

<b>DISTRICT COURT, LA PLATA COUNTY, COLORADO</b> 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;">           ORIGINAL FILED / REC'D            IN COMBINED COURT            LA PLATA COUNTY, COLORADO   <b>NOV 19 2013</b>             COURT USE ONLY            DEPUTY CLERK         </div>
<b>Plaintiff: PEOPLE OF THE STATE OF COLORADO</b>  v.  <b>Defendant: MARK ALLEN REDWINE</b>	Case Number: 17 CR 343
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	
<b>PEOPLE'S RESPONSE TO [D-58] MOTION TO SUPPRESS STATEMENTS OF MARK REDWINE OBTAINED BY TOM COWING, TONYA GOLBRICHT, BRANDON DYER, AND AGENT JOE FUNARO ON MARCH 19, 2013, AS SAID STATEMENTS WERE OBTAINED IN VIOLATION OF MARK REDWINE'S FIFTH AND SIXTH AMENDMENT RIGHTS, HIS MIRANDA RIGHTS, AND WERE NOT VOLUNTARY [PUBLIC ACCESS]</b>	

NOW COME the People, by and through Christian Champagne, District Attorney, in the County of La Plata, and respond to defense motion [D-58], 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 Tom Cowing, Tonya Golbricht, Brandon Dyer, and Agent Joe Funaro on March 19, 2013, were taken without the benefit of the warnings described in *Miranda v. Arizona*, 384 U.S. 436, 478 (1966), and were involuntary, and they should therefore be suppressed as unconstitutional.
2. Although not specifically address by the defense motion, the defendant did make several statements that are likely to be at issue during the suppression hearing. During the interview, the investigators began to focus on the defendant as a suspect and began to ask him questions about his involvement in the victim's disappearance. During this period, the defendant indicated that he did not have answers to their questions, stating:

- a. "I have nothing more to say." Exhibit 5 at 15, Exhibit 6 at 32:38.
- b. "I got nothing to say." Exhibit 5 at 15, Exhibit 6 at 33:28.
- c. "I got nothing more to say." Exhibit 5 at 16, Exhibit 6 at 35:15.
- d. "I got nothing more to say." Exhibit 5 at 16, Exhibit 6 at 36:28.
- e. "I got nothing more to say. I don't know how to put it any simpler than that." Exhibit 5 at 16, Exhibit 6 at 36:46.
- f. "What part of me not having any more to say do you not understand?" Exhibit 5 at 16, Exhibit 6 at 37:11.
- g. "I can't help you with that. I'm not, I don't want, I don't want to have this conversation anymore. I'm done talking." Exhibit 5 at 17, Exhibit 6 at 40:12.
- h. Defendant: "I've got nothing more to say. I'm not going to say it again."

Cowing: "So are we done here?"

Defendant: "Mm-hmm. Yeah, we are." Exhibit 5 at 18, Exhibit 6 at 43:45.

- i. Cowing: "Then why are you still here?"

Defendant: "That's a good question, because I don't think it's polite to just get up and walk out."

Cowing: "Is that what you want to do?"

Defendant: "At this point, I got nothing more to say. I told you that how many times now?"

Cowing: "Quite a few."

Defendant: "Well, more than once."

Cowing: "Okay."

Defendant: "After you."

Cowing: "Go ahead, let's be done. I appreciate you coming in." Exhibit 5 at 20, Exhibit 6 at 1:01:22.

## I. LEGAL AUTHORITY

### A. CUSTODIAL INTERROGATION

3. Two conditions must be met before *Miranda* warnings are required. First, the suspect must be in custody, and second, the questioning must meet the legal definition of interrogation. *United States v. Perdue*, 8 F.3d 1455, 1463 (10th Cir.1993); *People v. Hankins*, 201 P.3d 1215, 1218 (Colo. 2009).
4. In determining whether a person is in custody, a court must determine “whether a reasonable person in the suspect's position would believe himself to be deprived of his freedom of action to the degree associated with a formal arrest.” *Id.* (citations omitted).
5. Factors to consider whether a person is in custody include:
  - “(1) the time, place, and purpose of the encounter; (2) the persons present during the interrogation; (3) the words spoken by the officer to the defendant; (4) the officer's tone of voice and general demeanor; (5) the length and mood of the interrogation; (6) whether any limitation of movement or other form of restraint was placed on the defendant during the interrogation; (7) the officer's response to any questions asked by the defendant; (8) whether directions were given to the defendant during the interrogation; and (9) the defendant's verbal or nonverbal response to such directions.” *Hankins*, 201 P.3d at 1218-19 (citations omitted)
6. Under *Miranda*, the term “interrogation” “refers not only to express questioning, but also to any words or actions on the part of the police ... that the police should know are reasonably likely to elicit an incriminating response from the suspect.” *Rhode Island v. Innis*, 446 U.S. 291, 301 (1980).
7. The Fifth Amendment does not bar the admission of volunteered statements which are freely given. *Miranda*, 384 U.S. at 478.
8. *Miranda* has no applicability to statements which are not the product of interrogation. Therefore, volunteered or spontaneous statements by a person in custody are admissible at trial against that person. *Rhode Island v. Innis*, 466 U.S. 291, 299-300 (1980). See also *People v. Gonzalez*, 987 P.2d 239 (Colo.1999) (“Fifth Amendment protects defendants from improper forms of police interrogation, not from their own impulses to speak”); *United States v. Mullen*, 95 Fed.Appx.259, 260 (10<sup>th</sup> Cir.2003)

