

<b>DISTRICT COURT, LA PLATA COUNTY, COLORADO</b> 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  <b>NOV 19 2018</b>  DEPUTY CLERK
<b>Plaintiff: PEOPLE OF THE STATE OF COLORADO</b>  <b>v.</b>	<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		▲ COURT USE ONLY ▲  Case Number: 17 CR 343
<b>PEOPLE'S RESPONSE TO [D-59] MOTION TO SUPPRESS STATEMENTS OF MARK REDWINE OBTAINED BY TOM COWING AND JOE GABBARD ON APRIL 24, 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-59], 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 and Joe Gabbard, on April 24, 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.

## **I. LEGAL AUTHORITY**

### **A. CUSTODIAL INTERROGATION**

2. 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).

3. 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).
4. 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)
5. 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).
6. The Fifth Amendment does not bar the admission of volunteered statements which are freely given. *Miranda*, 384 U.S. at 478.
7. *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*, 446 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.”)
8. 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.*

9. 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.
10. 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**

11. Involuntary statements are inadmissible in trial, except for impeachment purposes. *See Dickerson v. United States*, 530 U.S. 428, 433 (2000).
12. The defense has the burden of proof to make a prima facie *evidentiary* showing that the statements at issue were involuntary. *People v Zadrán*, 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.*
13. 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).
14. Where coercive government conduct plays a significant role in inducing the inculpatory statement or statements, the statement is deemed involuntary. *Id.*
15. 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.

16. 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

17. This was a non-custodial interview. This interview took place at the home of Mark Redwine; he was at home when contacted by Investigators Cowing and Gabbard. Exhibits 1, 2, 3 (to be offered at hearing). He was never restrained or even physically touched by the officers, and never told or led to believe he was under arrest. *Id.* The tone was conversational, and the interview lasted about 11 minutes. *Id.* The defendant's freedom of movement was never limited in any way by the officers. *Id.* The officer responded to his questions appropriately, he was never forced or directly to do anything involuntarily, and the encounter ended after a short while. In essence, this interview had all the hallmarks of a short social visit in which the officers imparted information about developments in the case. Here, just as in *Lawrence*, the officers elicited voluntary cooperation through non-coercive questioning.
18. 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 psychological coercion in order to overbear his will and force him to make a statement against his own choice. *Id.* In short, there is absolutely nothing involuntary about this statement.

19. 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 and 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 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