

District Court, El Paso County, Colorado El Paso County Combined Courts 270 South Tejon Street, Colorado Springs CO 80903	FILED IN THE DISTRICT AND COUNTY COURTS OF EL PASO COUNTY, COLORADO
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff v. ROBERT LEWIS DEAR, Defendant	S.K. DEC 07 2015 DR. LYNETTE CORNELIUS CLERK OF COURT ▲ COURT USE ONLY ▲
DOUGLAS K. WILSON, Colorado State Public Defender Daniel King (No. 26129) Chief Trial Deputy State Public Defender 1300 Broadway, Suite 400 Denver, Colorado 80203 Phone (303) 764-1400 Fax (303) 764-1478 E-mail: state.pubdef@coloradodefenders.us	Case No. 15CR5795 Division 10
<p>D-011</p> <p>MOTION FOR COURT ORDER DIRECTING THE COLORADO JUDICIAL BRANCH TO REMOVE PLEADINGS FILED IN THIS CASE FROM THE “CASES OF INTEREST” SECTION OF ITS WEBSITE</p>	

Pursuant to his rights under the Fifth, Sixth, Eighth, and Fourteenth Amendments and Colorado Constitution article II, sections 16, 18, 20, 23, and 25, Mr. Dear, through counsel, respectfully moves this Court to issue an order directing the Colorado Judicial Branch to remove the pleadings filed in this case from the “Cases of Interest” section of its website. In support of this request, he states the following:

1. The Colorado Judicial Branch recently began posting the pleadings filed and orders issued in this case on the El Paso “Cases of Interest” section of its website. See https://www.courts.state.co.us/Courts/County/Case_Details.cfm?Case_ID=1421 (last visited at 1:30 p.m. on December 3, 2015). Defense counsel respectfully request that the Court order the Judicial Branch to: (1) remove these pleadings from its website and (2) to refrain from posting any additional pleadings filed, orders issued, and other documents about this case on its website.

2. While the media and the public have a qualified First Amendment right of access to certain pre-trial proceedings and trials, see, e.g., *Press Enterprise Co. v. Superior Court*, 478 U.S. 1 (1986); *Richmond Newspapers, Inc., v. Virginia*, 448 U.S. 555, 589 (1980), there is clearly no such right for the media and the public to access documents filed in this case on a public website. Rather, posting the pleadings on the “Cases of Interest” section of its website appears to be a convenient way for the Colorado Judicial Branch to disseminate information about the case to the public and the media, and to foster continued interest in the case.

3. While the media and the public have no constitutional right to have this information posted on a public website, Mr. Dear, in contrast, has a state and federal constitutional right to receive a fair trial by an impartial jury pursuant to the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution and article II, section 16, 23 and 25 of

the Colorado Constitution. *See, e.g., Sheppard v. Maxwell*, 384 U.S. 333, 350-51 (1966) (public scrutiny of criminal trial “must not be allowed to divert the trial from the very purpose of a court system to adjudicate controversies . . . in the calmness and solemnity of the courtroom according to legal procedures,” including “the requirement that the jury’s verdict be based on evidence received in open court, not from outside sources.” (internal quotations and citation omitted)); *Irvin v. Dowd*, 366 U.S. 717, 728 (1961) (reversal required where petitioner was “tried in an atmosphere [disturbed] by so huge a wave of public passion” that two-thirds of jurors admitted during voir dire to possessing a belief in his guilt); *United States v. McVeigh*, 119 F.3d 806, 815 (10th Cir. 1997) (district court properly exercised discretion to seal suppression motion in Oklahoma City bombing case because public disclosure of materials would “generate pre-trial publicity prejudicial to the interests of all parties in this criminal proceeding.”).

4. Given the important constitutional interests at stake, there is ample justification for this Court to prohibit the posting of pleadings filed, orders issued, and other documents pertaining to this case on a public website.

5. Protecting the integrity of the potential jury pool is vital to ensuring that Mr. Dear’s constitutional rights to a fair trial by an impartial jury remain inviolate. As the defense noted in its Submission of Amended Proposed Order Limiting Pretrial Publicity and Request for Immediate Ruling [D-009], this case is precisely the type of “rare” instance “in which pretrial publicity alone” has the potential to “actually deprive[] a defendant of the ability to obtain a fair trial.” *Gannett Co., Inc. v. DePasquale*, 443 U.S. 368, 404 n.1 (1979) (Rehnquist, J., concurring).

6. If the Court continues to allow the Judicial Branch to post the pleadings in this case on its website, it is highly likely that media organizations will post links to these documents on their own websites. In turn, members of the public will have immediate access to the documents, which may include sensitive, privileged, confidential, or ultimately inadmissible information about the case.

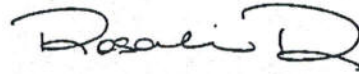
7. In defense counsel’s experience, attempts to redact sensitive information from pleadings and orders are not sufficient to protect such information about the case from being disseminated to the public. Mistakes can and do occur. Moreover, even if the parties and/or the court make attempts to “redact” information they deem to be unsuitable for the public now, neither the Court nor the parties can anticipate the nature of the pleadings and the litigation that will ensue in the coming months or years. Therefore, they cannot anticipate whether the propriety of those initial redactions (or lack thereof) will become an issue later on. Allowing the Colorado Judicial Branch to post the pleadings and orders in this case on its website is thus likely to have a chilling effect on the ability of the parties to make candid arguments about significant legal issues in the case going forward. *McVeigh*, 119 F.3d at 814.

8. For these reasons, Mr. Dear, through counsel, request that the Court issue the attached proposed order directing the Colorado Judicial Branch to remove the pleadings in this case from the “Cases of Interest” section of its website, and to refrain from posting any additional pleadings filed, orders issued, and other documents about this case on that site.

Mr. Dear files this motion, and makes all other motions and objections in this case, whether or not specifically noted at the time of making the motion or objection, on the following grounds and authorities: the Due Process Clause, the Right to a Fair Trial by an Impartial Jury, the Rights to Counsel, Equal Protection, Confrontation, and Compulsory Process, the Rights to Remain Silent and to Appeal, and the Right to be Free from Cruel and Unusual Punishment, pursuant to the Federal and Colorado Constitutions generally, and specifically, the First, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, and Fourteenth Amendments to the United States Constitutions, and Article II, sections 3, 6, 7, 10, 11, 16, 18, 20, 23, 25 and 28 of the Colorado Constitution.



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Dated: December 7, 2015

I hereby certify that on December 7, 2015, I

mailed, via the United States Mail,
 faxed, or
 hand-delivered

a true and correct copy of the above and foregoing document to:

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Rebekah Davis