free, without medication, for twenty-four (24) hours, other symptoms have improved, and at least ten (10) days have passed since symptoms first appeared.*** A limited number of people with severe illness may require longer isolation. Coloradans who are sick and receive negative COVID-19 test results should continue to stay home while they are sick and should consult with their healthcare provider about the need for additional testing and the appropriate time to resume normal activities.”

Center for Disease Control (CDC) directs both people who have tested positive and people who believe they have Covid-19 to self isolate,

*If you are sick with COVID-19 or think you might have COVID-19, follow the steps below to care for yourself and to help protect other people in your home and community: Stay home except to get medical care. Stay home. Most people with COVID-19 have mild illness and can recover at home without medical care. Do not leave your home, except to get medical care. Do not visit public areas.*

*Take care of yourself. Get rest and stay hydrated. Take over-the-counter medicines, such as acetaminophen, to help you feel better. Stay in touch with your doctor. Call before you get medical care. Be sure to get care if you have trouble breathing, or have any other emergency warning signs, or if you think it is an emergency. public transportation, ride-sharing, or taxis.*

See: <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/steps-when-sick.html>

The Office of the Colorado State Public Defender (OSPD) has promulgated Colorado State Public Defender COVID-19 Guidelines and Protocols. These guidelines and protocols further direct Mr. Bogan and Mr. Moran to quarantine and not go to work while we are symptomatic. Specifically the OSPD directs all Public Defenders as follows:

Do not come to work when ill or when someone in your household is ill or has tested positive for COVID-19 or you believe you have been exposed to COVID-19. Public Defenders are used to “sticking it out” and coming to work to help clients even when ill. It is critically important during this pandemic that you do not come to work when sick, when someone in your household is sick, or think you may have otherwise been exposed to the virus.

...

Each day before you report in-person at the office, the courthouse or any other work location outside your home, you must perform a self-screen of your temperature and symptoms and fill out the Public Defender screening form. Directions for how to access and submit the form electronically will be provided separately. Consistent with the law regarding employee medical information, this screening information will be retained by Human Resources in the State Office.

If you have a temperature of 100.4 degrees Fahrenheit or greater or any other COVID symptoms, you must remain home and report to your supervisor that you are experiencing symptoms. Guidelines for isolation are here: <https://covid19.colorado.gov/how-to-quarantine#>.

If you have come into contact with someone who is symptomatic or has tested positive for COVID-19, stay home and follow CDPHE guidelines for quarantine. You must do this even if, during that contact, you were wearing a mask and practicing physical distance. Guidance on what constitutes “close contact” changes as more is learned about the virus. The CDC currently defines a close contact as “[s]omeone who was within 6 feet of an infected person for a cumulative total of 15 minutes or more over a 24-hour period starting from 2 days before illness onset (or, for asymptomatic patients, 2 days prior to test specimen collection)[.]”

If you develop symptoms while at work (including while in court), please notify your supervisor and go home. Consult your doctor and seek a test if advised, including following guidelines for isolation.

The members of the Redwine Defense team who are symptomatic have contacted their own local health care providers. Direction has been provided to one team member to quarantine for 10 days from when symptoms began (November 5, 2020) and if necessary an additional 72 from when he last reported a fever.

The Defense Team for Mr. Redwine does not file this motion lightly and we understand how long this case has taken to bring to trial, and how long Mr. Redwine has been incarcerated pretrial. However, consistent with direction from our health care providers, CDC, and CDHPE, we must quarantine for 10-14 days starting November 5, 2020.

Dated: November 7, 2020

/s/ Justin Bogan  
Justin Bogan, No. 33827  
Deputy State Public Defender

/s/ John Moran  
John Moran, No. 36019  
Deputy State Public Defender

Certificate of Service

I hereby certify that on November 7, 2020  
I served the foregoing document by e-filing  
same to all opposing counsel of record.

/s/ Justin Bogan /s/ John Moran