DISTRICT COURT, LA PLATA COUNTY, COLORADO Court Address: 1060 E. Second Ave., Durango, CO 81301 Phone Number: (970) 247-2304	DATE FILED: January 17, 2019
Plaintiff: PEOPLE OF THE STATE OF COLORADO v. Defendant: MARK ALLEN REDWINE	▲ COURT USE ONLY ▲
PUBLIC ACCESS COPY	Case Number: 17CR343

ORDER REGARDING THE MOTIONS TO SUPPRESS STATEMENTS OF DEFENDANT TO LAW ENFORCEMENT AND AGENTS OF LAW ENFORCEMENT AND D-55 THROUGH D-81

The defendant is charged with murder in the second degree and child abuse resulting in death in relation to the death of the defendant's thirteen-year-old son, Dylan. The defendant has filed numerous motions to suppress the statements he made to law enforcement prior to his arrest in this case in 2017. These motions are designated by the defense as:

D-55 Statements made by the Defendant to law enforcement on 6/27/13;
D-56 Statements made by the Defendant to law enforcement on 2/24/13;
D-57 Statements made by the Defendant to law enforcement on 3/8/13;
D-58 Statements made by the Defendant to law enforcement on 3/19/13;
D-59 Statements made by the Defendant to law enforcement on 4/24/13;
D-60 Statements made by the Defendant to law enforcement on 11/21/12;
D-61 Statements made by the Defendant to law enforcement on 5/29/13;
D-62 Statements made by the Defendant to law enforcement on 6/29/13;
D-63 Statements made by the Defendant to law enforcement on 7/1/13;
D-64 Statements made by the Defendant to law enforcement on 7/29/13;
D-65 Statements made by the Defendant to law enforcement on 8/5/13;
D-66 Statements made by the Defendant to law enforcement on 11/20/12;
D-67 Statements made by the Defendant to law enforcement on 11/26/12;
D-68 Statements made by the Defendant to law enforcement on 11/27/12;

D-69 Statements made by the Defendant to law enforcement on 11/28/12 (these statements were actually made on 11/29/12);
D-70 Statements made by the Defendant to law enforcement on 11/30/12;
D-71 Statements made by the Defendant to law enforcement on 12/6/12;
D-72 Statements made by the Defendant to law enforcement on 1/8/13;
D-73 Statements made by the Defendant to law enforcement on 1/15/13;
D-74 Statements made by the Defendant to law enforcement on 6/7/13;
D-75 Statements made by the Defendant to law enforcement on 5/22/13
D-76 Statements made by the Defendant to law enforcement on 5/30/13;
D-77 Statements made by the Defendant to law enforcement on 7/15/13 (these statements were actually made on 7/16/13);
D-78 Statements made by the Defendant to law enforcement[1] on 1/5/13;
D-79 Statements made by the Defendant to law enforcement on 4/25/13;
D-80 Statements made by the Defendant to law enforcement on 5/2/13; and,
D-81 Statements made by the Defendant to law enforcement on 5/18/13.

The defendant alleges in all such motions that such statements were made in violation of *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966), and that the statements were 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). 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

[1] D-78, D-79, D-80, and D-81 were statements made to Julie Sundblom, the clerk of a general store located near the defendant's home. The defense alleges, and the prosecution stipulated, that these statements were the result of state action and the Court has analyzed these statements as if they were made directly to law enforcement officers.

> 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).

The Court listened to the testimony at the suppression hearings held from December 3, 2018, through December 7, 2018, reviewed the exhibits and listened to the recordings of the defendant's conversations with law enforcement that were included in the exhibits. The Court finds that an important circumstance to consider when determining whether the defendant was in custody or made involuntary statements is that the defendant had at least 27 interviews with law enforcement prior to being arrested in this case. These contacts with law enforcement were extremely similar in nature. The Court therefore finds that it should analyze these motions to suppress as a whole. In this order, the Court will first make findings that concern the similarities in the defendant's contacts with law enforcement. In the contacts with law enforcement that have arguable factual circumstances different from the remaining contacts, the Court will make findings that specifically address the motions that cover these contacts.