(“The Fifth Amendment does not bar the admission of volunteered statements which are freely given.”)

9. In *People v. Lawrence*, 55 P.3d 155, 159-60 (Colo. App. 2001)(*abrogated on other grounds*) the defendant was asked to voluntarily report to the police station for questioning regarding a crime, but, upon arrival and during questioning, was not handcuffed, blocked from leaving, told he was under arrest, and did not experience any other indicia of arrest. *Id.* The Court held that the officers “...elicited voluntary cooperation through non-coercive questioning,” and that “...a reasonable person would not have considered his freedom of action limited in a significant way.” *Id.* Because the defendant was not in custody, *Miranda* warnings and waiver thereof were not necessary. *Id.*
10. Similarly, in *People v. Cisneros*, 356 P.3d 877, 893 (Colo. App. 2014), the court held that statements made by the defendant to a detective at the police station were non-custodial when they were done for the purpose of furthering the investigation, the defendant was not placed under arrest or restrained, and the detective did not threaten or intimidate the defendant, but spoke in a calm conversational tone.
11. There is an extensive body of case law supporting the concept that just because the questioning occurs at the police station does mean the defendant was in custody. *See Oregon v. Mathiason*, 429 U.S. 492 (1977), *People v. Johnson* 671 P.2d 958 (Colo. 1983), *Jones v. People*, 711 P.2d 1270 (Colo. 1983).

## B. INVOLUNTARINESS

12. Involuntary statements are inadmissible in trial, except for impeachment purposes. *See Dickerson v. United States*, 530 U.S. 428, 433 (2000).
13. 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.*
14. 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).

15. Where coercive government conduct plays a significant role in inducing the inculpatory statement or statements, the statement is deemed involuntary. *Id.*
16. 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.

17. 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).
18. In determining whether government coercion induced the defendant to incriminate herself, the court weighs the circumstances of pressure against the power of resistance of the person confessing. *People v. Humphrey* 132 P.3d 352, 361 (Colo. 2006).
19. While the deliberate exploitation of a person's weakness by psychological intimidation can under some circumstances constitute a form of

governmental coercion that renders a statement involuntary, these circumstances alone do not render a statements involuntary. *See People v. Smith*, 716 P.2d 1115, 1118 (Colo.1986) (“Simply because the defendant became upset when she learned the victim had died was not a sufficient basis for the trial court's conclusion that her statement was involuntary.”) (citing *Raffaelli*, 647 P.2d at 230).

### C. INVOCATION OF RIGHT TO SILENCE AND TO CEASE QUESTIONING

20. “To effectively invoke the right to silence, a suspect must unambiguously and unequivocally assert his desire to cease questioning. *People v. Richardson*, 350 P.3d 905, 912 (Colo. App. 2014) *citing People v. Arroya*, 988 P.2d 1124, 1129-30 (Colo. 1999); *People v. Grenier*, 200 P.3d 1062, 1072 (Colo. App. 2008).
21. “In determining whether a suspect unequivocally invoked his right to silence, the trial court examines the totality of the circumstances.” *Id. citing Arroya*, at 1132. An inquiry therefore includes not only the words spoken by the suspect, but also the context in which the words were spoken. *Id. citing Arroya, supra*.
22. “Among other factors, a court may consider the officer’s response to the suspect’s statement, whether the officers attempted to clarify the suspect’s intent, the officer’s demeanor and tone, the suspect’s behavior, who was present during the interrogation, and the suspect’s sophistication or prior experience with the criminal justice system.” *Id. citing Arroya, supra*; *People v. Quezada*, 731 P.2d 730, 734 (Colo. 1987).
23. “If a suspect’s statement regarding his rights is ambiguous, police need not cease questioning or attempt to clarify the accused’s statements; rather, police are free to continue questioning.” (emphasis added) *Id. citing People v. Muniz*, 190 P.3d 774, 783-84 (Colo. App. 2008); *People v. Gray*, 975 P.2d 1124, 1130 (Colo. App. 1997).
24. “There is good reason to require an accused who wants to invoke his or her right to remain silent to do so unambiguously.” *Berghuis v. Thompkins*, 560 U.S. 370, 381 (2010). “A requirement of an unambiguous invocation of *Miranda* rights results in an objective inquiry that ‘avoid[s] difficulties of proof and...provide[s] guidance to officers’ on how to proceed in the face of ambiguity.” *Id.* “If an ambiguous act, omission, or statement could require police to end the interrogation, police would be required to make difficult decisions about an accused’s unclear intent and face the consequences of suppression ‘if they guess wrong.’” *Id.* at 382.
25. In *People v. Jimenez*, 217 P.3d 841, 860 (Colo. App. 2008) the court found that the defendant’s statement “I want to see my wife before I help

