ADVANCE SHEET HEADNOTE
October 23, 2023

2023 CO 55

No. 23SA125, *People v. Walthour*—Discovery—DUI—Trial Court Discretion.

The supreme court holds that Colorado Rule of Criminal Procedure 16 does not permit a trial court to suppress the results of a blood alcohol test when no trial has been set and the prosecution has not yet received the results of the test from the Colorado Bureau of Investigation. We exercise jurisdiction in this C.A.R. 21 proceeding because (1) the People had no adequate appellate remedy and (2) we had not yet considered the boundaries of a trial court's ability to order expedited disclosure of a CBI toxicology report in the absence of a Rule 16-imposed deadline. After determining that the trial court cannot base its suppression order on Crim. P. 16(I)(b)(3), Crim. P. 16(I)(b)(4), or the court's inherent power to regulate discovery, we make absolute the rule to show cause, reverse the trial court's suppression order, and remand for further proceedings consistent with our opinion.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2023 CO 55

Supreme Court Case No. 23SA125
Original Proceeding Pursuant to C.A.R. 21
Arapahoe County Court Case No. 22T6511
Honorable J. Jay Williford, Judge

In Re
Plaintiff:

The People of the State of Colorado,

v.

Defendant:

Ashleigh Rene Walthour.

Rule Made Absolute
en banc
October 23, 2023

Attorneys for Petitioner:
John Kellner, District Attorney, Eighteenth Judicial District
L. Andrew Cooper, Deputy District Attorney
Centennial, Colorado

Attorneys for Defendant:
Megan A. Ring, Public Defender
Jon W. Grevillius, Deputy Public Defender
Denver, Colorado

Attorneys for Respondent Arapahoe County Court:
Philip J. Weiser, Attorney General

Emily Burke Buckley, Senior Assistant Attorney General
Denver, Colorado

JUSTICE HART delivered the Opinion of the Court, in which **CHIEF JUSTICE BOATRIGHT, JUSTICE MÁRQUEZ, JUSTICE HOOD, JUSTICE GABRIEL, JUSTICE SAMOUR,** and **JUSTICE BERKENKOTTER** joined**.**

JUSTICE HART delivered the Opinion of the Court.

Colorado Rule of Criminal Procedure 16(I)(b)(3) requires prosecutors to disclose the results of scientific exams such as blood alcohol tests to defendants "as soon as practicable but not later than [thirty-five] days before trial." In the case underlying this original proceeding, the trial court announced that it would suppress blood alcohol test results when no trial had been set and the prosecution had not yet received the results of the test from the Colorado Bureau of Investigation ("CBI").

Rule 16 offers no support for such an order. We therefore make the rule to show cause absolute and remand the case to the trial court.

I. Facts and Procedural History

¶1 On November 18, 2022, Ashleigh Rene Walthour drove her car off a snowy road into some trees. She ran the four or five blocks to her home and called the Aurora Police Department. When the police arrived at Walthour's home to speak with her, she smelled like alcohol and had slurred speech, dilated pupils, and bloodshot eyes. She admitted to having consumed a shooter of Jack Daniels and was unable to perform voluntary roadside maneuvers. Walthour was arrested and taken to the Aurora City Jail, where she consented to a blood test. The police submitted Walthour's blood sample to the CBI for processing on November 23.

The People charged Walthour with driving under the influence ("DUI") and careless driving.

¶2 Walthour appeared in court for the first time on January 6, 2023. At that hearing, she notified the court that she would be seeking the assistance of the Public Defender's Office. The court set a second hearing for February 6. However, at the second hearing, Walthour explained that she had not qualified for a public defender and would be representing herself. At the same hearing, the People said that they had not yet received the blood test results from the CBI but that they "should" have the results "hopefully within the next week or two." The court set a third pretrial conference for March 7 and directed the prosecution to disclose the test results by February 28 at 5 p.m.

¶3 As it turned out, the prosecutor did not have any test results to disclose on that date. While the prosecutor's office called the CBI at least twice during February to check on Walthour's test results, the CBI had not provided those results by the court-imposed February 28 deadline.

¶4 At the March 7 conference, the prosecutor tried to explain the circumstances, observing that the CBI had generally been taking about 90 to 110 days to complete testing and that they were still within that time frame since Walthour's blood had been sent to the CBI 97 days earlier. The prosecutor further noted that the local district attorney's office had no power to compel the CBI, a state-wide agency, to

produce test results absent a deadline such as the "[thirty-five] days before trial" obligation established in Crim. P. 16(I)(b)(3).

¶5 The court disagreed and suppressed the evidence, citing the prosecutor's duty under (1) Crim. P. 16(I)(b)(3) to provide the results of scientific tests "as soon as practicable" and (2) Crim. P. 16(I)(b)(4) to "ensure that a flow of information is maintained" between the prosecution and various investigative agencies.

