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District Court, El Paso County, Colorado Court address: 270 South Tejon Colorado Springs, CO 80903 Phone Number: (719) 452-5446	FILED-DISTRICT & COUNTY COURTS-EL PASO CO., CO DEC 30 2015 DIVISION 10
People of the State of Colorado, Plaintiff, v ROBERT LEWIS DEAR, JR, Defendant.	
Attorney or Party without Attorney (Name and Address): Phone Number: Email: FAX Number: Atty.Reg#:	Case Number: 15CR5795 Division 10 Courtroom W570
ORDER REGARDING MEDIA MOTION TO UNSEAL FORTHWITH AFFIDAVITS OF PROBABLE CAUSE IN COURT FILE (C-006)	

THIS MATTER comes before the Court based upon the above mentioned motion filed on December 17, 2015 and argued on December 23, 2015. The movants ask the Court to unseal the affidavits of probable cause in support of the arrest and search warrants which have been fully executed and returned to the Court.

Procedural History

The case involves a shooting that occurred on November 27, 2015 at 3480 Centennial Blvd., Colorado Springs, Colorado, County of El Paso, State of Colorado. On November 27, 2015 a county court judge, pursuant to the district attorney's request, sealed both the search and arrest warrant. The defendant has made three court appearances and is presently undergoing a competency examination. The matter is set for a review of said examination on February 24, 2016 at one thirty. At the present time there has not been a request for a preliminary hearing or a waiver of said hearing. In addition, the district attorney in open court on December 23, 2015 stated there is still an ongoing investigation in the matter.

Media's Argument

The Court has considered the media's argument that the public has a right to access to the records and that continued sealing is only allowed to protect a

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governmental interest of the highest order and that no less restrictive alternative means exists to adequately protect that interest. In addition, the media gives several examples of other Colorado cases where an unsealing was ordered and also suggests to the court various methods the court can use to protect the defendant's right to a fair trial.

Defense Argument

The defense disagrees with the media's statement that they, the media, have a qualified first amendment right of access to the search and arrest warrants. Defense argues that they have a qualified right to attend certain proceedings in criminal matters and the common law governs the issue addressed in the present motion. The defense asks the court to apply a simple balancing test to evaluate whether the public right of access is outweighed by competing interests.

District Attorney Position

The district attorney did not file a written response to the motion; however, they did state in open court that there was still an ongoing investigation in the matter.

Court's Analysis

At the outset the Court notes that the case is just over one month old and the matter has not been set for a preliminary hearing and proof evident and presumption great hearing. In addition, per the district attorney, there is still an ongoing investigation. The Court has reviewed the standards as outlined in the Colorado Criminal Justice Records Act C.R.S. 24-72-301, et seq. This court has considered a number of factors in reaching its decision. Those factors include the privacy interests of individuals named in the affidavits and who may be impacted by a decision to allow inspection, the fact that there is still an ongoing investigation that should not be compromised, the public purpose to be served in allowing inspection and the stage of the proceedings.

Pursuant to a review of the above mentioned factors, the Court, at this stage of the proceedings, is denying the media's request for unsealing. All the victims and witnesses names have not been released and the Court is mindful of their privacy concerns. At a later date, for example after a preliminary hearing, when said information is made public the Court will revisit the issue.

The investigation is only in the start of the second month and the district attorney states that the investigation is ongoing. Thus, a release at this point would be contrary to "public interest."

The Court has considered the media's argument that the defendant's rights may be protected by extensive voir dire, change of venue, postponing the trial and by crafting specific jury instructions; however, said arguments are not particularly relevant at this stage of the proceedings. Said arguments may become relevant as we get closer to trial; however, as stated above the present case is only one month in duration.

While other courts have unsealed search and arrest warrants; that is normally done after the preliminary hearing or waiver of the preliminary hearing and only after the investigation has been completed.

Conclusion

Pursuant to the Court's above analysis, the Court concludes that the motion to unseal at the present time should be DENIED. The Court will revisit the issue as the case progresses. In addition, the Court's present case management order will remain as is.

DONE this 30th day of December, 2015.

BY THE COURT:


District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of December, a true and correct copy of this ORDER REGARDING MEDIA MOTION TO UNSEAL FORTHWITH AFFIDAVITS OF PROBABLE CAUSE IN COURT FILE (C-006) was delivered via EMAIL to the following:

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