

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

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**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 AND MOTION TO STRIKE [D-43] MOTION TO SUPPRESS
UNRELIABLE AND SUGGESTIVE IDENTIFICATION
[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, and moves this Honorable Court to strike or deny the defendant's motion to suppress unreliable and suggestive identification (D-43). AS GROUNDS for this motion, the People state as follows:

1. The defendant does not state a constitutional right to suppress the identification of a witness by another witness.

STATEMENT OF FACTS

2. Defendant Mark Redwine has been charged in La Plata County with Murder in the Second Degree and Child Abuse Resulting in Death following a Grand Jury Indictment.
3. On Sunday, November 18, 2012, Dylan Redwine was 13 yoa, and flew to Durango for a court ordered visitation with the defendant for Thanksgiving. It was well known that Dylan Redwine did not want to visit his father. 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 next morning. Family members and friends reported Dylan Redwine was in constant communication until approximately 9:37 pm, on November 18, 2012, at which time all communications ceased.

4. On Monday, 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. The search and rescue efforts were continued until some of Dylan Redwine's remains were found in June – July 2013.
5. On Tuesday, November 20, 2012, Investigator Tom Cowing was part of a massive search and rescue effort in the Vallecito area. As he searched the area, he spoke with Angela Lee by phone. She reported that she was absolutely sure she saw Dylan Redwine walking with another teen male on Monday, November 19, 2012, at 2:00 pm, in vicinity of Vallecito Market, as she delivered mail. She explained that she delivers mail to the defendant and has seen Dylan Redwine on previous occasions. Ms. Lee described both boys as wearing dark clothing; with dark backpacks and that they looked at each other as the boys walked past her vehicle.
6. On Friday, November 23, 2012, LPCSO Investigator Tonya Golbricht received information that a United States Postal worker, Angela Lee, reported seeing Dylan Redwine, walking with another boy on County Road 501. In an interview with Investigator Golbricht, on Saturday, November 24, 2012, Angela Lee reported that she is a postal worker that delivers to the Vallecito area. She is familiar with the defendant, that he travels a lot, and that he was home on Monday, November 19, 2012, because his mailbox did not have any incoming mail, and the flag on his mailbox was up. She continued to report that as she was delivering mail in afternoon at approximately 2:00 pm, on County Road 501, she saw what she believed to be "Mark's son," walking with another unknown boy. She described them as being the same height, wearing dark colored hoodies, and having backpacks. Ms. Lee was about "70%" sure that it was Dylan Redwine, but could not identify the other boy when showed pictures of Dylan Redwine's friends from Facebook.
7. On March 4, 2013, Angela Lee explained that she was "60 – 70%" sure that she had seen Dylan Redwine with another boy, as she delivered mail in the afternoon at about 1:30 pm, on November 19, 2012. Ms. Lee indicated that she had seen Dylan in the area 2 – 3 months prior to November 2012. She reasserted that she believed that Dylan Redwine was with another boy, and that they were both wearing dark hoodies with dark backpacks. Ms. Lee also explained that she had been discussing these facts with another witness who told her that he had seen two boys but that they were possibly different heights. Ms. Lee also explained that she had been discussing the case with other people in the area.

8. Ms. Lee was never provided a one-on-one photograph or a line-up of photographs with Dylan Redwine's photograph in the array.
9. Investigator Golbricht spoke with Angela Lee on March 6, 2013. Ms. Lee expressed that she was upset about the recently televised Dr. Phil show, featuring this case. Ms. Lee regretted doing the show, that she felt the show made her look stupid, and was upset that the defendant repeatedly referenced that she had seen Dylan Redwine in November 2012. She maintained that she was not 100% certain of the identification, and repeated that she was only 60 – 70% certain.
10. During this interview on March 6, 2013, Angela Lee denied saying that "I don't think that Mark was the last person to see Dylan," which was part of the Dr. Phil show. She also reported that she had been told by her employer that her employment could be terminated due to providing an interview to the television program.
11. In the same interview, Ms. Lee repeated that she had been discussing the case with other witnesses and the defendant. Ms. Lee described speaking with the defendant on multiple occasions between January – March 2013.
12. Ms. Lee also described that the last time she had seen Dylan Redwine in previous Summer 2012, in which she saw him outside his house on a couple of occasions, only said hello, and had no further conversations.
13. On March 7, 2013, Angela Lee met with Investigator Golbricht. Ms. Lee explained that on Monday, November 19, 2012, she was delivering mail, driving south on County road 501, when she saw two boys walking four feet apart on the east side of the road. She had to wait for them to pass to access a mailbox, and thought to herself that one of the boys was Dylan Redwine. She described the boy she believed to be Dylan Redwine as having blonde hair, with a dark colored hoodie and black backpack. Ms. Lee described the other boy as having brown hair, slender, with a hoodie and a backpack. She thought both boys were about 13 – 14 years old and about 5' – 5'03" tall. She was only 60% sure both boys were wearing hoodies, and 40% sure about the backpacks. She did not think anything of these observations until the next day when her son reported that Dylan Redwine was missing. On Wednesday, March 6, 2013, Investigator Golbricht once again spoke with Ms. Lee about her possibly seeing Dylan Redwine with another unknown boy on November 20, 2012.
14. That same day, Investigator Golbricht asked Ms. Lee about other children in the area. Also, Investigator Golbricht conducted a canvass of known children in the area. During that canvass, she interviewed a male juvenile, who reported walking with a female

juvenile , on November 19, 2012, in the area around Vallecito Market, where Ms. Lee reportedly saw Dylan Redwine. described wearing black jeans, a black hoodie, and dark green shoulder pack. also reported seeing Ms. Lee in the area, described as a tomboy. confirmed that she was walking in the area with , and was probably wearing her hair in a ponytail, and was probably wearing a sweatshirt or sweater. Neither child reported seeing anyone else, including children in the area on November 19, 2012. Investigator Golbricht took pictures on her cell phone of each juvenile.

