

District Court, City and County of Denver, Colorado Lindsey-Flanigan Courthouse 520 West Colfax Avenue Denver, CO 80204	
<hr/> Plaintiff: PEOPLE OF THE STATE OF COLORADO v. Defendant: HECTOR BENCOMO-HINOJOS	▲ COURT USE ONLY ▲ Case Number: 13 CR 20001 Div.: Criminal Ctrm: 4H
<hr/> Dawn Weber, Reg. No. 23433 Chief Deputy District Attorney Julie Hamel, Reg. No. 32136 Chief Deputy District Attorneys For: MITCHELL R. MORRISSEY , #13784 DISTRICT ATTORNEY 201 West Colfax Ave., Dept. 801 Denver, CO 80202 Phone Number: 720-913-9000 Fax Number: 720-913-9165	
PEOPLE’S RESPONSE TO DEFENSE “MOTION TO DISMISS”	

MITCHELL R. MORRISSEY, District Attorney, Second Judicial District, by and through his undersigned Chief Deputy District Attorneys, Julie Hamel and Dawn Weber, hereby submits the People’s Response to the Defense “Motion to Dismiss.” In support thereof, the People state as follows.

1. On October 10, 2014, the defense filed a “Motion to Dismiss.”
2. In response, the People wish to submit the following.

I. PROCEDURAL HISTORY & FACTUAL BACKGROUND

1. On March 27, 1981, the victim in this case, Ms. Patricia Beard, had not been seen or heard from by her family for several days. At the time of her death, 32-year-old Ms. Beard was living in a residential housing facility for mentally handicapped individuals. Her family was concerned for her welfare and asked the facility manager to check on her. He discovered Ms.

Beard murdered in her bedroom and immediately called 911. Officers arrived shortly thereafter. Ms. Beard underwent a post-mortem sexual assault examination.

2. This post-mortem examination included a vaginal swab, an oral swab, and swabs from each of Ms. Beard's breasts and from her right arm.

3. Despite a thorough investigation into the murder in 1981, no suspect was identified and arrested in 1981. The case was placed on inactive status and went "cold."

4. On August 11, 2011, a Denver Police Department cold case detective found that the contents of Ms. Beard's post-mortem kit - including the vaginal swab - had not been examined for possible DNA evidence. The detective was working under a federal grant designed for the sole purpose of examining the evidence in old, unsolved homicide cases to identify evidence that could be submitted for DNA testing. The Denver Police Department has files on well over 500 unsolved homicide cases and the grant enabled law enforcement to methodically comb back through old cases - some dating as far back as the 1960s - to search for evidence in cases in which a DNA match through a database could provide a meaningful investigative lead.

5. There was nothing shoddy, negligent or haphazard about the way the Denver Police Department Cold Case Unit detectives evaluated these cases for testing. The case reviews have proceeded in an orderly, chronological sequence and cases with intimate DNA samples (such as those in this case) were prioritized over those with non-intimate samples (such as a saliva sample taken from a beer can at an outdoor murder scene).

6. The defense claims of negligence, well-intended though they may be on the defendant's behalf, thus do not represent the true manner in which the killer in this case was identified or of the organized, thoughtful sequence in which cases of such old vintage have been submitted for testing.

7. After the evidence was submitted for testing, the Denver Police Department Crime Laboratory ("Denver Crime Lab") processed that biological evidence. The testing of that evidence was likewise given priority in the sense that the Denver Crime Lab has had dedicated, grant-paid lab analysts focusing either primarily or exclusively on cold cases since at least 2005/2006 (when undersigned counsel began working on the federally-funded Burglary Project, then the Denver District Attorney's Cold Case Unit). Thus, the evidence in this case did not languish in the long queue with the many thousands of DNA-based property crimes cases and crimes against persons that are investigated each year in Denver.

