

DISTRICT COURT, LA PLATA COUNTY, COLORADO Court Address: 1060 E. Second Ave., Durango, CO 81301 Phone Number: (970) 247-2304	DATE FILED: May 20, 2019
Plaintiff:       PEOPLE OF THE STATE OF COLORADO v. Defendant:     MARK ALLEN REDWINE	
	▲ COURT USE ONLY ▲ Case Number: 17CR343
<b>ORDER REGARDING SUPPLEMENTAL BRIEF ON THE USE OF CADAVER DOGS          D-109</b>	

The Defense has filed D-109, a supplemental brief, arguing that cadaver dogs are scientifically unreliable and that the Court, in its gatekeeping function regarding scientific evidence, should not allow the testimony of the cadaver dog handlers into evidence in this case. Originally, the Innocence Project attempted to file an identical brief as an *amicus curiae* brief. The Court denied the motion to file the *amicus curiae* brief on December 6, 2018. The defense then obtained permission from the Innocence Project to file the brief under the signature of defense counsel in this case and the brief was not accepted for filing until after the Court had already ruled upon D-36, D-37, D-38, D-39, D-40, and P-14 concerning the dog-sniff evidence.

The Court has reviewed the supplemental brief, and the arguments therein do not persuade the Court to change the order already issued regarding D-36, D-37, D-38, D-39, D-40, and P-14. In that Order, the Court held:

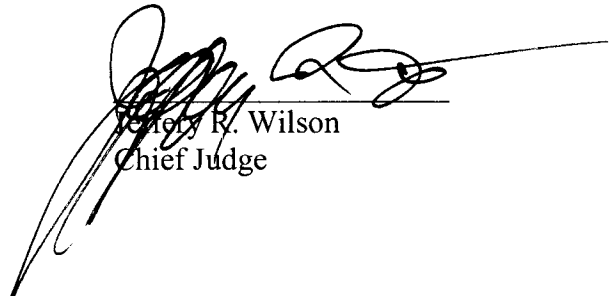
The defense argues that the dog-sniff evidence falls into two separate categories, the first being dogs using their sense of smell to track people and the second being dogs sniffing to detect human cadavers or decaying human tissue. The defense arguments concerning dog-tracking evidence have been clearly decided against

the defense in *Brooks v. People*, 975 P.2d 1105 (Colo. 1999), as modified on denial of reh'g (Apr. 12, 1999). The Colorado Supreme Court specifically held in *Brooks* that dog-trailing evidence was not subject to analysis as novel scientific evidence subject to either *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923) or *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993). *Brooks* held instead that dog-tracking evidence is expert testimony based upon experience and should be analyzed under CRE 702 and CRE 403 when determining whether such evidence should be admitted. While *Brooks* was decided prior to *Shreck* [*People v. Shreck*, 22 P.3d 68 (Colo. 2001)], *Shreck* did not overrule *Brooks*. *Shreck* instead cited *Brooks* approvingly to support its holding regarding the admission of expert testimony.

The Court will, however, allow the defense to present evidence that the defense uses to support their arguments in the supplemental brief at the upcoming hearing upon the dog-sniff evidence to argue under CRE 403 that the probative value proposed dog-sniff evidence would be substantially outweighed by its prejudicial effect.

DONE this 20<sup>th</sup> day of May, 2019.

BY THE COURT:



Jeffrey R. Wilson  
Chief Judge