

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 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 MOTION TO DISMISS FOR          PRE-INDICTMENT DELAY</b>	

**BETH McCANN**, District Attorney in and for the Second Judicial District, State of Colorado, by and through the undersigned Deputy District Attorney, respectfully submits this Response to Defense’s Motion to Dismiss for Pre-Indictment Delay. The grounds therefore are set forth below.

1. The defendant has filed a consolidated “Motion to Dismiss for Pre-Indictment Delay and Destruction of Evidence”. This response is specific to the Motion to Dismiss for Pre-Indictment Delay.

**CHRONOLOGY OF THE CASE**

2. Between December 5, 1994, and December 7, 1994, victim R.D. was sexually assaulted and murdered in room #202 of the Broadway Plaza Motel. The killer left behind his DNA – internally and externally on R.D.’s body and in other locations around the motel room –

along with hairs, fingerprints, and a palm print left in suspected blood on the bedsheet on the bed on which R.D.s body was found.

3. The Denver Police Department investigated the sexual homicide of R.D. between 1994 and 1995. In 1995, the Federal Bureau of Investigation (FBI) assisted with the investigation by examining and attempting to enhance the print on the bedsheet to develop it in a manner that would be of sufficient quality and detail for comparison. That initial effort was not successful, and the case became inactive when there were no more leads for police to follow. Apart from a few possible suspects investigated - and ruled out - early on, there was no identified suspect in the case from 1994 until 2018.
4. On July 18, 2018, the Denver Crime Lab issued a CODIS Match Report stating that the male DNA profile developed from sperm fraction of the anal swabs collected during R.D.'s autopsy had been identified as a match to the defendant's DNA profile which was uploaded into the convicted offender index of the Combined DNA Index System ("CODIS"). CODIS is a nationwide database of DNA profiles obtained from persons convicted of various offenses and obtained from forensic samples found at crime scenes. CODIS is administered by the FBI.
5. The defendant's DNA profile had been lawfully uploaded into CODIS following a prior felony conviction in the state of Virginia.
6. Upon learning of the CODIS match, Denver Police Department Cold Case Detective Kari Johnson immediately re-opened the investigation in earnest. She thoroughly reviewed the case file, requested the evidence be pulled from the property bureau to assess what items had been preserved, and began identifying essential witnesses in order to make efforts to determine which of them were still alive and where the living witnesses could be found.
7. Detective Johnson also embarked on the task of gathering evidence to eliminate several men initially investigated as possible suspects. Because some of these men were still alive and others were not, this required collecting DNA samples in the form of buccal swabs from those who were living and attempting to locate postmortem kits previously collected from those who were now deceased.
8. Detective Johnson continued diligently investigating this case amid shutdowns and delays caused by the COVID-19 pandemic.
9. Undersigned counsel can state, as an officer of the court, that the renewed investigation processed apace until all material leads had been exhausted but for interviewing the defendant. Indeed, the Supplementary Report drafted by Detective Johnson documenting the renewed cold case investigation is *eighty-three* pages long. See Bates-stamped discovery documents numbered 1517-1600.
10. On September 2, 2020, the Honorable Judge Shelly I. Gilman signed an At Large Arrest Warrant for the defendant.

## DEFENDANT'S CLAIMS ARE WITHOUT MERIT

11. As a threshold matter, the People do not contest the four-part test set forth in paragraph 66 of the Motion to Dismiss. The People agree that the case law cited therein is an accurate statement of the law. The People do, however, assert that the defense has failed to state a claim for relief upon analysis of those four factors. The People shall discuss those four factors, along with other relevant concerns, below.
12. *First*, “Although statutes of limitations exist to guard against the prejudice of stale prosecutions, there is no statute of limitations for first degree murder because of its grave and heinous nature.” People v. Melanson, 937 P.2d 826, 832 (Colo. App. 1996) *as modified on denial of rehearing* (Oct. 10, 1996) *cert. den’d* (June 2, 1997) *citing* §16-5-401(1)(a), C.R.S. As recognized in United States v. Marion, 404 U.S. 307, 92 S.Ct. 455, 30 L.Ed.2d 468 (1971), the primary mechanism provided by law to protect against prejudice resulting from the passage of time between the crime and arrest or charge is the applicable statute of limitation.
13. There is no constitutional right to “a speedy arrest.” People v. Hall, 729 P.2d 373, 375 (Colo. 1986).
14. *Second*, the People concede that a number of witnesses in this case have indeed passed away since December of 1994. Be that as it may, the defense has failed to state how the loss of those witnesses impairs their case. Indeed, the loss of many of those witnesses, overall, helps rather than hurts the defense case. For instance, [REDACTED] (who was employed by the Colorado Coalition for the homeless and who observed a slender, Black male, about 5’8” tall exiting room #202 on the morning of December 6, 1994, while conducting a welfare check on R.D.) would have provided testimony describing his observations which are consistent someone matching the defendant’s documented appearance in 1994 leaving the murder scene that December morning. This testimony would be harmful to the defense case, and it is the People’s case that will suffer by the unavailability of this witness.
15. Likewise, the defense benefits from the unavailability of several alternate suspects in this case, such as [REDACTED] whose fingerprint was located in an unknown red substance on a table leg in the motel room. Based on that fingerprint, Mr. [REDACTED] was arrested for this murder in December of 1994. He was ultimately not charged with the murder based on an injury to his arm which would have rendered him unable to commit such a violent beating and murder. The People anticipate the defense will present evidence of Mr. [REDACTED]’ fingerprint and his arrest in relation to this case and the People will be left without the ability to put Mr. [REDACTED], himself, on the stand to explain the circumstances. Again, it is the People’s case that will suffer from the delay in solving this case.

