

District Court, City and County of Denver, Colorado Court Address: Lindsey-Flanigan Courthouse, Room 135 520 W Colfax Ave Denver, CO 80204	
THE PEOPLE OF THE STATE OF COLORADO  v. <b>STEVEN CUMBERBATCH</b> , Defendant <b>DOB:</b> ██████████	▲ <b>COURT USE ONLY</b> ▲
Dawn M. Weber, Reg. No. 23433 Senior Chief Deputy District Attorney Cold Case Unit  McKenna E. Burke, Reg. No. 49550 Deputy District Attorney Cold Case Unit  For: Beth McCann, Reg No. 5834 District Attorney 201 W. Colfax Ave. Dept. 801 Denver, CO 80202 Phone Number: (720) 913-9000 FAX Number: (720) 913-9035	Case No. 20 CR 20010 Div: Criminal Ctrm: 5H
<b>PEOPLE’S RESPONSE TO DEFENSE “D-13 MOTION FOR SANCTIONS          FOR DUE PROCESS VIOLATIONS RESULTING FROM PROSECUTION’S          DESTRUCTION OF MATERIAL AND EXCULPATORY EVIDENCE”          &amp;          “D-18 SUPPLEMENTAL MOTION TO DISMISS AS SANCTION FOR          DESTRUCTION OF MATERIAL AND EXCULPATORY EVIDENCE”</b>	

**Beth McCann**, District Attorney, in and for the Second Judicial District, City and County of Denver, State of Colorado, by and through the undersigned Senior Chief Deputy District Attorney, respectfully submits the above-captioned People’s response. As grounds therefore, the People state as follows

## FACTUAL BACKGROUND

1. This defendant is charged with Murder in the First Degree - After Deliberation and With Intent and Murder in the First Degree – Felony Murder (Sexual Assault). The charged offenses occurred between December 5, 1994, and December 7, 1994.
2. On December 7<sup>th</sup>, 1994, victim R.D. was found deceased in room #202 at the Broadway Plaza Motel located at 1111 Broadway in downtown Denver. R.D. was found naked on the motel bed with her legs spread partially open and a blanket thrown over the bottom half of her body. She was visibly beaten. The Denver Medical Examiner's Office determined that R.D. was the victim of a homicide. She sustained numerous abrasions, contusions, and lacerations, and her cause of death was determined to be asphyxiation by smothering.
3. Crime Scene Detectives responded to document the scene and collect evidence. There were no signs of forced entry into the motel room. The inside of the motel room was in disarray. There was blood on the bed surrounding R.D.'s body and what appeared to be a bloody palm print in suspected blood on the sheet near her body. There was a bedside table missing one of its four legs. The corresponding table leg was found on the floor near the side of the bed next to a pair of white men's shorts. The metal brace that would have secured that table leg to the table was located on the bed near the victim's body. A gin bottle was also collected from the motel room.
4. Additional evidence was collected from R.D.'s body during autopsy, including fingernail scrapings from both the victim's hands and from oral, anal and vaginal swabs. Subsequent testing on each of these items inculpated the defendant, as did his palmprint impressed on the apparently bloody sheet found underneath the victim's body. The defendant was also the source of two hairs found on the victim's back.
5. What's more, the defendant's fingerprint was developed from the metal brace for the detached table leg that was recovered from the bed.
6. In the motel room, the defendant's DNA profile was located on the inside waistband of the white men's shorts, the hairs collected from the white men's shorts, the foot of the detached table leg, and on a gin bottle.
7. The gist of the defense motions is that the defendant is entitled to dismissal of the charges because certain items of evidence were not collected at the scene and other items of evidence were collected but not preserved during the ensuing investigation.

8. These issues will be the subject of testimony at a motions hearing set on Friday, October 28, 2022, two days hence. This pleading is not intended to lay out all the relevant facts which will support denial of the defense motions – that evidence will be elicited through live testimony at the motions hearing – but rather to provide the court with the applicable law for resolution of these claims.

### **LEGAL ANALYSIS AND ARGUMENT**

9. The law is well-established concerning “destruction of evidence” claims. In *California v. Trombetta*, 467 U.S. 479, 488, 104 S. Ct. 2528 (1984), the United States Supreme Court held that the state has a constitutional duty to preserve only that evidence that “might be expected to play a significant role in the suspect’s defense.” To satisfy this standard, the evidence must: (1) possess an exculpatory value that was apparent before the evidence was destroyed; and (2) be of such a nature that the defendant would be unable to obtain comparable evidence by other reasonably available means. *Id.* at 488-489.
10. Three years later, the Colorado Supreme Court adopted the same formulation in *People v. Greathouse*, 742 P.2d 334, 338 (Colo. 1987). It did so because the *Trombetta* standard provides a more realistic way to evaluate a due process claim predicated on the state’s duty to preserve evidence during the investigatory stage of a case, and correctly focuses on the state’s knowledge prior to the actual loss or destruction of evidence. *Id.*
11. The year after the Colorado Supreme Court announced the *Greathouse* decision, the United States Supreme Court furthered this line of jurisprudence, publishing *Arizona v. Youngblood*, 488 U.S. 51, 109 S. Ct. 333 (1988). In *Youngblood*, the United States Supreme Court addressed the state’s duty to preserve evidence when the exculpatory value of the evidence does not satisfy the *Trombetta* Standard. The court characterized evidence of this nature as that which might have been “of conceivable evidentiary significance” in a prosecution, and “of which no more can be said than that it could have been subjected to tests, the results of which might have exonerated the defendant.” *Youngblood, supra*, 488 U.S. at 57-58, 109 S. Ct. 333 at 337, 102 L. Ed. 2d 281 at 289. The court concluded that when this is all that can be said about the exculpatory value of the evidence that was destroyed, a defendant may still successfully claim that his due process rights were violated, but only if he can demonstrate that the prosecution acted in bad faith. *Id.*
12. Colorado expressly adopted the holding of *Youngblood* in *People v. Wyman*, 788 P.2d 1278 (Colo. 1990). *See also People v. Eagen*, 892 P.2d 426, 428 (Colo.App. 1994)

### **THE PROPER REMEDY FOR ANY VIOLATION OF THE LAW**

13. Even in cases where a court determines that the defendant’s right to Due Process has been violated, 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). (citations omitted)

14. While each court has broad discretion in fashioning a proper remedy, a court should not impose a remedy that is more restrictive than necessary to protect the defendant's right to Due Process. *People v. Sheppard*, 701 P.2d 49 (Colo. 1985); *People v. Eagen*, 892 P.2d 426 (Colo. App. 1994).