8. ***Solving cold case homicides such as this one required the convergence of three crucial factors: the evolution of state-of-the-art DNA testing; the funding needed to conduct such testing; and the dedicated staffing required to focus on these cases (which would otherwise continually be put to the side in favor of the most recent violent crimes and other high-volume DNA-based cases). Put another way, the evidence in this case was examined and tested appropriately once the science, funding and staffing for such cases came into being. Any claims to the contrary are unpersuasive.***

9. Returning to the procedural history of this case, in the summer of 2013, DNA Forensic Lead Analyst Susan Berdine issued a report setting forth the developed male DNA profile from the sperm in the vaginal swab in this case. The DNA profile was complete and analyst Berdine reported uniquely-identifying markers (or “alleles”) at each of the 15 distinctive locations found on the DNA strand. Analyst Berdine’s testing also revealed that the oral swabs taken from the victim contained spermatozoa which matched the DNA recovered from the vaginal swab.

10. The Denver Crime Lab uploaded this unknown male DNA profile into CODIS, a national DNA database maintained by the FBI. That upload resulted in a match to the defendant. The Denver Crime Lab was notified that the DNA from the vaginal swab taken from Ms. Beard matched that of a federal prisoner, the defendant.

11. Cold Case Detective Ken Klaus learned of the DNA match on July 11, 2013. Detective Ken Klaus traveled to the Pennsylvania prison where the defendant was set for mandatory release and deportation within a mere business day or two. Detective Klaus acted in haste given the possibility of the defendant’s release from federal prison and imminent planned deportation to a country in Central or South America (from which extradition may have been impossible).

12. On July 17, 2013, Detective Klaus gave the defendant a comprehensive Miranda advisement and, after obtaining the defendant’s consent, interviewed him. The defendant admitted that he was present in the Denver area during the time of Ms. Beard’s murder. The defendant also stated that he had never had a relationship with any African-American women (Ms. Beard was African-American).

13. The defendant continued to deny ever having met or interacted with Ms. Beard whatsoever, even after he was shown her photo and confronted with the fact that his semen was recovered from within her body.

14. Based upon the totality of the evidence, the defendant was charged on July 22, 2013 with homicide and was thereafter extradited to Colorado to stand trial.

15. As this procedural history makes clear, the Denver Police Department reviewed the evidence in the case appropriately as science, funding and resources became available and, without doubt, acted swiftly in apprehending the defendant once his identity was revealed via the CODIS match.

16. ***The Court must also consider that the DNA testing in this case reveals that there is less than a 1 in 2.5 quadrillion chance that the DNA profile from the sperm fraction in the mouth and vagina of Ms. Beard belong to anyone besides the defendant. To grant the defendant’s Motion to Dismiss would be to confer an undeserved windfall on an unrepentant rapist killer.***

17. Any delay occasioned by the renewed investigation does not rise to the level of a Due Process violation requiring dismissal. See People v. Small, 631 P.2d 148 (Colo. 1981) *cert.*

den'd 454 U.S. 1101, 102 S.Ct. 678, 70 L.Ed.2d 644 (1981) (when the government takes time before seeking an indictment for purposes of conducting further criminal investigation, fundamental fairness is not violated unless this procedure shocks the community's sense of fair play and decency).

18. What's more, any delay that may have occurred at the beginning of this case was attributable to the competency evaluation requested by defense counsel, not to delay on the part of the People. See, e.g., the defense's September 30, 2013 request for competency evaluation. Moreover, the delay from February 10, 2014 until April 21, 2014 was attributable to the defense's request for a second competency evaluation. The defendant was, for a second time, found to be competent (this time by Dr. Mac Bradley).

II. DEFENDANT'S CLAIMS ARE WITHOUT MERIT

1. **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.

2. There is no constitutional right to "a speedy arrest." People v. Hall, 729 P.2d 373, 375 (Colo. 1986).

3. **Second**, the People concede that certain evidence is now unavailable due to the passage of time. However, that evidence is unavailable to the People as well as to the defense and there is no evidence of bad faith on the part of the People vis-à-vis this loss of evidence.

