DISTRICT COURT LA PLATA COUNTY, COLORADO 1060 EAST SECOND AVENUE DURANGO COLORADO 81301	DATE FILED: September 20, 2018 9:45 PM FILING ID: 398C93F224411 CASE NUMBER: 2017CR343
THE PEOPLE OF THE STATE OF COLORADO, v. Mark Redwine Defendant	σ COURT USE ONLY σ
Megan Ring, Colorado State Public Defender John Moran 36019 Justin Bogan 33827 175 Mercado Suite 250 Durango Colorado 81301	**Case No.: 17CR343**

[D 70]

MOTION TO SUPPRESS STATEMENTS OF MARK REDWINE OBTAINED BY DAN PATTERSON, AND OTHER LAW ENFORCEMENT ON NOVEMBER 30, 2012 AS SAID STATEMENTS WERE OBTAINED IN VIOLATION OF MARK REDWINE'S FIFTH AND SIXTH AMENDMENT RIGHTS, HIS MIRANDA RIGHTS, AND WERE NOT VOLUNTARY

Mark Redwine, through Counsel, moves this Court to suppress all statements made by the Defendant made to law enforcement on November 30, 2012, as said statements are the fruit of a custodial interrogation without the benefit of a ***Miranda*** advisement and were further 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. Dylan was visiting his father on November 18 and 19, 2012, consistent with a court order for visitation issued in 05DR255. Mark Redwine reported his son was missing on November 19, 2012. Since reporting his son missing, Mark Redwine has been the primary suspect in Dylan's disappearance and death. Mark Redwine was interrogated by Deputy Patterson on November 30, 2012 at the Bayfield Marshall's Headquarters while the Deputy served Mr. Redwine with a 41.1 warrant. This interrogation and the events leading up to it are described in the discovery the Prosecution has provided defense counsel.

2. Mark Redwine requests this Court to suppress all the statements he made to Law Enforcement on November 30, 2012 as said statements were obtained in violation of his Miranda rights, Fifth Amendment Rights, Sixth Amendment Rights, and were not voluntary.

POINTS AND AUTHORITIES

3. Miranda Violations consist of three factors: (1) a person is in the custody of law enforcement, (2) the person in custody is interrogated by law enforcement, (3) the person interrogated by law enforcement while in they are in custody is not advised of her Miranda Rights or does not voluntarily waiver her Miranda rights. All three factors must exist for the Court to find a Miranda violation. Miranda v. Arizona, 384 U.S. 436 (1966). Once a suspect is in custody, police must not interrogate him until they have provided him with an advisement pursuant to , and obtain a knowing, Intelligent, and voluntary waiver of those rights by the suspect. Id. and People v. Hopkins, 774 P.2d 849 (Colo. 1989).

4. If the Miranda requirements are not complied with, the statements made by the suspect must be suppressed at trial. Oregon v. Elstad, 470 U.S. 298 (1985); People v. Viduya, 703 P.2d 1281 (Colo. 1985); United States Constitution, Article II, Section 25.

5. 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).

6. An objective test is used to determine whether a suspect is in custody. The Court is to determine "whether a reasonable person in the suspect's position would have considered himself deprived of his freedom of action in a significant way." People v. Hamilton, 831 P.2d 1236 (Colo. 1992). Relevant criteria include the time, place, and purpose of the encounter with the suspect, as well as the words and demeanor of the officer and the suspect's response to directions provided by the police. People v. LaFrankie, 858 P.2d 702 (Colo. 1993); People v. Milhollin, 751 P.2d 43, 49 (Colo. 1988).

7. In Colorado, the State Supreme Court discussed the custody prong of Miranda violations at length in People v. Matheny, 46 P.3d 453 (2002). In the Colorado Supreme Court's opinion, there are several, though not all inclusive, factors the Court must consider in determining if a suspect was in custody for Miranda purposes:

> We made clear that the objective reasonable person standard applies to the issue of custody. Id. at 123. The reasonable person standard, we explained, is superior to a subjective test because it is not " 'solely dependent either on the self-serving declarations of the police officers or the defendant.' " Id. (quoting Berkemer, 468 U.S. at 442 n. 35, 104 S.Ct. 3138); accord Hamilton, 831 P.2d at 1330; Trujillo, 785 P.2d at 1293. Some of the factors a court should consider under this standard are:
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> (1) the time, place, and purpose of the encounter; (2) the persons present during the interrogation; (3) the words spoken by the officer to the defendant; (4) the officer's tone of voice and general demeanor; (5) the length and mood of the interrogation; (6) whether

> any limitation of movement or other form of restraint was placed on the defendant during the interrogation; (7) the officer's response to any questions asked by the defendant; (8) whether directions were given to the defendant during the interrogation; and (9) the defendant's verbal or nonverbal response to such directions.

Id. None of the factors above is solely determinative as to the issue of custody. Id.

8. More recently, the Matheny factors and custody prong were discussed in People v. Begay P.3d 1026 (2014):

> A suspect is in custody for purposes of Miranda if "under the totality of the circumstances, a reasonable person in the defendant's position would consider himself to be deprived of his freedom of action ***to the degree associated with a formal arrest.***" Id. at 468 (emphasis added).
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> Under the Fourth Amendment, a seizure occurs when "a reasonable person *1030 would not have felt 'free to leave' or otherwise terminate an encounter with law enforcement." People v. Barraza, 298 P.3d 922, 926.
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> Thus, what constitutes "custody" for Miranda is narrower than what constitutes a "seizure" under the Fourth Amendment. See People v. Hughes, 252 P.3d 1118, 1121 (Colo.2011) ("We have previously recognized that even though a person may be 'seized' within the meaning of the Fourth Amendment, this does not necessarily mean that the suspect is 'in custody' for purposes of Miranda.") (internal quotations omitted); People v. Polander, 41 P.3d 698, 705 (Colo.2001) ("[T]he [Miranda] question is not whether a reasonable person would believe he was not free to leave, but rather whether such a person would believe he was in police custody of the degree associated with a formal arrest." (citing 1 Wayne R. LaFave & Jerold H. Israel, Criminal Procedure § 6.6(c), at 526 (2d ed. 1999))).
>
> A trial court errs by applying the "free to leave" standard in evaluating whether a suspect is in custody under Miranda doctrine. See Barraza, 18, 298 P.3d at 926 (applying "formal arrest" standard and reversing trial court's suppression order); People v. Pittman, 2012 CO 55, ¶ 1, 284 P.3d 59, 60 (concluding that trial court applied incorrect "free to leave" standard and reversing under "formal arrest" standard); Hughes, 252 P.3d at 1122 (same).

Id.

9. The prosecution bears the burden of proving, by a preponderance of the evidence that the accused made a voluntary waiver of his rights. Colorado v. Connelly, 479 U.S. 157 (1986).

10. If this Court determines that there was no Miranda violation, 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:
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> > Whether the defendant was in custody or was free to leave and was aware of his situation;
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> > whether Miranda warnings were given prior to any interrogation and whether the defendant understood and waived his Miranda rights;
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> > 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
September 20, 2018

/s/ Justin Bogan
Justin Bogan, #33827
Deputy State Public Defender
Dated: September 20, 2018

Certificate of Service
I hereby certify that on Sept. 20, 2018, I served the foregoing document by ICCES to all opposing counsel of record.
/s/ Justin Bogan