

DISTRICT COURT LA PLATA COUNTY, COLORADO 1060 EAST SECOND AVENUE DURANGO COLORADO 81301	DATE FILED: September 20, 2018 2:42 PM FILING ID: DE9F868F76362 CASE NUMBER: 2017CR343
THE PEOPLE OF THE STATE OF COLORADO, v. Mark Redwine Defendant	σ COURT USE ONLY σ
Douglas Wilson, Colorado State Public Defender Justin Bogan 33827 John Moran 36019 175 Mercado St. Suite 250 Durango Colorado 81301 John.moran@coloradodefenderes.us	Case No.: 17CR343 Div. 1
[D47] MOTION TO SUPPRESS STATEMENTS OF MARK REDWINE OBTAINED THROUGH HIS APPEARANCE ON THE DR. PHIL TELEVISION SHOW (PUBLIC ACCESS)	

Mark Redwine, through Counsel, moves this Court to suppress all statements made by Mr. Redwine during his appearance and association with the television program as said statements were involuntary.

The grounds for this motion are the following:

1. Dylan Redwine went missing from his father's home on or about November 18 and 19, 2012. His father, the Defendant in this case, owned a house in the Vallecito, Colorado area. Since reporting his son missing, Mark Redwine has been the primary suspect in Dylan's disappearance and death.
2. Mr. Redwine is currently charged with Second Degree Murder F2, Child Abuse Knowingly/Recklessly Causing Death F2.
2. Mark Redwine requests this Court to suppress all the statements he made to law enforcement agent Dr. Phil McGraw and his staff.
3. Dr. Phil on the program repeatedly acknowledges working with La Plata County Sheriff's Office in the process of pointedly interrogating Mr. Redwine in front of a live television

audience. Mr. Redwine was lured into appearing on the show under the auspices of generating publicity of this missing child. The show quickly devolved into an inquisition involving aggressive confrontations.

4.

Mr. Redwine was confronted by his first ex-wife, Betsy Horvath who provided the television audience with an inaccurate timeline of events. He was confronted by his adult son, Cory Redwine, who began his remarks to his father saying, "I hate you." Disco p. 4448. The show began with a confrontation between Elaine Redwine and Mark Redwine where she said something false. She claimed that she had made efforts to contact Mr. Redwine telephonically the day Dylan was reported missing. Dr. McGraw adopted Elaine Redwine's untruthful narrative souring on Mr. Redwine for the remainder of the program. The audience mocked Mr. Redwine.

POINTS AND AUTHORITIES

5. People v. Jaquez, May 31, 2018--- P.3d ----2018 WL 2436819 states, "State action has been extended to include civilians acting as agents of the state in order to prevent law enforcement officials from circumventing the Miranda requirements by directing a third party to act on their behalf." Id. "The test as to whether a private citizen has acted as an agent of the police for purposes of criminal investigation is whether the person 'in light of all the circumstances of the case, must be regarded as having acted as an "instrument" or agent of the state.' " People v. Lopez, 946 P.2d 478, 481 (Colo. App. 1997) (quoting Coolidge v. New Hampshire, 403 U.S. 443, 487, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971))." See also People v. Robledo 832 P.2d 249.

6. The acquisition of evidence by an individual acting as an agent of the police must be reviewed by the same fourth amendment standards that govern law enforcement officials. People in Interest of P.E.A. 754 P.2d 382 (citing Coolidge v. New Hampshire, 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971); People v. Chastain, 733 P.2d 1206 (Colo.1987)). The resolution of whether an individual becomes an agent of the police is determined by the totality of the circumstances. Coolidge, 403 U.S. at 487. The agency rule prevents police from circumventing the fourth amendment by having a private individual conduct a search or make a seizure that would be unlawful if performed by the police themselves. Chastain, 733 P.2d at 1214; see United States v. West, 453 F.2d 1351 (3d Cir.1972). The defendant has the burden of establishing that an individual has acted as a police agent. United States v. Snowadzki, 723 F.2d 1427 (9th Cir.), cert. denied, 469 U.S. 839.

7. Interrogation occurs when the words or action of the police are "reasonably likely to elicit an incriminating response from the suspect." Rhode Island v. Ellis, 446 U.S. 291, 301 (1980); People v. Trujillo, 784 P.2d 788, 790 (Colo. 1990).