4. The People contest the defense statement that the location where this killing occurred is fundamentally different now from how it was in 1981. Indeed, as has been disclosed in discovery, the only things different about the facility where Patricia Beard lived are: a) a new exterior portico at the main entrance; b) a new coat of exterior paint; and c) new windows (although, with that being said, a window of the sort that used to exist throughout the building still exists in the basement of the building and has been documented and disclosed to the defense).

5. What's more, the former owner of the building, Mr. Dale Naylor, has been interviewed by the People and a Memorandum of Interview has been disclosed to the defense. Mr. Naylor lives locally and is cooperative and is a definitive source of information about the condition of the facility in 1981 because he was the owner of the facility at the time. Indeed, it is undersigned counsel's impression that, in a certain sense, this facility is a time capsule that very accurately depicts the condition of the building at the time of Ms. Beard's murder because (no offense to Mr. Naylor) very little has been done to the facility in the way of capital improvement since 1981. As a residential facility for mentally handicapped individuals, little has been done,

cosmetically or otherwise, to upgrade the facility since 1981 and there is nothing to prevent the defense from inspecting the facility as have the People.

6. Additionally, scene responder retired Detective Marty Golden was likewise interviewed by the People and the contents of his interview have been discovered to the defense. Detective Golden has an independent recollection of the scene and likewise can be interviewed by the defense.

7. 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.

8. In this case, the defendant stated categorically during his interview with Detective Klaus that he had not had sex with an African-American female. Indeed, he was shown a photo of the victim and he denied knowing her. The People anticipate that the defendant will claim at trial that so much time has passed that he simply forgot his sexual encounter with the victim. The jury will be free to accept or reject that claim at trial.

9. “The general assertion that the lapse of time has caused his memory to be dim is not sufficient” prejudice to mandate dismissal at this stage of the proceedings. People v. Duran, 535 P.2d 505, 506 (Colo. 1975) *citing* United States v. Marion, *supra*.

10. **Third**, the defendant does not allege and, indeed, there is no evidence that the delay was purposeful and intended to prejudice the defendant. This is not a case in which the Denver Police Department had identified the defendant in the early 1980s and had laid in wait, delaying the case presentation as a means of hindering his defense. Rather, the creation, between 1980 and 2010 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 Ms. Beard’s body and on her clothes all evolved over decades.

11. **Fourth**, the kind and quantum of evidence available to the prosecution in 2013-2014 is materially different from that available in the 1980s, 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 make a charging decision 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”).

12. **Fifth**, 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 benefit of dismissal of this case as a reward for having successfully eluded detection for thirty-two years. 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 Patricia Beard by the defendant.

13. Here, the People's case is not dependent on unreliable identification by an eyewitness 30-plus years after the crime was committed. The People will establish the defendant's identification via DNA evidence and the surrounding circumstances of Ms. Beard's death.

14. Finally, this Court should reject any of the defendant's Due Process claim based on failure to preserve evidence. 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").

15. It is utterly constitutional for there to be no statute of limitations for the crime of homicide. That reflects the absolute gravity of the crime and the General Assembly's entirely appropriate recognition that murderers should not be immunized for their crimes through the mere passage of time. It would be perverse, indeed, to conclude that a crime such as kidnapping (for which there is no statute of limitations) should have no time bar whereas the ultimate and most violent and reprehensible conduct seen in the criminal justice system - the taking of the life of another human being - should be subject to a time limitation.

14. The defense has cited no evidence to the contrary and the People respectfully request that the Court deny the defense Motion to Dismiss.

Respectfully submitted this 21st day of November, 2014.

Respectfully submitted,

MITCHELL R. MORRISSEY
District Attorney

by: _____

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CERTIFICATE OF MAILING

I certify that on the 21st day of November, 2014, I sent via e-mail transmission and placed in the United States mail, first class, postage pre-paid, a true and correct copy of the foregoing to:

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ORDER CONCERNING DEFENSE “MOTION TO DISMISS”	

The Court, being fully advised in the premises, orders as follows:

The defense Motion to Dismiss is hereby:

_____ **DENIED;**
 _____ **GRANTED.**

Dated this _____ day of November, 2014.

BY THE COURT:

HONORABLE BRUCE JONES
 District Court Judge