### **THE DEFENDANT'S CLAIM LACKS MERIT**

15. The defendant's claims must fail. None of the evidence which was not preserved possessed apparent exculpatory value. The defendant's claims rest on the unsupported assertion that the unpreserved evidence would have been exculpatory. The defense does not state any facts or articulate any defense theories as to how the evidence would have been exculpatory.
16. Here, the most probative and inculpatory known data points are the DNA profile located on R.D.'s body orally, anally, vaginally, on her left and right fingernail scrapings, on two hairs collected from her back, the palm print in suspected blood on the bedsheet next to R.D.'s body, a fingerprint located on the metal brace belonging to the detached table leg that was recovered from the bed, the DNA profile located on the inside waistband of the white men's shorts, the hairs collected from the white men's shorts, the fingerprints on metal brace belonging to the detached table leg, plus the evidence on the gin bottle.
17. All of these data points – the DNA profile, palm print, and fingerprints – match the defendant.
18. The testing results of each of the intimate swabs from the victim's body also excluded each of the males whom the defense will characterize as alternate suspects (the People acknowledge that the fingerprint of one of the males was found on the table leg). In other words, these data points were *actually exculpatory* as to each of those males but *wholly inculpatory* as to the defendant.
19. When it is reasonably foreseeable that evidence may be favorable to the accused, the prosecution must employ procedures to preserve such evidence. However, the prosecution's duty to prevent the loss or destruction of evidence that may be favorable to the defendant is not absolute. *People v. Braunthal*, at 172 citing *Greathouse* at 337 and *People v. Brown* at 92, 94, 194.
20. The defense argument does not meet the governing legal standard which places the burden squarely on the defense to establish that, at the time of destruction, the evidence possessed apparent exculpatory value and was destroyed in bad faith.
21. All that can be said of the motel ledger, the pack of Salem cigarettes and cigarette butts, the phone records, and television is that those items *could have been* subject to testing.

That is precisely the type of evidence that the *Youngblood* court characterized as potentially, not actually, exculpatory. *Youngblood*, 488 U.S. at 57, 109 S.Ct. at 337.

22. Here, the defendant is unable to meet the requirement of proving bad faith. Accordingly, the unavailability of the items does not constitute a denial of Due Process of law. *Youngblood*, 488 U.S. at 58, 109 S.Ct. at 337.
23. Here, none of the items not collected or destroyed possessed apparent exculpatory value and no bad faith has been or can be shown. Thus, the defense claim must fail. See, i.e., *People v. Wyman*, 788 P.2d 1278, 1279 (Colo. 1990) citing *Arizona v. Youngblood*, 488 U.S. 51, 109 S.Ct. 333 (holding that “the Due Process clause of the Fourteenth Amendment does not invariably require a state to preserve evidence which might be favorable to the accused when dealing with evidentiary material of which no more can be said than it could have been subjected to tests.”).
24. To be clear, it is extremely unfortunate that these evidentiary items were not preserved. Retention of the items would have served the ends of justice for both sides. However, there is simply no proof that the items were destroyed in bad faith and accordingly the defense claim fails. As Justice Stevens pointed out in his concurrence in *Youngblood*, the prosecution also suffers a detriment when evidence is not preserved and by the mere passage of time.
25. The People agree that the Court must be mindful of the defendant’s Due Process rights. The People are entrusted, as is the Court, with protecting the defendant’s constitutional rights in a search for the truth. At the same time, a murderer should not be granted a windfall due to the mere passage of time and evolution of evidence retention standards. See, i.e., the General Assembly’s 2008 enactment of the Colorado “Preservation of DNA Evidence” statute found at §18-1-1101, et. seq., C.R.S. (setting forth the legislature’s 2008 enactment of legislation expressly governing evidence retention in Colorado). See also *People v. Braunthal*, 31 P.3d 167, 172 (Colo. 2001) (“[T]he prosecutor’s duty to prevent the loss or destruction of evidence is not absolute”).
26. Finally, because the defendant has failed to establish that a sanction should be imposed, no sanction – much less the most severe sanction of dismissal – is warranted here. See *People v. District Court*, 793 P.2d 163 (Colo. 1990).

**WHEREFORE**, the People respectfully request that this Honorable Court deny the defense motions.

**RESPECTFULLY SUBMITTED** this 26<sup>th</sup> day of October, 2022.

**BETH McCANN**  
District Attorney

By: */s/ Dawn Weber, Reg. No. 23433*  
Senior Chief Deputy District Attorney

Cold Case Unit  
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**CERTIFICATE OF SERVICE**

I certify that on the 26<sup>st</sup> day of October, 2022, a true and correct copy of the foregoing was:

- E-served through CCE on all parties who appear of record and/or have entered their appearances.
- Filed with Denver County Court and provided to all parties who appear of record and/or have entered their appearances.
- Filed with Denver County Court and will be provided upon request for discovery.

By: */s/ Dawn Weber*