

DISTRICT COURT, LA PLATA COUNTY, COLORADO Court Address: 1060 E. Second Ave., Durango, CO 81301 Phone Number: (970) 247-2304	▲ COURT USE ONLY ▲
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 MOTION FOR SCENE VIEW (P-3) [PUBLIC ACCESS]	

COME NOW the People, by and through Christian Champagne, District Attorney in and for the Sixth Judicial District of the State of Colorado, and moves this Honorable Court to order that the jury be allowed to view the crime scenes during trial. AS GROUNDS for this motion, the People state as follows:

1. Defendant Mark Redwine has been charged in La Plata County with Murder in the Second Degree and Child Abuse Resulting in Death following a Grand Jury Indictment.

STATEMENT OF FACTS

2. On November 18, 2012, Dylan Redwine was 13 yoa, and flew to Durango for a court ordered visitation with the defendant for Thanksgiving. Several family members and friends reported that Dylan Redwine did not want to visit the defendant because of their strained relationship. The tension in their relationship was due, in part, to Dylan Redwine's knowledge of compromising photographs of the defendant, which later shown to trigger a violent response from the defendant. Friends reported that Dylan Redwine attempted to make arrangements with his friends to stay with them and to go to their house very early in the morning on November 19, 2012. Family members and friends reported that on November 18, 2012, that Dylan Redwine was in constant communication until approximately 9:37 pm, at which time all communications ceased.

3. On November 19, 2012, Dylan Redwine did not arrive at his friend's home at 6:45 am as planned, nor did any of his family members or friends receive any communication from Dylan Redwine. Later that afternoon, the defendant reported Dylan Redwine missing. A search and rescue effort was initiated and continued for several days and weeks.
4. On November 28, 2012, a search was conducted of the defendant's home, 2343 CR 500, Bayfield, Colorado, which is located at the farthest northwestern tip of Vallecito Reservoir, and at the base of Middle Mountain. During the search, blood was found in the residence and later analysis revealed that it was Dylan Redwine's blood. During the investigation, pursuant to a consensual search, cadaver dogs indicated that human remains had been inside the residence and the defendant's truck.
5. In June – July 2013, and again in July 2014, Dylan Redwine's partial remains and clothing were found on Middle Mountain Road, at a location that is approximately 1.27 miles as the crow flies from the defendant's house, and roughly 8.6 miles by road. The location of these remains is approximately 100 yards from the jeep trail, down a footpath. The area around the remains is heavily wooded and very steep terrain. The area of the recovery site is roughly 1,400 vertical feet from the defendant's house.
6. In November 2015, part of Dylan Redwine's skull was found, at another location in the area of Middle Mountain, which is approximately 1.52 miles as the crow flies, another 5.7 miles by road from the first recovery site. To reach the location of where Dylan Redwine's skull was found, you must travel up approximately 1,400 vertical feet, and then down around 500 vertical feet. Subsequent evaluation of Dylan Redwine's skull found several fractures and a tool mark consistent with a knife or similar instrument.
7. Evidence of the murder of Dylan Redwine was recovered in three primary locations. Dylan Redwine's blood was found in Mark Redwine's residence, and at two different locations in the Middle Mountain area.
8. Experts have opined that an animal cannot, and would not, have moved human remains the distance between any of the crime scenes, through the steep and wooded terrain. In his numerous statements in this case, Mark Redwine has put at issue the possibility that animal activity could account for the locations of the remains, and that Dylan Redwine could have hiked to the first location of the remains. The only way to completely understand the likelihood of this explanation is to see the crime scenes in person.