anymore, I want to see her. I won't say nothing, I won't talk to nobody until I see my wife. That's all I want is to see my wife," was not an unequivocal invocation of his right to remain silent. *Id.*

26. In *People v. Muniz*, 190 P.3d 774, 783 (Colo. App. 2008) (abrogated on separate grounds), the court found that the statements that "[t]o end this interview" he wanted to provide a blood sample, and that he "want[ed] to go home" did not unequivocally invoke the defendant's right to silence, holding, "... a reasonable police officer could have understood the statements at issue as an expression of defendant's desire to go home promptly, rather than as an invocation of his right to remain silent." *Id.* at 784.
27. However, in the *Arroya, supra*, the Court held that the defendant's statement "I don't wanna talk no more" was an found to be an unequivocal invocation of the defendant's right off cut off questioning. *Arroya*, 988 P.2d at 1129-30.

## II. ARGUMENT

28. This was a non-custodial interview. Although the interview did take place at the La Plata County's Sheriff's department, the defendant was never in custody. There is nothing about the context that would have lead the defendant to believe he was under arrest. Exhibits 1-5, 6 (to be offered at hearing). It was noted that he'd been there before for other interviews, and was specifically thanked for coming in voluntarily and told that he could leave at any time. *Id.* He was allowed freely move around the building, he was offered to take any breaks needed, offered drinks and cigarettes by the officers, and he was allowed to use the restroom as needed. *Id.* at 19. The officers present were Investigators Cowing and Dyer, although Investigator Golbricht and Agent Funaro made very brief and inconsequential contact with the defendant. *Id.* The tone was conversational, and the interview lasted about 1 hour and 2 minutes. *Id.* The officers responded to his questions appropriately, he was never forced or directly to do anything involuntarily, and he was allowed to leave at his request. *Id.* Here, just as in *Lawrence*, the officers elicited voluntary cooperation through non-coercive questioning.
29. The statements made by the defendant were not involuntary. The defendant was neither in custody nor under arrest, thus no *Miranda* warnings were given. *Id.* The defendant was never denied the opportunity to consult with counsel or others, and he never requested to do so. No promises or threats were made to coerce the defendant into making statements; instead he volunteered all of his statements. There was nothing coercive about the method, style, or length of the interview. The

officers did not seek to exploit his mental or physical condition, his educational background, or any other means of coercion in order to overbear his will and force him to make a statement against his own choice. *Id.* Although the officers did seek to appeal to his emotions and sympathy for the victim at times during the interview, the defendant was able to resist these emotional pleas and they did not cause to submit to answering questions against his will. In short, there is absolutely nothing involuntary about this statement.

30. Regarding the defendant's statements to the effect that "I got nothing more to say," the People argue that these statements were not an unequivocal invocation of the right to end questioning, but rather the defendant stating he did not wish to make further statements on that topic. This defendant was experienced with these officers and had several conversations with them, especially Investigator Cowing. *Id.* The defendant made no effort to leave the interview did not become angry or agitated, but remained calm and under control. *Id.* The defendant took long pauses in considering the questions of the officers, apparently pondering them thoroughly before indicating that he had nothing to say on the topic. *Id.* The officer's questions note that the defendant's body language did not express a desire to end the interview. *Id.* Finally, the defendant attempted to change the topic to potential prosecution, again indicating that he did not want to talk about the facts and circumstances surrounding the victim's disappearance, but was willing to discuss other topics of the investigation. *Id.* These statements, and the defendant's attendant behaviors, are ambiguous as to his desire to cease questioning and the officers properly continued questioning the defendant.
31. 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 non-custodial nature, the voluntariness of the statement, and whether the defendant unequivocally invoked his right to end questioning.

WHEREFORE, because the statements made by the defendant were not involuntary, the People request this court to DENY the defense motion.

Respectfully submitted this November 19, 2018.

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