

<b>DISTRICT COURT, LA PLATA COUNTY, COLORADO</b> <b>Court Address: 1060 E. Second Ave., Durango, CO 81301</b> <b>Phone Number: (970) 247-2304</b>	DATE FILED: April 30, 2021 11:58 AM
<b>Plaintiff: PEOPLE OF THE STATE OF COLORADO</b> v. <b>Defendant: MARK ALLEN REDWINE</b>	<b>▲ COURT USE ONLY ▲</b>
	<b>Case Number: 17CR343</b>
<b>Order Regarding the Defendant's Second Motion to Exclude the Testimony of Broc Flahavan and for Sanctions to Stem the Ongoing Pattern of Disclosure Misconduct D-187</b>	

The defendant has filed a second motion to exclude the testimony of Broc Flahavan. The Court denied the defendant's original motion to exclude Mr. Flahavan's testimony in its order regarding the defendant's motion in limine for jailhouse informant reliability hearing dated October 24, 2020. In the present motion, the defense argues that the prosecution affirmatively misled the Court by representing that there was no agreement between Mr. Flahavan and the district attorney to grant sentencing concessions in three felony cases that were being prosecuted by this district attorney's office. Defense counsel quotes portions of a motion filed by defense counsel, a portion of an order, the plea agreement, and two hearings<sup>1</sup> in Mr. Flahavan's case, 19CR157, to support the defendant's arguments. The Court notes that defense counsel did not file any of these documents with the Court and that the dates on all such hearings were well

---

<sup>1</sup> The defendant's motion indicating that there were status conferences regarding the motion to reconsider on May 7, 2020, and May 27, 2020, is incorrect. The Court has reviewed the filed in 2019CR157 and believes the reference to May 27, 2020, was a typographical error as there was no status conference in that case on May 27, 2020, and the quote in the defendant's motion can be found in the transcript from the May 7, 2020, status conference.

before this Court issued its initial order regarding Mr. Flahavan's testimony on October 24, 2020.

In its response, the prosecution cites the same transcripts and provided exhibits which consisted of the report of the investigator the DA assigned to interview the former deputy district attorney who negotiated Mr. Flahavan's plea agreement in 19CR157 (Exhibit 1); a copy of the plea agreement (Exhibit 2); a transcript of the plea hearing (Exhibit 3); a transcript of the sentencing hearing (Exhibit 4); Mr. Flahavan's first motion to reconsider (Exhibit 5); Mr. Flahavan's second motion for reconsideration (Exhibit 6); an e-mail chain between Mr. Champagne, the lead prosecutor in Mr. Redwine's case, and the deputy district attorney prosecuting Mr. Flahavan during the litigation on the motion to reconsider (Exhibit 7); a transcript from the status conference held regarding the motion to reconsider (Exhibit 8); the motion from the district attorney's office requesting Judge Herringer rule upon Mr. Flahavan's motion to reconsider (Exhibit 9); and Judge Herringer's Order denying Mr. Flahavan's motion to reconsider (Exhibit 10).

After reviewing all ten exhibits, the Court finds that:

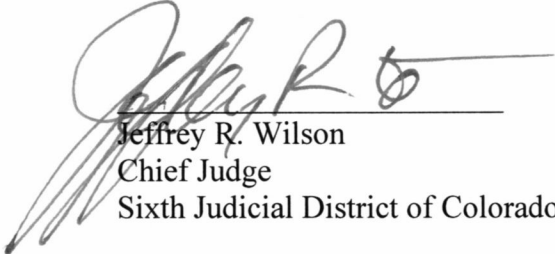
1. There was no agreement between the district attorney and Mr. Flahavan that his sentence would be reduced if he cooperated with the prosecution in this case. See the statement of Mr. Flahavan's attorney, Exhibit 8, pp 7-8;
2. Judge Herringer did not believe that there was any secret agreement between the district attorney and Mr. Flahavan that was approved off the record by Judge Herringer. See Exhibit 8, pp.16-17, and Exhibit 10;
3. The district attorney did not ask Judge Herringer to give Mr. Flahavan any special consideration because of his status as a witness in the Redwine case. Exhibit 8; and,
4. Mr. Flahavan did not receive any sentence reduction due to his status as a witness in this case. Exhibit 10.

While disputed by the district attorney in this case, the only possible agreement that Mr. Flahavan had with the district attorney's office was that the court in Mr. Flahavan's case could consider whether to reduce Mr. Flahavan's sentence as a result of Mr. Flahavan's

testimony in this case. Exhibit 10, pp 7-8 and 12. Even were the Court to make a finding that this agreement was made and not disclosed to the defense, the Court does not find this to be a discovery violation that warrants sanctions, particularly when no consideration was given to Mr. Flahavan in his motion to reconsider and when all the facts are known to defense counsel and available for use in cross-examination.

The Defendant's Second Motion to Exclude the Testimony of Broc Flahavan and for Sanctions to Stem the Ongoing Pattern of Disclosure Misconduct, D-187, is denied.

Done and signed this 30<sup>th</sup> day of April, 2021.



Jeffrey R. Wilson  
Chief Judge  
Sixth Judicial District of Colorado