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 14 2018 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 Fax Number: (970) 259-0200	Case Number: **17 CR 343**

PEOPLE'S RESPONSE TO [D-95] DEFENDANT'S MOTION TO SUPPRESS FRUITS OF ILLEGAL SEARCH – SEARCH WARRANT TO SEARCH MARK REDWINE'S TRUCK EXECUTED ON MARCH 20, 2014
[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 Dylan Redwine's [redacted]. At that time, [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 a trained and experienced human remains detection canine handler, Carren Corcoran, and her certified canine Molly, to follow up on [redacted].

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 human remains detection canine Molly and handler Carren Corcoran. The Defendant gave consent to go on his property over speaker phone and two sheriff's deputies and two canine handlers heard the conversation and his verbal consent. After the human remains detection dog [redacted], 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 two canine handlers over speaker phone. While inside, [redacted]. The conversations regarding consent to enter the property and the home are documented in the police reports and canine handler report in discovery.

3. Law enforcement officers then applied for a search warrant to seize and search the Defendant's Dodge truck based in part on the evidence acquired during the consensual canine search, and it was granted on February 5, 2014. See attached People's Exhibit 1. The Dodge truck was seized that day, and the search was executed on February 13, 2014. Subsequent to that search, law enforcement officers applied for a second search warrant to search additional contents of the truck. This was granted on March 20, 2014. See attached People's Exhibit 2.

4. In good faith and reliance upon those lawful orders, La Plata County Sheriff's Deputies seized evidence in this case.

5. Now the Defendant challenges the validity of the March 20, 2014 warrant.

6. Though his motion references an electronic tracking device in the opening paragraph, and the Defendant fails to attach the affidavit for the search warrant to his motion, the People are working under the assumption that this is an error and the warrant in question is the search warrant for the Dodge truck.

Law

7. "Probable cause for a search warrant exists when the affidavit in support of the warrant alleges sufficient facts to warrant a person of reasonable caution to believe that contraband or other evidence of criminal activity is located at the place to be searched." *Bartley v. People*, 817 P.2d 1029, 1032-1033 (Colo. 1991) (*citing People v. Arellano*, 791 P.2d 1135, 1137 (Colo.1990); *see also People v. Hill*, 690 P.2d 856, 859 (Colo.1984); *People v. Hearty*, 644 P.2d 302, 309 (Colo.1982). In assessing whether this constitutional standard for probable cause has been satisfied, an affidavit for search warrant must be interpreted in a common sense and realistic fashion. *Id.* (*citing Arellano*, 791 P.2d at 1137-38; *see also Hill*, 690 P.2d at 859; *People v. Ball*, 639 P.2d 1078, 1082 (Colo.1982)). Due consideration should be given to a law officer's experience and training in evaluating the significance of the officer's observations relevant to probable cause. *Id.* (citing *Ball*, 639 P.2d at 1082).

8. A probable cause determination is limited to the four corners of the affidavit. *People v. Meraz*, 961 P.2d 481, 483 (Colo. 1998) (en banc).

9. The analysis of probable looks at the totality of the circumstances. *People v. Altman*, 960 P.2d 1164 (Colo. 1998) (en banc). The probable cause standard does not lend itself to mathematical certainties and should not be laden with hypertechnical interpretations or rigid legal rules; instead, judges, considering all of the circumstances, must make a practical, common-sense decision whether a fair probability exists that a search of a particular place will reveal contraband or evidence of a crime. *Id.* (citations omitted).

10. Because the exclusionary rule is designed to deter police misconduct and not judicial error, the "good faith exception" exists where a police officer is executing a court issued search warrant. *Id.* C.R.S. 16-3-308 codified the "good faith exception," creating a presumption that the officer is acting in good faith by relying upon a court issued warrant. *Id.* The inquiry by the court must be whether it was objectively reasonable for the officer to rely upon the warrant, and only if no reasonable officer would have relied upon the warrant is the exception inapplicable. *Id.*

11. Police officers are not appellate judges, and therefore the determination by an appellate court that a warrant is invalid does not mean a police officer's reliance upon that warrant was objectively unreasonable. *Id.* Finally, where the "good faith exception" applies, the Colorado Supreme Court has determined that further analysis regarding probable cause in the warrant affidavit is not required. *Id.*

12. Under *United States v. Leon*, four circumstances in which an officer could not reasonably rely on a warrant: (1) where the magistrate was misled by knowingly or recklessly false information; (2) where the magistrate wholly abandoned his or her judicial role; (3) where the warrant is so facially deficient that the executing officers cannot reasonably determine the particular place to be searched; and (4) where the warrant is based on an affidavit so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable. 468 U.S. 897, 923 (1984).