15. Investigator Golbricht immediately met with Angela Lee to show her the cell phone pictures of and Ms. Lee looked at the pictures and identified them as the children she saw walking on the road on November 19, 2012. More specifically, Ms. Lee said that she believed the person she previously identified as Dylan Redwine was actually Ms. Lee also said that she no longer believed that she saw Dylan Redwine on that day.
16. Ms. Lee was never provided a line-up with photo arrays that included Dylan Redwine, , together or in separate arrays.

LEGAL ANALYSIS

17. The defendant does not have a constitutional right to suppress the identification of one witness by another.
18. A one-on-one, or show-up identification, is an identification procedure used when a suspect has been detained soon after the commission of the crime when the witness description of the suspect resembles the suspect. This procedure typically relies on reasonable suspicion to detain the suspect.
19. It is well established in Colorado that “one-on-one line-ups are not favored and tend to be suggestive, but are not per se violative of due process.” *People v. Williams*, 516 P.2d 114, 115 (1973).
20. In Colorado, “one-on-one showups are not per se violative of due process, although the procedure is viewed with disfavor because of its strong potential for unnecessary suggestiveness.” *People v. Mascarenas*, 666 P.2d 101, 109 (Colo. 1983). However, the need for a quick determination of whether they should continue a search, often for armed and dangerous felons, may not be preferable, but may be reasonable under the circumstances. *Id.*

21. While one-on-one showups are disfavored because they tend to be suggestive, but are not per se invalid, to determine if it violates due process, the trial court must consider whether under the totality of the circumstances, it creates "...a very substantial likelihood of irreparable misidentification." *People v. Martinez*, 378 P.3d 761, 765 (Colo. App. 2015); citing *People v. Smith*, 620 P.2d 232, 237 (Colo. 1980); quoting *Manson v. Braithwaite*, 432 U.S. 98, 114-16, 97 S.Ct. 2243, 53 L.ed.2d 140 (1977).

22. To determine if there is a substantial likelihood of irreparable misidentification, the trial court may consider:

- (1) The witness's opportunity to view the criminal at the time of the crime;
- (2) The witness's degree of attention;
- (3) The accuracy of any prior description of the criminal;
- (4) The level of certainty demonstrated at the time of the identification; and,
- (5) The time between the crime and the identification.

People v. Martinez, 378 P.3d at 765 (Colo. App. 2015).

23. It is important to stress that the contested identifications do not include any identification of the defendant. Therefore, there is not a possibility of a due process violation.

24. Nevertheless, under the totality of the circumstances, the totality of the Ms. Lee's identification of [redacted] and [redacted] are admissible. It would be misleading to the jury to only admit part of Ms. Lee's identification. Colo. R. Evid. 403.

25. To determine if Angela Lee's identification of [redacted] as one of the children she saw walking on County Road 501 on November 19, 2012, is a violation of the defendant's due process, the Court may consider:

- (1) Ms. Lee had sufficient opportunity to observe [redacted] and [redacted] to provide their physical descriptions, their clothing, and backpacks;
- (2) Similarly, Ms. Lee's degree of attention was sufficient to make observations and reflect on those observations;
- (3) Although the defendant is not subject to this identification procedure, the identification of [redacted] and [redacted] are physically accurate;
- (4) Ms. Lee repeatedly said she was never 100% certain of her initial identification of Dylan Redwine, and was only 60 – 70% certain.
- (5) Ms. Lee's ultimate identification of [redacted] and [redacted] was made within four months of her initial observations.

26. Under the totality of the circumstances, the entirety of Angela Lee's identification of and , including the one-on-one identification is admissible. This includes her confirmation statement that she was only 60 – 70% certain of her initial identification of Dylan Redwine, which was not a preferred procedure until more recent eyewitness identification studies completed after Dylan Redwine's homicide.
27. Therefore, the defendant may impeach the identification. This impeachment may include recent studies and the use of a confidence statement. However, under the totality of the circumstances, impeachment of the identification will be up to the factfinder to determine what weight to give the evidence, rather than its admissibility.

WHEREFORE, the People request this Honorable Court strike the motion to suppress identification (D-43), or in the alternative deny the motion, because based upon the totality of the circumstances, there is not an unduly suggestive identification that compromises the defendant's rights to due process.

Respectfully submitted this November 13, 2018.

CHRISTIAN CHAMPAGNE
DISTRICT ATTORNEY
6th JUDICIAL DISTRICT

/s/ Matthew Durkin
Matthew Durkin
Special District Attorney, #28615

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