

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 ▲
	Case Number: 17CR343
ORDER REGARDING THE DEFENSE REQUEST FOR GRAND JURY MATERIALS (D-14)	

In a confusing motion challenged by a lack of coherent organization, the defense requests certain materials from the grand jury in this case be released. The Court believes the following order addresses all the defense requests contained in this motion. If it does not, the Court orders that within 14 days of the date of this order, defense counsel is to inform the Court if it neglected to address any issues raised in the motion.

The Court will designate its order regarding the defendant's requests in the same manner designated in the defendant's motion.

Paragraph 5 A

- a. The reporter has previously provided the prosecution with the transcripts of all witnesses that testified before the grand jury. The transcripts should have been provided to the defense through discovery. If they have not, the prosecution shall do so immediately.
- b. No such previous grand jury or other legal proceedings where testimony was taken exists.

- c. The defendant requests the transcripts of all statements made by the prosecution to grand jurors, including grand jury colloquy. The defense seeks the transcripts of the colloquy in this grand jury proceeding apparently to determine if reasons exist to have the indictment dismissed. All statements made by prosecutors, other than statements made during colloquy, have been provided to the prosecution, who should have provided such statements to the defendant through discovery.

CRS 16-5-204(n) requires that any "... motions testing the validity of the indictment may be heard by the court based only on the record and argument of counsel, unless there is cause shown for the need for additional evidence." The Colorado Supreme Court has ruled that the colloquy during grand jury proceedings is not part of the record and that the defense must demonstrate that providing a transcript of the colloquy would materially aid in "... the preparation of the defense." See *People v. Dist. Court for Second Judicial Dist.*, 402, 610 P.2d 490, 493 (1980). In this request, there is no showing the colloquy would materially assist the defendant in preparing his defense. Additionally, in ruling upon D-93 and D-94, the Court has reviewed the entire transcript that has been prepared to date, including the colloquy with the grand jury, and did not observe any improper conduct on the part of the prosecution or any irregularities in the proceedings during colloquy. The Court denies the request as it relates to colloquy.

- d. The defendant requests that the transcripts of all statements made by the grand jurors to the prosecutors be provided to the defendant, including grand jury colloquy. To the extent these statements were made outside of colloquy, such statements have been provided to defense counsel in the redacted transcripts. To the extent such statements were made during colloquy, the request is denied for the reasons stated in (c) above.
- e. The defense requests an entire transcript of the selection of the grand jury in this case, including the identities and addresses of the grand jurors. The defense cites *Test v. United States*, 420 U.S. 28, 95 S. Ct. 749, 42 L. Ed. 2d 786 (1975), CRS 13-71-136, and CRS 13-72-103 to argue that the identities and addresses of grand jurors must be released to the defendant. The Court disagrees. The Court finds that *Test* is specifically limited to federal grand juries as its ruling is based upon a federal statute, which, unlike CRS 13-72-103, gives an unqualified right to inspect grand jury lists.

CRS 13-71-136 does require the jury commissioner release the names and addresses of prospective jurors upon request. However, CRS 13-71-136 is modified by CRS 13-72-103 that states "... the court may close to the public part or all of the selection process when reasonably necessary to protect the grand jury process or the security of the grand jurors." The Court issued such

an order on July 13, 2017. See the motion for closed selection and order granting the motion attached hereto as Exhibit A.

