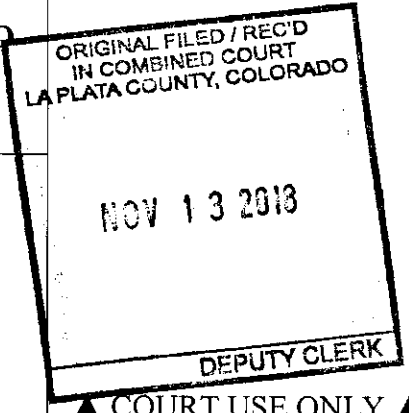


DISTRICT COURT, LA PLATA COUNTY, COLORADO Court Address: 1060 E. Second Ave., Durango, CO 81301 Phone Number: (970) 247-2304	
Plaintiff: PEOPLE OF THE STATE OF COLORADO v. Defendant: MARK ALLEN REDWINE	
Christian Champagne - District Attorney, #36833 Matthew Durkin, Special Deputy District Attorney, #28615 Fred Johnson, Special Deputy District Attorney, #42479 P.O. Drawer 3455, Durango, Colorado 81302 Phone Number: (970) 247-8850 Fax Number: (970) 259-0200	Case Number: 17 CR 343
PEOPLE'S RESPONSE TO [D-86] DEFENDANT'S MOTION TO SUPPRESS FRUITS OF ILLEGAL SEARCH – SEARCH WARRANT OF MARK REDWINE'S HOUSE (11/29/12) [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, without a hearing, the defendant's motion to suppress fruits of illegal search – search warrant of Mark Redwine's house on November 29, 2012 (D-86). 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. By the late afternoon of November 20, 2012, Dylan Redwine had been reported missing for nearly 24 hours, in freezing temperatures. Intense search and rescue efforts were implemented throughout the day.
4. On November 28, 2012, Investigator Dan Patterson applied for a search warrant for the defendant's home, which was supported by an affidavit. Section 16-3-309; Colo. R. Crim. P. 41. The search warrant and affidavit in support of the search warrant were signed the same day. The search warrant was executed the next day on November 29, 2012.
5. 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).
6. 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).
7. 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).
8. 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).
9. The search warrant was based upon the four corners of an affidavit that Dylan Redwine was reported missing on November 20, 2102; Dylan Redwine was not found despite a massive search; the defendant provided information that he "rough housed" Dylan Redwine before he reported him missing; the defendant provided inconsistent and inaccurate information. (See People's Exhibit 1: Search Warrant and Affidavit)
10. The defendant misstates the affidavit which does not include any references to "Mr. Henderson."

11. 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).
12. In his motion, the defendant does not provide the entire context of the search warrant, and therefore, misstates it.
13. For clarification, the search warrant specifically includes:

Evidence sought: Dylan Redwine, last clothing seen on Dylan Redwine to include a black hooded sweatshirt with green “monster” drink tear marks insignia on the left side, Dylan Redwine’s cellular telephone and Verizon service assigned number and cell phone charger, black Nike Air Jordan basketball shoes, black shorts, “Hurley” backpack colored black and grey, an i-pod and i-pod charger, body wash and unknown clothing in the backpack to include clothing indicative of a 13 year old boy, as well as evidence of Dylan Redwine to include trace evidence, blood, and body fluids (DNA). Any evidence of a possible crime.

14. 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.
15. **Deny Without a Hearing:** Finally, the motion should be denied because “the affidavit must be afforded ‘a presumption of validity.’” *People v. Cox*, 2018 CO 88 (Colo. Nov. 5, 2018); citing *People v. Kerst*, 181 P.3d 1167, 1171 (Colo. 2008). The defendant has not alleged “the affiant’s good faith is at issue”, which is the only circumstance that a “veracity hearing” could be held. *People v. Cox*, 2018 CO 88 (Colo. Nov 5. 2018); citing *People v. Flores*, 766 P.2d 114, 118 (Colo. 1988). To warrant a veracity hearing the motion to suppress must satisfy two conditions: (1) it must be supported by at least one affidavit that reflects there is a “good faith basis for the challenge,” and (2) it must identify with specificity the “precise statements” being challenged. *Id.*: citing *People v. Dailey*, 639 P.2d 1068, 1075 (Colo. 1982). The defendant has not alleged, therefore, has not established the conditions necessary to have a hearing

WHEREFORE, the People request this Honorable Court deny, without a hearing, the defendant’s motion to suppress fruits of illegal search – search warrant of Mark Redwine’s house on November 29, 2012, because a common sense review based upon the totality of the circumstances contained within the four corners of the search warrant and affidavit establishes probable cause.

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