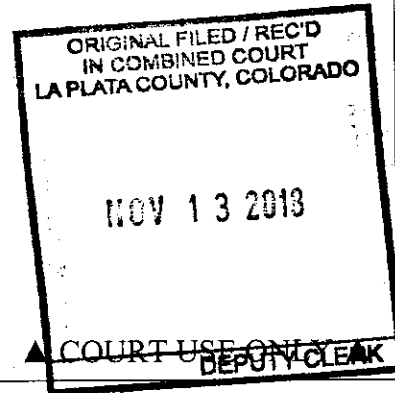


**DISTRICT COURT, LA PLATA COUNTY, COLORADO**  
Court Address: 1060 E. Second Ave., Durango, CO 81301  
Phone Number: (970) 247-2304



**Plaintiff: PEOPLE OF THE STATE OF COLORADO**

v.

**Defendant: MARK ALLEN REDWINE**

Christian Champagne - District Attorney, #36833  
Matthew Durkin, Special Deputy District Attorney, #28615  
Fred Johnson, Special Deputy District Attorney, #42479  
P.O. Drawer 3455, Durango, Colorado 81302  
Phone Number: (970) 247-8850  
Fax Number: (970) 259-0200

Case Number: 17 CR 343

**PEOPLE'S RESPONSE AND MOTION TO STRIKE [D-82] DEFENDANT'S MOTION TO SUPPRESS FRUITS OF ILLEGAL SEARCH – SEARCH OF MARK REDWINE'S HOUSE (11/20/12) [PUBLIC ACCESS]**

COME NOW the People, by and through Christian Champagne, District Attorney in and for the Sixth Judicial District of the State of Colorado, respectfully requests this Honorable Court strike, or in the alternative, deny the defendant's motion to suppress fruits of illegal search – search of Mark Redwine's house on November 20, 2012 (D-82). AS GROUNDS for this motion, the People state as follows:

1. The defendant does not identify evidence that was seized or any "fruits" of the consensual search.

**STATEMENT OF FACTS**

2. On November 18, 2012, Dylan Redwine was 13 yoa, and flew to Durango for a court ordered visitation with the defendant for Thanksgiving. Several family members and friends reported that Dylan Redwine did not want to visit the defendant because of their strained relationship. The tension in their relationship was due, in part, to Dylan Redwine's knowledge of \_\_\_\_\_ of the defendant, which later shown to trigger a violent response from the defendant. Friends reported that Dylan Redwine attempted to make arrangements with his friends to stay with them and to go to their house very early in the morning on November 19, 2012. Family members and friends

reported that on November 18, 2012, that Dylan Redwine was in constant communication until approximately 9:37 pm, at which time all communications ceased.

3. On November 19, 2012, Dylan Redwine did not arrive at his friend's home at 6:45 am as planned, nor did any of his family members or friends receive any communication from Dylan Redwine. Later that afternoon, the defendant reported Dylan Redwine missing. A search and rescue effort was initiated and continued for several days and weeks
4. By the late afternoon of November 20, 2012, Dylan Redwine had been reported missing for nearly 24 hours, in freezing temperatures. Intense search and rescue efforts were implemented throughout the day.
5. Investigator Tom Cowing, Deputy Barrett Potthoff, and Investigator Dan Patterson, went to the defendant's residence. Upon arrival, they introduced themselves to the defendant who was at the residence. They informed the defendant that they wanted to search the residence to confirm that Dylan Redwine was not hiding within the residence, which had been the case in other cases. The defendant said that they could search anywhere they wanted. Investigator Patterson remained with the defendant in his living room, as Investigator Cowing and Deputy Potthoff searched the residence and out buildings.
6. While inside the residence, they asked the defendant if they could use the computer that the defendant alleged Dylan Redwine was using on November 18, 2012, to view Dylan Redwine's Facebook account. Once again, the defendant consented and both Investigator Cowing and Investigator Patterson reviewed the laptop. Nothing was found or collected, and law enforcement left the scene.

