

District Court, Weld County, Colorado Court address: 901 9 th Avenue, Greeley, CO 80631	DATE FILED: September 12, 2018 ▲ COURT USE ONLY ▲
PEOPLE OF THE STATE OF COLORADO, Plaintiff v. CHRISTOPHER WATTS, Defendant	
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 Division: 5
(D-035) MR. WATTS' MOTION TO RECONSIDER THE COURT'S ORDER (C-7) DENYING DEFENSE MOTIONS (D-029), (D-30), AND (D-031)	

CHRISTOPHER WATTS, through his attorneys, hereby moves this Honorable Court to reconsider its ruling in Order (C-7) and states:

1. On September 6, 2018, the government responded to Mr. Watts' Motions (D-029), (D-030), and (D-031) concerning leaks to the media. Today, the court issued its ruling, (C-7). Mr. Watts responds to the court's ruling and the government's arguments in its responsive pleading, Motion [J], and respectfully asks the court to reconsider its ruling.
2. First, the court noted that the government cited news articles that may have cited information contained in pleadings (D-020) and (D-021). Order (C-7) at p. 2. But that argument is irrelevant. What Mr. Watts' counsel writes in a motion is not an extrajudicial statement, is not subject to Rule 3.6, and has absolutely no bearing on the issue before this Honorable Court.
3. The government argues, and the court seems to agree, that the court has no authority to order the relief requested by the defense in (D-029), (D-030), and (D-031). *See* Motion [J], ¶¶ 11, 12; *See* Order (C-7), p. 3.
4. To the contrary, "As part of its inherent authority, the court has the power to enforce obedience . . ." to its lawful pretrial orders. *People v. McGlotten*, 134 P.3d 487, 489-90 (Colo. App. 2005). The court's power includes the sanction of contempt. *See e.g., Id.* The court is inarguably authorized to impose remedial sanctions for contempt, and such sanctions are "intended to force compliance with a lawful order. . . ." *In re Marriage of Cyr and Kay*, 186 P.3d 88, 92 (Colo. App. 2008). Surely, the government does not argue the court's pretrial order is unlawful.

5. Additionally though, the court retains other inherent powers. As the Court of Appeals stated in 2016, “It is fundamental that trial courts are vested with certain inherent powers necessary for courts to act efficiently.” *Laleb v. Johnson*, 405 P.3d 286, 290 (Colo. App. 2016)(citing *Peña v. Dist. Court*, 681 P.2d 953, 956 (Colo.1984)). “These inherent powers,” the appellate court continued, “include all powers reasonably necessary to allow the court to efficiently perform its judicial functions *and to make its lawful actions effective.*” *Id.* (emphasis provided).
6. Clearly then, this Honorable Court has both the power of remedial contempt *and* such other inherent powers necessary to “make its lawful actions effective.” *Id.*
7. To be clear, Mr. Watts does not, as addressed in the court’s order, seek to have the government charge someone with a crime. Order (C-7) at p. 3 (noting the government has the duty to prosecute, has prosecutorial discretion, and that “such a function is not subject to judicial control.”). True enough, such prosecutorial discretion is free from judicial control; however, violations of the court’s lawful orders, and the authority possessed by the court to remedy said violations, are clearly within the court’s purview. There is no separation of powers issue when the court uses its inherent authority to ensure any party – the government included – complies with its lawful orders.
8. Regarding the substance of the government’s response, the government first points to generic steps it has taken to attempt to limit extrajudicial statements by its agents. *See* Motion [J], ¶ 9. The court seems moved by these steps. *See* Order (C-7) at 3 to 4 (noting the “numerous steps” the government has taken to limit dissemination of unauthorized information.)
9. It must be recognized these “numerous steps” involve a generic letter sent out to Weld County law enforcement, appearing to specifically apply to officer-involved shootings (Attachment 7), internal emails warning district attorney staff about “discuss[ing] this case in the public areas of the courthouse . . .”(Attachment 9), and unspecified notification of the FBI and Frederick PD (there are no attachments explaining this assertion), and a generic email from the Sheriff’s Office about not disseminating information (Attachment 10).
10. The government argues these general steps, which one would hope would be the norm for every case, constitute “reasonable care” pursuant to Rule 3.8(f). *See* Motion [J], ¶¶ 7-9.
11. But that argument fails to address what is axiomatic in the law: The term reasonable care “is always relative, depending on the particular circumstances.” *Black’s Law Dictionary* (10th ed. 2014). For instance, “what is reasonable care in one case might be gross negligence in another.” *Id.*
12. It is beyond dispute that the media attention in this case is extraordinary, pervasive, and, ultimately, threatening to Mr. Watts’ rights to a fair trial and due process of law under the Colorado and Federal Constitutions. COLO. CONST. art. II, §§ 16, 18, 25; U.S. CONST. amends. V, VI, XIV.
13. Because of the extraordinary nature of this case, reasonable care should not consist of a couple of generic notifications via email or form letter.