16. In Colorado, a “showing of specific prejudice is required” for the defendant to establish a Due Process claim justifying the dismissal of charges. People v. Hutchinson, 557 P.2d 376, 377 (Colo. 1976). Under this state of the record, the defendant has failed to make such a showing.
17. **Second**, the defense allegation that the State’s negligence has given the People a tactical advantage is baseless. This is not a case in which the Denver Police Department had identified the defendant in 1994 and had laid in wait, delaying the case presentation as a means of hindering his defense. Rather, the creation of the nationwide CODIS database, the development of laws permitting the upload of convicted felons’ DNA into CODIS and the developments in forensic DNA analysis that identified the defendant as the source of the DNA in R.D.’s body and all over the murder scene all evolved over decades.
18. Defense argues, in paragraph 77, that there is “no reasonable alternative explanation for delaying charges for over two decades” other than the State’s desire to gain a tactical advantage. Such argument not only falls short of establishing governmental misconduct, but it also fails to state any legitimate basis for such an accusation against the People.
19. In paragraph 78 of the Motion to Dismiss, defense states that the defendant was “by all accounts” a suspect in the initial investigation because his DNA and prints were left at the scene in 1994. The People respectfully submit that such an argument defies common sense. The defendant was not identified as a suspect until the police knew that it was ***his*** DNA left in R.D.’s body and ***his*** print in suspected blood on the bedsheet and elsewhere in the motel room. This identification was not made until the CODIS Match Report issued in July of 2018. **Steven Cumberbatch was not a suspect in this sexual homicide until July of 2018.**
20. Likewise, defense’s argument that the State has had “twenty-five years to investigate, research and formulate arguments” is contradicted by discovery in this case, which clearly demonstrates that the investigation in this case was not re-opened until July of 2018.
21. **Third**, the kind and quantum of evidence available to the prosecution in 2022 is materially different from that available in the 1990s and early 2000s. As the Court of Appeals recognized in the case of Melanson, *supra*, it is appropriate for the prosecution to consider whether there exists a reasonable likelihood of conviction at trial under the current state of the evidence and to postpone the filing of charges accordingly. See Melanson, *supra* at 831 - 832 (delay of approximately 18 years before charging the defendant with murder did not violate Due Process; approving of the prosecution’s postponement of charges “because the prosecution would have had a significantly weaker case without the identification of the victim’s remains”).
22. **Fourth**, the interests of justice and fair play do not warrant the dismissal of the charges against the defendant. The defendant contends, in essence, that he should obtain the windfall of dismissal of this case as a reward for having successfully eluded detection for

decades. The defendant must not be so rewarded. Instead, the interests of justice and fair play dictate that a jury should be allowed to hear about the sexual assault and murder inflicted on victim R.D. by the defendant.

23. Here, the People's case is not dependent on unreliable identification by an eyewitness some twenty-plus years after the crime was committed. The People will establish the defendant's identification via DNA, fingerprint and palmprint evidence.

24. **Finally**, this Court should reject the defendant's Due Process claim based on failure to preserve evidence. The People will further this argument in a separate response, but it is worth stating here that the defense has not shown that the evidence that no longer exists was actually exculpatory or was not preserved due to bad faith. See e.g., Arizona v. Youngblood, 488 U.S. 51, 109 S.Ct. 333 (1988) (setting forth both requirements). See also People v. Wyman, 788 P.2d 1278 (Colo. 1990); People v. Eagen, 892 P.2d 426, 428 (Colo. App. 1994) ("Colorado expressly adopted the holding of Youngblood in People v. Wyman").

**WHEREFORE**, the People respectfully submit this Response to Defense's Motion to Dismiss for Pre-Indictment Delay.

**RESPECTFULLY SUBMITTED** this 15th day of August, 2022.

**BETH McCANN**  
District Attorney

By: */s/McKenna Burke, Reg. No. 49550*  
Deputy District Attorney

Cold Case Unit  
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**CERTIFICATE OF SERVICE**

I certify that on the 15th day of August, 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/ McKenna Burke