

DISTRICT COURT, LA PLATA COUNTY, COLORADO Court Address: 1060 E. Second Ave., Durango, CO 81301 Phone Number: (970) 247-2304	<div style="border: 2px solid black; padding: 5px; text-align: center;"> <p>ORIGINAL FILED / REC'D IN COMBINED COURT LA PLATA COUNTY, COLORADO</p> <p style="font-size: 1.5em; margin: 10px 0;">AUG 18 2017</p> <p>DEPUTY CLERK</p> <p>▲ COURT USE ONLY ▲</p> </div>
Plaintiff: PEOPLE OF THE STATE OF COLORADO v. Defendant: MARK ALLEN REDWINE	
Christian Champagne - District Attorney, #36833 Matthew Durkin, Special Deputy District Attorney, #28615 Fred Johnson, Special Deputy District Attorney, #42479 P.O. Drawer 3455, Durango, Colorado 81302 Phone Number: (970) 247-8850 Fax Number: (970) 259-0200	Case Number: 17 CR 343
PEOPLE'S RESPONSE TO DEFENDANT'S MOTION TO PRESERVE, PROTECT, AND DISCOVER ALL EVIDENCE [D-1] [PUBLIC ACCESS]	

NOW COME the People, by and through Christian Champagne, District Attorney, in the County of La Plata, and hereby file their Response to Defendant's Motion to Preserve, Protect, and Discover All Evidence [D-1] as follows:

1. The People understand the provisions of Rule 16 of the Colorado Rules of Criminal Procedure and how these provisions may relate to police notes, recordings, photos, informant agreements, physical evidence, phone and computer records, medical records.
2. The People will comply with the Rule and associated case law regarding discovery.
3. The People have no objection to the preservation of police notes and tapes as well as the preservation of physical evidence. The People have notified the appropriate law enforcement agencies to preserve their notes concerning this case.
4. In paragraph 5 of defendant's motion, defendant cites numerous cases in support of his assertion that "the State must preserve at least equal amounts of any evidence tested by the prosecution, for defense testing." In fact, none of the cases cited by defendant say anything of the kind.

5. For example, *People v. Thatcher*, 638 P.2d 760 (Colo. 1981), deals with the discovery of prosecutors' notes. Even if that case did deal with the preservation of physical evidence as defense counsel asserts, it was later expressly overruled by *People v. El Paso Dist. Ct.*, 790 P.2d 332 (Colo. 1990). *Thatcher* simply does not address or support the assertion that "the state must preserve at least equal amounts of any evidence tested by the prosecution for defense testing."
6. The two cases cited by defendant which deal even tangentially with the issue raised by Defense counsel contradict defendant's position. In fact, *People v. Garries*, 645 P.2d 1306 (Colo. 1982) quotes the other cited case, *People v. Gomez*, 596 P.2d 1192 (Colo. 1979) for the proposition that "in those cases where the amount of material available for testing is small, or when the state's duty to preserve evidence would otherwise be enhanced, it may be incumbent on the state to contact the defendant to determine whether he wishes his expert to be present during the tests."
7. Such misstatements of case holdings do little to inform the Court or opposing counsel regarding the state of the law. The "rule" asserted by defense counsel simply does not exist. The state is not required to "preserve at least equal amounts of any evidence tested by the prosecution for defense testing."
8. The defendant states in paragraphs 7 and 8, with no supporting authority, that the evidence discussed in their motion "...cannot legitimately be altered..." and that the defendant will essentially be unable to have a fair trial unless the matter remains in an "unchanged condition." This position fails to take into account that the state may need to conduct additional testing on evidence within its possession and has the right to do so. As noted above, consumptive testing can be problematic if insufficient amounts of material remain for retesting, but short of that, there is no authority which prevents the state from conducting any testing it deems necessary to develop evidence.

Respectfully submitted this August 18, 2017.

CHRISTIAN CHAMPAGNE
DISTRICT ATTORNEY
6th JUDICIAL DISTRICT

/s/ Christian Champagne
Christian Champagne #36833
District Attorney

CERTIFICATE OF SERVICE

I hereby certify that on 8/18/2017, I delivered a true and correct copy of the foregoing to the parties of record via e-service.

/s/ Christian Champagne
Christian Champagne