

DISTRICT COURT LA PLATA COUNTY, COLORADO 1060 EAST SECOND AVENUE DURANGO COLORADO 81301	DATE FILED: September 21, 2018 8:54 AM FILING ID: 4BAE64601191E CASE NUMBER: 2017CR343
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff v. Mark Redwine Defendant	σ COURT USE ONLY σ
Megan Ring, Colorado State Public Defender Justin Bogan 33827 John Moran 36019 175 Mercado Suite 250 Durango Colorado 81301	Case Number: 17CR343 Division 1
[D-82]: MOTION TO SUPPRESS FRUITS OF ILLEGAL SEARCH – SEARCH OF MARK REDWINE’S HOUSE	

Defendant moves for this court to enter an order preventing the prosecution from using at trial or pre-trial proceedings any evidence seized by the state during its November 20, 2012 search of:

**2343 COUNTY ROAD 500
 BAYFIELD, COLORADO**

The premises searched are the defendant's residence. As such, the defendant had a reasonable expectation of privacy with respect to the premises and the contents therein. Rakas v. Illinois, 439 U.S. 128, (1978); People v. Juarez, 770 P.2d 1286 (Colo.1989). Defendant also seeks to suppress any fruits or derivatives of any evidence or information obtained as a result of that search or seizures, for all of the following reasons:

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 05CR255. Mark Redwine reported his son was missing on November 19, 2012 at roughly noon. Since reporting his son missing, Mark Redwine has been the primary suspect in Dylan’s disappearance and death.

2. Mark Redwine was interrogated on November 20, 2012 at his home. Law Enforcement entered his home without a warrant. During this interrogation Law Enforcement purports to have obtained permission to search Mr. Redwine's house. His house was subsequently searched, items were seized and observations by law enforcement were made.

3. This interrogation, search and the events leading up to it are described in the discovery the Prosecution has provided defense counsel. Mark Redwine requests this Court to suppress all the evidence seized during the search because he did not knowingly and voluntarily consent to the search of his house.

4. There was no warrant for the search.

5. There were no exigent circumstances nor emergency aid to render to anyone in Mr. Redwine's home, so the only issue for this Court to resolve is whether or not Mr. Redwine knowingly and voluntarily consented to the warrantless search of his home. Law enforcement asserts that he consented to the search.

6. Voluntary consent to search one's home must be established by the prosecution by clear and convincing evidence. *People v. Drake*, 785 P.2d 1257 (Colo. 1990). "Voluntariness" requires a free and unconstrained choice and consent that is not the result of duress, coercion, or any other form of undue influence. *Schneckloth v. Bustamonte*, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973).

7. Further, voluntariness must be "product of an essentially free and unconstrained choice" by its maker and not the result of circumstances "which overbore the consent party's will and critically impaired his or her capacity for self-determination." *People v. Magallanes-Aragon*, 948 P.2d 528, 530-32 (Colo. 1997).

8. Moreover, any express or implied limitations on the consent, such as the items to be seized or areas to be searched, are to be strictly enforced. *Coolidge v. New Hampshire*, 403 U.S. 443 (1971). Question is: what would typical reasonable person have understood by the exchange b/w the officer and the suspect. *Florida v. Jimeno*, 500 U.S. 248 (1991) (consent to search auto did not confer consent to open a locked container). *People v. Herrera*, 935 P.2d 956 (Colo. 1997).

9. Defendant moves for a hearing on this motion.

10. Defendant makes this motion, and all other motions and objections during all proceedings in this case, whether or not explicitly stated at the time of the making of the motion or objection, under the Due Process, Right to Counsel, Confrontation, Right to Remain Silent, Privilege Against Self Incrimination, Compulsory Process, Ex Post Facto, Trial by Jury, Equal Protection, Right to Appeal and Cruel and Unusual Punishment Clauses of the federal and Colorado Constitutions, and Article II, §§ 3, 6, 7, 10, 11, 16, 18, 20, 23, 25, and 28, of the Colorado Constitution, and Article I, § 9, and the First, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, and Fourteenth Amendments to the U.S. Constitution.

MEGAN RING
COLORADO STATE PUBLIC DEFENDER

 /s/ John Moran
John Moran
Deputy Public Defender
#36019
September 21, 2018

 /s/ Justin Bogan
Justin Bogan
Deputy Public Defender
#33827
September 21, 2018

CERTIFICATE OF SERVICE

I hereby certify that on September 21, 2018, a copy of the foregoing document was served on opposing counsel of record.

 /s/ JB