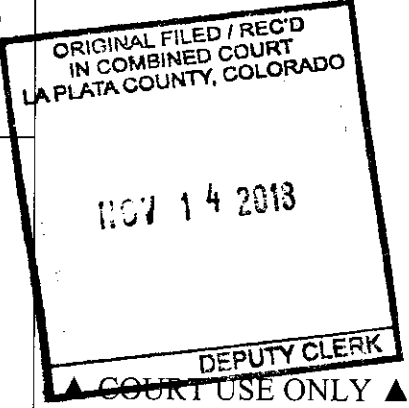


<b>DISTRICT COURT, LA PLATA COUNTY, COLORADO</b> Court Address: 1060 E. Second Ave., Durango, CO 81301 Phone Number: (970) 247-2304	
<b>Plaintiff: PEOPLE OF THE STATE OF COLORADO</b> v. <b>Defendant: MARK ALLEN REDWINE</b>	
Christian Champagne - District Attorney, #36833 Matthew Durkin, Special Deputy 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
<b>PEOPLE'S RESPONSE TO [D-88] DEFENDANT'S          MOTION TO SUPPRESS FRUITS OF ILLEGAL SEARCH – SEARCH WARRANT TO          OBTAIN MATERIAL FROM MARK REDWINE'S BLACK SAMSUNG VERIZON          CELL PHONE, AND BLUE APPLE IPOD          [PUBLIC ACCESS]</b>	

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 to obtain material from Mark Redwine's black Samsung Verizon cell phone, and blue Apple iPod (D-88). 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. On December 20, 2012, Investigator Kevin Brown submitted a an affidavit and search warrant for a black Samsung Verizon cell phone, evidence #25, and a blue Apple iPod, evidence #28, to search for "any pictures, videos, voicemails, contact lists, call records, downloads, text messages, setting preferences, task lists, applications, SIM card information, GPS information, evidence of ownership, and any other information associated with the storage of the above items that could be user specific settings or preferences not know in advance by law enforcement to be specifically referenced in this affidavit."
4. Some of Dylan Redwine's remains were not found until June – July 2013.

#### **ARGUMENT**

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 affidavit in support of the search warrant comprehensively describes the initial report of a missing child; search and rescue efforts to that point; interviews with witnesses; investigation of cell activity at the defendant's home; several interviews of the defendant; inconsistencies within those statements; the defendant description of the use of cell devices in the home; and, statements describing the defendant "rough housing" Dylan Redwine. (See People's Exhibit 1: Search Warrant and Affidavit)
10. The defendant misstates the affidavit which does not include any references to the defendant's truck.
11. In his motion, the defendant does not provide the entire context of the affidavit in support of search warrant, and therefore, misstates it.
12. For clarification, in addition to the paragraph included in the defendant's motion, the affiant included a summary of the significant search efforts, numerous interviews, searches of numerous electronic devices and social media sites, the fact that some of Dylan Redwine's remains were found, inconsistencies with the defendant's statements, including other investigation that showed that the defendant's devices were being accessed during the night of November 18, 2012
13. 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).
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 to obtain material from Mark Redwine's black Samsung Verizon cell phone and a blue Apple iPod (D-88), 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 14, 2018.

CHRISTIAN CHAMPAGNE  
DISTRICT ATTORNEY  
6<sup>th</sup> JUDICIAL DISTRICT

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

#### **CERTIFICATE OF SERVICE**

I hereby certify that on November 14, 2018, I delivered a true and correct copy of the foregoing to the parties of record via e-service.

/s/ Christian Champagne  
Christian Champagne