

District Court, Weld County, Colorado Court Address: 901 9th Avenue , Greeley, CO 80631	DATE FILED: August 29, 2018
<b>PEOPLE OF THE STATE OF COLORADO,</b> Plaintiff v. <b>CHRISTOPHER WATTS,</b> Defendant	▲ COURT USE ONLY ▲
John Walsh, Atty. Reg. No. 42616 Kathryn Herold, Atty. Reg. No. 40075 Deputy State Public Defenders 822 7th Street, Ste. 300 Greeley, CO 80631 Phone Number: (970) 353-8224 FAX Number: (970) 352-8293 E-mail address: john.walsh@coloradodefenders.us	Case Number: 18CR2003  Courtroom 5

CHRISTOPHER WATTS, through his attorneys, hereby moves this court to order the government to investigate persons associated with the prosecution, determine if they've disseminated extrajudicial information to the press, and to advise the court about what reasonable care it has used to prevent such dissemination. Once that information is known, Mr. Watts may have additional pleadings. As grounds for this motion, Mr. Watts states:

1. As of this morning, some thirteen days after Mr. Watts' first appearance in court, he has yet to receive a single page of discovery in this case.
  2. For instance, although this court unsealed the affidavit in this case on August 21, 2018, multiple media outlets, several days before that, were already reporting on alleged details of the investigation. Most of those stories cited unnamed prosecution-related sources. *See e.g.*, Exhibit A (originally posted on August 16, 2018, citing “several high-ranking sources”); Exhibit B (originally posted on 9news.com on August 16, 2018, citing “a law enforcement source”).
  3. Then yesterday, at about 4:15 p.m., *People.com*, the online website for the gossip magazine *People Magazine*, posted a story, citing “a source close to the investigation.” The headline of the story in Exhibit C notes the information came from a “Police Source.” The source notes that the authorities have “just begun our investigation.” The source goes on to comment on the truthfulness of Mr. Watts’ alleged statements, the nature and existence of alleged physical evidence, and, ultimately, about whether Mr. Watts is guilty. *See Exhibit C.*

4. These extrajudicial statements have the effect of irretrievably tainting the potential jury pool, violating Mr. Watts' rights to a fair and impartial jury, and undermining the fundamental fairness of these proceedings. COLO. CONST. art. II, §§ 16, 23, 25; U.S. CONST. amends. V, VI, XIV.
5. Mr. Watts reminds the court that it issued an order limiting pretrial publicity on August 20, 2018.
6. In that order, the court required compliance with COLO. R.P.C. 3.6. Rule 3.6 specifically references the additional requirements of Rule 3.8(f). *See* COLO. R.P.C. 3.6(b)(noting what a lawyer may state and specifically referencing Rule 3.8, which is particularly aimed at prosecutors).
7. In that vein, Rule 3.8 requires prosecutors to “exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that a prosecutor would be prohibited from making under Rule 3.6 . . .”
8. Specifically, Rule 3.6 would prevent law enforcement and prosecution-related parties from making extrajudicial statements that “will have a substantial likelihood of material prejudicing” the proceedings. COLO. R.P.C. 3.6(a).
9. The commentary to that rule gives examples of “certain subjects that are more likely than not to have a material prejudicial effect on a proceeding, particularly when they refer to . . . a criminal matter . . .” The rule warns against extrajudicial statements regarding the “character [or] credibility . . . of a [] suspect in a criminal investigation”, “any opinion as to guilt . . . of a defendant . . . in a criminal case . . .”, and “the identity or nature of physical evidence expected to be presented.” COLO. R.P.C. 3.6, comment [5].
10. Unfortunately, Exhibit C demonstrates that someone is commenting on those very things. To counsel’s knowledge, no other person would have information with respect to the physical evidence and the content and plausibility of Mr. Watts’ statement in the case besides law enforcement, prosecutors, their agents and employees, and people associated with them.
11. It should be noted that in its opposition to Mr. Watts’ request to limit pretrial publicity, the government argued, in rote protestation, that it was aware it was “bound by the Colorado Rules of Professional Conduct, with or without a specific Court Order.” *[E] People’s Response to Defendant’s Motion (5) to Limit Pretrial Publicity*, ¶ 2. In fact, the government noted its position was that the court should “simply require that all parties comply with Rules 3.6 and 3.8 of the Colorado Rules of Professional Conduct.” *[E] People’s Response to Defendant’s Motion (5) to Limit Pretrial Publicity*, ¶ 4.
12. It now appears, though, that the government has been unable or unwilling to follow through on its banal assurance to comply with COLO. R.P.C. 3.6 and 3.8.
13. Counsel for Mr. Watts suspects the government will argue that it has no specific knowledge that any of its agents or associates has released this type of information. But, that objection

does not properly address the specific requirements of Rule 3.8. Indeed, the rule requires the government to “exercise reasonable care” in preventing the dissemination of materially prejudicial extrajudicial statements.

14. That being said though, it is obvious that Mr. Watts has no access to the information needed to determine if, as it at least appears, the government has violated the court’s order. Instead, the government fully controls the information necessary to determine if there’s been a violation.
15. Because of this reality, Mr. Watts moves the court to order the government to undertake an investigation of the issue.
16. In doing so, the court should demand:
  - a. The government determine if any of its investigators, law enforcement personnel, employees, or other persons assisting or associated with the prosecutor in the case made the extrajudicial statements to *People Magazine* or any other media source; and that
  - b. The government reduce the outcome of its investigation to writing so that the court and counsel can take appropriate next steps; and that
  - c. The government’s written response contain a specific notation and explanation about if and how it has exercised reasonable care in preventing the dissemination of this and other materially prejudicial extrajudicial information.
17. Mr. Watts is concerned that what has already been a media frenzy in this case is already posing a serious threat to the fundamental fairness of these proceedings. If Mr. Watts does not have the information needed to litigate potential serious violations of the court’s order, his rights to a fair trial, a fair and impartial jury, and to the fundamental fairness which due process requires are all violated. U.S. CONST. amends. V, VI, XIV; COLO. CONST. art. II, § 16, 23, 25.

WHEREFORE, Mr. Watts moves this court for the relief cited in this motion.

Respectfully submitted,  
MEGAN A. RING  
COLORADO STATE PUBLIC DEFENDER

  
John Walsh, Atty. Reg. No. 42616

  
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Kathryn Herold, Atty. Reg. No. 40075  
Deputy State Public Defenders

**CERTIFICATE OF SERVICE**

I hereby certify that on  
8/29/18, I served the foregoing  
document by e-service through ICCES to all  
opposing counsel. TC

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