

DISTRICT COURT, LA PLATA COUNTY, COLORADO 1060 East Second Avenue Durango, Colorado 81301	DATE FILED: September 20, 2018 2:15 PM FILING ID: 5A525D7942540 CASE NUMBER: 2017CR343
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff,  v.  <b>MARK REDWINE,</b> Defendant	σ COURT USE ONLY σ
Douglas K. Wilson, Colorado State Public Defender John Moran, Attorney No. 36019 Justin Bogan, Attorney No. 33827 Deputy Public Defender 175 Mercado Street, Suite 250, Durango, CO 81301 Phone: (970) 247-9284 Fax: (970) 259-6497 E-Mail: Justin.Bogan@coloradodefenders.us Email: John.Moran@coloradodefenders.us	Case Number: 17CR343  Division: 1
<p><b>[D41]</b></p> <p><b>MOTION TO SUPPRESS EVIDENCE OBTAINED AS A RESULT OF AN AUGUST 5, 2013 WARRANTLESS ENTRY OF MR. REDWINE'S HOME EFFECTED BY A LAW ENFORCEMENT OFFICIAL CRAWLING THROUGH A SECOND FLOOR WINDOW WHILE MR. REDWINE WAS IN TEXARKANA, TEXAS</b></p>	

Mr. Redwine, through counsel, respectfully requests this Court suppress all law enforcement observations, statements, and any additional evidence derived from the unlawful entry into the home by law enforcement. As grounds for the request, Mr. Redwine states:

### FACTS

1. La Plata County Sheriff's Office Investigator Golbricht crawled through the second floor window of Mark Redwine's home on August 5, 2013. She accessed the window from the roof of a vehicle Inv. Cowing pulled up to the house. After climbing in the window and unlocking the door, the house was searched by La Plata County Sheriff's Office Deputies and a canine handler team Carren Corcoran and Molly. Carren Corcoran and her dog were directed by La Plata County Sheriff's Office deputies and acted as their agents. Moreover, Carren Corcoran is a

police officer with the Madison, Wisconsin Police Department though it appears when acting as an agent of the La Plata County Sheriff's Office she is freelancing.

2. La Plata County Sheriff's Office deputies and Carren Corcoran claim that they had permission from Mark Redwine. They say they were given permission over the phone. The conversation was not recorded. There was no written consent to enter provided. Mr. Redwine was away for work in Texarkana, Texas when he received the call. Inv. Cowing made promises to Mr. Redwine to induce him to allow the search. Counsel is unaware of anything provided to Mr. Redwine that would have made him aware of his right to refuse the search.

### **LEGAL ARGUMENT**

3. When law enforcement conducts a search or seizure without a warrant, including entry into a home, that search or seizure is presumed to be an unreasonable one. As with any unreasonable search or seizure, the 4<sup>th</sup> Amendment requires suppression of any and all evidence obtained by the improper search or seizure. The People may overcome this presumption by establishing a narrowly defined exigent circumstance or free and voluntary consent to the search.

### **THE WARRANTLESS SEARCH OF MR. REDWINE'S HOME IS PRESUMPTIVELY UNREASONABLE.**

4. "All searches and seizures conducted outside the judicial process, without prior approval by judge or magistrate are per se unreasonable under the Fourth Amendment – subject only to a few specifically established and well delineated exceptions." *Katz v. United States*, 389 U.S. 347,

357 (1967); *see also Coolidge v. New Hampshire*, 403 U.S. 443, 454-55 (1971); *People v. Hill*, 929 P.2d 735 (1996) (“Generally speaking, warrantless searches violate constitutional guarantees because they are presumptively unreasonable.”); *People v. Mendoza-Balderama*, 981 P.2d 150 (a warrantless entry in order to search a person’s home is presumptively unreasonable); *People v. Simmons*, 973 P.2d 672 (Colo. Ct. App. 1998) (subject to a few narrow and specifically delineated exceptions, warrantless searches are presumed unreasonable). This same rule applies to the Colorado Constitution Article II, § 7. *See People v. Gothard*, 185 P.3d 180, 183 (Colo. 2008).

5. The burden is on the prosecution to prove one of the exceptions to the Warrant Clause. *U.S. Const.* amend. 4; *Colo. Const.* Art. II, §7; *People v. Pate*, 71 P.3d 1005, (Colo. 2003).

6. The prosecution may overcome the unreasonable presumption of a warrantless search by “showing that one of the narrow exceptions to the warrant requirement existed at the time of the entry.” *Mendoza-Balderama* at 156. This burden of proof remains on the prosecution to establish that warrantless conduct falls within one of the narrowly defined exceptions. *People v. Jansen*, 713 P.2d 907 (Colo. 1986).

7. The Colorado Supreme Court has repeatedly recognized that the “Colorado Constitution ... is a source of enhanced protection of individual rights that is independent of and supplemental to the protections provided by the United States Constitution.” *People v. Young*, 814 P.2d 834 (Colo. 1991). Article II, Section 7 of the Colorado Constitution protects a greater range of privacy interest than does the Fourth Amendment to the United States Constitution. *People v. Oates*, 698 P.2d 811 (Colo. 1985).