APPLICABLE LAW

9. The Colorado Rules of Criminal Procedure neither prohibit nor permit jury views of property or premises outside the courtroom. Rule 57(b) states that “[i]f no procedure is specifically prescribed by rule, the court may proceed in any lawful manner not inconsistent with these Rules of Criminal Procedure or with any directive of the Supreme Court regarding the conduct of formal judicial proceedings in the criminal courts, and shall look to the Rules of Civil Procedure and to the applicable law if no Rule of Criminal Procedure exists.”
10. The Colorado Rules of Civil Procedure provide that “[i]f in the opinion of the court it is proper for the jury to see or examine any property or place, it may order the jury to be conducted thereto in a body by a court officer.” C.R.C.P. 47(k) (2013). The parties and their attorneys may be present. *Id.*
11. Colorado courts have consistently held that the decision to allow a jury to view the actual scene of a crime is within the sound discretion of the trial court. *People v. Favors*, 556 P.2d 72, 75-76 (Colo. 1976); *Day v. People*, 381 P.2d 10, 12 (Colo. 1963); *People v. Cisneros*, 720 P.2d 982, 984 (Colo. App. 1986); *People v. Garcia*, 981 P.2d 214, 218 (Colo. App. 1998).
12. In exercising its discretion on a request for a jury view of a crime scene, the trial court must be guided by the same rules governing the admission of other evidence. *Favors*, 556 P.2d at 76. Factors to be considered include “the importance of the information to be gained by the view to the issues in the case, changed conditions, practicality, and whether the same information has been secured from maps, photos or diagrams and testimony from the witnesses.” *Johnson v. Baker*, No. 1:08-CV-000382, 2009 U.S. Dist. LEXIS 99080, at *20–21 (W.D. Ky., July 16, 2009) (citing 2 McCormick on Evidence § 219 (6th ed. 2006)).
13. A view of the crime scene in this case is proper because such a view will provide the jury with the full context necessary to understand the in-court testimony and to fully assess the credibility of witnesses and the weight to be given to evidence introduced in court. *Compare State v. McCorgary*, 543 P.2d 952, 959 (Kan. 1975) (upholding jury view of crime scene because view would “further enlighten the jury concerning the testimony of witnesses at the trial”) with *Day v. People*, 152 Colo. 152, 158 (Colo. 1963) (upholding denial of jury view because there were no disputed questions of fact to which a jury view of the premises “...could possibly have been of any benefit.”). Though photographs and maps of the area will provide the jury with some context for the testimony of various witnesses, the jury’s understanding of the testimony will be enhanced significantly if they

have the opportunity to view the crime scene for themselves. *See id.* (upholding grant of jury view even "...though photographs of the scene were admitted into evidence and were available for the jury's inspection.").

14. Presentation of in-court testimony about the location has a high likelihood to confuse the jury if they are not afforded the opportunity to view the crime scene. Only by viewing the scene can the jury gain a complete understanding of the relationship between various locations referenced in testimony and displayed in photographs, particularly the distances between them, differences in elevation, available visibility, and accessibility. This information is material to the case, and due to the geographic and topographic complexity of the location, cannot adequately be reproduced in the courtroom through the use of visual representations and testimony.
15. The site to be viewed has not changed significantly since the time of the events in this case, and a view of the site is unlikely to confuse the jury by requiring them to disregard changes in the location. The court may protect against potential bias by ordering that the scene be properly administered during the viewing. *See State v. Didion*, 877 N.E.2d 725, 730 (Ohio Ct. App. 2007) ("The trial court ordered the reference letters and the angel statue removed from the scene so as to avoid the jury's seeing 'evidence' during the jury view or being prejudiced in favor of the state."). Procedural safeguards may be implemented to ensure that the view is fair to the parties and that the truth-finding function of the trial is maintained, such safeguards are feasible to adopt in this case. *See Mauricio v. State*, 153 S.W.3d 389, 393 n. 3 (Tex. Crim. App. 2005) (stating that appropriate safeguards were adopted where the trial court attended and supervised the view, instructed the jury to remain silent during the view, gave both counsels opportunity to be present, and recorded the view for the record).
16. The practical considerations of transporting the jury to the crime scene and conducting the view do not outweigh the informative value that the view would provide. The La Plata County Sheriff's Office will draft an implement an operational plan in accordance with Court orders that will include time, transportation, and provisions for all involved.
17. Pursuant to the caselaw, the Colorado Supreme Court has recognized the following instruction that may be given to the jury prior to the scene view:

The Court has concluded that you should now view [insert appropriate description of the subject or scene] as a group, and you are to go with the bailiff(s). While you are there or in transit do not discuss this case among yourselves and do not ask any questions of the attorneys or of the people who may be there. The purpose of the viewing is to assist you in understanding and applying the testimony you hear and the exhibits introduced at this trial. COLJI C:09, Directions Prior to Jury Viewing.

18. The location of all of the crime scenes, including the locations of the remains, their relation to one another, and their geographical and topographical characteristics are all critical to this case. Despite significant efforts, photographic, video, and computer mapping are insufficient to fully demonstrate these critical components to this case.

Wherefore, the People respectfully request that the Court allow the jury to view the crime scenes to provide the only means to fully understand the geographical and topographical characteristics of the scene.

Respectfully submitted this June 28, 2018.

CHRISTIAN CHAMPAGNE
DISTRICT ATTORNEY
6th JUDICIAL DISTRICT

/s/ Christian Champagne
Christian Champagne #36833
District Attorney

CERTIFICATE OF SERVICE

I hereby certify that on 6/28/2018, I delivered a true and correct copy of the foregoing to the parties of record via e-service.

/s/ Christian Champagne
Christian Champagne