

DISTRICT COURT, LA PLATA COUNTY, COLORADO Court Address: 1060 E. Second Ave., Durango, CO 81301 Phone Number: (970) 247-2304	DATE FILED: January 22, 2019
Plaintiff: PEOPLE OF THE STATE OF COLORADO v. Defendant: MARK ALLEN REDWINE	▲ COURT USE ONLY ▲
PUBLIC ACCESS	Case Number: 17CR343
ORDER REGARDING THE MOTION TO SUPPRESS STATEMENTS OF MARK REDWINE OBTAINED THROUGH HIS APPEARANCE ON THE DR. PHIL TELEVISION SHOW (D-47)	

The defendant is charged with murder in the second degree and child abuse resulting in death in relation to the disappearance and death of the defendant's thirteen-year-old son, Dylan. The defendant has filed a motion to suppress statements made by the defendant when the defendant made three separate appearances on the Dr. Phil television show. The Court has reviewed the four DVDs that contain the raw footage shot for the three Dr. Phil programs in which the defendant appeared. The Court notes that portions of the DVDs contain a degraded audio track and are difficult to understand. However, the Court believes that it was able to understand the audio track well enough to rule upon the defendant's motion.

The defendant argues that Dr. Phil interrogated the defendant on his television show after claiming that he (Dr. Phil) was working with the La Plata County Sheriff's Office. The defendant further argues that he was insulted and taunted by his second wife and adult son (Dylan's mother and brother), that the show was full of incorrect information, that Dr. Phil "cajoled" the defendant **Redacted** that the

defendant was confronted by claims by his first wife that he had committed acts of domestic violence upon her, and that he was confronted with **Redacted**

The defendant asserts that Dr. Phil was acting as an agent of the La Plata County Sheriff's Office and as such was required to advise the defendant and obtain a waiver of the defendant's rights under *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966). Finally, the defendant argues that the statements he made on the Dr. Phil Show were involuntary.

The only evidence that the Dr. Phil Show was acting as an agent of the La Plata County Sheriff's Office are the statements of Dr. Phil that he had been in contact with law enforcement and that law enforcement had been in contact with the Dr. Phil show. The burden of proof when there is a claim that a private party is acting as an agent of law enforcement is upon the party asserting state action. See *United States v. Snowadzki*, 723 F.2d 1427 (9th Cir. 1984); *United States v. Miller*, 688 F.2d 652 (9th Cir. 1982). The Court does not find that Dr. Phil's assertions of contact with some unknown law enforcement agent(s) meets this burden. However, even if the defendant had met this burden, the defendant was neither required to receive *Miranda* warnings prior to questioning nor were his statements involuntary. *Miranda* warnings are only required to be given prior to interviewing a criminal suspect when the interview is a custodial interrogation. *Miranda*, 86 S. Ct. 1602, 1612. An individual is in custody for *Miranda* purposes when:

. . . under the totality of the circumstances, a reasonable person in the defendant's position would consider himself to be deprived of his freedom of action to the degree associated with a formal arrest.

People v. Begay, 325 P.3d 1026, 1030 (Colo. 2014), citing *People v. Matheny*, 46 P.3d 453, 468 (Colo. 2002). In this case, the defendant voluntarily allowed the Dr. Phil show to video

him at his home where he made a statement about Dylan and the circumstances of his disappearance, flew to Los Angeles to participate in the initial filming of the program, went to a

Redacted came back to the studio the next day and talked to Dr. Phil and the **Redacted**, which was made part of the second Dr. Phil episode, and much later, after portions of Dylan's body were found, participated in a telephone call with Dr. Phil for a third episode. Under no stretch of the imagination could the defendant be considered to be in custody during any of his appearances on the Dr. Phil show. Thus, even if Dr. Phil was acting as an agent of the La Plata County Sheriff's Office, there was no obligation to inform the defendant of his *Miranda* rights and no obligation to obtain a waiver of the defendant's *Miranda* rights.

For the same factual reasons stated above, the Court finds, after considering a totality of the circumstances, all of the statements the defendant made on the Dr. Phil show were voluntary. When determining whether a criminal suspect's statements are voluntary, the court must consider a totality of the circumstances:

Included in any listing of such details, but by no means intended as an exhaustive cataloging, are the following: whether the defendant was in custody or was free to leave and was aware of his situation; whether *Miranda* warnings were given prior to any interrogation and whether the defendant understood and waived his *Miranda* rights; whether the defendant had the opportunity to confer with counsel or anyone else prior to the interrogation; whether the challenged statement was made during the course of an interrogation or instead was volunteered; whether any overt or implied threat or promise was directed to the defendant; the method and style employed by the interrogator in questioning the defendant and the length and place of the interrogation; 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.

People v. Hutton, 831 P.2d 486, 488 (Colo. 1992) citing *People v. Gennings*, 808 P.2d 839, 844 (Colo.1991).

For the foregoing reasons, the Court denies the motion to suppress the statements the defendant made on the Dr. Phil Show. However, the Court will, *sua sponte*, prohibit the vast majority of the statements the defendant made on the Dr. Phil show from being admitted at trial pursuant to CRE 403. CRE 403 allows a court to prohibit the introduction of evidence whose probative value is substantially outweighed by its prejudicial effect. In this case, at the beginning of the first Dr. Phil episode, Dr. Phil essentially qualifies himself as an expert in forensic psychology. Over the course of three episodes, Dr. Phil and a former FBI agent, tell the defendant and the audience that the defendant's actions after Dylan's disappearance and the defendant's demeanor are not consistent with someone who is telling the truth or consistent with someone who is innocent. The episodes do not contain calm discussions between Dr. Phil and his guests. They degenerate into Dylan's mother and brother ganging up on the defendant and arguing with him.

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Thus, the prejudicial effect of most of the content on the three Dr. Phil episodes is extremely high. The Court also finds, except for one of the statements made by the defendant on the Dr. Phil

episodes, the defendant's statements are identical to statements that he made over and over to law enforcement during the course of the investigation. The Court therefore finds that the probative value of almost all of the statements made by the defendant to be extremely low. With two exceptions, the Court will prohibit the prosecution from introducing any portions of the three Dr. Phil episodes into evidence at the defendant's trial.

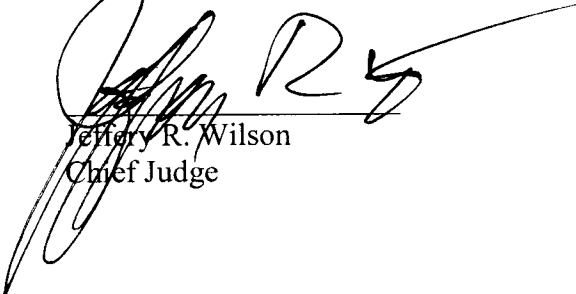
The first exception is that the prosecution will be allowed to admit into evidence the initial statement of the defendant made at the start of the first episode of the Dr. Phil show that is contained in pages 6-9 of the transcript. This statement is made by the defendant without apparent questioning and without Dr. Phil or any other persons being part of the clip. The Court finds no prejudicial effect from this small portion of the first episode as neither the defendant's character nor his credibility was attacked during this statement.

The Court may also allow a second segment from the Dr. Phil show.

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DONE this 22nd day of January, 2019.

BY THE COURT:



Jeffrey R. Wilson
Chief Judge