

DISTRICT COURT DOLORES COUNTY, STATE OF COLORADO 409 Main Street - Dove Creek, CO 81324	
PEOPLE OF THE STATE OF COLORADO (Plaintiff)	DATE FILED: March 5, 2022 1:26 PM
vs.	
RONALD MOROSKO, Defendant	- Court Use Only -
Matthew Margeson (Atty Reg. No. 39015) District Attorney for the 22nd Judicial District 109 W. Main St., Cortez, Colorado 81321 Phone: (970) 565-3788 Fax: (970) 565-9396	Case No.: 21CR11
PEOPLE'S RESPONSE TO DEFENSE #11 - RE: DISCOVERY VIOLATION	

COMES NOW the People, by and through Matthew Margeson, District Attorney, in and for the Twenty-Second Judicial District of the State of Colorado, in the County of Montezuma, and responds to the defendant's motion *D11* as follows:

1. The defendant alleges bad faith and deliberate deception as it relates to recent discovery provided to counsel. The People vehemently deny these baseless allegations.
2. Charges in this matter were filed on 10/26/21. On 1/21/22, the defendant pled not guilty, and a jury trial was set to start on 5/16/22.
3. *People's Exhibit 1* demonstrates compliance with CRCP Rule 16 and has been attached for the court's review. Of note, *Exhibit 1* establishes that discovery pages 1 through 59 (D1-D59) along with 12 media folders (DA 1 - 12) were provided to the defendant on or before October 13, 2021.
4. CRCP Rule 16 Part I(a)(1) requires the prosecution to "make available to the defense..." materials detailed thereafter regarding the pending case. It also mandates the prosecution to "provide duplicates upon request..." of these same materials.
5. In October of 2021, both parties received and had opportunity to review the discovery referenced above. Following this review and frequent discussions between parties, the defendant filed allegations related to the People's failure to preserve evidence (see *Defense Motion #5*).
6. On February 24th, 2022, while preparing for hearing on *Motion #5*, the People again reviewed pages 34 through 59 (D34-59) of discovery which contained the Colorado Bureau of Investigation's "Case Master Report 2021-284," authored by Agent in Charge Collin Reese.
7. During this review, Deputy District Attorney Reed noticed the following on page 50 of discovery (D50):

DOCUMENTATION: The scene was photographed, scanned with a FARO 3D laser system, and GPS coordinates were obtained.

GPS coordinates:

Gabrisch

N37 48.852

W108 02.459

Backpack

N37 48.885

W108 02.446

LIMITATIONS: Due to the special circumstances of limited travel to and from the scene by helicopter, no evidence placards were used. A metal detector was not flown up. Thus, searching for a projectile was limited to visual only, none were found.

8. On the same day, DDA Reed contacted Agent Reese and inquired about the above-referenced, "FARO 3D laser system." Not having previously seen this evidence firsthand, DDA Reed and the 22nd Judicial District Attorney's legal staff checked to see if results of this scan had been received from CBI and recognized it had not.
9. Legal staff immediately contacted CBI, received the scan, and discovered it to the defendant on February 25th, 2022. This discovery is noted as DA #14 in the *People's Exhibit 1*.
10. Additionally, DDA Reed contacted defense counsel by telephone to explain what he had noticed and was in the process of discovering.
11. Following receipt of the FARO scan, the defendant filed its *Motion* #11 alleging discovery violations including dismissal.
12. First, there is no discovery violation. The evidence noted in discovery has always been available to the defendant upon request. As soon as DDA Reed noticed the FARO scan's reference on page D50, he took immediate steps to personally obtain this evidence and provide a duplicate copy to defense. The same steps could have been utilized by defense counsel as D50 had been in its possession since October 13, 2021.
13. Defense counsel's failure to request what is plainly found on page 50 of discovery is not tantamount to a discovery violation. Had defense counsel noticed reference to this scan first and requested a duplicate copy per CRCP Rule 16 Part I(1)(a), the People would have obliged (noting in candor, it would have needed to request and receive this information from CBI prior to its dissemination). Had the People not complied with this request, a discovery violation allegation would be appropriate. However, to suggest there was some sinister effort to hide this evidence while encouraging defense counsel's candor about trial strategy is simply an exercise in hyperbole.

14. There is no record to support the defendant's allegations of repeated gross negligence and willful discovery violations. Defense counsel's reference to a case wherein the District Attorney's Office took drastic steps to self-regulate and encourage the MCSO's compliance with CRCP Rule 16 should promote confidence in the 22nd JDA's Office, not distrust. To achieve perfection in an otherwise human process is to ask the impossible. Nevertheless, this office stands proud of its record of self-sanction when the interests of justice so dictate. This situation, however, is not an instance worthy of self or court-imposed consequence.
15. The imposition of discovery sanctions generally serves the dual purposes of protecting the integrity of the truth-finding process and deterring discovery-related misconduct. *People v. Cobb*, 962 P.2d 944, 949 (Colo.1998); *People v. District Court*, 808 P.2d at 836.

Among the factors that a trial court should consider in fashioning the appropriate sanctions are (1) the reason for the delay in providing the requisite discovery; (2) any prejudice a party has suffered as a result of the delay; and (3) the feasibility of curing such prejudice by way of a continuance or recess in situations where the jury has been sworn and the trial has begun. *People v. Dunlap*, 975 P.2d 723, 755 (Colo.1999); *People v. Castro*, 854 P.2d 1262, 1265 (Colo.1993); *People v. District Court*, 793 P.2d at 168.

16. The purpose of the discovery process, including the imposition of sanctions, is to advance the search for the truth. When a party violates Rule 16, we believe the court should impose the least severe sanction that will ensure that there is full compliance with the court's discovery orders. *People v. District Court*, 793 P.2d 163, 168 (Colo.1990).
17. CRCP Rule 16's purpose to promote a fair, truth-seeking process has not been diminished here. The defendant has always been on notice of the FARO scan's use and its reference in discovery was obvious. The results of this scan have been provided well in advance of trial. Defense counsel's decision to share information about its expert witnesses or trial tactics was not the result of DDA Reed's deception and should not be considered a prejudicial effect of the discovery process.
18. The undersigned has always appreciated defense counsel's willingness to discuss its interpretation of case facts such that a defendant's virtue or mitigating circumstances can be made plain to the prosecution. This case does not represent a deviation from that normal practice and was not given to DDA Reed because of manipulation or detrimental reliance.
19. The fact is, both sides missed Agent Collin's reference to the FARO scan. After DDA Reed noticed what was hiding in plain sight, he took immediate steps to inform defense counsel of what he read, hurriedly acquired the evidence from CBI, and discovered it - all within 24 hours. It is regrettable that both sides initially missed this evidence when reviewing discovery, but this mutual lack of literary comprehension is not worthy of judicial sanction.
20. Even if the court were to find grounds for a discovery violation, the least severe sanction is not contained in the defendant's requests for relief which include dismissal, suppression, and financial restitution. None of these are appropriate considering the People's compliance with CRCP Rule 16 and the court's discovery orders.
21. Assuming arguendo a violation exists, a trial continuance should be the only sanction considered by the court in light of the above facts.