For the most part, the defendant's interviews with law enforcement were conversational in tone. Some interviews were conducted over the phone in or at the defendant's home, some occurred in the La Plata County Sheriff's Office after the defendant was either asked to come speak to investigators or he showed up at the sheriff's office uninvited. Whether he was invited to the sheriff's office or appeared on his own volition, the defendant drove himself to and from the sheriff's office. He was never handcuffed, nor were his movements restricted while at the

sheriff's office. He was allowed to leave the sheriff's office after each of his interviews. Although the defense tried to suggest that the defendant was subject to a pat-down search for weapons upon entering the sheriff's office, there was no evidence presented at the hearing that he was ever subject to a pat-down search. While being interviewed, he was allowed to take breaks, go outside and smoke cigarettes, and he was at least once provided with and shared a meal with the officers questioning him. The defendant was allowed to end the interviews and leave when he wanted to do so. In fact, during the March 19, 2013, interview in which officers became confrontational with the defendant, the defendant stated that he had nothing more to say. When he did not respond to additional questions, he was asked, "Then why are you still here?" The defendant responded that he didn't want to be rude by getting up and leaving. Upon making the foregoing statement, the defendant got up from his chair and left the sheriff's office.

During the July 1, 2013, interview of Lt. Jim Byrn of the Fort Collins Police Department, D-63, the defendant was interviewed after being seen in a mountain meadow near the location that Dylan's remains were found. Although the defendant appeared intoxicated, he appeared to understand the conversation and his situation. He had a conversational interview with Lt. Byrn and the two drank the defendant's beer together and talked about the events before and after Dylan's disappearance. The defendant sometimes laughed and sometimes appeared on the verge of crying during this interview. Lt. Byrn offered to terminate the interview at one point due to the emotional state of the defendant, but the defendant told Byrn that he wanted the interview to continue.

Motion to suppress D-66 concerns statements the defendant made to law enforcement just after Dylan was reported missing from the defendant's home and law enforcement had arrived at the Defendant's home to actively search for Dylan. The defendant was interviewed by

Investigator Patterson in his home as law enforcement sought information that could help investigators locate Dylan. The defendant was cooperative and responded to Investigator Patterson's questions in a calm, clear, and concise manner. Investigator Patterson asked questions in a calm manner to gain as much information as possible. There is no reason for the Court to believe that at this point in time investigators considered the defendant a suspect in Dylan's disappearance, nor is there any evidence to suggest that the defendant felt he was under suspicion at this time. The defendant allowed investigators to look at Dylan's computer to look for clues as to Dylan's location. The defendant also allowed investigators to search his home to make sure Dylan was not hiding anywhere on the premises.

On November 26, 2012, La Plata County sheriff's deputies took two FBI agents to the defendant's home uninvited and knocked on the defendant's door. D-67. The defendant greeted the officers and agents at the door and the FBI agents introduced themselves.

After being let into the defendant's house, Agent Grusing apparently took the lead in the interview, explained that the FBI conducted many similar investigations and that the FBI was hopeful that they could find Dylan. Grusing asked the defendant to provide a written statement in as much detail as possible. The defendant did write out the statement. The entire interaction between law enforcement and the defendant lasted approximately two hours.

Motion to suppress D-69 concerns conversations between the defendant and law enforcement on November 29, 2012 (not November 28, 2012, as stated in D-69). On November 29, 2012, the sheriff's office was conducting a search of the defendant's home. It is unclear from the evidence, but at some point on November 29, 2012, a search warrant authorized law enforcement to search the defendant's two trucks. Pursuant to standard law enforcement procedures, the defendant was not allowed to be in his home or have access to his vehicles while

the searches were being conducted. FBI Agent Grusing arrived at the Redwine house at approximately 8:00 AM. Grusing's responsibility was to speak to the defendant outside the home while the search was being conducted. Grusing told the defendant and the defendant's brother who was staying with the defendant at the time of the search that he wished to again talk to the defendant about Dylan's disappearance. Grusing stated that they could stay outside of the defendant's house while the search was being conducted or that they could go to the FBI office in Durango. The defendant decided to go to the FBI office and was taken to the FBI office in a sheriff's department vehicle. Grusing and the defendant discussed details of the search on the way to Durango. The trip to Durango took approximately 30 minutes and the defendant, Agent Grusing, and FBI Agent Humphrey went into a conference room to talk. The agents told the defendant that he was free to leave at any time and if he wanted to leave to get something to eat, they would take him somewhere to eat. The tone of the conversation was calm and conversational.