8. Mark Redwine requests this court to make a legal and factual determination as to the voluntariness of his statements. Effland v. People P.3d 868 (Colo. 2010) offers this Court one of the best descriptions of the analysis regarding the voluntariness of a Defendant's statements:

To be voluntary, a statement must be "the product of an essentially free and unconstrained choice by its maker." Raffaelli, 647 P.2d at 234 (citing Culombe v. Connecticut, 367 U.S. 568, 602, 81 S.Ct. 1860, 6 L.Ed.2d 1037 (1961)). A confession or inculpatory statement is involuntary if coercive governmental conduct played a significant role in inducing the statement. People v. Gennings, 808 P.2d 839, 843 (Colo.1991) (citing Colorado v. Connelly, 479 U.S. 157, 163–67, 107 S.Ct. 515, 93 L.Ed.2d 473 (1986)). Indeed, coercive government conduct is a "necessary predicate to the finding that a confession is not 'voluntary.'" Connelly, 479 U.S. at 167, 107 S.Ct. 515; People v. Wood, 135 P.3d 744, 749 (Colo.2006). Coercive police conduct includes not only physical abuse or threats directed against a person, but also subtle forms of psychological coercion. Gennings, 808 P.2d at 843–44 (citing Arizona v. Fulminante, 499 U.S. 279, 287, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991)); People v. Miranda-Olivas, 41 P.3d 658, 660–61 (Colo.2001). The focus of the voluntariness question is "whether the behavior of the State's law enforcement officials was such as to overbear [the defendant's] will to resist and bring about confessions not freely self-determined—a question to be answered with complete disregard of whether or not the [defendant] in fact spoke the truth." Rogers v. Richmond, 365 U.S. 534, 544, 81 S.Ct. 735, 5 L.Ed.2d 760 (1961).

Whether a statement is voluntary must be evaluated on the basis of the totality of the circumstances under which it is given. Raffaelli, 647 P.2d at 235. "Relevant circumstances include the occurrences and events surrounding the confession and the mental condition of the person making the statement." Id. "While a defendant's mental condition, by itself and apart from its relationship to official coercion, does not resolve the issue of constitutional voluntariness, the deliberate exploitation of a person's weakness by psychological intimidation can under some circumstances constitute a form of governmental coercion that renders a statement involuntary." Gennings, 808 P.2d at 844 (citing Connelly, 479 U.S. at 164, 107 S.Ct. 515), see also People v. Humphrey, 132 P.3d 352, 361 (Colo.2006); People v. Valdez, 969 P.2d 208, 211 (Colo.1998). In Gennings, this court stated "the term 'totality of the circumstances' refers to the significant details surrounding and inhering in the interrogation under consideration." 808 P.2d at 844. There, we provided a non-exhaustive list of factors helpful to the voluntariness determination:

Whether the defendant was in custody or was free to leave and was aware of his situation;

whether Miranda warnings were given prior to any interrogation and whether the defendant understood and waived his Miranda rights;

whether the defendant had the opportunity to confer with counsel or anyone else prior to the interrogation;

whether the challenged statement was made during the course of an interrogation or instead was volunteered;

whether any overt or implied threat or promise was directed to the defendant;

the method and style employed by the interrogator in questioning the defendant and the length and place of the interrogation

and the defendant's mental and physical condition immediately prior to and during the interrogation,

as well as his educational background, employment status, and prior experience with law enforcement and the criminal justice system.

Id.

CONCLUSION AND REQUEST FOR RELIEF

The Defendant, requests an order suppressing any evidence or statements obtained as a result of the above referenced interrogation pursuant to the Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution, C.R.S. 1973 Section 16-2-112, and Article II, Sections 7, 16, 18 and 25 of the Colorado Constitution.

/s/ John Moran

John Moran #36019

Deputy State Public Defender

Dated: September 20, 2018

Certificate of Service

I hereby certify that on I served the foregoing document by ICCES to all opposing counsel of record.

/s/ John Moran

/s/ Justin Bogan

Justin Bogan, #33827

Deputy State Public Defender

Dated: September 20, 2018