

DISTRICT COURT DOUGLAS COUNTY DISTRICT COURT 4000 JUSTICE WAY CASTLE ROCK, CO 80109	▲ COURT USE ONLY ▲
<b>Plaintiff(s):</b> THE PEOPLE OF THE STATE OF COLORADO  v. <b>Defendant:</b> DEVON MICHAEL ERICKSON	
	Case No. 2019CR451 Division: 1
<b>[C-10] ORDER REGARDING EXPANDED MEDIA COVERAGE</b>	

**THIS MATTER** comes before the Court on several requests for Expanded Media Coverage (“EMC”). The Court has also reviewed the pleadings of both parties regarding EMC filed on May 11, 2021. The requests seek EMC in this case for the Jury Trial scheduled to begin May 24, 2021.

The Court first notes, the proceedings in this matter will be held in Division 1 of the Douglas County Courthouse (“DCJC”) and broadcast publicly via **WebEx**. The virtual courtroom link will change daily and will be posted here:

[https://www.courts.state.co.us/Courts/County/Index.cfm?County\\_ID=58&submit=Go](https://www.courts.state.co.us/Courts/County/Index.cfm?County_ID=58&submit=Go)

The virtual courtroom will be open to the public unless otherwise ordered by the Court.

Regardless of the type of courtroom in which proceedings are held, the Court must always balance several important and often competing rights. First and foremost, the rights of the Defendant to a fair trial are the highest priority of the Court: “No right ranks higher than the right of the accused to a fair trial.” *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501, 508 (1984). The Court must also take great care to grant public access to criminal proceedings and provide a forum for named victims or their representatives to “be heard when relevant, informed, and present at all critical

stages of the criminal justice process.” Colo. Const. Art. 2, § 16a. The rights of the press to access a criminal proceeding are “no greater than those of any other member of the public.” *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 609 (1978)(quoting *Estes v. Texas*, 381 U.S. 532, 589 (1965) (Harlan, J., concurring)). There is no constitutional right to the use of cameras or audio-transmitting devices. *See, e.g. United States v. Edmonds*, 785 F.2d 1293 (5th Cir. 1986).

Chapter 38, Rule 3 of the Colorado Supreme Court Rules provides the standard for authorizing EMC. While this Court has the *discretionary authority* to allow EMC, there is no *presumption* in favor of EMC. Pursuant to Rule 3 of Chapter 38 (hereinafter “Rule 3”), the Court may permit “the audio recording of proceedings,” as well as “all recording or broadcasting of visual images” of such proceedings “by means of still photographs, videotape, television broadcasts, motion pictures, or otherwise.” In deciding whether to permit EMC, the Court must consider the following three factors:

- (A) Whether there is a reasonable likelihood that EMC would interfere with the rights of the parties to a fair trial;
- (B) Whether there is a reasonable likelihood that EMC would unduly detract from the solemnity, decorum and dignity of the court, and
- (C) Whether EMC would create adverse effects which would be greater than those caused by traditional media coverage.

The Court must analyze these requests both for the in-person courtroom and the virtual courtroom.

#### IN-PERSON COURTROOM

Because the Court must limit the capacity of the courtroom as a result of the COVID-19 Pandemic; and because of the large number of people who are entitled to be physically present in the courtroom; and historically the high level of public interest in these proceedings, it is necessary to limit the number of people who are physically present in Division 1. Because allowing EMC in-person takes physical space, it will interfere with the rights of the parties to a fair trial. Specifically, it may limit the number of professionals each side has stated are necessary to be effective; will limit the number of named victims permitted to appear in-person; and other interested people who

may not be named in the complaint, but have significant interest in the outcome would not be permitted in the courtroom. Therefore, the Court will **not** permit cameras in-person. The Court will, however, reserve four (4) seats for media representatives to be physically present, but without recording devices or cameras. If additional seating is available, certainly more media representatives will be permitted in-person, however, they will still not be permitted to use their recording devices.

### VIRTUAL COURTROOM

The analysis for an EMC request is very different in a virtual courtroom as opposed to a courtroom where proceedings are held only in person.

During in-person proceedings, the court often needs to enter orders in order to avoid a flood of cameras and equipment in the courtrooms, distracting from the solemnity, decorum and dignity of the court. But in the virtual courtroom, the distractions that a large number of cameras cause in a traditional courtroom is not a concern for the Court.

Proceedings involving Defendant have been highly publicized, including some coverage before COVID-19 when this Court permitted EMC at in-person proceedings. Although the media coverage related to the STEM school has generated some concern about the Court's ability to pick a fair and unbiased jury, the coverage of the actual proceedings related to Defendant generated from the EMC was slight in comparison and had little or no impact on the otherwise high public interest and other media coverage overall. In addition, jurors will take an oath to follow the Court's orders, which will include not watching, reading, or listening to media coverage of this trial. Since previous EMC orders brought little or no adverse effects on the proceedings, and because the Court does not perceive EMC will interfere with the parties and their rights to a fair trial, EMC will be permitted, but only in the virtual courtroom.

Persons conducting expanded media coverage shall handle themselves in a manner consistent with the decorum and dignity of the courtroom **as if the proceedings were held in person.**

The Court may restrict, or limit expanded media coverage as may be necessary to preserve the dignity of the court or to protect the parties, witnesses, or jurors. The Court may terminate or suspend expanded media coverage at any time. Thus, this Order only authorizes expanded media

coverage so long as there is full compliance with all Court orders. Any inappropriate attempts to disrupt the process may result in exclusion from further proceedings and/or other legal sanctions, including contempt of court.

DCJC is governed by CJO 14-21 and CJO 19-04 ("The CJOs). These CJOs continue to apply to this case; this Order does not amend or otherwise revoke the CJOs and any exceptions to the CJOs that this Order grants are limited to the above captioned case.

CONCLUSION

For the reasons articulated in this Order, EMC shall be permitted subject to the boundaries set forth in this Order.

Done this 20<sup>th</sup> day of May 2021.

  
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THERESA M. SLADE  
DISTRICT COURT JUDGE