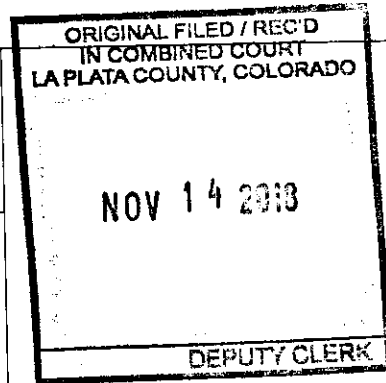


DISTRICT COURT, LA PLATA COUNTY, COLORADO
Court Address: 1060 E. Second Ave., Durango, CO 81301
Phone Number: (970) 247-2304



Plaintiff: PEOPLE OF THE STATE OF COLORADO

v.

Defendant: MARK ALLEN REDWINE

▲ 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
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Case Number: 17 CR 343

**PEOPLE'S RESPONSE AND MOTION TO STRIKE [D-98a] DEFENDANT'S
MOTION TO SUPPRESS BUCCAL SWABS, PHOTOGRAPHS, AND FRUITS OF THE
SEARCH ON NOVEMBER 30, 2012 FOR FAILURE TO COMPLY WITH C.R.C.P 41.1
AND IN VIOLATION OF MR. REDWINE'S RIGHTS TO BE FREE OF
UNREASONABLE SEARCH AND SEIZURES
[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 buccal swabs, photographs, and fruits of the search on November 30, 2012, for failure to comply with C.R.C.P. 41.1 and in violation of Mr. Redwine's rights to be free of unreasonable search and seizures (D-98a). 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 compromising photographs 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. On Friday, November 30, 2012, Investigator Patterson obtained a court order to collect the buccal swabs and photographs from the defendant. The defendant agreed to meet Investigator Patterson at the Bayfield Marshall's Office as he drove back to his home. At that time, Investigator Patterson returned the defendant's laptop, collected buccal swabs and took photographs of the defendant. The defendant's brother, David, was also present and voluntarily provided buccal swabs. After the brief interaction, the defendant and his brother, left the Bayfield Marshall's Office.

ARGUMENT

6. The Colorado Supreme Court has held that "contrary to the defendants' contention, we need not concern ourselves with the investigatory procedures of Crim.P.41.1 because the defendants voluntarily submitted to fingerprinting, thereby waiving their Fourth Amendment protections under the United States Constitution." *People v. Hannaman*, 507 P.2d 466, 467 (Colo. 1973).
7. Voluntary surrender of nontestimonial evidence waives Fourth Amendment protections. The defendant did not contest the voluntariness of his production to the officers of this evidence at trial. In the absence of objection from the defendant, the trial court had no obligation to raise the issue of voluntariness on its own motion. *People v. Mattas*, 645 P.2d 254, 260 (Colo. 1982). *People v. Sanchez*, 503 P.2d 619 (Colo. 1972); *Neighbors v. People*, 467 P.2d 804 (Colo. 1970).
8. The defendant coordinated with the La Plata County Sheriff's Office to meet at the Bayfield Marshall's Office, where law enforcement returned his laptop, and he voluntary

submitted buccal swab and photographs. After this consensual encounter, the defendant left. Based upon well-established precedent, the defendant is precluded from alleging that his Constitutional rights were violated.

WHEREFORE, the People request this Honorable Court to deny the defendant's motion to suppress buccal swabs, photographs, and fruits of the search on November 30, 2012 for failure to comply with C.R.C.P. 41.1 and in violation of Mr. Redwine's rights to be free of unreasonable searches and seizures, because he voluntarily provided the swabs and photographs

Respectfully submitted this November 14, 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 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