

DISTRICT COURT, LA PLATA COUNTY, COLORADO Court Address: 1060 E. Second Ave., Durango, CO 81301 Phone Number: (970) 247-2304	<div style="border: 2px solid black; padding: 5px; text-align: center;"> <p>ORIGINAL FILED / REC'D IN COMBINED COURT LA PLATA COUNTY, COLORADO</p> <p style="font-size: 1.5em; font-weight: bold;">NOV 13 2013</p> <p>DEPUTY CLERK</p> <p>▲ COURT USE ONLY ▲</p> </div>
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-81] MOTION TO SUPPRESS STATEMENTS OF MARK REDWINE OBTAINED BY TOM COWING BY HIS AGENT JULIE SUNDBLOM ON MAY 18, 2013, AS SAID STATEMENTS WERE NOT VOLUNTARY [PUBLIC ACCESS]	

NOW COME the People, by and through Christian Champagne, District Attorney, in the County of La Plata, and respond to defense motion [D-81], and move this honorable Court to deny the defense request. AS GROUNDS for this response, the People state as follows:

1. The defendant asserts that his statements to Julie Sundblom on May 18, 2013 were involuntary and that she was acting as a state agent during the time that she elicited the statements from the defendant, and they should therefore be suppressed as unconstitutional.

I. LEGAL AUTHORITY

A. STATE AGENT

2. Constitutional violations resulting in the exclusion of evidence generally do not apply to evidence obtained by private parties or evidence resulting from the conduct of private parties. *People v. Lopez*, 946 P.2d 478, 482 (Colo. App. 1997) (citing *Colorado v. Connelly*, 479 U.S. 157, 167 (1986)).

3. An exception to this rule exists when private persons become agents of the police by virtue of their suggestion, order, request, or participation for purposes of criminal investigation. *Id.*; *People v. Henderson*, 559 P.2d 1108 (Colo. App. 1976).
4. “The burden of establishing government involvement...rests on the party objecting to the evidence.” *U.S. v. Snowadzki* 723 F.2d 1427 (9th Cir. 1984).
5. Determination of whether an individual is acting as an agent of the police requires examination of the totality of the circumstances. *People in Interest of P.E.A.*, 754 P.2d 382, 385 (Colo.1988). Critical factors in determining whether a private citizen is a state actor include “(1) whether the government knew of and acquiesced in the intrusive conduct, and (2) whether the party performing the search intended to assist law enforcement efforts or to further his own ends.” *Coolidge v. New Hampshire*, 29 L.Ed.2d 564, 567 (1971);
6. In situations where the person is not paid by a public agency, the courts have found they were not a state actor and the statements made were admissible. *People v. Chastain*, 733 P.2d 1206 (Colo.1987) (holding that a hospital security guard was not a state actor). Similarly, when a defendant is questioned without an investigative purpose, but simply out of curiosity, the questioner was deemed to not be a state actor. *United States v. Morales*, 834 F.2d 35 (2nd Cir.1987) (statements made to a physician's assistant at a correctional facility were held admissible because the physician's assistant had no investigative purpose, had no responsibility to investigate, and was only questioning the defendant out of curiosity.) When a person has no duty to report the statements made by a defendant, he is deemed to not be a state actor. *State v. Olson*, 449 N.W.2d 251 (S.D.1989) (a counselor at a prison was deemed not to be a state actor.)

B. INVOLUNTARINESS

7. Involuntary statements are inadmissible in trial, except for impeachment purposes. *See Dickerson v. United States*, 530 U.S. 428, 433 (2000).
8. The defense has the burden of proof to make a *prima facie evidentiary* showing that the statements at issue were involuntary. *People v Zadran*, 314 P.3d 830, 833 (Colo. 2013); *People v. McIntyre*, 325 P.3d 583, 587 (Colo. 2014) (emphasis added). If able to do so, the burden of preponderance then falls on the prosecution to establish that the statements were voluntary. *Id.*
9. Coercive conduct is a “necessary predicate to the finding that a confession is not ‘voluntary,’” *Connelly*, 479 U.S. at 167, and must “play[] a

significant role in inducing a confession or an inculpatory statement....” *People v. Medina*, 25 P.3d, 1216, 1222 (Colo. 2001). Such activity can take the form of overt physical abuse and threats or subtle forms of psychological coercion. *Arizona v. Fulminante*, 499 U.S. 279, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991); *People v. Gennings*, 808 P.2d 839 (Colo.1991).

