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DISTRICT Court, LA PLATA County, Colorado 1060 E 2nd Ave, Durango, CO	
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff, v. MARK REDWINE, Defendant	COURT USE ONLY
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**

[D-117]
MR. REDWINE'S MOTION FOR RELIEF DUE TO THE STATE'S DESTRUCTION AND ALTERATION OF PHYSICAL EVIDENCE

PUBLIC ACCESS

Mr. Redwine moves for relief, including dismissal of the charges, an order preventing the state's use of the pertinent evidence, and other appropriate relief as requested herein and at the hearing on this motion, for the following reasons:

1. The state has destroyed and altered physical evidence concerning which the state has conducted extensive expert analyses, making it impossible for Mr. Redwine to conduct adequate independent analysis of that evidence. The state contends that the physical evidence is inculpatory and has, unreasonably and in bad faith, ensured that Mr. Redwine will be unable to adequately contest the state's evidence and to discover and present whatever other exculpatory evidence such an independent evaluation would have revealed. Mr. Redwine has thus been denied due process of law. U.S. Const. amd. 14; Colo. Const. art. II, § 25. *McNabb v. U.S.*, 318

U.S. 332 (1942); *Ariz. v. Youngblood*, 488 U.S. 51 (1988); *People v. Wartena*, 156 P.3d 469, 472 (Colo. 2007), and cases cited therein.

2. The state did not merely "fail to preserve useful evidence," *ala People v. Greathouse*, 742 P.2d 334 (Colo. 1987); *People v. Wyman*, 788 P.2d 1278 (Colo. 1990). The state went out of its way, unnecessarily and with no justification or underlying investigatory rationale, to alter the physical evidence which it now plans to use against Mr. Redwine. As a result thereof Mr. Redwine cannot adequately contest the state's expert's assertions that the evidence is inculpatory.

3. The state contends that a partial cranium found in Nov. 2015, which it asserts was the alleged victim's, bears two extremely minute marks which the state's expert is willing to testify could not have been caused by other than human action. The bone was found in the wild, and was allegedly there for three years. It bears extensive animal and exposure damage.

4. The state immediately took the partial cranium to a "forensic anthropologist," Dr. Mulhern, for analysis. Dr. Mulhern did not provide opinions which suited the state's purposes, so it took the partial cranium to another expert, Dr. Diane France. Dr. France provided the state with the allegedly inculpatory opinion that the partial cranium bore two minute (approx. 2 mm x <.5mm) markings which were caused by a tool, and which could not have been caused by any other thing, process or mechanism in the natural world. Dr. France supposedly based this opinion in part on what she asserted were the physical characteristics of these minute markings.

5. Then, for no purpose legitimately related to the investigation at hand, the state had Dr. France attempt a silicon mold of the partial cranium. This process required direct and forceful application of liquid silicone into and around the markings in question, and then the forcible removal of the mold therefrom. The attempts by Dr. France to make a mold and caste of the partial cranium failed to produce either a mold or cast.

6. Predictably and inevitably, these gratuitous actions altered the minute markings, both by physically changing them due to the repeated forceful application and removal of the foreign materials, and because the markings themselves now contain remnants of the casting/molding material. Consequently, Mr. Redwine has been deprived of his right to have a meaningful independent analysis of the evidence, and thus to contest the state's allegedly inculpatory evidence, has been negated. If the state is permitted to take advantage of the situation for which it is solely responsible, Mr. Redwine will be denied due process of law, his right to present a defense and his right to confront the state's evidence. *Crane v. Ky.*, 476 U.S.

683 (1986); *Chambers v. Miss.*, 410 U.S. 284 (1973); *Washington v. Tx.*, 388 U.S. 14, 23 (1967); U.S. Const. amd. 6, 14; Colo. Const. art. II, §§ 16, 25.

7. After the attempts to mold the partial cranium failed, the partial cranium was transported to the University of Northern Texas Center for Human Identification at the direction of the Prosecution. There, a sizable rectangle was cut out of the cranium for DNA purposes. The bone material cut out of the partial cranium was pulverized, thus making it impossible for anyone to observe, examine, measure, analyze and catalog the taphomonic damage to that portion of the cranium.

7. The absence of any legitimate investigatory purpose for the repeated insults to the physical evidence, and the predictable nature of the effects to evidence can only reasonably be interpreted as bad faith on the part of the state.

8. Further, because the state proposes to present expert testimony and opinions concerning the same evidence which it has subsequently improperly altered and destroyed, there is no "bad faith" prerequisite to finding a due process violation and protecting the integrity of the truth-seeking process. *See People v. Dist. Court, City & Cty. of Denver*, 808 P.2d 831 (Colo. 1991); *People v. Garries*, 645 P.2d 1306 (Colo. 1982); *People v. Morgan*, 199 Colo. 237, 606 P.2d 1296 (1980).

9. The state has no defense for its misconduct such as a consumptive-testing situation might present. Nothing of relevance the state did was related to obtaining the "testing" or "analysis" evidence it desires to present. *Cf.* C.R.S. §16-3-209. It gratuitously altered and destroyed the evidence after it obtained expert opinions it liked.

11. The appropriate remedy, considering the factors noted in *People v. Dist. Court* and *Morgan*, *supra*, is dismissal of the charges.

12. Preventing the state from using evidence pertaining to the aforementioned minute marks on the partial cranium is required in order to protect the integrity of the judicial system and the truth-seeking function of the trial. *See also People v. Elliston*, 181 Colo. 118, 508 P.2d 379, 383 (1973)("This court has repeatedly stated that the duty of a prosecutor is not merely to convict, but to see that justice is done by seeking the truth of the matter.")

13. Mr. Redwine requests a hearing on this motion.

14. Mr. Redwine make this motion, and makes all other motions and objections in this case, whether or not specifically noted at the time of making the motion or objection, on the following grounds and authorities: the Due Process Clause, the Right to a Fair Trial by an Impartial

Jury, the Rights to Counsel, Equal Protection, Confrontation, and Compulsory Process, the Rights to Remain Silent and to Appeal, and the Right to be Free from Cruel and Unusual Punishment, pursuant to the Federal and Colorado Constitutions generally, and specifically, the First, Fourth, Fifth, 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/ Justin Bogan
Justin Bogan, No. 33827
Deputy State Public Defender
Dated: May 6, 2019

/s/ John Moran
John Moran, No. 36019
Deputy State Public Defender
Dated: May 6, 2019

Certificate of Service
I hereby certify that on May 6, 2019
I served the foregoing document by e-filing
same to all opposing counsel of record.
/s/ Justin Bogan /s/ John Moran