¶6 A day later, on March 8, the prosecutor received the blood test results from the CBI. The toxicology report shows that Walthour's blood alcohol content was 0.160 grams/100 mL, which is twice the legal limit. *See* § 42-4-1301(2)(a), C.R.S. (2023).

¶7 The People then filed this C.A.R. 21 petition, asking both Walthour and the trial court to show cause why the court's preemptive suppression of the blood test results should not be reversed.

II. Jurisdiction

¶8 The exercise of this court's original jurisdiction under C.A.R. 21 is discretionary, and any relief pursuant to that rule is "an extraordinary remedy that is limited in both purpose and availability." *People in Int. of T.T.*, 2019 CO 54, ¶ 16, 442 P.3d 851, 855–56 (quoting *Villas at Highland Park Homeowners Ass'n v. Villas at Highland Park, LLC*, 2017 CO 53, ¶ 22, 394 P.3d 1144, 1151). We have previously exercised jurisdiction under Rule 21 "when an appellate remedy would be

inadequate, when a party may otherwise suffer irreparable harm, [or] when a petition raises 'issues of significant public importance that we have not yet considered.'" *People v. Kilgore*, 2020 CO 6, ¶ 8, 455 P.3d 746, 748 (citations omitted) (quoting *Wesp v. Everson*, 33 P.3d 191, 194 (Colo. 2001)).

¶9 We choose to exercise original jurisdiction here because there is no other adequate remedy. This petition concerns "a pretrial ruling that may significantly impact [the prosecution]'s ability to litigate the case on the merits and is not curable on direct appeal." *Id.* at ¶ 10, 455 P.3d at 749. If the trial court's preemptive suppression order stands, the People will not be able to introduce the results of Walthour's toxicology report as evidence in this DUI trial. Without that evidence, the People's ability to try this case is significantly limited. Furthermore, assuming the People are not successful at trial, double jeopardy will preclude any appellate remedy. *See People v. Casias,* 59 P.3d 853, 856 (Colo. 2002) (exercising jurisdiction in a C.A.R. 21 proceeding concerning suppressed evidence because, "if the trial proceeds with wrongly suppressed evidence and [the defendant] is acquitted," then double jeopardy attaches and the defendant "may not be retried").

¶10 Although prosecutors are generally authorized to file interlocutory appeals challenging the suppression of evidence, those appeals are only authorized when the trial court has suppressed evidence because of a search the court has deemed unlawful. *See People v. Zuniga*, 2016 CO 52, ¶ 11, 372 P.3d 1052, 1056 ("Under

section 16-12-102(2) and C.A.R. 4.1, the People may file an interlocutory appeal to challenge certain types of adverse suppression rulings, including the suppression of evidence obtained from a search that the trial court deemed unlawful."). Here, the trial court's preemptive suppression order sanctioned the prosecutor for an alleged discovery violation rather than an unlawful search.

¶11 Moreover, this case presents an issue of significant public importance that we have not yet considered; namely, the boundaries of a judge's authority to order expedited disclosure of a CBI toxicology report when no trial has been set and therefore no Rule 16-imposed deadline has been triggered.

¶12 In arguing that we should exercise our discretionary jurisdiction, the People submitted numerous exhibits that were not initially presented to the trial court. These exhibits included information about the CBI blood testing process, the volume of DUI blood testing undertaken by the CBI toxicology section, and the impact of court-ordered deadlines in particular cases on the overall CBI process. The People submitted these exhibits to support their argument that the approach taken in this case will have repercussions for the CBI and for other courts around the state.

¶13 Respondents ask this court to ignore these arguments, and the exhibits supporting them, because the People did not present them to the trial court. However, Rule 21 petitions regularly include information that might not have

been important to the trial court's determination in that particular case, but that help this court assess whether to exercise its original jurisdiction. *See, e.g.*, *Arvada Vill. Gardens LP v. Garate*, 2023 CO 24, ¶ 7, 529 P.3d 105, 107 (crediting the petitioner's novel argument and evidence that this court should exercise its jurisdiction because Colorado courts had inconsistently decided the relevant question of law). We can and do appropriately consider the People's arguments here for that limited purpose, and we conclude that the petition presents a question of public significance with state-wide implications.

¶14 For the foregoing reasons, we exercise our jurisdiction under C.A.R. 21.

III. Analysis

¶15 After setting out the relevant standard of review, we consider the trial court's interpretation and application of Rule 16 in this case. We conclude that neither provision of Rule 16 on which the court relied to set an expedited deadline for disclosure of the CBI's toxicology results justified the deadline. Further, we explain why neither "good cause" nor the court's inherent powers can justify the preemptive suppression of the toxicology results. Therefore, we make the rule absolute.