## ARGUMENT

7. The defendant does not identify what evidence is the alleged "fruit" of the search.
8. It is uncontested that the search of the defendant's home was conducted without a search warrant.
9. On November 19, 2012, Dylan Redwine was reported missing which led to intense search and rescue effort. In an effort to find Dylan Redwine, law enforcement returned to the defendant's home where he was reportedly last seen. The defendant was present in his home, and provided consent to search the home.
10. **Consent:** Situations in which voluntary consent from the individual whose property is to be searched has been obtained are exempted from the warrant requirement. *People v. Hopkins*, 870 P.2d 478, 480 (Colo. 1994); *Illinois v. Rodriguez*, 497 U.S. 177, 181, 110 S.Ct. 2793, 2797, 111 L.Ed.2d 148 (1990); *People v. McKinstrey*, 852 P.2d 467, 470 (Colo. 1993).

11. A warrantless search is constitutionally justified when it is conducted pursuant to voluntary consent. *People v. Magallanes-Aragon*, 948 P.2d 528, 530 (Colo. 1997); *Schneekloth v. Bustamonte*, 412 U.S. 218, 222, 93 S.Ct. 2041, 2045, 36 L.Ed.2d 854 (1973), *People v. Drake*, 785 P.2d 1257, 1265 (Colo. 1990). Consent is deemed voluntary when “it is the product of an essentially free and unconstrained choice by its maker”, and “not the result of circumstances which overbear the concerning party’s will and critically impair his capacity for self-determinatoin.” *Id.*
12. The defendant has not alleged any express or implied coercion or duress that created even minimal circumstances that could overbear a person’s will.
13. **Emergency Search:** Although the search was pursuant to valid consent provided by the defendant, emergency efforts to find a reportedly missing child provided for the limited, exigent search of the residence for emergency purposes.
14. The emergency doctrine is a variant of the exigent circumstances exception to the warrant requirement and will be invoked where facts exist which support a “colorable claim of emergency threatening the life or safety of another.” *People v. Reynolds*, 672 P.2d 529, 531-32 (Colo. 1983); *People v. Clements*, 661 P.2d 267, 271 (Colo.1983) (quoting *McCall v. People*, 623 P.2d 397, 402 (Colo.1981)); *see also People v. Amato*, 193 Colo. 57, 562 P.2d 422 (1977). An emergency search is strictly circumscribed by the exigency which created its justification and cannot be used to support a general exploratory search. *Mincey v. Arizona*, 437 U.S. 385, 98 S.Ct. 2408, 57 L.Ed.2d 290 (1978); *People v. Roark*, 643 P.2d 756 (Colo.1982). A search based on exigent circumstances requires the presence of an immediate crisis and the probability that assistance will be helpful. *People v. Amato, supra*. The police response must be strictly limited to that action necessary to respond to the exigency. *People v. Roark, supra*; *People v. Gomez*, 632 P.2d 586 (Colo.1981); *McCall v. People, supra*.
15. The emergency aid exception does not require probable cause, but the police must have a “reasonable basis” approximating probable cause that associates the emergency with the area to be searched. *People v. Allison*, 86 P.3d 421, 427 (Colo. 2004); citing *People v. Hebert*, 46 P.3d 473, 479 (Colo. 2002). “Reasonable basis” requires more than a “theoretical possibility that another’s life or safety is in danger; rather, [it requires] a colorable claim that another’s life or safety is in danger.” The police cannot use the “possibility” of an emergency to avoid the warrant requirement. *Id.*
16. At the time of the search in the late afternoon of November 20, 2012, there was a reasonable basis to enter the defendant’s home had he not provided valid consent.

WHEREFORE, the People request this Honorable Court strike, or in the alternative, deny the defendant's motion to suppress fruits of illegal search – search of Mark Redwine's house on November 20, 2012, because the defendant does not identify any fruits of the search, the search was conducted pursuant to valid consent provided by the defendant, and pursuant to an immediate crisis of a boy who was reported missing for 24 hours.

Respectfully submitted this November 13, 2018.

CHRISTIAN CHAMPAGNE  
DISTRICT ATTORNEY  
6<sup>th</sup> JUDICIAL DISTRICT

/s/ Matthew Durkin  
Matthew Durkin, #28615  
Special Deputy District Attorney

#### **CERTIFICATE OF SERVICE**

I hereby certify that on November 13, 2018, I delivered a true and correct copy of the foregoing to the parties of record via e-service.

/s/ Christian Champagne  
Christian Champagne