

DISTRICT COURT, LA PLATA COUNTY, COLORADO Court Address: 1060 E. Second Ave., Durango, CO 81301 Phone Number: (970) 247-2304	DATE FILED: February 13, 2020
Plaintiff: PEOPLE OF THE STATE OF COLORADO v. Defendant: MARK ALLEN REDWINE	▲ COURT USE ONLY ▲
	Case Number: 17CR343
ORDER REGARDING THE DEFENDANT'S MOTION TO DISMISS BASED UPON AN UNREASONABLE FIVE-YEAR DELAY IN BRINGING CHARGES (D-98)	

The defendant is charged with murder in the second degree and child abuse resulting in death in relation to the death of the defendant's thirteen-year-old son, Dylan. The defendant first reported Dylan missing from the defendant's home on November 19, 2012. The grand jury returned its indictment and the Court issued a warrant for the defendant's arrest on July 20, 2017. The defendant seeks to have the case dismissed as violations of his due process rights, arguing that the delay in the issuance of the indictment was unreasonable and that the delay has prejudiced the defendant's ability to present a defense.

Both federal and Colorado case law hold that in determining whether pre-charging delay results in a due process violation, the trial court should evaluate:

Certain key factors, among others, are whether defense witnesses have become unavailable by reason of the delay; whether the delay was purposeful and intended to prejudice the defendant; the kind of evidence and the quantum which is available to prove the prosecution's case; and whether justice dictates that the case be dismissed.

People ex rel. Coca v. Dist. Court of Seventh Judicial Dist., 530 P.2d 958, 960–61 (1975), citations omitted. See also, *United States v. Marion*, 404 U.S. 307, 324, 92 S. Ct. 455, 465, 30 L.

Ed. 2d 468 (1971); *United States v. Lovasco*, 431 U.S. 783, 97 S. Ct. 2044, 52 L. Ed. 2d 752 (1977).

In deciding this motion, the Court takes judicial notice of all the hearings it has held in this case, along with all the motions and exhibits attached to those motions, and all of the search warrant affidavits the undersigned has reviewed since 2012. The Court finds that this is not the typical homicide case that is filed in the Sixth Judicial District. According to the statements of the attorneys, this case has generated over 20,000 pages of discovery. Dylan's first set of remains were not found for seven months and the second set of remains (a partial cranium) were found approximately three years after Dylan disappeared at a separate location. The second set of remains were reviewed by numerous experts to determine the nature of various markings upon the cranium, which were eventually found to be evidence of both predation and toolmarks.

Motions hearing, June 26, 2019. Because of the extremely complex nature of the case which is evidenced by the amount of discovery and motions filed and the finding of a limited amount of Dylan's remains that were exposed to the elements for months and years after Dylan disappeared, the Court finds that the delay in filing charges in this case was justified by the need of law enforcement to conduct a thorough investigation prior to the filing of charges. The Court does not find the five-year delay to be a purposeful method of prejudicing the defendant in this case.

The Court has also been cited one Colorado case, *People v. Hall*, 729 P.2d 373 (Colo. 1986), that upheld a dismissal of a criminal case due to a delay in the filing of charges even though the trial court found that the delay was not a purposeful attempt to gain an advantage at trial over the defendant. In *Hall*, the trial court found substantial prejudice accrued to the defendant when law enforcement waited approximately two months after they knew the

defendant would not act as an informant for law enforcement before filing charges against her. In that two months, the defendant had moved and was not aware of the charges against her for two years. During those two years, law enforcement negligently failed to keep in contact with the confidential informant who could not be found prior to trial. Additionally, the defendant could not locate her roommate at the time of the alleged crime by the time the case was ready to be tried. The trial court found that both of these individuals would have been of a benefit for the defendant in preparing her defense.

This case is factually distinguishable from the *Hall* case. As evidenced by the volume of discovery and search warrant affidavits in this case, this case was actively investigated from the day Dylan was reported missing at least until the decision was made to empanel a grand jury. This is not a case that lingered due to the negligence of law enforcement.