10. Where coercive government conduct plays a significant role in inducing the inculpatory statement or statements, the statement is deemed involuntary. *Id.*
11. In determining whether government coercion induced the defendant to incriminate himself, the Court should weigh “the circumstances of pressure against the power of resistance of the person confessing.” *Medina*, 25 P.3d at 1222. As part of those circumstances, the court may consider:
 - a. whether the defendant was in custody or was free to leave and was aware of his situation;
 - b. whether *Miranda* warnings were given prior to any interrogation and whether the defendant understood and waived his *Miranda* rights;
 - c. whether the defendant had the opportunity to confer with counsel or anyone else prior to the interrogation;
 - d. whether the challenged statement was made during the course of an interrogation or instead was volunteered;
 - e. whether any overt or implied threat or promise was directed to the defendant;
 - f. the method and style employed by the interrogator in questioning the defendant and the length and place of the interrogation;
 - g. and the defendant's mental and physical condition immediately prior to and during the interrogation, as well as his educational background, employment status, and prior experience with law enforcement and the criminal justice system.

Gennings, 808 P.2d at 844.

12. Additionally, the official misconduct must be causally related to the confession or statement. *See Connelly*, 479 U.S. at 164, 107 S.Ct. 515. And, “[e]ven where there is a causal connection between police misconduct and a defendant's confession, it does not automatically follow that there has been a violation of the Due Process Clause.” *Id.* at 164 n. 2 *See also People v. Wickham*, 53 P.3d 691, 694 (Colo.App.2001).

II. ARGUMENT

13. The People do not dispute that on May 18, 2013, Julie Sundblom was acting as an agent of law enforcement. She had previously arranged with Tom Cowing to interview and record Mark Redwine on behalf of law enforcement and turn over those recordings to law enforcement upon their completion. *See Exhibit 1.* This arrangement was still in place on May 18, 2013. *See Exhibit 2.*
14. However, the statements made by the defendant were not involuntary. The defendant spoke with Ms. Sundblom upon entering her place of employment, the Rocky Mountain General Store in Vallecito, Colorado, a store the defendant was known to frequent. He was not in custody and therefore no *Miranda* warnings were necessary or appropriate. He was not denied an opportunity to speak to counsel or anyone else as this was not a formal interrogation; instead, the statement was volunteered entirely by the defendant. He was not induced to make the statements by any threats or promises. The tone was conversational, the conversation was not overly lengthy, and it took place at a place of comfort and safety for the defendant. While it is true that Ms. Sundblom attempted to play on the fact that she had the defendant's trust, she did not seek to exploit his mental or physical condition, his educational background, or any other means of psychological coercion in order to overbear his will and force him to make a statement against his own choice. *See Exhibit 3.* In short, there is absolutely nothing involuntary about this statement.
15. The People have provided the necessary exhibits to allow the court to understand the context surrounding the statement and a transcript of the statement itself. This is sufficient for the court to make findings regarding the voluntariness of the statement without an evidentiary hearing, and the People request that after considering the exhibits, the court deny the defendant's request without a hearing.

WHEREFORE, because the statements made by the defendant were not involuntary, the People request this court to DENY the defense motion without a hearing.

Respectfully submitted this November 18, 2018.

CHRISTIAN CHAMPAGNE
DISTRICT ATTORNEY
6th JUDICIAL DISTRICT

/s/ Christian Champagne
Christian Champagne #36833
District Attorney

CERTIFICATE OF SERVICE

I hereby certify that on March 14, 2019, I delivered a true and correct copy of the foregoing to the parties listed below via e-service.

/s/ Christian Champagne
Christian Champagne