The case for keeping the identities of grand jurors confidential after the grand jury has returned an indictment is not as strong as keeping grand jurors' identities confidential prior to the conclusion of grand jury proceedings. Nevertheless, due to the intense public and media scrutiny of this case, the Court finds the prosecution's reasoning as to why the identities of grand jurors should remain confidential persuasive and adopts Paragraph 25 of the People's Response to D-14 as reasons to deny the motion to release the identities of the grand jurors in this case. Paragraph 25 of the People's Response to D-14 states:

The importance of protecting the identities of the grand jurors goes to the very ability of a grand jury to do its job. Unlike a trial jury, in addition to rendering a decision which is reflected in a True Bill or No True Bill, the grand jury is an investigating body. They are tasked participating in the process, and as lay citizens must be made comfortable and secure in duties that trial juries need not undertake. For this and other reasons they are assigned numbers throughout a grand jury investigation so that their names are not in the transcripts. If grand juror's identities are not protected in appropriate cases it could have a chilling effect on their ability to abide by their oaths and fairly do their jobs. The crime in this case is a violent one, and grand jurors received confidentiality so that they could properly do their job on this case without fear of retribution. Subjecting them to questioning would exceed the appropriately limited scope of the Court's Order for limited release of transcripts and violate grand jury secrecy pursuant to C.R.Cr.P. 6.2 and 6.9. Their deliberations remain subject to secrecy requirements, as does their colloquy discussions as explained in this Response. Further, specific to this case any release of their information poses a risk that media outlets would reach out to jurors and attempt to compromise the process by asking about secret information from the proceedings. Additionally, the Defendant himself notes some of the passionate responses to this case by certain members of the community, and there are certainly some persons who present as though they could pose a security risk or a risk of harassing the jurors if their identities are not protected. Finally, if the transcripts of jury selection are released to the Defendant, even without the identities of the grand jurors, the Defendant would have access to the discussions during the selection

process to see if any jurors expressed inappropriate biases or outside influences.

The Court will therefore allow the defendant to order a transcript of the selection of the members of the grand jury. The identities of potential grand jurors and the grand jurors, including, if applicable, their addresses, shall be redacted.

- f. The items requested in paragraph 5(A)(f) should be included in the rulings above and the Court will issue no further orders thereon.
- g. If not already provided as part of the transcript, the defendant may order a redacted transcript of the proceedings of July 20, 2017, when the indictment was returned.
- h. For the reasons stated above, the Court denies the request for a list of the jurors and potential jurors called to the grand jury.

Paragraph 5 B

To the extent that all documents, exhibits, and/or physical evidence considered by or presented to the grand jury has not already been discovered to the defense, the Court orders that such information be provided to the defense pursuant to CRCrimP 16.

Paragraph 5 C

The Court grants the request made in paragraph 5(C) with the exceptions of:

- d. For the reasons stated above, neither the identities of grand jurors called for grand jury service nor their addresses will be provided to the defense. Additionally, because releasing the names and addresses of the jury pool called to the grand jury would make it possible to identify and contact the grand jurors chosen in this case, the Court denies the motion insofar as it seeks the names and addresses of potential jurors summoned to appear for jury duty. To the extent the defense is requesting a list from which potential grand jurors were summoned, the Court grants the request. The jury commissioner shall provide the list from which potential grand jurors are called.
- e. The clerk does not keep attendance records. The attendance of grand jurors should be evident from the transcripts of the proceedings.
- f. The summons to the grand jurors shall be provided to the defense after redacting the names and the addresses of the grand jurors.

- g. The questionnaires returned by the grand jurors shall be provided after redacting the names and the addresses of the grand jurors.
- i. The Court does not intrude upon the sanctity of grand jury deliberations and has no record as to the grand jurors voting on any proposed or returned indictment.

Paragraph 5 D

If not already provided in discovery, the prosecution shall provide the items contained in paragraph 5(D).

Paragraph 5 E

The indictment is in the Court's file and is available to the defendant. If the defendant is seeking other information, he may file a more specific request.

Paragraph 5 F

The requests in this paragraph are overly broad and may require the disclosure of privileged work product. The Court orders that in regard to this request that the prosecution comply with CRCrimP 16.

Paragraph 5 G

The requests in this paragraph are overly broad and may require the disclosure of privileged work product. The Court orders that in regard to this request that the prosecution comply with CRCrimP 16.

DONE this 17th day of January, 2019.

