

District Court, Weld County, Colorado Court address: 901 9 th Avenue, Greeley, CO 80631	DATE FILED: October 19, 2018 9:51 AM
PEOPLE OF THE STATE OF COLORADO, Plaintiff v. CHRISTOPHER WATTS, 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 Division: 5
(D-041) MR. WATTS' MOTION FOR ALTERNATIVE RELIEF IN THE EVENT THAT HIS MOTION TO INTERVENE PURSUANT TO COLO. R. CRIM. P. 24 IS DENIED IN 18CV30907	

CHRISTOPHER WATTS, through his attorneys, hereby moves this Honorable Court to hold a hearing on the government's proffered reason for wanting to deny disclosure of the autopsies in this matter. As grounds for this motion, Mr. Watts states:

1. Mr. Watts filed today a motion in case number 18CV30907 to intervene in that proceeding pursuant to Colorado Rule of Criminal Procedure 24. As of the filing of this motion, the court there, the Honorable Todd Taylor, has yet to rule on Mr. Watts' pleading.
2. Out of an abundance of caution, Mr. Watts files this motion before this court, as well. If the court denies Mr. Watts' motion in 18CV30907, Mr. Watts respectfully moves this court to hold a hearing on whether the release of the autopsies "could result in tainting witnesses that have not yet been interviewed" as the government claimed in its Motion [L] at paragraph 3.
3. As stated in Mr. Watts' notice (D-039), the government's alternative claim that the results of the autopsies will taint potential jurors is groundless – the results will almost assuredly be revealed in court proceedings well in advance of trial.
4. However, counsel for Mr. Watts remains concerned about the government's spurious claims related to tainting witnesses who have yet to be interviewed. Counsel remains specifically concerned that the government possesses information that the defense does not have.
5. It is not clear if the government's assertion means that it has knowledge that witnesses may change their testimony once they see the coroner's opinion. It is not clear which witnesses the government knows about who have not been interviewed that may have that reaction to the opinion of the coroner. It is not clear what information the government possesses that would lead them to that conclusion.

6. Perhaps more importantly, it is now clear that no party in the civil case has an interest in developing the record about this specious claim. According to the petition filed in 18CV30907, the coroner (whose office is ostensibly independent from the district attorney's) "concur[s] with the District Attorney's reasoning" and has "no reason to doubt [the] District Attorney" 18CV30907, VERIFIED PETITION IN RE: THE REQUEST OF THE GREELEY TRIBUNE FOR CERTAIN RECORDS PURSUANT TO THE COLORADO OPEN RECORDS ACT, C.R.S. §§ 24-72-201, ET. SEQ., at ¶¶ 13, 14. Counsel for Mr. Watts cannot share the coroner's apparent confidence. The coroner's naked deference to the government has therefore made clear that he has no interest in challenging the government's judgement; consequently, he has no interest in investigating and ferreting out the validity of its claim. Mr. Watts does.
7. The respondents to the action may have some interest in determining the validity of the government's witness claim. But, their interest can, of course, be no greater than that of Mr. Watts. Mr. Watts is constitutionally entitled to know and meaningfully challenge the evidence and witnesses against him and to have and make use of any and all information related to their veracity or credibility. *See e.g.*, COLO. CONST. art. II, §§ 16, 20, and 25; U.S. CONST. amends. V, VI, VIII, XIV; *Washington v. Texas*, 388 U.S. 14 (1967); *Giglio v. U.S.*, 405 U.S. 150, 154-55 (1972); *People v. Bueno*, 626 P.2d 1167, 1169 (Colo. App. 1981); *Crane v. Kentucky*, 476 U.S. 683, 690 (1986).
8. Because the government's claim that the release of the autopsies may taint witnesses who have not been interviewed seems to suggest there are witnesses that the government knows who may slant or change their testimony based on the autopsy results, Mr. Watts has an obvious and substantial interest in developing the record on that claim. In addition, because that result, if true, has a direct effect on the criminal proceedings in this case, this court, should the court in 18CV30907 deny Mr. Watts' request to intervene, must hold a hearing in this case.
9. Even more concerning, though, the coroner requested the court in 18CV30907 allow him to offer specifics about his agreement with the district attorney "under seal to the Court or in a closed hearing" 18CV30907, VERIFIED PETITION IN RE: THE REQUEST OF THE GREELEY TRIBUNE FOR CERTAIN RECORDS PURSUANT TO THE COLORADO OPEN RECORDS ACT, C.R.S. §§ 24-72-201, ET. SEQ., at ¶¶ 16. If the court were to allow this extraordinary request, Mr. Watts would be denied the opportunity not only to challenge the evidence but also, and obviously more egregiously, to even know what the evidence is.
10. Because of these realities, the court here should hold a hearing on these matters.
11. Albeit in different contexts, the Supreme Court of Colorado has acknowledged a need to protect "the integrity of the fact-finding process, the fairness or appearance of fairness of trial, . . . [and the] public trust or confidence in the criminal justice system." *People v. Rodriguez*, 914 P.2d 230, 290 (Colo. 1996).
12. Of course, only a proceeding which affords the accused fundamental fairness can comport with due process of law. COLO. CONST. art. II § 16, 23, and 25; U.S. CONST. amends. V, VI, XIV; *see e.g.*, *Lassiter v. Dep't of Social Services of Durham County, N.C.*, 452 U.S. 18, 24-25 (1981)(noting the "lofty" importance of due process of law).
13. As has been pointed out by the United States Supreme Court, "due process, unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances." *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)(internal citations and

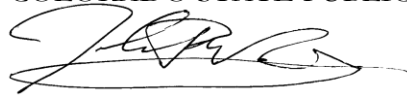
punctuation omitted). Indeed, due process “is flexible and calls for such procedural protections as the particular situation demands.” *Id.*

14. Here, if the civil court denies the request to intervene, due process requires this Honorable Court to hold a hearing anyway. Denying such a hearing continues to erode and undermine Mr. Watts’ rights to meet and defend the accusations against him, to learn of constitutionally significant evidence, and, ultimately, to a fundamentally fair proceeding comporting with due process of law. COLO. CONST. art. II, §§ 16, 20, 23, and 25; U.S. CONST. amends. V, VI, VIII, and XIV.
15. The High Court has put it most succinctly: “the fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.” *Mathews*, 424 U.S. at 333 (internal citations and punctuation omitted). Mr. Watts moves this Honorable Court to afford him such an opportunity.

WHEREFORE, Mr. Watts is entitled to the relief requested in this motion. Mr. Watts files this motion, and makes all other motions and objections in this case, whether or not specifically noted at the time of making the motion or objection, on the following grounds and authorities: the Due Process Clause, the Right to a Fair Trial by an Impartial Jury, the Rights to Counsel, Equal Protection, Confrontation, and Compulsory Process, the Rights to Remain Silent and to Appeal, and the Right to be Free from Cruel and Unusual Punishment, pursuant to the Federal and Colorado Constitutions generally, and specifically, the First, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, and Fourteenth Amendments to the United States Constitutions, and Article II, sections 3, 6, 7, 10, 11, 16, 18, 20, 23, 25 and 28 of the Colorado Constitution.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on
10/19/18, I served the foregoing document
by e-service through ICCES to all opposing
counsel. TC