

DISTRICT COURT
WELD COUNTY, COLORADO
Court Address: PO Box 2038
901 9th Ave
Greeley CO 80631
(970) 475-2400

THE PEOPLE OF THE STATE OF COLORADO vs.
Defendant:
CHRISTOPHER LEE WATTS

COURT USE ONLY

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Case Number:
18CR2003
Division/Ctrm:
5

**[J] PEOPLE’S RESPONSE TO DEFENDANT’S MOTIONS D-29, D-30, AND D-31 –
MOTIONS TO REQUIRE THE GOVERNMENT TO DO AN INVESTIGATION INTO
WHETHER PERSONS ASSOCIATED WITH THE PROSECUTION MADE
EXTRAJUDICIAL STATEMENTS PURSUANT TO COLO. RPC 3.6 AND 3.8 AND TO
THEN ADVISE THE COURT, IN WRITING, WHETHER IT HAS EXERCISED
REASONABLE CARE TO PREVENT THE DISSEMINATION OF MATERIALLY
PREJUDICIAL INFORMATION**

COMES NOW, MICHAEL J. ROURKE, District Attorney in and for the Nineteenth
Judicial District of the State of Colorado, and by and through his undersigned Chief Deputy
District Attorney and Deputy District Attorney, respectfully responds to Defendant’s motions
D29, D30 and D31, as follows:

FACTUAL AND PROCEDURAL BACKGROUND

1. On August 16, 2018, the Defendant was arrested pursuant to a warrantless arrest affidavit. Accompanying the warrantless arrest affidavit was a motion to seal the affidavit, which the Court granted.
2. On August 17, 2018 the Defendant filed D-20 Motion to Compel Pathologist to Take DNA Swab of Throats of Decedent Children. Attached as Exhibit A to the motion was an email exchange between defense counsel and Richard Eikelenboom. It was this defense exhibit that alerted the press to the fact that the children were likely

killed by strangulation, that Defendant was alleging that Shanann Watts was the parent responsible for their death, and that the bodies of the children had been recovered from an oil tank. Below is a non-exhaustive list of articles generated from this defense filing:

- (a) August 17, 2018, 9 News – “Documents: Defense filing suggests Watts girls were strangled”. (*See Attachment 1*)
 - (b) August 17, 2018, Denver 7 – “Chris Watts’ attorneys request for DNA samples suggest daughters were strangled”. (*See Attachment 2*)
 - (c) August 17, 2018, Chicago Tribune – “Bodies of Colorado Mother, 2 daughters were submerged in crude oil for 4 days; father in custody”. (*See Attachment 3*)
 - (d) August 17, 2018, USA Today Network Fort Collins Coloradoan – “Court documents: Colorado children found in oil well, may have been strangled”. (*See Attachment 4*)
 - (e) August 17, 2018, Fox 31 – “Christopher Watts’ attorneys request DNA samples from bodies of wife, children”. (*See Attachment 5*)
 - (f) August 17, 2018, Sandhills Express – “Motive a mystery in Colorado man’s alleged killing of pregnant wife and 2 young daughters”. (*See Attachment 6*)
3. On August 20, 2018, after the filing of formal charges, the People filed a motion to unseal the affidavit in support of warrantless arrest. This Court granted the motion.
 4. On that same date, the Court also ordered that both parties strictly comply with Colo. RPC – 3.6 regarding pretrial publicity. Pursuant to the Court’s order, the parties may make extrajudicial public statements concerning the following matters:
 - (a) That an investigation is in progress;
 - (b) The offense or defense involved;
 - (c) The identity of the person involved, accept when prohibited by law;
 - (d) Information contained in the public record;
 - (e) The scheduling or results of any step in the criminal case;
 - (f) A request for assistance in obtaining evidence and necessary information;
 - (g) A warning or danger concerning the behavior of any person involved when there is a reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest;
 - (h) The identity, residence, occupation, and family status of the defendant or suspect;
 - (i) Information to aide in the apprehension of the defendant or suspect, if necessary;
 - (j) The fact, time, and place of arrest;
 - (k) The length of investigation; and
 - (l) The identity of the investigating and arresting officers, agencies, or departments.

