

DISTRICT COURT LA PLATA County, Colorado 1060 E 2 <sup>nd</sup> Ave, Durango, CO	DATE FILED: September 21, 2018 8:57 AM FILING ID: E645FBC0A4582 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 John Moran #36019 Justin Bogan #33827 Deputy Public Defenders 175 Mercado St. Suite 250 Durango, Colorado 81301	<b>Case No.: 17CR343</b>  <b>Division: 1</b>
<b>[D 83]</b> <b>MOTION TO SUPPRESS EVIDENCE SEIZED BY THE WHATCOM COUNTY SHERIFFS DEPARTMENT FROM MARK REDWINE'S TRUCK DURING A WARRANTLESS SEARCH NOT CLEANSED BY MR. REDWINE'S PUPORTED CONSENT TO PERMIT THE SEARCH.</b>	

The Defendant, through Counsel, moves this Court to suppress all items obtained by the search and seizure of his truck by the Whatcom County Sheriffs Department on or about July 22, 2017.

The grounds for this motion are the following:

1. On July 22, 2017 Mr. Redwine was stopped, detained and arrested in Bellingham, Washington by the Whatcom County Sheriff. His arrest was executed pursuant to a warrant issued by the La Plata County Colorado District Court after he was indicted for Second Degree Murder and Child Abuse Resulting in Death by a Grand Jury.
2. Subsequent to his arrest his truck was searched and several items were taken into custody by the Whatcom County Sheriff. Those items were subsequently sent to the La Plata County Sheriff.

3. Mr. Redwine did not knowingly and voluntarily consent to the search of his truck.

## ARGUMENT

### **I. THE GOVERNMENT MUST PROVE PROBABLE CAUSE TO SEARCH MR. REDWINE'S VEHICLE AND THAT THE SEARCH FELL WITHIN AN EXCEPTION TO THE WARRANT REQUIREMENT.**

1. Individuals have a right to be free from unreasonable searches and seizures. U.S. Const. Amend. IV; Colo. Const. Art. II §7.
2. At a suppression hearing, the defendant has the burden of producing some evidence of an impermissible seizure. People v. Outlaw, 17 P.3d 150, 155 (Colo. 2001). Once the defendant produces some evidence of a seizure, the burden shifts to the prosecution. *Id.* “When the defendant comes forward with evidence of a seizure, the fact that police proceeded without a warrant places the burden on the prosecution to demonstrate the encounter’s legality. *Id.*”
3. The defense’s initial burden in a suppression hearing is minimal. See People v. Jansen, 713 P.2d 907, 911. In *Jansen*, the Colorado Supreme Court found that the defense’s three-sentence offer of proof made during the hearing provided sufficient notice of the issues being challenged to both the prosecution and the court. *Id.* During the hearing, defense counsel stated the issues before the court. *Id.* Before presentation of the evidence, defense counsel stated that one issue was “whether there was probable cause to make an initial search, your Honor, whether there was probable cause to arrest. There was a search.” *Id.* During cross-examination of a defense witness, defense counsel stated, “[t]here was a search prior to the search warrant, and that is where I’m going.” *Id.* The Court held that defense counsel’s cursory statements were specific enough to satisfy the defendant’s burden. *Id.*
4. Warrantless searches are presumed to violate the Fourth Amendment right to be free from unreasonable searches and seizures. People v. Jansen, 713 P.2d 907, 911 (Colo. 1986)
5. Someone has standing to assert a Fourth Amendment violation if they have a legitimate expectation of privacy in the areas searched. People v. Schafer, 946 P.2d 938, 941 (Colo. 1997)(citation omitted). Whether someone has a legitimate expectation of privacy is determined by the totality of the circumstances including whether an individual has possessory or proprietary interest in the areas searched. *Id.*
6. Mr. Redwine has a reasonable expectation of privacy in his vehicle and thus has standing to challenge this search.
7. “In the case of a warrantless search, the burden of proof is always upon the People to establish that (1) probable cause exists, and (2) the search falls within the limits of a well-recognized exception to the warrant requirement.” People v. Villiard, 679 P.2d 593, 597 (Colo. 1984).

8. Here, it appears there was at least one warrantless vehicle search by the Whatcom County Sheriff. The Sheriff purports that Mr. Redwine consented to the search.

9. Per Arizona v. Gant, 556 U.S. 332, absent a warrant, there are only two scenarios in which police officers may search a vehicle's passenger compartment after arresting an occupant. First, an officer may search the vehicle if the arrested occupant is unsecured and can access the interior of the vehicle. Second, an officer may conduct a search if it is reasonable to believe that evidence of the offense of arrest might be found in the vehicle. *Id.* See also Perez v. People, 231 P.3d 957.

## **II. REMEDY**

1. Any evidence derived from or obtained as the result of the illegal conduct of the law enforcement officers is improperly obtained fruits of the conduct in violation of defendant's rights. Wong Sun v. U.S., 371 U.S. 471 (1963); People v. Hopkins, 774 P.2d 849 (Colo. 1989).

WHEREFORE, Mr. Redwine respectfully requests that this Court suppress, as incriminatory evidence in this or any other proceeding, any and all evidence acquired subsequent to at least one warrantless vehicle search, including law enforcement personnel's observations obtained as a result of an unlawful searches in violation of the Fourth Amendment of the United States Constitution an Article Two Section Seven of the Colorado Constitution.

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

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

### **Certificate of Service**

I hereby certify that on Sept. 21, 2018, I served the foregoing document by delivering to all opposing counsel of record.

/s/ JB