14. That in mind, generally notifying the police about the court's order of August 20, 2018, seems inadequate anyway. The order only makes a brief, non-specific reference to the special duties of the prosecutor under Rule 3.8(f) and doesn't mention the commentary to Rule 3.6 at all. The only way we know the court's order applies to law enforcement is because Rule 3.8(f) itself says so. The court's order does not. And so, a reasonable law enforcement officer reading the court's order is not made specifically aware the order applies to her and certainly doesn't know what specific *kinds* of statements are prohibited by the commentary to Rule 3.6. *See* Order on Defense Motion (D-5)(ordering "the parties" to strictly comply with the Rules of Professional Conduct, and mentioning prohibitions against "a lawyer" making prohibited statements.") This fact alone seems to raise the inference that the government has not exercised reasonable care in this case.
15. In addition, the government argues at several turns there is no evidence of a violation of the court's order. *See* Motion [J] at ¶¶ 8, 13. The court seems to agree. Order (C-7) at p. 3. But, such is not the case.
16. Despite the court's finding that there was "no showing of a violation" (Order (C-7) at p. 3), the court, at the same time, seems to acknowledge the very real possibility that there was such a violation. Order (C-7) at p. 4 (addressing the Frederick Police Department leaks). Quite tellingly, the government's motion simply ignores that very real possibility. The court will recall that the offending member of the Frederick Police Department, in apparent open defiance of this Honorable Court, "asked for anonymity because the officer is not authorized to speak to the press . . ." *Exhibit E* to (D-031) at 55.
17. So, far from there being "no evidence" (Motion [J] at ¶ 8), there is, indeed, information that a police department actively working on this case is making materially prejudicial extrajudicial statements. Because the court has the inherent authority described above, the court has the authority to order the relief requested.
18. In arguing that such relief would be overly burdensome, the government makes a specious argument that it must interview "hundreds of governmental employees," review "thousands of pages of phone records," and write "hundreds of reports" to do such an investigation. Motion [J] at ¶ 10. Based on counsel's understanding, the Town of Frederick employs approximately 21 uniformed officers. *See e.g.*, <https://www.frederickco.gov/360/Police>. An investigation into that department hardly seems overly burdensome and, instead, seems a small price to pay to try to salvage Mr. Watts' already-compromised constitutional rights to a fair and impartial jury and due process of law. U.S. CONST. amends. V, VI, XIV; COLO. CONST. art. II, §§ 18, 23, and 25.
19. It is, of course, even more concerning if there are additional leaks beside the Frederick Police Department leaks. For that reason alone, an investigation is necessary to preserve what is left of the possibility of affording Mr. Watts a fundamentally fair trial before a fair and impartial jury of his peers. U.S. CONST. amends. V, VI, XIV; COLO. CONST. art. II, §§ 18, 23, and 25.

20. Finally, if the court does reconsider its order, the government’s motion raised the question of who would pay for such an investigation (*see* Motion [J] at 10). But, that question misses the point.
21. “Expedience,” the Colorado Supreme Court has warned, “may not override the Constitution of Colorado.” *City of Canon City v. Merris*, 323 P.2d 614, 617 (Colo. 1958)(overruled on other grounds by *Vela v. People*, 484 P.2d 1204 (Colo. 1971)). “If, one by one,” the High Court continued, “the rights guaranteed by the federal Constitution can and must, for expediency's sake, be violated, abolished, stricken from that immortal document, and from state Constitutions, we will find ourselves governed by expediency, not laws or Constitutions” *Id.* (internal punctuation and citation removed).

WHEREFORE, for the reasons stated in this motion, and for the reasons contained in Motion (D-029), (D-030), and (D-031), Mr. Watts respectfully requests the court reconsider its Order (C-7). In addition to the citations contained in this motion, Mr. Watts makes this request pursuant to his rights to a fair and impartial jury, a fair, untainted, and impartial jury venire, and a fundamentally fair proceeding comporting with the requirements of due process of law. U.S. CONST. amends. V, VI, XIV; COLO. CONST. art. II, §§ 16, 18, 23, and 25.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on 9/12/18,
I served the foregoing document by e-service
through ICCES to all opposing counsel. TC
