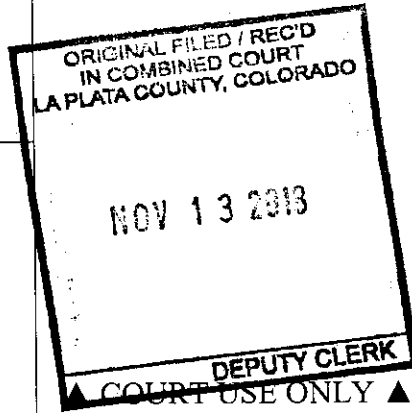


DISTRICT COURT, LA PLATA COUNTY, COLORADO
Court Address: 1060 E. Second Ave., Durango, CO 81301
Phone Number: (970) 247-2304



Plaintiff: PEOPLE OF THE STATE OF COLORADO

v.

Defendant: MARK ALLEN REDWINE

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-83] DEFENDANT'S
MOTION TO SUPPRESS EVIDENCE SEIZED BY WHATCOM COUNTY SHERIFF'S
DEPARTMENT FROM MARK REDWINE'S TRUCK DURING WARRANTLESS
SEARCH NOT CLEANSED BY MR. REDWINE'S PURPORTED CONSENT TO THE
SEARCH
[PUBLIC ACCESS]**

COME NOW the People, by and through Christian Champagne, District Attorney in and for the Sixth Judicial District of the State of Colorado, respectfully requests this Honorable Court to deny the defendant's motion to suppress evidence seized by Whatcom County Sheriff's Department from Mark Redwine's truck during warrantless search not cleansed by Mr. Redwine's purported consent to the search (D-83). AS GROUNDS for this motion, the People state as follows:

STATEMENT OF FACTS

1. On November 18, 2012, Dylan Redwine was 13 yoa, and flew to Durango for a court ordered visitation with the defendant for Thanksgiving. Several family members and friends reported that Dylan Redwine did not want to visit the defendant because of their strained relationship. The tension in their relationship was due, in part, to Dylan Redwine's knowledge of _____ of the defendant, which later shown to trigger a violent response from the defendant. Friends reported that Dylan Redwine attempted to make arrangements with his friends to stay with them and to go to their house very early in the morning on November 19, 2012. Family members and friends

reported that on November 18, 2012, that Dylan Redwine was in constant communication until approximately 9:37 pm, at which time all communications ceased.

2. On November 19, 2012, Dylan Redwine did not arrive at his friend's home at 6:45 am as planned, nor did any of his family members or friends receive any communication from Dylan Redwine. Later that afternoon, the defendant reported Dylan Redwine missing. A search and rescue effort was initiated and continued for several days and weeks
3. Some of Dylan Redwine's remains were discovered on Middle Mountain in the summer of 2013, and again in the summer of 2014. Later in November 2015, Dylan Redwine's skull was recovered at a different location further up in the Middle Mountain area.
4. In the meantime, investigation continued which included many consensual searches, searches pursuant to search warrants, and an extraordinary amount of defendant statements made during consensual and voluntary meetings.
5. In July 2017, a La Plata County Grand Jury indicted the defendant in the homicide of Dylan Redwine, and a warrant was issued for the defendant's arrest.
6. On July 21, 2017, the defendant was arrested pursuant to the arrest warrant in the state of Washington as he drove through the state as an overhaul truck driver for CR England. The defendant was arrested without incident and executed a consent to search form authorizing the search of the vehicle.
7. On July 28, 2017, Investigator Tonya Golbricht submitted an affidavit and search warrant to obtain notebooks, post-it notes, and handwritten notes. The affidavit explains that the truck driven by the defendant at the time of his arrest is owned, and was in the possession of, CR England. They had inventoried the vehicle, removed the items, reported that Dylan Redwine's name was written in many places amongst the items, and mailed the items to the La Plata County Sheriff's Office.
8. On July 31, 2017, a similar search warrant and order was signed by a judge in Utah where the truck and items were held by CR England.
9. Pursuant to an inventory evidence form dated August 3, 2017, the consensual search yielded 5 cell phones, 2 wallets, and a pack of documents.
10. On August 3, 2017, CR England mailed the items described in the search warrant to the La Plata County Sheriff's Office, which were received on August 8, 2017.
11. The defendant did not revoke his consent at any time prior to August 8, 2017.