13. The first prong relates to the veracity of the affiant. The test for veracity is the "totality-of-circumstances" as seen in *Illinois v. Gates*, meaning that the duty of the reviewing Court is merely to ensure that the issuing magistrate had a "substantial basis for concluding" that probable cause existed. 462 U.S. 213, 216 (1983).

14. While in *Franks v. Delaware*, to challenge the veracity of an affidavit, the defendant must meet a variety of requirements, Colorado has a two-part test to establish whether a veracity hearing is needed. The defendant (1) establishes a good faith basis in fact for the challenge and (2) describes with specificity the precise statements being challenged. *People v. Warner*, 251 P.3d 556, 560 (Colo. App. 2010).

15. A defendant is permitted a hearing on the veracity of an affidavit for a search warrant only if they can prove with "substantial preliminary showing that a false statement knowingly and intentionally, or with reckless disregard for the truth was included in the affidavit". *Id.*

16. If this burden is met, the defendant must then prove by a preponderance of the evidence that with the false material is set aside, the remaining material in the affidavit is insufficient to establish probable case. *Id.*

17. To meet their burden, the motion to suppress must, also, contain one or more affidavits supporting their good faith basis with which specific statements will be challenged to allow the prosecution to prepare for the hearing. *People v. Dailey*, 639 P.2d 1068, 1075 (Colo. 1982).

18. Therefore, in circumstances where the Defendant cannot satisfy the two-prong test of *Dailey,* or under circumstances where there is enough evidence to establish probable cause after redacting the false statements as seen in *Franks*, then no hearing will be administered to challenge veracity. 639 P.2d at 1075; 438 U.S. at 155-56.

19. If granted a hearing to challenge the validity of the affidavit for the search warrant, the defendant bears a burden of proving by the preponderance of the evidence, the falsity of the statement(s) included in the affidavit and without the statement, that the search warrant would have never been granted due to lack of probable cause. At the hearing, the Court must determine "whether there are erroneous statements in affidavit". *Warner*, 251 P.2d 560. If the Court does declare there are erroneous statements, then they must next determine whether the source of the error is intentional falsehood or reckless disregard of the truth on the part of affiant. *Id.*

20. It should be noted that this applies only to falsehoods attributed to the affiant, and not necessarily to the information and sources relied upon by the affiant. In *Warner*, false statements from sources other than the affiant may not be excluded if the trial determines that sanctions or no sanctions are appropriate. 251 P.2d at 260.

21. A defendant may not rely purely on the affidavit to prove falsity of the statements. *Warner* at 561-62. Not only must the defendant not rely on the affidavit to resolve the dispute, there must be proof that the falsity of the statements led to an illegal search warrant, making evidence from the search inadmissible. *Id.* If the defendant is unable to establish a preponderance of the evidence, then the Court shall deny the motion. *Id.*

Analysis

22. As a threshold matter, a search conducted pursuant to a judicially approved search warrant is presumed to be a valid search. Here, the search warrant affidavit, when viewed in the totality of the circumstances within the four corners of the warrant, establishes probable cause.

23. First and foremost, the People ask that this court review the warrant in its totality as opposed to in the pieces presented by the Defendant in his motion. Since the Defendant opted not to attach the affidavit for the Court's reference, the People have done so with this response. When viewed in its entirety, the affidavit contains ample information to support probable cause.

24. [redacted] is sufficient to justify a search warrant for further efforts to search for evidence of a homicide, especially after the victims remains have been found roughly 8 miles up the road since the last search of the home. Further, indications by the canine [redacted], in conjunction with the other evidence in the warrant, support probable cause for the March 20, 2014 search.