The defendant alleges that the delay in filing charges against him has prejudiced him due to the intervening death of an alternative suspect and because other witnesses have faded memories or are no longer available due to the passage of time.

In January of 2016, La Plata County Sheriff's Office investigators were informed that an inmate in the La Plata County jail, James Croxell, wanted to speak to investigators regarding the Redwine case. P. 5947, Exhibit 2 to the People's Response to the Notice to Introduce Alternative Suspects, D-126. Croxell told law enforcement that a drunken Martin Webster had confessed to Croxell that he had killed a boy near Bayfield in 2012 or 2013. *Id.*, pp 5947-5948. Webster died in 2014. *Id.*, p. 6188. The Court fails to understand how delaying the filing of charges in this case prejudiced the defendant when Webster died before law enforcement was aware of Webster's alleged role in this case.¹

¹ Whether evidence of Webster's alleged confession will be admitted at trial will be decided by the Court when it rules on the defendant's notice of intent to introduce alternate suspect evidence. (D-126).

The defendant also argues that the delay in bringing charges has hamstrung “. . . Mr. Redwine’s ability to prepare and present a defense, as the evidence available to exonerate him became stale, memories faded and witnesses became lost due in part to the State’s deliberate decision not to keep track of them.” Paragraph 4 of Section III B of the defendant’s motion.

The Court can accept, without any specific allegation, that memories have faded, but the Court is not aware of, and there have been no allegations made that any specific witnesses have become lost due to “. . . the State’s deliberate decision not to keep track of them.” If there is such a witness (other than Mr. Webster), the defendant shall inform the Court, within 14 days, such witness’s identity. Otherwise, the Court will assume that the allegation that “. . . witnesses became lost due in part to the State’s deliberate decision not to keep track of them” is simply the start of a cutting and pasting error in the drafting of D-98, as the very next sentence states “This is especially so for the period of time between the discovery of Ms. Birgfeld’s remains and the eventual filing of charges more than 2 ½ years later.” Obviously, there is no discovery of remains of a Ms. Birgfeld in this case and this sentence is a complete non sequitur in relation to the facts of this case.

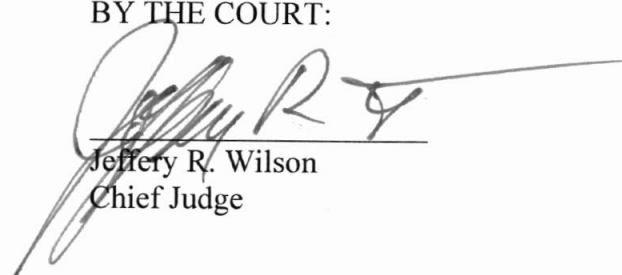
The Court also finds that the allegation that memories of witnesses have faded is insufficient reason to dismiss charges based upon an unreasonable delay in filing criminal charges. See *People v. Duran*, 535 P.2d 505, 506 (1975), citing *United States v. Marion*, 404 U.S. 307, 92 S.Ct. 455, 30 L.Ed.2d 468 (1971); *United States v. Emory*, 468 F.2d 1017 (8th Cir. 1972); *Dancy v. United States*, 395 F.2d 636 (1968). Additionally, the Court has reviewed numerous witness statements in relation to the various motions in this case and observed counsel refer witnesses to reports during evidentiary hearings in this case. The Court takes judicial notice that witness statements will be available to both sides to assist witnesses in refreshing

their memories regarding this case. See *People v. Melanson*, 937 P.2d 826, 832 (Colo. App. 1996), *as modified on denial of reh'g* (Oct. 10, 1996).

Although the Court finds that a substantial portion of the evidence against the defendant is circumstantial in nature, the Court does not find it in the interests of justice to dismiss this case based upon the five-year delay in filing charges. Unless the defendant can demonstrate to the Court that witnesses have been lost due to prosecution's "... deliberate decision not to keep track of them," the defendant's motion to dismiss based upon an unreasonable five-year delay in bringing charges (D-98) is denied.

Done and signed this 13th day of February, 2020.

BY THE COURT:



Jeffery R. Wilson
Chief Judge