ARGUMENT

12. **Consent:** Situations in which voluntary consent from the individual whose property is to be searched has been obtained are exempted from the warrant requirement. *People v. Hopkins*, 870 P.2d 478, 480 (Colo. 1994); *Illinois v. Rodriguez*, 497 U.S. 177, 181, 110 S.Ct. 2793, 2797, 111 L.Ed.2d 148 (1990); *People v. McKinstrey*, 852 P.2d 467, 470 (Colo. 1993).
13. A warrantless search is constitutionally justified when it is conducted pursuant to voluntary consent. *People v. Magallanes-Aragon*, 948 P.2d 528, 530 (Colo. 1997); *Schneckloth v. Bustamonte*, 412 U.S. 218, 222, 93 S.Ct. 2041, 2045, 36 L.Ed.2d 854 (1973), *People v. Drake*, 785 P.2d 1257, 1265 (Colo. 1990). Consent is deemed voluntary when “it is the product of an essentially free and unconstrained choice by its maker”, and “not the result of circumstances which overbear the concerning party’s will and critically impair his capacity for self-determination.” *Id.*
14. The defendant has not alleged any express or implied coercion or duress that created even minimal circumstances that could overbear a person’s will.
15. Quite to the contrary the defendant executed a consent to search form. In the consent to search, the defendant acknowledged dominion over the vehicle to be searched, provides consent to search, and acknowledged that he may limit or revoke the consent at any time. Finally, the defendant provided permission to search the vehicle without “threats or coercion of any kind”, by signing the form. (See People’s Exhibit 1: Consent to Search)
16. **Inventory Search:** Although the search was pursuant to valid consent provided by the defendant, a private company completed an inventory search of their vehicle that was being driven by the defendant at the time of his arrest. This search did not involve any government action. However, had law enforcement taken possession of the vehicle, a warrantless inventory search would have been justified. *Colorado v. Bertine*, 479 U.S. 367, 107 S.Ct. 738, 93 L.Ed.2d 739 (1987).
17. Following their inventory search, CR England mailed the items described in the search warrant to the La Plata County Sheriff’s Office.
18. **Search Warrant:** Based upon the selected language cited by the defendant in his motion, and a review of the four corners of the search warrant and affidavit, there is probable cause to support the search warrant, based upon the fact that these printed and written materials contained Dylan Redwine’s name in the vehicle driven by the defendant nearly five years after the homicide. (See People’s Exhibit 2: La Plata County Affidavit and Search Warrant)

19. Another judge in Salt Lake City, Utah, reviewed a similar affidavit and approved the search warrant for the same items. (See People's Exhibit 3: Salt Lake City Affidavit and Search Warrant).
20. Considering the totality of the circumstances, an issuing court must "make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, there is a fair probability that contraband or evidence of a crime will be found in a particular place". *People v. Pennebaker*, 714 P.2d 904, 907 (Colo 1986).
21. To support a search warrant, probable cause must be based upon reasonableness and not mathematical certainty. *People v. Atley*, 727 P.2d 376, 378 (Colo. 1986).
22. To determine if there is underlying facts or circumstances that are sufficient to support a search warrant, a reviewing court "must only look within the four corners of the affidavit". *People v. Padilla*, 511 P.2d 480, 482 (Colo. 1973); citing *People v. Brethauer*, 482 P.2d 369 (Colo 1971).
23. On November 5, 2018, the Colorado Supreme Court once again held that the probable cause determination must be based upon facts contained "within the four corners of the affidavit" submitted in support of the search warrant. *People v. Cox*, 2018 CO 88 (Colo. Nov. 5, 2018); citing *People v. Gallegos*, 251 P.3d 1056, 1064 (Colo. 2011). The probable cause determination is generally given "great deference" and "any doubts must be resolved in favor of the magistrate's probable cause determination." *Id.*; citing *People v. Hebert*, 46 P.3d 473, 481 (Colo. 2002).
24. To determine whether a search warrant is too general, the nature of the property to be seized must be considered. *People v. Lindholm*, 591 P.2d 032, 1035 (Colo. 1979); citing *People v. Lamirato*, 504 P.2d 661 (1972).
25. On November 5, 2018, the Colorado Supreme Court once again established that When considering the totality of the circumstances contained within the four corners of the search warrant and affidavit together, there is probable cause to support the search warrant.

WHEREFORE, the People request this Honorable Court deny the defendant's motion to suppress the defendant's motion to suppress evidence seized by Whatcom County Sheriff's Department from Mark Redwine's truck during warrantless search not cleansed by Mr. Redwine's purported consent to the search (D-83), the search was conducted pursuant to valid consent provided by the defendant and two search warrants.

Respectfully submitted this November 13, 2018.

CHRISTIAN CHAMPAGNE
DISTRICT ATTORNEY
6th JUDICIAL DISTRICT

/s/ Matthew Durkin
Matthew Durkin, #28615
Special Deputy 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