25. Further, the information in the affidavit was not illegally obtained because the Defendant gave valid consent to enter his home (*See People's Response to D-41*). Not only did officers ask for permission, they explained the reason they were entering the home and they abided by the parameters of the consent given by the Defendant. They did not exert undue influence through any threats or promises to overcome his will, nor does the Defendant articulate with particularity any such influences in his motion. However, the Court need not address this for purposes of this four corner analysis.

26. Additionally, the Defendant's assertion that the affidavit contains conclusory language is an incorrect characterization. Those paragraphs of the affidavit include information obtained from wildlife and canine experts and relayed to the court regarding material evidence in the case; they are not the unsupported opinions of the affiant. Ms. Corcoran's credentials are even attached for the Court's reference to support the information she provided to the affiant. It is not "suspect," it is reliable and accurate. However, the Court need not consider D-36-40 or People's Responses thereto because this is a four corners analysis which does not factor in extraneous information, and the court is "required to presume those attestations were valid." *People v. Cox*, 2018 CO 88, ¶¶ 15-16.

27. Further, the Defendant's assertions that the items to be searched for are not stated with particularity ignores the context and facts of the situation at the time. Dylan Redwine's remains were found off a dirt mountain road 8 miles from the Defendant's home, and yet very few of his belongings were recovered. He was last seen with the Defendant, [redacted]. Further, specific reasons were given to suspect electronics evidence including deception by the Defendant. It was appropriately particular to request to look for Dylan Redwine's belongings, DNA, air samples, and electronics evidence, as these items were directly connected to the supporting facts and the deceased victim.

28. The Defendant's argument that law enforcement seized items not named in the warrant is without merit. First, all items seized were believed to be related to the crime, and were authorized to be seized and analyzed for Dylan Redwine's DNA. Although law enforcement was prudent and sought this second search warrant, the initial warrant from February 5, 2014 pursuant to which the truck was seized and put into evidence had already authorized the collection of DNA and trace evidence, which could have been found on these items (*see People's Exhibit 2*). Second, many of these items were

believed to be Dylan Redwine's belongings or were media storage devices, and therefore explicitly authorized to be seized. Third, law enforcement officers may seize evidence that is in plain view while executing a search warrant.

29. Although the places that may be searched and items that may be seized pursuant to a search warrant are circumscribed by the precise grant of the warrant itself, it is well established that executing officers are not required to close their eyes to other incriminating evidence plainly visible to them while conducting a valid search. *People v. Koehn*, 178 P.3d 536 (Colo. 2008) (en banc) (citing *People v. Kluhsman*, 980 P.2d 529, 534 (Colo.1999) (acknowledging and describing the limits of the "plain view" exception)). As long as the incriminating character of an item is immediately apparent and the officer seizing it is lawfully located in a place from which he can both plainly see and lawfully access it, a warrantless seizure does not offend the Fourth Amendment. *Horton v. California,* 496 U.S. 128, 136-137, 110 S.Ct. 2301, 110 L.Ed.2d 112 (1990).

30. Under these circumstances, although the Court need not apply the good faith exception as there is clearly probable cause in the four corners of the warrant, certainly law enforcement's reliance on the Court's order in these circumstances was objectively reasonable.

Conclusion:

31. When considered under the totality of the circumstances and within the four corners of the warrant, there is probable cause for the search in this case.

32. Further, because only a four corners analysis is appropriate under these circumstances, the People respectfully request that the court deny his motion for a hearing and find probable cause through a four corners analysis of the totality of the circumstances.

WHEREFORE, the People respectfully request this Honorable Court DENY Defendant's Motion To Suppress Fruits Of Illegal Search – Search Warrant To Search Mark Redwine's Truck Executed On March 20, 2014.

Respectfully submitted this March 14, 2019.

CHRISTIAN CHAMPAGNE
DISTRICT ATTORNEY
6th JUDICIAL DISTRICT

/s/ Fred Johnson
Fred Johnson, #42479
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