

DISTRICT COURT, LA PLATA COUNTY, COLORADO Court Address: 1060 E. Second Ave., Durango, CO 81301 Phone Number: (970) 247-2304	
Plaintiff:       PEOPLE OF THE STATE OF COLORADO v. Defendant:     MARK ALLEN REDWINE	▲ COURT USE ONLY ▲
	Case Number: 17CR343
<b>ORDER REGARDING DOG-SNIFF EVIDENCE          D-36, D-37, D-38, D-39, D-40, AND P-14</b>	

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. During the investigation, law enforcement utilized several different dogs and dog handlers to use the dogs' sense of smell in an attempt to track Dylan, to attempt to corroborate the defendant's statements concerning Dylan's activities the night before he was reported missing, and to determine if any human remains (as argued by the prosecution) or decaying human tissue (as argued by the defense)<sup>1</sup> were located at or had been previously located in the defendant's house, pickup truck, and other locations.

The defendant has filed five motions, D-36 through D-40, seeking to suppress the results of this search and requesting that the searches be subject to a hearing pursuant to *People v. Shreck*, 22 P.3d 68 (Colo. 2001). In addition to responding to D-36 through D-40, the prosecution has filed a supplemental motion, P-14, in opposition to the defense motions to

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<sup>1</sup> If the distinction between human cadavers and decaying human tissue is legally significant, the Court will issue appropriate orders when the prosecution attempts to qualify the dog handlers as expert witnesses.

suppress and requesting the Court determine, based upon the exhibits the prosecution has filed, whether a pretrial ruling is necessary to determine the admissibility of the dog-sniff evidence.

First the Court notes that the defense motions should more properly be considered as motions in limine and not motions to suppress. Despite the arguments of counsel, the issues raised in these motions regard the rules of evidence, not constitutional rights.

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*, *Shreck* did not overrule *Brooks*. *Shreck* instead cited *Brooks* approvingly to support its holding regarding the admission of expert testimony.

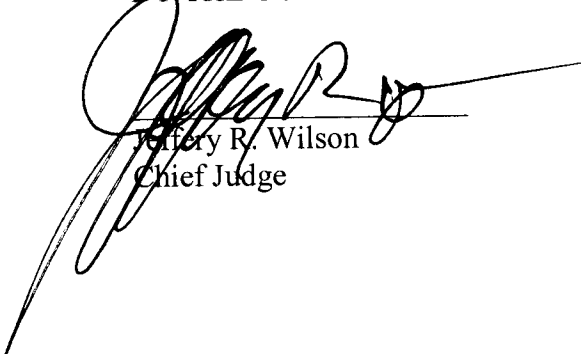
Regarding the second category of dog-sniff evidence (cadaver or decaying human tissue) presented in this case, the Court finds that the reasoning used in *Brooks* regarding dog tracking applies with equal weight to whether dog-sniff evidence can be used to determine if any human

remains or decaying human tissue were located at or had been previously located in a particular location. For the foregoing reasons, the Court denies the motions to suppress.<sup>2</sup>

The Court cannot determine from the exhibits presented by the prosecution regarding this issue as to whether the foundational elements of *Brooks* have been met. While the exhibits seem to support the prosecution's position, the Court cannot determine, *inter alia*, exactly what training the dogs received from the training logs, exactly what the training logs reflect, nor whether the breeds of dogs used have a particularly acute sense of smell as required by *Brooks*. The Court finds that, prior to the prosecution presenting any dog-sniff evidence, the prosecution will be required to show that the foundational requirements of *Brooks* have been met, with appropriate deviations when the evidence being presented is not specific to the trailing of a human being. The Court would prefer to make this determination prior to trial and the Court is willing to do so during the motions hearings currently scheduled for the week of March 11, 2019, or at any other appropriate pre-trial hearing.

DONE this 11<sup>th</sup> day of February, 2019.

BY THE COURT:



Jeffrey R. Wilson  
Chief Judge

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<sup>2</sup> The defense also argues that any testimony presented by the dog handlers regarding the alerts (or lack thereof) that the handlers observed the dogs give while searching is inadmissible hearsay. The Court notes that CRE 801(a) and (b) defines hearsay as the out-of-court statements made by a declarant offered for the truth of the matter asserted. A statement is defined as the assertion or nonverbal conduct of a person and declarant is defined as a person who makes a statement. Thus, by definition, the actions of an animal are excluded from the hearsay rules.