

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

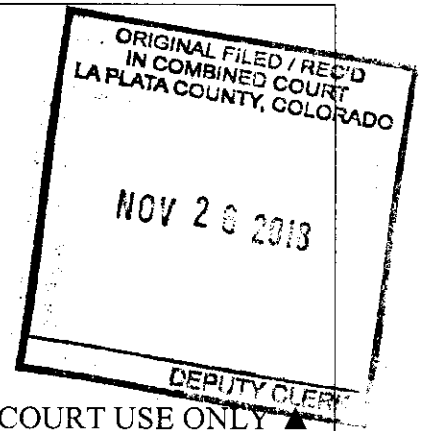
v.

Defendant: MARK ALLEN REDWINE

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

**ADDENDUM TO PEOPLE'S RESPONSE TO [D-87] DEFENDANT'S
MOTION TO SUPPRESS FRUITS OF ILLEGAL SEARCH – SEARCH WARRANT TO
INSTALL PEN REGISTER ON MARK REDWINE'S PHONE
[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, without a hearing, the defendant's motion to suppress fruits of illegal search – search warrant to install pen register on Mark Redwine's phone (D-87). 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. Some of Dylan Redwine's remains were not found until June – July 2013.
4. The following affidavits and search warrants to install a pen register were approved by the court:
 - a. 12SW184: Signed December 5, 2012, authorization from December 5, 2012 – January 4, 2013 (See Exhibit 1) (previously filed);
 - b. 13SW14: Signed February 14, 2013, authorization from February 14, 2013 – March 16, 2013 (See Exhibit 2);
 - c. 13SW66: Signed June 24, 2103, authorization from June 24, 2013 – December 21, 2013 (Exhibit 3);
 - d. 13SW69 (Correction): Signed June 24, 2013, authorization from June 2, 2013 – August 23, 2013 (Exhibit 4).

ARGUMENT

5. Considering the totality of the circumstances, an issuing court must “make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him, there is a fair probability that contraband or evidence of a crime will be found in a particular place”. *People v. Pennebaker*, 714 P.2d 904, 907 (Colo 1986).
6. To support a search warrant, probable cause must be based upon reasonableness and not mathematical certainty. *People v. Atley*, 727 P.2d 376, 378 (Colo. 1986).
7. To determine if there is underlying facts or circumstances that are sufficient to support a search warrant, a reviewing court “must only look within the four corners of the affidavit”. *People v. Padilla*, 511 P.2d 480, 482 (Colo. 1973); citing *People v. Brethauer*, 482 P.2d 369 (Colo 1971).
8. On November 5, 2018, the Colorado Supreme Court once again held that the probable cause determination must be based upon facts contained “within the four corners of the affidavit” submitted in support of the search warrant. *People v. Cox*, 2018 CO 88 (Colo. Nov. 5, 2018); citing *People v. Gallegos*, 251 P.3d 1056, 1064 (Colo. 2011). The probable cause determination is generally given “great deference” and “any doubts must be resolved in favor of the magistrate’s probable cause determination.” *Id.*; citing *People v. Hebert*, 46 P.3d 473, 481 (Colo. 2002).

9. In his motion, the defendant quoted only three paragraphs from the ten page affidavit. However, if the Court was only to consider those paragraphs, a finding of probable cause could be made.
10. In addition to the limited paragraphs cited by the defendant, the affidavit describes the investigation into the use of cellular devices by the defendant and Dylan Redwine; the extensive search and rescue efforts to that point; details of the investigation including searches; witness statements; and, more inconsistencies with the defendant's statements. The search warrant and affidavit also describes that the pen register may be utilized to locate the whereabouts of Dylan Redwine, and those persons who the defendant may be contacting that may be aware of where Dylan Redwine may be. (See People's Exhibit 1: Search Warrant and Affidavit)
11. To determine whether a search warrant is too general, the nature of the property to be seized must be considered. *People v. Lindholm*, 591 P.2d 032, 1035 (Colo. 1979); citing *People v. Lamirato*, 504 P.2d 661 (1972).
12. When considering the totality of the circumstances contained within the four corners of the search warrant and affidavit together, there is probable cause to support the search warrant.
13. **Deny Without a Hearing:** Finally, the motion should be denied because "the affidavit must be afforded 'a presumption of validity.'" *People v. Cox*, 2018 CO 88 (Colo. Nov. 5, 2018); citing *People v. Kerst*, 181 P.3d 1167, 1171 (Colo. 2008). The defendant has not alleged "the affiant's good faith is at issue", which is the only circumstance that a "veracity hearing" could be held. *People v. Cox*, 2018 CO 88 (Colo. Nov. 5, 2018); citing *People v. Flores*, 766 P.2d 114, 118 (Colo. 1988). To warrant a veracity hearing the motion to suppress must satisfy two conditions: (1) it must be supported by at least one affidavit that reflects there is a "good faith basis for the challenge," and (2) it must identify with specificity the "precise statements" being challenged. *Id.*: citing *People v. Dailey*, 639 P.2d 1068, 1075 (Colo. 1982). The defendant has not alleged, therefore, has not established the conditions necessary to have a hearing.

Wherefore, the People request this Honorable Court deny, without a hearing, the defendant's motion to suppress fruits of illegal search – search warrant to install pen register on Mark Redwine's phone (D-87), because a common sense review based upon the totality of the circumstances contained within the four corners of the search warrant and affidavit establishes probable cause.

Respectfully submitted this November 26, 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 26, 2018, I delivered a true and correct copy of the foregoing to the parties of record via e-service.

/s/ Christian Champagne
Christian Champagne