

DISTRICT COURT, LA PLATA COUNTY, COLORADO
Court Address: 1060 E. Second Ave., Durango, CO 81301
Phone Number: (970) 247-2304

ORIGINAL FILED / REC'D
IN COMBINED COURT
LA PLATA COUNTY, COLORADO

NOV 13 2013

DEPUTY CLERK

Plaintiff: PEOPLE OF THE STATE OF COLORADO

v.

Defendant: MARK ALLEN REDWINE

▲ COURT USE ONLY ▲

Christian Champagne - District Attorney, #36833
Matthew Durkin, Special Deputy District Attorney, #28615
Fred Johnson, Special Deputy District Attorney, #42479
P.O. Drawer 3455, Durango, Colorado 81302
Phone Number: (970) 247-8850
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Case Number: 17 CR 343

**PEOPLE'S RESPONSE TO [D-41] DEFENDANT'S MOTION TO SUPPRESS
EVIDENCE (AUGUST 5, 2013 SEARCH)
[PUBLIC ACCESS]**

NOW COME the People, by and through Christian Champagne, District Attorney, in the County of La Plata, and as their response to the Defendant's motion state as follows:

Facts

1. On November 18, 2012, Dylan Redwine went missing while in the custody of his father, the Defendant. On November 28, 2012, a search warrant of the Defendant's home revealed [REDACTED]. At that time, [REDACTED] at locations associated with the Defendant's [REDACTED]. In late June of 2013, Dylan Redwine's remains were located roughly 8 miles up a dirt road from the Defendant's home. In early August of 2013, La Plata County Sheriff's deputies received assistance from [REDACTED], to follow up on whether a [REDACTED] had been inside the Defendant's home.
2. On August 5, 2013, police officers called Mark Redwine on his cellular phone and asked his permission to enter his property and home with [REDACTED]. The Defendant gave consent to go on his property over speaker phone and two sheriff's deputies and [REDACTED] heard the conversation and his verbal consent. After the

██████████ showed an interest in the Defendant's home, sheriff's deputies called him again and asked permission to enter the home. The Defendant expressed concerns over potential damage to his window, and when Deputy Tom Cowing assured him they would pay for any damage, the Defendant gave them permission to enter his home. This conversation was also heard by two sheriff's deputies and ██████████ over speaker phone. While inside, the ██████████ indicated the presence of ██████████. The conversations regarding consent to enter the property and the home are documented in the police reports and ██████████ report in discovery.

Law

3. Warrantless searches are prohibited unless there is a valid exception to the warrant requirement. *People v. Pate*, 71 P.3d 1005, 1010 (Colo. 2003). The three primary exceptions for warrantless searches of the home are searches made with valid consent, searches made with probable cause under exigent circumstances, and searches made under the emergency said exception. *People v. Allison*, 86 P.3d 421, 426 (Colo. 2004).
4. A warrantless search is constitutionally justified when it is conducted pursuant to voluntary consent. *People v. Munoz-Gutierrez*, 342 P.3d 439 (Colo. 2015). Consent is voluntary if, under the totality of the circumstances, it is "the product of an essentially free and unconstrained choice by its maker." *Schneckloth v. Bustamonte*, 412 U.S. 218, 243 (1973); see also *People v. Licea*, 918 P.2d 1109, 1112 (Colo. 1996).
5. A consensual search is involuntary when police overbear the consenting party's will and critically impair their capacity for self-determination through duress or coercion or through undue influences such as promises, threats, or intrusive or threatening police conduct. *Munoz-Gutierrez*, 342 P.3d at 444 (citations omitted).
6. The key concern is whether the police's intrusive conduct "critically impaired the defendant's judgment." *Id.* (citing *Magallanes-Aragon*, 948 P.2d at 531; *Schneckloth*, 412 U.S. at 228–29; *Capps v. People*, 426 P.2d 189, 191 (1967)).

Legal Analysis

7. There is no evidence to suggest that there were any threats or promises made that would invalidate the Defendant's voluntary consent to waive his right. The only promise made by law enforcement, which the Defendant avoids describing with specificity in his motion, was that if they damaged the Defendant's property while entering they would pay for it. This could not reasonably be construed to overcome his will and critically impair his capacity for self-determination.

8. The Defendant did not state with any particularity in his motion that there was any wrongdoing by the police. He alleges no threats or coercion whatsoever in his Motion.
9. Because the Defendant fails to state with any particularity what promises, threats, or coercive tactics overcame his will, the People believe the Motion should be denied. However, since this was a warrantless search based on an exception to the warrant requirement and therefore implicates the Defendant's constitutional rights, there is an argument that raising the issue shifts the burden to the People. Therefore, despite the vague and unsubstantiated claims of the Defendant, the People will be prepared to present testimony at the motions hearing.
10. WHEREFORE, the People respectfully request this Honorable Court DENY Defendant's Motion To Suppress Evidence As A Result Of An August 5, 2013 Entry.

Respectfully submitted this March 14, 2019.

CHRISTIAN CHAMPAGNE
DISTRICT ATTORNEY
6th JUDICIAL DISTRICT

/s/ Fred Johnson
Fred Johnson #42479
Special District Attorney

CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2018, I delivered a true and correct copy of the foregoing to the parties of record via e-service

/s/ Christian Champagne
Christian Champagne