**THERE WERE NO EXIGENT CIRCUMSTANCES THAT ALLOWED OFFICERS TO ENTER MR.  
REDWINE’S HOME WITHOUT A WARRANT**

8. The doctrine of exigent circumstances encompasses those situations where, due to an emergency, the compelling need for immediate police action militates against the strict adherence to the warrant requirement. *McCall v. People*, 623 P.2d 397 (Colo. 1981).

9. Exigent circumstance justifying a warrantless arrest generally have been limited to situations involving:

- a. A bona fide pursuit of a fleeing suspect;
- b. The risk of immediate destruction of evidence, or;
- c. A colorable claim of emergency threatening the life or safety of another. *People v. Gomez*, 632 P.2d 586 (Colo. 1981).; *People v. Miller*, 773 P.2d 1053, 1057 (Colo. 1989).; *People v. Drake*, 785 P.2d 1257 (Colo. 1990).

10. "A warrantless entry and arrest of a suspect in his home is illegal unless the prosecution establishes the existence of probable cause and exigent circumstances." *People v. Griffin*, 727 P.2d 55, 58 (Colo.1986). The determination that a warrantless search or seizure is justified based on exigent circumstances, the court must consider the totality of the circumstances at the time when the warrantless search or seizure is made. *People v. Drake*, 785 P.2d 1257, 1263 (Colo. 1990).

**ANY ALLEGED CONSENT GIVEN BY MR. REDWINE WAS NOT FREE OR VOLUNTARY AND  
WAS THE RESULT OF POLICE THREATS AND COERCION.**

11. One of the narrow, specifically and jealously guarded exceptions provides that a valid search of property may be made without probable cause or a search warrant if based upon consent to

search - because consent serves as a waiver of the constitutional requirement. *Schneekloth v. Bustamante*, 93 S. Ct. 2041 (1973); *People v. Drake*, 785 P.2d 1257 (Colo. 1990).

12. The 4<sup>th</sup> and 14<sup>th</sup> Amendments require that consent not be coerced by law enforcement, either by implicit or explicit means or implied threat or covert force. *Bustamante* at 228. “If it appeared that the consent was not given voluntarily – that it was coerced by threats or force, or granted only in submission to a claim of lawful authority – then we have found consent invalid and the search unreasonable.” *Id.* at 232; see *Bumper v. North Carolina*, 391 U.S., at 548.

13. Consent to search is “voluntary” if it is product of essentially free and unconstrained choice by its maker and not result of circumstances where his will has been overborne and his capacity for self-determination critically impaired. *People v. Licea*, 918 P.2d 1109 (Colo. 1996). However the burden rests on the government to demonstrate by clear and convincing evidence, that consent was knowing, intelligent, and voluntary. *Bumper* at 548; *People v. Licea*, 918 P.2d 1109 (Colo. 1996). “Whether an individual’s consent to entry was voluntary is a matter to be determined under the totality of the circumstances.” *People v. Milton*, 826 P.2d 1282, 1286 (Colo. 1992)

**MS. REDWINE HAS A LEGITIMATE EXPECTATION OF PRIVACY IN HIS HOME AND THE  
GOVERNMENT MAY NOT REAP THE BENEFITS OF ITS OWN ILLEGAL BEHAVIOR**

14. Defendant challenging constitutionality of search must demonstrate a legitimate expectation of privacy in the areas searched or the items seized. *People v. Curtis*, 959 P.2d 434 (Colo. 1998) (en banc). Subjective **expectation of privacy is legitimate** for purposes of the Fourth Amendment only if it is one that society is prepared to recognize as reasonable. *Supra Curtis*, at 437.

15. It is well-settled law that the government may not reap the benefits of its own illegal behavior:

The “fruit of the poisonous tree” doctrine provides that evidence derived from information acquired by the police through unlawful means is inadmissible in criminal prosecutions. *People v. Schrader*, 898 P.2d 33 (Colo. 1995); *citing Wong Sun v. United States*, 371 P.2d 471, 484, 486 (1963); *People v. Richie*, 828 P.2d 797, 800 (Colo. 1992).

The subject of the seizure in this case is the residence of Mr. Redwine. The home is the place where a reasonable person expects to maintain privacy and be free from government intrusion. Thus, Mr. Redwine had a reasonable expectation of privacy in his home.

WHEREFORE, Mr. Redwine requests that any and all evidence obtained by law enforcement following the warrantless and illegal entry be suppressed as a violation of his constitutional rights. This constitutional right to be free from unreasonable searches and seizures is guaranteed to her by the Fourth and Fourteenth Amendments of the United States Constitution and Art. II Section 7 of the Colorado Constitution.

Mr. Redwine requests a hearing on this matter.

Respectfully submitted,

/s/ John Moran

John Moran, No. 36019

Deputy State Public Defender

Dated: September 20, 2018

/s/ Justin Bogan

Justin Bogan, No. 33827

Deputy State Public Defender

Dated: September 20, 2018

Certificate of Service

I hereby certify that on July 24, 2018, I served the foregoing document by e-filing same to all opposing counsel of record.

/s/ John Moran

/s/ Justin Bogan