

**DISTRICT COURT, WELD COUNTY,
COLORADO**

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DATE FILED: September 10, 2018

PEOPLE OF THE STATE OF COLORADO,
Plaintiff

v.

CHRISTOPHER LEE WATTS, Defendant

▲ COURT USE ONLY ▲

Case Number: 18CR2003

Division: 5

**ORDER DENYING DEFENDANT'S REQUEST TO REQUIRE THE GOVERNMENT
TO DO AN INVESTIGATION (C-7)**

THIS MATTER comes before the court on Defendant's *Motion To Require The Government To Do An Investigation Into Whether Persons Associated With the Prosecution Made Extrajudicial Statements Pursuant to Colo. R.P.C. 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*, (D-029); *Supplement to His Motion* (D-029), (D-030); and *Additional Supplement and Arguments Related to (D-029) and (D-030)*, (D-031). The Court has considered the motion and the prosecution's *Response* (J) filed on September 6, 2018. The motions involve reports in the media regarding information surrounding the investigation. Defendant alleges that said reports "have the effect of irretrievably tainting the potential jury pool, violating Mr. Watts' right to a fair and impartial jury, and undermining the fundamental fairness of these proceedings."

Defendant was arrested late in the night of August 15, 2018. The next day a motion to seal the warrantless arrest affidavit was granted, and Defendant moved for, among other things, a limitation on pretrial publicity (defense motion 5). On August 17, 2018, Defendant moved for, among other things, a court order to compel the pathologists to take DNA swabs of the throats of

the child victims, or to allow a defense expert to take such swab samples (defense motions 20 and 21).

The *Affidavit in Support of Warrantless Arrest* was unsealed on August 20, 2018. That day the Court also issued an order limiting pretrial publicity, requiring strict compliance with Colorado Rules of Professional Conduct 3.6-Trial Publicity, with specific reference to the additional requirements of Rule 3.8(f) which directs 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 the prosecutor would be prohibited from making under Rule 3.6.”

Now, Defendant alleges potential violations of the August 20 order in regard to five articles attached to D-029 through D-031:

Exhibit A: “Bodies of two Frederick girls found inside oil and gas tanks, sources say,” published August 16, 2018

Exhibit B: “Husband arrested: Sources, family members say he admitted to killing wife, daughters,” published August 16, 2018

Exhibit C: “‘Absolutely No Evidence’ Shan’ann Watts Killed Her Daughters: Police Source,” published August 28, 2018

Exhibit D: “Chris Watts Was Emotionless After Murder Arrest, Source Says: ‘Like He Couldn’t Be Bothered,’” published August 29, 2018

Exhibit E: “The Watts Family Murders Secrets & Lies,” published September 10, 2018.

In their *Response*, the People highlight several articles that appear to have cited defense motions 20 and 21. The People also stated:

[T]he 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 investigations, employees, and other persons assisting or associated with the district attorney in the criminal case from making such extrajudicial statements.* ¶7 (emphasis in pleading).

The Court has considered Defendant's motions and exhibits and the prosecution's *Response* and exhibits. Defendant has requested that this Court order the District Attorney to investigate potential leaks to the media, reduce the outcome of its investigation into writing, and explain how it has exercised reasonable care in preventing the dissemination of this and other materially prejudicial extrajudicial information. For the reasons set forth in this *Order*, the motion is denied.

Defendant Fails to Offer Legal Authority Providing that the Judiciary May Order an Executive Agency to Initiate Investigations

Defendant offers no legal authority for his request that the Court order the District Attorney to investigate the potential leaks. The District Attorney belongs to the executive branch of the government and is charged with the duty to prosecute persons for violations of the criminal laws with broad discretion in performance of those duties. *People v. Dist. Court*, 632 P.2d 1022, 1024. (Colo. 1981). The scope of this discretion extends to the power to investigate and to determine who shall be prosecuted and what crimes shall be charged. *Id.* Such a function is not subject to judicial control; to hold the exercise of such prosecutorial discretion is subject to judicial oversight would erode the doctrine of separation of powers in violation of Article III of the Colorado Constitution. *See, id.*

Nor may this Court require prosecution under C.R.S. § 16-5-209, because such an order requires a finding that the district attorney is acting arbitrarily or capriciously and without reasonable excuse in refusing to prosecute. Because Defendant's allegations do not show either a court order violation nor prejudice suffered by the Defendant, the Court cannot say that the district attorney is acting arbitrarily or capriciously and without reasonable excuse to refuse to investigate such potential violation. Furthermore, there has been no showing of a violation of the Court's order by the District Attorney which would justify any sanction. To the contrary the district

attorney has taken numerous steps to try to limit the dissemination of information to only that which Colo. RPC 3.6 and the Court has authorized.

Thus, the Court finds and concludes that it is without authority to order the government to do an investigation and, accordingly, that request is **DENIED**. Accordingly, the Court will also deny Defendant's request that the government reduce the outcome of its investigation to writing.

However, based upon Exhibit E, attached to D-031, the September 10, 2018 article appears to attribute information to a Frederick police source that, if it came from a Frederick police source, would constitute a violation of the pretrial publicity order. Namely, the article quotes "a Frederick police source" who commented on the credibility of Defendant, as well as the identity and nature of physical evidence that has not been discussed on the record and can reasonably be expected to be presented in the case if it proceeds to trial. If true, this occurred despite the People's asserted "reasonable care to prevent law enforcement personnel . . . from making such extrajudicial statements," to include notifying Frederick Police Chief Todd Norris of the Court's order and need to direct all media inquiries to the District Attorney's Office. While the comments made by the "police source" is unproven to date, the District Attorney's shall once again notify the Frederick Police Department of their obligations regarding extrajudicial statements.

The Court is mindful that it must be ever vigilant to ensure that Defendant receives a fair trial. While the request to order the government to investigate is denied, the Defense is free to investigate violations of the pretrial publicity order and seek leave to schedule an evidentiary hearing for sanctions for violation of the pretrial publicity order upon an appropriate offer of proof. Lastly, if the District Attorney learns of any information that is in violation of the Court order he shall have a duty to disclose that information to the defendant and the Court.

Dated: September 10, 2018

BY THE COURT:

A handwritten signature in black ink, appearing to read "Marcelo A. Kopcow". The signature is written in a cursive style with a large, sweeping flourish at the end.

Marcelo A. Kopcow
District Court Judge