A. Standard of Review

¶16 Typically, we review a trial court's sanction for a discovery violation in a criminal case for an abuse of discretion. *See, e.g.*, *People v. Lee*, 18 P.3d 192, 196

(Colo. 2001). However, this case concerns the proper interpretation of Rule 16, and we therefore apply a *de novo* review. *See Hunsaker v. People*, 2021 CO 83, ¶ 16, 500 P.3d 1110, 1114; *Kilgore*, ¶ 1, 455 P.3d at 747–48 (holding that a trial court's case-management discretion cannot exceed the bounds of Rule 16).[1]

B. Rule 16 Does Not Support the Trial Court's Order

¶17 Rule 16 governs a prosecutor's discovery obligations. In this proceeding, Respondents invoke two portions of Rule 16—Crim. P. 16(I)(b)(3) and Crim. P. 16(I)(b)(4)—to justify the county court's suppression order.

¶18 Rule 16 creates several disclosure timelines, including one for "reports or statements of experts made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments, or comparisons." Crim. P. 16(I)(a)(1)(III). That disclosure timeline, contained in Crim. P. 16(I)(b)(3), requires the prosecution to turn this material over to the defense "as soon as practicable but not later than [thirty-five] days before trial."

---

[1] Respondents assert that because the prosecution did not object to the court's sanction, it did not preserve its claims on appeal. We disagree. During a colloquy concerning the discovery order, the prosecution argued that the CBI's failure to comply with the discovery order could not be attributed to the prosecution; the court rejected that argument. Thus, the issue was appropriately preserved. *See Forgette v. People*, 2023 CO 4, ¶ 22, 524 P.3d 1, 6 (concluding that an issue is preserved when the lower court had an adequate opportunity to address the argument on the record).

¶19 Respondents argue that the Rule's requirement that material be turned over "as soon as practicable" gives the trial court discretion to determine what is "practicable" in a particular case and to order disclosure by that time. But the court cannot arbitrarily decide that a particular disclosure date is "practicable" without some record support for its conclusion. In this case, the People explained to the court on February 6 that they "hope[d]" to have the results in the coming weeks. The prosecutor's office checked with the CBI to see where the results were in the system but did not have access to the toxicology report on February 28 and could not have disclosed it then. Indeed, there is no evidence that the test results existed on February 28. At the March 7 hearing, the court explained at some length that it understood the reason for the delay was that the CBI had a backlog of cases because "the State legislature actually required that . . . agencies throughout Colorado use the [CBI]." There was no evidence under these circumstances to support the court's finding that it would have been "practicable" for the prosecution to disclose Walthour's blood test results by February 28.

¶20 The court could have set the case for trial, which would have forced the CBI to prioritize the processing of these test results because of the "no later than [thirty-five] days before trial" provision in Crim. P. 16(I)(b)(3). But Crim. P. 16(I)(b)(3) does not allow a court to modify the established timeline when the

prosecution, despite good faith efforts, is unable to obtain relevant evidence from a third party.

¶21 The respondents also point to Crim. P. 16(I)(b)(4), which provides that a prosecutor must "ensure that a flow of information is maintained between the various investigative personnel and his or her office sufficient to place within his or her possession or control all material and information relevant to the accused and the offense charged." This provision contains no reference to a specific schedule of production beyond any timelines already provided in Rule 16. In this case, the People repeatedly contacted the CBI to check on the test results, and the toxicology report was disclosed on March 8, 2023—before Walthour had hired a lawyer or been appointed a public defender; before she had entered a plea; and before a trial date had been discussed, much less set. The People's conduct was entirely consistent with their obligation to "ensure that a flow of information is maintained" as required by Crim. P. 16(I)(b)(4).

¶22 Both Walthour and the trial court assert that the court had the authority to set an expedited deadline for production of test results by virtue of (1) the court's inherent authority to manage its docket, and (2) the court's authority under Crim. P. 16(V)(b)(4) to alter discovery deadlines for "good cause." As to the first argument, we have noted more than once that "a trial court's inherent authority . . . cannot be used as a license to contradict statutes or rules." *People v. Justice,* 2023

CO 9, ¶ 40, 524 P.3d 1178, 1186; *see also Kilgore*, ¶ 26, 455 P.3d at 751. Rule 16 mandates particular disclosure timelines, and a court cannot alter those timelines absent good cause. And as to the "good cause" argument, the trial court made no finding of "good cause" to depart from Rule 16's ordinary deadlines here. Nor, on the record before us, would such a finding have been justified.

IV. Conclusion

¶23 A court may not exercise its discretion under the above-cited provisions of Rule 16 to suppress test results in a DUI case merely because it is dissatisfied with the CBI's testing timeline. As a result, we make our rule to show cause absolute, reverse the trial court's suppression order, and remand for further proceedings consistent with this opinion.