The parties **may not** make extrajudicial public statements about a criminal investigation or criminal case that would have a substantial likelihood of materially prejudicing the criminal case. C.R.C.P. Rule 3.6. Specifically, the district attorney will not make extrajudicial public statements concerning the following subjects:

- (a) The character, credibility, or reputation of a defendant, suspect, or witness;
- (b) The identity of a witness or expected testimony of a witness;
- (c) The possibility of a plea of guilty to the offense;
- (d) The existence or contents of any confession, admission, or statement given by a defendant or suspect, or the refusal or failure to make a statement;
- (e) The performance or result of any examination or test, the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented in the case;
- (f) Any opinion as to the guilty or innocence of the defendant or suspect in the case;
- (g) Information that the district attorney knows or reasonably should know is likely to be inadmissible as evidence and that would come if disclosed, create a substantial risk of prejudicing an impartial trial;
- (h) The fact that a defendant has been charged with a crime unless accompanied by a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent unless and until proven guilty beyond a reasonable doubt. C.R.C.P. Rule 3.6 (comment).

5. On August 29, 2018, the Defense filed D-29 requesting this Court order *the government*¹ conduct an investigation into the source of alleged leaks to the press and generate a report of its findings. The motion identifies several news articles which claim to have obtained information about the state of the murder investigation from “a source close to the investigation”, “several high-ranking sources”, and “a law enforcement source”.

ARGUMENT

6. The events leading up to the filing of this case quickly garnered the attention of the nation. Driven in large part by the now unnerving pleas of help made by the Defendant himself, local community members and individuals around the country followed constant news reports of the search for Shanann, Belle, and Celeste Watts. Now that Defendant has been charged with murdering his family and disposing of their deceased bodies, national media interest in the case is likely to persist.

¹ Despite the reality that as employees of the Office of the Public Defender defense counsel are as much agents of “the government” as the police and prosecution, the People presume for purposes of responding to this motion Defendant is requesting the Court order sworn law enforcement personnel spend the hundreds of hours it would likely take to conduct such an investigation, not his own publicly funded investigators.

7. The District Attorney strives to protect both the rights of the individual defendant or suspect, and the need of citizens to be informed and aware of public dangers and the conduct of public judicial proceedings. Except for statements that are necessary to inform the public of the nature and extent of the District Attorney's actions, and statements that serve a legitimate law enforcement purpose, the District Attorney has and will continue to refrain from making extrajudicial statements that have a substantial likelihood of heightening public condemnation of the defendant or suspect, and *will exercise reasonable care to prevent law enforcement personnel, investigators, employees, and other persons assisting or associated with the district attorney in the criminal case from making such extrajudicial statements.* Colo. RPC - 3.8 (special responsibilities of a prosecutor).
8. There is no evidence any lawyer or other employee of the District Attorney's Office has violated any rule of professional conduct or corresponding order of this Court.
9. Additionally, the District Attorney, both over time and regarding this specific investigation, has taken numerous practical steps to try to limit the dissemination of information to only that which Colo RPC – 3.6 and the Court has authorized. These efforts include:
 - a. Sending an annual letter to all Weld County police chiefs and the Sheriff alerting them to the mandates of Colo. RPC 3.6 and 3.8. (*See Attachment 7*)
 - b. Notifying CBI of the Court's order limiting pretrial publicity and the need to direct all media inquiries to the District Attorney's Office. On August 16, 2018, the Director, John Camper, of the Colorado Bureau of Investigations sent a text message to Deputy Director of Investigations Chris Schaefer, Deputy Director of Forensic Services Jan Girtin, Assistant Director Dan Volz, and Public Information Officer Susan Medina emphasizing the importance of keeping the information about the case confidential. (*See Attachment 8*)
 - c. Notifying FBI supervisors and investigators of the Court's order and need to direct all media inquiries to the District Attorney's Office
 - d. Notifying Frederick Police Chief Todd Norris of the Court's order and need to direct all media inquiries to the District Attorney's Office (after charges were filed).
 - e. Notifying all District Attorney employees via email of the importance of maintaining confidentiality regarding the Watts case. (*See Attachment 9*)
 - f. Notifying Weld County Sheriff Steve Reams of the Court's order and the need to direct all media inquiries to the District Attorney's Office. Sheriff Reams subsequently sent an email to Sheriff's Office employees. (*See Attachment 10*)
 - g. The District Attorney addressed the media on three separate occasions, August 16 (two occasions) and August 20, 2018. The District Attorney complied with Colo RPC - 3.6 and 3.8. During the press briefing on formal charges, and subsequent to reading the charges, the District Attorney explained that the rules of professional conduct prevented his office from