BY THE COURT:

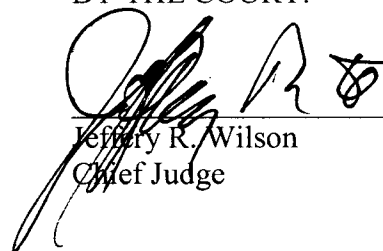

Jeffrey R. Wilson
Chief Judge

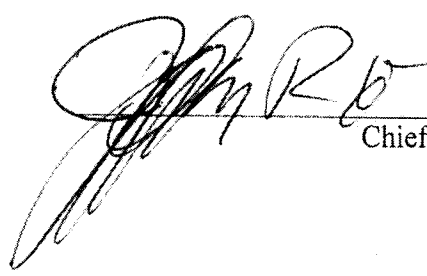
EXHIBIT A

DISTRICT COURT, LA PLATA COUNTY, COLORADO Court Address: 1060 E. Second Ave., Durango, CO 81301 Phone Number: (970) 247-2304	FILED JUL 13 2017 DEPUTY CLERK ▲ COURT USE ONLY ▲
THE PEOPLE OF STATE OF COLORADO	
IN RE: 2017 LA PLATA COUNTY, COLORADO GRAND JURY	
	Case Number: 17 CR 134
ORDER: MOTION FOR CLOSED JURY SELECTION	

THE COURT, having reviewed the Motion for Closed Jury Selection, hereby finds and concludes as follows:

The district attorney has shown good cause for a closed jury selection process and the court orders the jury selection closed to the public..

IT IS SO ORDERED. Done this 13th day of July, 2017.



Chief Judge

xc: DA
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DISTRICT COURT, LA PLATA COUNTY, COLORADO Court Address: 1060 E. Second Ave., Durango, CO 81301 Phone Number: (970) 247-2304	<p style="text-align: center;">FILED DISTRICT COURT LA PLATA COUNTY, COLORADO</p> <p style="text-align: center;">JUL 13 2017</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p> <p style="text-align: center;">Case Number: 17 CR 134</p>
THE PEOPLE OF STATE OF COLORADO IN RE: 2017 LA PLATA COUNTY, COLORADO GRAND JURY	
Christian B. Champagne - District Attorney, # 36833 P.O. Drawer 3455, Durango, Colorado 81302 Phone Number: (970) 247-8850 Fax Number: (970) 259-0200	
MOTION FOR CLOSED JURY SELECTION	

COME NOW The People, through Christian Champagne, District Attorney in and for the Sixth Judicial District, State of Colorado, and pursuant to C.R.S. §13-72-103, respectfully move this Court to close the jury selection process for the 2017 La Plata County Grand Jury. AS GROUNDS THEREFORE, the People state:

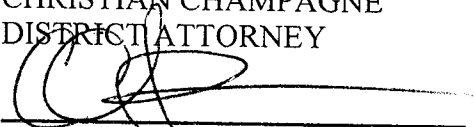
1. C.R.S. §13-72-103 authorizes the chief judge of the judicial district to close the jury selection process to the public and conduct the proceedings in secret when reasonably necessary to protect the grand jury process or the security of the grand jurors.
2. The district attorney hereby requests the court to close the jury selection process to the public in order to protect the grand jury process and the identities of the grand jurors. The jury selection in this matter will occur in the La Plata County courthouse, a public building, during normal business hours. The People believe that it is necessary to close the jury selection proceedings in order to protect the identities of the grand jurors and to protect the integrity of the grand jury process.
3. The People therefore request that this Court close the jury selection process to the public and conduct jury selection in secret.

WHEREFORE, the People, by and through Christian Champagne, District Attorney in and for the Sixth Judicial District, State of Colorado, respectfully move this Court to conduct jury selection in manner closed to the public.

Respectfully submitted this July 13, 2017.

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CHRISTIAN CHAMPAGNE
DISTRICT ATTORNEY



Christian Champagne #36833
District Attorney