When interviewing suspects, Agent Grusing generally does not and did not on this occasion become angry, belittle, threaten, or yell at the defendant because Agent Grusing has found that such behavior is counterproductive to obtaining information from the suspect. The interview lasted for a considerable period of time, ending at approximately 4:00 PM. During the last ten to fifteen minutes of the interview, Grusing began asking the defendant direct questions about how the defendant's statements could be accurate when compared to other evidence that had been gathered by law enforcement. During this time, Grusing also told the defendant that he believed that the defendant had some role in Dylan's disappearance. At approximately 4:00 PM, the defendant stated that he needed to start thinking about himself and the defendant terminated

the interview. The defendant was allowed to leave and law enforcement provided the defendant a ride back to his home.

On at least two occasions, the defendant spoke about either obtaining or speaking to an attorney. Several days after the defendant was interviewed at the FBI office in Durango, Grusing called the defendant **REDACTED**

On November 23, 2012, the defendant told Investigator Patterson that he wished to consult with an attorney prior to Patterson walking through the defendant's house and recording the defendant as the defendant was asked about what he and Dylan did the night before Dylan disappeared. The Court does not find that the defendant mentioning that he desired or had already consulted an attorney to be of any legal significance. The Court, considering a totality of the circumstances, does not find that at any time during the interviews that are the subject of the motions to suppress was the defendant in custody. Therefore, the defendant's Fifth and Sixth Amendment rights had not attached which would have required the presence of counsel upon the request of the defendant. See *People v. Romero*, 411 P.3d 897, (Colo. App. 2015).

At no time during any of these interviews did law enforcement employ any tactics or behavior that caused the defendant's will to be overborne. Even during the interview that lasted approximately six hours on February 24, 2013, (D-56), or during other interviews where law enforcement disputed the defendant's statements, got confrontational and even angry at the defendant, the defendant never changed his version of events and was allowed to leave at the end of the interviews. Based upon a totality of the circumstances, the Court finds all of the statements made by the defendant in the interviews that were the subject of motions to suppress D-55 through D-81 to be voluntary. The Court denies motions to suppress D-55 through D-81 in their totality.

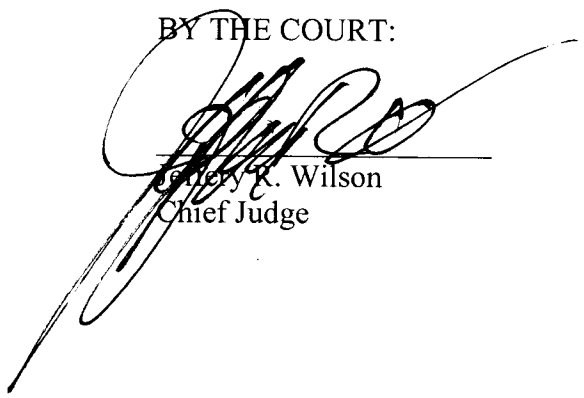
REDACTED

The Court therefore finds that the probative value of the interview of the defendant with Larry Backer on November 21, 2012, is substantially outweighed by considerations of the needless presentation of cumulative evidence. CRE 403. The Court therefore orders that the November 21, 2012, interview of the defendant by Larry Backer shall not be introduced at trial.

The Court also finds that portions of the interview of the defendant on February 24, 2014, to Deputy Cowing and Special Agent Russin, contain accusations that the defendant of committing domestic violence during his first marriage. The prosecution has not filed any motion seeking to introduce such evidence pursuant to CRE 404(b) and the Court orders that if the prosecution intends to introduce any portion of this interview, that all mentions of previous domestic violence shall be redacted.

DONE this 17th day of January, 2019.

BY THE COURT:



Jeffrey R. Wilson
Chief Judge