answering questions specific to the investigation, and further reminded the media that charges are simply allegations and that the Defendant is presumed innocent unless and until proven guilty beyond a reasonable doubt.

10. The People are aware of and concerned that media outlets have allegedly obtained information from sources within law enforcement. Such conduct only works to undermine the public's confidence in their government. However, as this Court is aware, neither it nor law enforcement investigators have any legal ability to order the press to disclose their sources. Consequently, Defendant's motion is presumably asking this Court to order a special commission (appointed by the Court, made up of members from outside the FBI, CBI, Frederick Police Department, Weld County District Attorney's Office, and the Weld County Sheriff's Office) interview potentially hundreds of governmental employees, obtain warrants to inspect thousands of pages of phone records, and then write hundreds of reports documenting their findings. Who would staff and fund such an investigation?
11. A court's authority to act derives from rule, statute, case law, or the inherent authority of courts. *See, e.g., People v. Dist. Court, 575 P.2d 7, 8 (Colo.1978)* (concluding there was no statute or case that gave the court authority to remove a juvenile defendant from the State for an evaluation); *cf. People v. Aleem, 149 P.3d 765, 774 (Colo. 2007)* (discussing a court's inherent authority to use all powers reasonably required to protect the integrity of the court and judicial process).
12. Defendant fails to offer any legal support for the extraordinary premise that the judicial branch possesses inherent authority to order the executive branch to engage in the massive investigation of law enforcement personnel he now requests.
13. Equally significant, there has been no showing of a violation of the Court's order by the District Attorney which would justify any sanction, especially a sanction this drastic. Pursuant to the rules of professional conduct and the order of this Court, the District Attorney has exercised reasonable care to prevent law enforcement personnel, investigators, employees, and other persons assisting or associated with the District Attorney from making such extrajudicial statements. The result that extensive efforts to prevent leaks may have come up short is clearly unfortunate, but far from unheard of in an investigation involving this many people and agencies. In other words, the fact a leak may have occurred does not constitute a per se violation of the Court's order. If there is no violation, there should be no sanction.
14. The District Attorney will continue to remind law enforcement that unauthorized media leaks could result in responsible individuals being held in contempt of court. Further orders are unnecessary, beyond the scope of this Court's authority, and would be an unjustified use of limited governmental resources.

WHEREFORE, the People request this Court deny the Defendant's motions D-29, D-30, and D-31 in their entirety.

DATED this 6th day of September 2018.

MICHAEL J. ROURKE, #28812
DISTRICT ATTORNEY

By /s/Michael J. Rourke
MICHAEL J. ROURKE #28812
DISTRICT ATTORNEY

By /s/Steve Wrenn
STEVE WRENN, #35411
CHIEF DEPUTY DISTRICT ATTORNEY

By /s/Patrick T. Roche II
PATRICK T. ROCHE, II, #47352
DEPUTY DISTRICT ATTORNEY

CERTIFICATE OF SERVICE

I hereby certify that on 9/6/18, a true and correct copy of People's [J] was e-filed and e-served via ICCES E-System, addressed to the following: John Walsh/Kathryn Herold/Public Defender's Office

BY /s/KLHolscher