

Colorado Supreme Court 2 East 14 th Avenue Denver, Colorado 80203 <hr/> Original Proceeding District Court, El Paso County 2015CR5795	
In Re: Plaintiff, The People of the State of Colorado v Defendant: Robert Lewis Dear.	
	Supreme Court Case No. 2016SA13
RECONSIDERATION ORDER PURSUANT TO REMAND	

INTRODUCTION

This matter is before the Court on the Supreme Court's Remand of March 21, 2016. The remand asked the trial court to reconsider its previous denial of Petitioner's motion to unseal in light of changed circumstances. The parties at the March 24, 2016 court appearance were allowed additional argument concerning the unsealing of the affidavits of probable cause. The district attorney did not object to the unsealing provided that victims and witnesses names which have not already been made public are redacted. Defense counsel remains opposed to the release and stood on it previous motions and responses. The Petitioner (media) asked the Court to release the affidavits in total.

PROCEDURAL HISTORY

This case involves a shooting on November 27, 2015 at approximately 11:30 a.m. at the Planned Parenthood Building located at 3480 Centennial Blvd. in Colorado Springs, Colorado. On that same day a county court judge granted the district attorney Donna Billek's request for sealing of the search warrant as well as her request for sealing of the arrest warrant. Those affidavits remain sealed. Subsequent search warrants and affidavits have been sealed by other judicial officers.

In its order of December 30, 2015 this Court denied the request to unseal the affidavits. The Court stated, inter alia, "The Court will revisit the issue as the case progresses." In its previous analysis the Court stated the case was just over one month old and the matter had not been set for a preliminary hearing or proof evident or presumption great hearing. The Court considered the privacy interest of the various individuals, the fact that there was an ongoing investigation, which should not be compromised, and the public purpose to be served in allowing inspection at that stage of the proceedings.

In this Court's answer to order and rule to show cause filed with the Colorado Supreme Court this Court stated, "Remand for further proceeding would also be appropriate if a new right is recognized because of the changed circumstances in this case....Although the majority of the shooting victims names have not been released and would be appropriately redacted, these changed circumstances may render it appropriate to release the affidavits of probable cause in redacted form."

The Supreme Court on March 21, 2016 asked this Court to reconsider the matter in light of changed circumstances.

As stated above the district attorney, defense counsel and the media attorney made additional statements and arguments at the March 24, 2016 court appearance.

ANALYSIS

This Court's previous ruling on the motion to unseal was based on a statutory analysis under CCJRA and as such the release of such records is left to the custodian's discretion. Thus the Court must balance various competing interests including whether or not there is an ongoing investigation, the privacy concerns of victims and witnesses whose names have not been released and the public's interest in public access. In addition the Court has taken into consideration the defendant's right to a fair trial. See Harris v Denver Post Corp., 123 P.3d 1166 (Colo. 2005) and Star Journal Publ'g Corp. 591 P.2d 1028 (Colo. 1979).

In striking the balance as is required by case law this Court finds that at the present time unsealing the affidavits with redaction of names of individuals who have not already been publicly released is warranted.

The posture of the proceedings today is significantly different from the court's previous denial of the motion to unseal. The Court has considered a number of changed circumstances. The investigation in this case has now entered its fourth month. Since November 27, 2015 a significant number of details of the incident have been released through pleadings and pretrial hearings. A significant amount of information in the affidavits is already in the public domain. In addition the defendant

has on more than one occasion sua sponte contacted the media outlets to share information about the facts of the case as well as his mental status. Moreover, Mr. Dear has also made unsolicited statements in open court concerning the shooting events of November 27, 2015.

Additional information has reached the public domain. At the March 24, 2015 court appearance it was revealed that a victim/witness has appeared on television to discuss the incident. In addition the district attorney stated that while parts of the investigation is still ongoing most of the investigation has been completed.

The Court remains concerned about the privacy and safety as to those victims and each individual witness whose names are not yet in the public domain. With the exception of a few names the majority of the names have been redacted from the court filings. Planned Parenthood facilities have been the subject of a considerable amount of debate and controversy. The abortion issue and debate heighten the risk of intimidation, harassment or physical injury if their names are revealed. The Court finds that at this stage of the proceedings the balance must fall on the victims and each individual witness right to anonymity. As stated in previous orders this Court will revisit issues of the release of names as the case progresses.

CONCLUSION

In light of the changed circumstances, the Court concludes that the affidavits should be released in redacted form. The redactions shall include social security numbers, victims' and witness names who are not already in the public domain. The Court hereby unseals and releases the affidavits and record warrants. These documents shall be made available to Media Petitioner's.

The Court will wait for an additional remand or order from the Supreme Court prior to releasing said information.

DONE this 28th day of March, 2016.

BY THE COURT:



District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of March, 2016, a true and correct copy of this Reconsideration Order Pursuant to Remand was delivered via EMAIL to the following:

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