

<b>DISTRICT COURT, LA PLATA COUNTY, COLORADO</b> 1060 East Second Avenue Durango, Colorado 81301	FILED IN COMBINED COURT LA PLATA COUNTY, COLORADO  <b>MAY 24 2019</b>  _____ DEPUTY CLERK  σ COURT USE ONLY σ
<b>THE PEOPLE OF THE STATE OF COLORADO,</b> Plaintiff,  v.  <b>MARK REDWINE,</b> Defendant	Case Number: 17CR343  Division: 1
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	
<p style="text-align: center;">[D-121]</p> <p style="text-align: center;"><b>DEMAND FOR DISCOVERY, COLORADO BUREAU OF INVESTIGATION, COLD CASE REVIEW TEAM [PUBLIC ACCESS]</b></p>	

The Defendant, by and through counsel, hereby makes the following request for all documents, notes, statements, and other media files regarding the meeting between the La Plata County Sheriff's Department and the Colorado Bureau of Investigations Cold Case Review Team discovery pursuant to Colorado Rule of Criminal Procedure 16 (Rule 16).

**PROCEDURAL HISTORY**

1. On May 19, 2015 law enforcement officers Tom Cowing, Tonya Golbricht, and Jim Ezzell (hereinafter, the Officers) met with the Colorado Bureau of Investigation, Cold Case Review Team.
2. For an entire day, the Officers presented materials and evidence to the Cold Case Review Team, and sought their input, opinions, and conclusions regarding material issues in the investigation of Mark Redwine and his purported involvement in the disappearance of Dylan Redwine.

3. On May 22, 2015, Ronald Sloan, Director of The Colorado Bureau of Investigation (hereinafter, CBI) sent Sheriff Smith of the La Plata County Sheriff's Office a letter commending the officers for their work and presentation. In the final paragraph of this letter he writes:

*We* wanted to pass along our congratulations to you and your investigative team for the remarkable efforts on this case, and we stand ready to assist the La Plata County Sheriff's Office in any way in future needs related to the case. We also understand that cases of this nature are some of the most difficult to bring to closure. It is our hope that the combined efforts of the La Plata County Sheriff's Office with the many agencies involved in the investigation, as well as the review conducted on May 19th, will ultimately result in bringing justice to Dylan's unfortunate death.

See Attached Exhibit A.

4. The interaction between members of the La Plata County Sheriff's Department and other law enforcement personnel and forensic experts was part the collaborative investigation of the death of Dylan Redwine.
5. On April 16, 2019 Defense Counsel sent a letter to Christian Champagne requesting that the prosecution discover all materials related to the collaborative work law enforcement officers Tom Cowing, Tonya Golbricht, and Jim Ezzell did with the Colorado Bureau of Investigation Cold Case Review Team.
6. Defense has received some the materials related to this collaboration between The La Plata County Sheriff's Department and Colorado Department of Investigation Cold Cases Review Team. Specifically, the application made by the Sheriff's Department and the Letter from Mr. Sloan, Exhibit A.
7. In his letter, Mr. Sloan specifically names each law enforcement officer, but does not mention of any members of the District Attorney's Office or any licensed prosecutor attending the presentation. See Attached Exhibit A.
8. As part of the collaboration with the Cold Case Review Team, Tom Cowing, Tonya Golbricht, and Jim Ezzell claimed they had investigated and cleared from suspicion forty-four (44) other suspects from involvement in Dylan Redwine's disappearance. In our letter to Mr. Champagne, we asked for the identity of the 44 other suspects. Mr. Champagne has refused to provide those names.
9. Mr. Champagne has refused to provide the names of the 44 other suspects and remaining materials from this collaboration between law enforcement agencies. In his reply letter he stated that "the presentation is all based on materials previously discovered to you." He also asserts that "any documentation pertaining to that meeting is work product and not subject to discovery; they contain the opinions, theories and conclusions of the prosecution team and are protected under Crim.P. Rule 16 (I)(e)(1) and the work product doctrine." This statement appears to be based upon Mr. Champagne reviewing the notes, documents, reports, statements and other media exchanged between Tom Cowing, Tonya Golbricht, and Jim Ezzell and all the members of the Cold Case Review Team.

## ARGUMENT

10. Crim.P.16(I)(c)(1) states:

Matters not Subject to Disclosure.

- (1) Work Product. Disclosure shall not be required of legal research or of records, correspondence, reports, or memoranda to the extent that they contain the opinions, theories, or conclusions of the *prosecuting attorney or members of his legal staff*.

Emphasis Added.

11. Sergeant Cowing, Sergeant Golbricht, and Captain Ezzell of the La Plata County Sheriff's Department are not members of Mr. Champagne's staff. The panel members of the Colorado Bureau of Investigation Cold Case Review Team are not members of Mr. Champagne's staff.
12. The Officers are in fact endorsed prosecution witnesses, therefore their statements to the CBI Cold Case Review Team are indeed witness statements are subject to mandatory discovery. Crim.P.16. (I)(a)(1)(I).
13. The materials the Officers prepared for their collaboration with the CBI Cold Case Review Team constitute offense reports and are subject to mandatory discovery. Crim.P.16(I)(a)(1)(I).
14. The statements, notes, and reports of the experts Sergeant Cowing, Sergeant Golbricht, and Captain Ezzell collaborated with at the CBI Cold Case Review Team made in connection with this particular case are subject to mandatory discovery Crim.P.16(I)(a)(1)(III). Though already subject to mandatory disclosure, they are also subject to Crim.P.16(I)(c) and (d) discretionary disclosure as well.
15. In Colorado only opinion work product is protected from discovery, not factual work product. Crim.P.16(I)(e)(1), People v. Angel, 277 P.3d.231:

Under the plain meaning of Crim. P. 16(I)(e)(1), the prosecutorial work product protection only applies to so-called "opinion work product," and does not extend to "fact work product." The commentary to ABA Criminal Justice Discovery Standard 11-6.1(a), which contains language that is nearly identical to Crim. P. 16(I)(e)(1),<sup>4</sup> explains that the prosecutorial work product doctrine protects attorney work product that is "judgmental rather than factual." ABA Criminal Justice Discovery Standard 11-6.1(a), Commentary (3d ed. 1995) [hereinafter "ABA Standard 11-6.1(a)"]. By way of example, the commentary provides a list of materials that are typically considered opinion work product, including "notes relating to trial strategy, to theoretical arguments and supporting authority, and to direct and cross-examination; office memoranda on legal questions, evidence, prospective jurors, and other aspects of the case ...; and summaries and analyses of the case file, of anticipated witnesses or their testimony, and of the probability of obtaining certain evidence." Id. Accordingly, Crim. P. 16(I)(e)(1) protects against the disclosure of any prosecutorial work product containing the prosecution's strategy, legal research, impressions, or professional judgments.

Id. at 235.

16. The Collaboration between Tom Cowing, Tonya Golbricht, and Jim Ezzell and the Cold Case Review Team occurred on May 19, 2015 and the dates leading up to it. Mr. Redwine was indicted in July 2017. Therefore, there was no trial to prepare for at that time. Further, no prosecutors attended the collaboration on May 19, 2015.
17. For purposes of Crim. P. 16, material in possession of the investigating agencies is in possession of prosecution. *Chambers v. People*, 682 P.2d 1173, 1180 n.13 (Colo. 1984); *Ortega v. People*, 162 Colo. 358, 426 P.2d 180 (1967); *People v. Lucero*, 623 P.2d 424 (Colo. App. 1980); Crim. P. 16(I)(c). Furthermore, the prosecution has a duty to **timely comply** with its discovery obligations, Crim. P. 16(I)(b); see *People v. Terry*, 720 P.2d 125, 130-31 (Colo. 1986). The constitutional right to counsel includes a guarantee that defense counsel shall have sufficient time to prepare effectively in order to protect his or her client's constitutional rights. See *Reece v. Georgia*, 350 U.S. 85, 89-91 (1955); *People v. Meyers*, 617 P.2d 808, 813 (Colo. 1980); *U.S. Const.*, amend. VI, *Colo. Const.*, art. II, § 16.
18. To fulfill the “timely” disclosure requirement, the prosecutor must disclose all material information “in advance of the next critical stage of the proceeding – whether the evidence would particularly affect that hearing or not.” *In the Matter of Attorney C*, 47 P.3d 1167 (Colo. 2002)(emphasis added).
19. The prosecution must disclose any material evidence which is favorable to the accused and relates to either the guilt or punishment of the accused, and if he or she fails to do so, he or she commits an ethical violation and due process is violated. See *Brady v. Maryland*, 373 U.S. 83 (1963); *People v. Greathouse*, 742 P.2d 334 (Colo. 1987); *U.S. Const.*, amends. V, XIV; *Colo. Const.*, art. II, § 25; Crim. P. 16(I)(a)(2), 16(I)(d)(1); C.R.P.C. 3.8(d). It is irrelevant whether or not the prosecution acted in good faith in suppressing evidence that is material and favorable. *People v. District Court*, 808 P.2d 831, 834 (Colo. 1991); *People v. Sheppard*, 701 P.2d 49, 51 (Colo. 1985).
20. Any evidence of material importance to the defense is subject to disclosure in Colorado under the *Brady* doctrine, whether that evidence is substantive, *impeachment*, or exculpatory, regardless of whether it is ultimately admissible at trial, or whether the prosecution intends to offer the evidence at all. *People v. Shaw*, 646 P.2d 375 (Colo. 1982); *People v. District Court*, 790 P.2d 332 (Colo. 1990). Consequently, the prosecutor is *required* to disclose evidence that might enable the defense to impeach prosecution witnesses. *United States v. Bagley*, 473 U.S. 667 (1985); *People v. District Court*, 790 P.2d 332 (Colo. 1990) (impeachment evidence is material under the *Brady* doctrine); *People v. Thatcher*, 638 P.2d 760 (Colo. 1981) (use of discovery material for impeachment purposes implicates the defendant’s due process rights). Such material would include statements inconsistent in whole or in part with previous statements, and statements which provide greater detail than the witness provided in

previous statements, even if such subsequent statements appear to be *inculpatory* at first glance

21. Mr. Redwine submits that the materials discussed in this motion and already requested from the prosecution are subject to mandatory disclosure. However, if the prosecution is going to continue to assert that the statements of the law enforcement and their consultants are not subject to mandatory disclosure, this Court must conduct an ex parte, in camera review as provided for under Crim. P. 16(III)(f) of the contested materials. People v. Angel, 277 P.3d.231, at 238.

Dated: May 24, 2019

/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 May 24, 2019  
I served the foregoing document by e-filing  
same to all opposing counsel of record.

/s/ Justin Bogan /s/ John Moran